

RECEIVED
Apr 19 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Charles B. Simmons, Jr., Master in Equity

Civil Action No. 2017-CP-23-06301 Appellate Case No. 2018-001209

Raymond Wedlake, individually, and derivatively, on behalf of all Members of the
Woodington Homowners' Association, Inc., Appellant,

v.

Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as
the current Board of Directors of the Woodington Homeowners' Association, Inc., Respondents.

PETITION FOR REHEARING
WITH A NEW PANEL OF JUDGES;
OR, ALTERNATELY *EN BANC*

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

April 20, 2021

Statement of Grounds - Table of Contents

PREFACE	.....	1
OVERVIEW	.....	1 - 2
ARGUMENT	.....	2 - 15
A) WHOA By-Laws are a self-authenticated-public record	.....	2 - 4
A1. The Record On Appeal contains: “Exhibit A - By-Laws”	.....	2
A2. Exhibit A matches a filed-public record recorded by the Register of Deeds	.....	3
A3. Common knowledge says public records are self-authenticated	.....	3 - 4
B) Errors of Fact cannot be used to conclude affirmation of involuntary non-suit	.....	4 - 7
B1. Issue One: “... the Board ... must comply with ... By-Laws:” was affirmed by the Master and therefore precludes a granting of involuntary non-suit	.....	4 - 5
B2. Issue Two: “... bylaws place a duty on the Board of Directors to fill a vacancy ...” was affirmed by the Master and therefore precludes a granting of an involuntary non-suit	.....	5
B3. Issue Three: “... management contract ...” was settled – not a trial issue	.....	5
B4. Issue Four: “... bylaws do not permit a Director to remain beyond a five-year term ...” was affirmed by the Master and therefore precludes a granting of involuntary non-suit	.....	5 - 6
B5. Issue Five: “... Bylaws of the Association do not permit delegation of the role or authority of the Board ...” was erroneously stated as moot by the Master and represents an Error of Fact	.....	6 - 7
B6. Issue Six: “... Bylaws require the Board of Directors to send out a ballot ...” was affirmed by the Master and therefore precludes a granting of involuntary non-suit	.....	7
C) Exclusion of evidence by the Master, and this Court’s affirmation, violated the Court’s own Rules of Evidence	.....	7 - 9
C1. Direct violation of Rule 901, SCRE is noted	.....	7 - 8
C2. Testimony provides authentication of trial issues per Rule 901(b)(1) ..		8
C3. No Rule of Evidence contains the word “enter”, nor the phrase “entered into evidence”	.....	8
C4. A substantial right was denied with granting of involuntary non-suit ..		8 - 9
C5. All admissible evidence found in the ROA should be considered	....	9
D) Testimonial-witness evidence overwhelmingly proves Appellant’s right to requested declarations	.....	9
E) Errors of Fact cannot be used to claim issues were moot	.....	9 - 11
E1. Issue One was not moot at the time of trial	.....	9 - 10
E2. Issue Two was not moot at the time of trial	.....	10

E3. Issue Four was not moot at the time of trial	11
E4. Issue Five was not moot at the time of trial	11
F) Issue Six was supported by testimonial evidence, making whether or not the By-Laws were excluded from evidence irrelevant	12
G) Appellant’s individual action cannot be dismissed based upon Error of Fact	12 - 14
G1. For all five issues, a concept of “... not the only plausible interpretation of the By-Laws, ...” does not apply	12 - 13
G2. Another plausible interpretation of the By-Laws does not exist and such claim cannot be used to annul Appellant’s individual action	13 - 14
H) Physical incapacity of Counsel for Appellant during trial led to mental aberrations	14
I) As an alternative, Appellant requests Rehearing <i>en banc</i>	14 - 15
CONCLUSION	15

Memorandum with Citation of Authorities

Cases

<i>Eadie v. H.A. Sack Co.</i> , 322 S.C. 164, 172, 470 S.E.2d 397, 401 (Ct. App. 1996)	3
--	---

Rules

South Carolina Appellate Court Rules: Rule 219, SCACR	14
South Carolina Appellate Court Rules: Rule 221, SCACR	1
South Carolina Rules of Evidence: Rule 103, SCRE	9
South Carolina Rules of Evidence: Rule 901, SCRE	2, 3, 7, 8

Statutes

S.C. Code Ann. § 33-31-140(3)	6
S.C. Code Ann. § 33-31-805(a)	5

Other

By-Laws of Woodington Homeowners’ Association, Inc.	2-5, 8-13
Constitution of the United States, Amendment XIV	9

COMES NOW Raymond A. Wedlake, Appellant (*Pro Se*), and pursuant to Rule 221, SCACR, submits this timely filed “Petition for Rehearing”. Stated in “Statement of Grounds - Table of Contents” as above are points that have been overlooked, or misapprehended by the Court, as documented by the Court in “Unpublished Opinion No. 2021-UP-113” (U113) (Exhibit PFR1).

PREFACE

Experience shows that a same Judge, or a same panel of Judges that authored U113 will be closed minded as related to rehearing. Experience shows that due consideration will not be given for a rehearing by a set of the same persons. Thus, a new panel is requested for review of this Petition. Appellant prays for due consideration to finally decide his appeal. Excerpts from Rule 221 (emphasis added) show:

RULE 221 - REHEARING ...

(a) Rehearing. Petitions for rehearing must be actually received by the appellate court no later than **fifteen (15) days** after the filing of the opinion, order, judgment, or decree of the court. A petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the **points supposed to have been overlooked or misapprehended** by the court. No return to a petition for rehearing may be filed ...

(c) Rehearing of Motions. The appellate court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or **petition has the effect** of dismissing or **finally deciding a party's appeal**.

OVERVIEW

This appeal seeks reversal and remand from a granting of involuntary non-suit. Appellant placed evidence before the Court showing that the Board of Directors (Board) of Woodington Homeowners’ Association, Inc. (WHOA) perpetrated unlawful actions upon WHOA members (Members). Appellant is a Member of WHOA. All pertinent evidence that was contained in the

Court's record for the case, and that is also cited in the Record On Appeal, was ignored by a Master In Equity (Master) in the process to dismiss Appellant's case. Factual evidence presented to the Court as part of its Record, as well as per witness testimony heard during trial, proves that granting of involuntary non-suit represents many **Errors of Fact**. Affirmation by this Court via misapprehension of factual evidence negates a basic premise that all Courts must come to conclusions based upon evidence. Such negation of all evidence belies the Court's duty to administer justice. Appellant is discouraged and dismayed that learned judges at an appellate level can be mislead so easily by Defense Counsel arguments, which do not contradict factual evidence, and effectually have no bearing on factual evidence.

ARGUMENT

A) WHOA By-Laws are a self-authenticated-public record

A1. The Record On Appeal contains: "Exhibit A - By-Laws" (R. pp. 35 - 45)

1. Exhibit A is plainly titled: "BY-LAWS OF WOODINGTON HOMEOWNERS ASSOCIATION, INC." and satisfies Rule 901(a), SCRE, requirement of authentication. Authentication occurs directly because Exhibit A cannot be construed to be anything else. The document in question is what Appellant claimed it to be. It is a valid copy of By-Laws, Revision 3, of 15 August 2012. Any contention to the contrary represents an **Error of Fact**. Excerpts from Rule 901(a) (emphasis added) show:

RULE 901 - Requirement of Authentication or Identification
(a) General Provision. The requirement of **authentication** or identification as a condition precedent to **admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.**

A2. Exhibit A matches a filed-public record recorded by the Register of Deeds

2. Found as recorded by the Register of Deeds (ROD) is a public-record-By-Laws document (Exhibit PFR2) that matches Exhibit A word for word (barring Optical Character Recognition transcription errors in Exhibit A). ROD is a South Carolina public office that records public documents. Exhibit PFR2 “By-Laws” is in fact recorded at ROD. The Master violated Rule 901(b)(7) because Exhibit A conforms with the requirements for authentication as compared to a readily available and indisputable public record. Any contention to the contrary represents an **Error of Fact**. Excerpts from Rule 910(b) (emphasis added) show:

RULE 901 - Requirement of Authentication or Identification

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of **authentication** or identification **conforming with the requirements of this rule**:

(7) **Public Records** or Reports. Evidence that a writing authorized by law to be recorded or filed and **in fact recorded or filed in a public office**, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

A3. Common knowledge says public records are self-authenticated

3. Common knowledge says public records are a category of document deemed to be self-authenticating. Therefore, no requirement existed that Exhibit A needed to be introduced and authenticated at trial. A source of “... indisputable reliability ...” is “... readily available ...” as provided by a public record. As such, U113 **cannot** state:

First, the content of the WHOA By-Laws is not general common knowledge, nor can the accuracy of the version Wedlake included in the complaint be ascertained or authenticated by "readily available sources of indisputable reliability." *Eadie v. H.A. Sack Co.*, 322 S.C. 164, 172, 470 S.E.2d 397, 401 (Ct. App. 1996) ("A fact is not subject to judicial notice unless the fact is either of such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may

be ascertained by reference to readily available sources of indisputable reliability."). Instead, the proper avenue for proving what the WHOA By-Laws stated was to introduce and authenticate a copy of the By-Laws at trial.

as related to Exhibit-A By-Laws, pursuant to excerpts from:

https://en.wikipedia.org/wiki/Self-authenticating_document,

which show (emphasis added):

Self-authenticating document

From Wikipedia, the free encyclopedia

A **self-authenticating document**, under the law of evidence in the United States, is any document that can be admitted into evidence at a trial **without proof being submitted to support the claim that the document is what it appears to be**. Several categories of documents are deemed to be self-authenticating:

1. Certified copy of **public** or business **records**;

B) Errors of Fact cannot be used to conclude affirmation of involuntary non-suit

4. Appellant's case sought declaratory judgment (R. p. 19), as he was directed by the South Carolina Attorney general (R. p. 223, ll. 9-12), for six simple issues 1a – 1f (R. p. 178 - 179). All six issues were effectively requests for the Court to "... construe and declare ..." the meaning of WHOA By-Laws. Factual evidence was presented to the Court which proved the Board's violations of By-Law provisions. This Court is duty bound to evaluate what the Master actually said during trial as recorded in the Transcript, as contrasted against the "legal-wrangling" gobbledygook with which Defense Counsel inserted into the Order, falsely, based upon information and belief of Appellant. Gobbledygook must be disregarded as irrelevant when it has nothing to do with factual evidence, and when it does not contradict factual evidence.

B1. Issue One: "... the Board ... must comply with ... By-Laws:" (R. p. 178) was affirmed by the Master and therefore precludes a granting of involuntary non-suit

5. The Master affirmed a Board must act in compliance with the By-Laws. Affirmation of this issue means a final conclusion of involuntary non-suit represents an **Error of Fact**.

Excerpts from the Record On Appeal (ROA) show, as found in the Order and as stated by the Master:

... the Court does recognize and order that the board of directors of the Association must act in compliance with the bylaws unless inconsistent with law or unless otherwise provided by law (R. p. 11)

In looking at the stipulated issues for trial, and I think this has already been established, but the Court will issue an Order stating that the Board must act in compliance with the Bylaws. (R. p. 325, ll. 2 – 5)

B2. Issue Two: "... bylaws place a duty on the Board of Directors to fill a vacancy ..." (R. p. 178) was affirmed by the Master and therefore precludes a granting of an involuntary non-suit

6. The Master affirmed a Board must fill a vacancy in a timely manner. Affirmation was consistent with evidence, and testimony, before the Court where the Board unlawfully stayed for a term of seven years (R. p. ...). Affirmation of this issue means a final conclusion of involuntary non-suit represents an **Error of Fact**. Excerpts from the ROA show as stated by the Master:

... that certainly includes the criteria and the time frames for filling of vacancies on the Board of Directors ... (R. p. 325, ll. 6 - 7)

B3. Issue Three: "... management contract ..." was settled – not a trial issue

7. By mutual agreement between Counsels, this issue was settled prior to trial.

B4. Issue Four: "... bylaws do not permit a Director to remain beyond a five-year term ..." (R. p. 179) was affirmed by the Master and therefore precludes a granting of involuntary non-suit

8. The Master affirmed a Board-member's term must comply with the SC Code of Laws (R. p. 294, ll. 20 - 24), as well as with the By-Laws (R. p. 36, Section 2), and cannot exceed five

years. Presented to the Court was factual evidence, as was discussion and testimony during trial, proving that the Board had stayed in office for a term of seven years (R. p. 65, par. 3; R. p. 217, ll. 11 – 15; R. p. 218, ll. 10 – 18; R. p. 446, par.11). Consequently, Appellant was forced to request that the Court construe and declare the By-Laws relative to this issue to be sure to stop the Board from repeating such unlawful action.

9. Appellant reminds the Court the law specifies the Board is a continuous-legal entity, whose identity does not change, irrespective of the name by which the individual or individuals are designated. In SC Code of Laws one finds (excepted, emphasis added):

SECTION 33-31-140. Definitions.

(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).

Affirmation of this issue means a final conclusion of involuntary non-suit represents an

Error of Fact. Excerpts from the ROA show as stated by the Master:

... that certainly includes the criteria and the time frames for filling of vacancies on the Board of Directors, as well as the term of the Board of Directors ... (R. p. 325, ll. 6 - 8)

B5. Issue Five: "... Bylaws of the Association do not permit delegation of the role or authority of the Board ..." (R. p. 179), was erroneously stated as moot by the Master and represents an Error of Fact

10. The Master did not consider this disputed issue (R. p. 21, par. 13) based upon any legal standard. He simply said "... I just think ..." to contend this issue was moot. The facts of this matter are the By-Laws specify it must be a duty of the Board to:

a. Exercise for the Association all powers, duties, and authority vested in or

delegated to this association and not reserved to the membership by other provisions of these By-Laws, or the "Covenants" (Reference 1). (R. p. 38)

This is specific that "... all powers, duties, and authority vested in or delegated to this association ..." must be handled by the Board. A Board may seek assistance from a management company to help the Board with Board duties, but a Board cannot delegate the power, duty, and authority to any other person nor entity.

11. Non-substantiated denial of this issue means a final conclusion of involuntary non-suit represents an **Error of Fact**. Excerpts from the ROA show as stated by the Master:

But at the same time, you do have the right to ask that the Board operate within the confines of the Bylaws, which is certainly what the order of this Court will be. But, beyond that limited basis, I just think that other issues are moot. (R. p. 325 - 326, ll. 22- 25, 1)

B6. Issue Six: "... Bylaws require the Board of Directors to send out a ballot ..." (R. p. 179) was affirmed by the Master and therefore precludes a granting of involuntary non-suit

12. The Master affirmed a "... proper and appropriate ..." action for the Board related to "... ballots being sent out ...". Affirmation of this issue means a final conclusion of involuntary non-suit represents an **Error of Fact**. Excerpts from the ROA show as stated by the Master:

... And I think also, in accordance with the rules and Bylaws, you know, as far as the ballots being sent out for membership and records being kept, minutes being provided; I think all those are proper and appropriate. (R. p. 325, ll. 11 - 14)

C) Exclusion of evidence by the Master, and this Court's affirmation, violated the Court's own Rules of Evidence

C1. Direct violation of Rule 901, SCRE is noted.

13. Appellant gave testimony as the only witness called during trial. No allegations exist that claim Appellant lacked "knowledge". Appellant attested to knowledge as sworn by

Affidavit (R. p. 433, par. 2; R. p. 445, par. 2; R. p. 451, par. 2; R. p. 460, par. 2). In many instances, Appellant testified that matters related to evidence – particularly the By-Laws – was “... what it is claimed to be.” (R. p. 236, ll. 5 – 7, 14, 20-23; R. p. 237, ll. 2 – 8, 17 – 18; R. p. 238, ll. 19 - 21; R. p. 242, ll. 11 - 14; R. p. 243, l. 12; R. p. 244, ll. 8 – 9, 14 – 15; R. p. 245, ll. 4 - 5; R. p. 253, ll. 8 - 15; R. p. 262, ll. 12 -16; R. p. 265, ll. 9 – 17; R. p. 266, ll. 12 - 16; R. p. 287, ll. 4 - 6; R. p. 291, ll. 10 - 12; R. p. 293, ll. 10 – 13; R. p. 294, ll. 20 - 24; R. p. 296, ll. 1 - 6; R. p. 298, ll. 21 - 22; R. p. 310, ll. 5 – 6; R. p. 311, ll. 21 - 23; R. p. 317, ll. 2 - 3; R. p. 318, ll. 8 - 12; R. p. 319, ll. 17 – 21; R. p. 320, ll. 24 - 25; R. p. 322, ll. 3 – 6, 9 – 10, 20 – 23).

C2. Testimony provides authentication of trial issues per Rule 901(b)(1)

14. By his **testimony, Appellant authenticated many provisions in the By-Laws** that were at issue during the trial. Rule 901(b)(1) excerpts (emphasis added) show:

RULE 901 - Requirement of Authentication or Identification
(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of **authentication** or identification **conforming with the requirements of this rule**:

(1) **Testimony of Witness With Knowledge**. Testimony that a matter is what it is claimed to be.

C3. No Rule of Evidence contains the word “enter”, nor the phrase “entered into evidence”

15. Appellant finds no requirement anywhere within SCORE that self-authenticated evidence must be “entered into evidence”. Factually, no reference is found to the word “enter” in any SCORE.

C4. A substantial right was denied with granting of involuntary non-suit

16. The Master’s granting of involuntary non-suit denied from Appellant his substantial

right to both “... due process ...” and to “... equal protection of the laws ...”. Both are guaranteed to all United States Citizens pursuant to Amendment XIV of the “Constitution of the United States”. Obvious abuse of judicial discretion due to ignoring evidence presented before the Court directly violated Rule 103(a)(2), because the specific evidentiary basis supporting admission was made known to the court by offer (R. p. 324, ll. 11 - 17). Additionally, multitudinous references to the By-Laws were apparent from the context (R. references as cited in C1). Excerpts from Rule 103(a)(2), SCRE (emphasis added) show:

RULE 103 RULINGS ON EVIDENCE

(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence **unless a substantial right of the party is affected**, and

(2) Offer of Proof. In case the **ruling is one excluding evidence**, the substance of the evidence and the **specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context**.

C5. All admissible evidence found in the ROA should be considered

17. No claims for inadmissibility of evidence are found in the ROA. Thus, this Court must be bound by contents found in the ROA, and cannot affirm involuntary non-suit based upon “lack of evidence” caused by inadmissible evidence.

D) Testimonial-witness evidence overwhelmingly proves Appellant’s right to requested declarations

18. Appellant has a right to requested declarations because of proof provided by testimony.

E) Errors of Fact cannot be used to claim issues were moot

E1. Issue One was not moot at the time of trial.

19. Factually, due to the whole set of five (reduced from six by agreement prior to trial)

issues stipulated for trial being in dispute at the time of trial, the Court has misapprehended the entire landscape. The Board's statement of "... The law must be followed. By election to the Board, we did agree to abide by the By-Laws ..." was intended to mislead and to obfuscate the fact there was no evidence before the Court showing any truth to the Board's false statement. That is, the statement was a "talk-the-talk" illusion, done with "slight of hand". In truth, the Board did not show evidence to prove they actually did, indeed, "walk the walk" as regards any "agreement" to "abide by the By-Laws". Whether or not the Board "stipulated" to Issue One does not hold water for all five issues (R. p. 322, ll. 20 – 22). For five stipulated issues, any contention that the Board's actions showed they did "abide by the By-Laws" is an Error of Fact.

E2. Issue Two was not moot at the time of trial.

20. Facts show the Board did not fill a vacancy that started on May 9, 2017 (R. p. 25, ppar. 42 - 44) until well into 2018, which Appellant believes was done for the sole purpose for the Board to say in Court they had filled the vacancy (R. p. 244, ll. 20 – 23). The Board's contention that they made an attempt to fill the vacancy by appointing a remaining Board member is not sanctioned by, and is in direct contradiction to, the By-Laws (R. p. 58, Question 1, RWP [Ray Wedlake Position]). A claim in U113 that the mootness doctrine applies, when such direct violation of the By-Laws by the Board would clearly have "... future or collateral consequences for the parties ...", is tacitly absurd. Factually, the 05/09/17 vacancy represented a future or collateral consequence, because Board vacancies were never filled by a three-member Board in 2016 (R. p. 257, l. 24). The mootness doctrine is annulled due to the fact that violation of the By-Laws vacancy provision by the 2017 Board proved the event "... is capable of repetition but

evading review ...”, due to the Master’s improper granting of involuntary non-suit.

E3. Issue Four was not moot at the time of trial.

21. Factually, Board members who began to serve in 2009 had their terms expire in 2014. Still, as a Board they violated the five year term limit in 2015, and then again in 2016. Thus, the mootness doctrine is annulled due to the fact that violation of the By-Laws-five-year-term provision by the 2016 Board proved the event “... is capable of repetition but evading review ...”, due to the Master’s improper granting of involuntary non-suit. Unlawful actions by the Board cited in paragraph 8 certainly cannot be thought to be moot. Appellant believes other paragraph 8 content is sufficient to prove that Issue Four was not moot at the time of trial.

E4. Issue Five was not moot at the time of trial

22. Factually, this Issue Five “delegate” question was not linked exclusively to a former management company (AMG) (R. p. 21, par. 13). So, whether or not AMG and/or a Board Secretary still served at the time of trial is moot, making irrelevant the U113 statement “... the management company in question no longer served as WHOA's management company and the secretary was no longer serving on the Board. ...”. In fact, Appellant requested for the Board to amend the Articles of Incorporation (AOI) as related to delegation (R. p. 31, par. 78), but the Board did not amend. Consequently, a declaration from the Court confirming “no delegation” would be instrumental in encouraging lawful action by the Board. Without such declaration from the Court, no amendment will occur, and thus Issue Five cannot be viewed as moot since a declaration from the Court would help to resolve this issue, and therefore annul the U113 claim “... would have no practical legal effect on an existing controversy. ...” .

F) Issue Six was supported by testimonial evidence, making whether or not the By-Laws were excluded from evidence irrelevant

23. Factually, substantive-testimonial evidence exists to support Appellant's position related to a requirement for the Board to send out a ballot (R. p. 235, ll. 15 – 17; R. p. 237, ll. 5 - 8; R. pp. 243 - 244, ll. 23 – 25, 1 – 9 [where a typo needs correction, changing the word sign to send: "... Board secretary shall sign [send] the ballot ..."]; R. p. 253, ll. 19 - 22; R. p. 266, ll. 12 - 16; R. p. 309, ll. 7 - 8; R. p. 318, ll. 2 – 4, 18 - 21; R. p. 319, ll. 6 – 8, 18 – 21). All this testimonial evidence makes the U113 claim "... did not produce any other evidence in support of his position, and no version of the WHOA By-Laws was admitted into evidence ..." immaterial and irrelevant.

G) Appellant's individual action cannot be dismissed based upon Error of Fact

G1. For all five issues, a concept of "... not the only plausible interpretation of the By-Laws, ..." does not apply

24. U113 seems to want to apply other-legal-wrangling gobbledygook, quoted relative to the "vacancy" issue only, to contend that with respect to the By-Laws other plausible interpretations are possible. Appellant states emphatically for all five stipulated issues, that By-Laws provisions are clear, unambiguous, black and white (or black letter), without any other plausible interpretations being possible. U113 then wrongfully concludes that the alleged plausibility justifies annulment of Appellant's individual action for all issues.

25. Appellant's individual action cannot be construed as applying to one issue, only. In addition to all five issues forming a basis for a derivative action, all five stipulated issues form a basis for Appellant's individual action (R. p. 20, par. 4; R. p. 29, par. 69; R. pp. 30 - 31, par. 76; R. p. 126, par. 5; R. p. 171, par. 1; R. p. 176, section L; R. p. 220, ll. 2 - 8; R. p. 286 – 287,

ll. 21 – 25, 1). The Master directly affirmed for Appellant: “... He clearly has rights individually as a member of the Woodington Homeowners Association. ...” (R. p. 324, ll. 24 – 25). Any contention that Appellant has no individual rights represents an Error of Fact.

G2. Another plausible interpretation of the By-Laws does not exist and such claim cannot be used to annul Appellant’s individual action

26. U113 refers to a Board letter (R. pp. 406 – 408), where the pertinent part shows:

... You are correct that in line with Article V section 3 – Removal, the remaining Board members select the successor of a resigning member. Article IX section 1 – Enumeration of Offices the Board describes an option for that selection process, which the Board chose and decided during the Q2 Board meeting, to combine the office of Secretary with an existing role. This course of action is also inline with Article IX Section 6 – Multiple Offices. ...

U113 claims that references to the By-Laws in this letter:

... indicates Wedlake's interpretation of the By-Law provisions regarding replacement of a Board member was not the only plausible interpretation of the By-Laws, ...

which is a **misapprehension** by the Court. Article IX, Section 1 does state “... the Board may combine one or more offices ...”, but this is **not an option** that the Board may choose. It is not plausible which is clarified by the **exclusionary condition** stated in Article IX, Section 6 (emphasis added): “... The Board of Directors may **combine** one or more offices **when necessary due to a lack of eligible Association Members who are willing to serve** on the Board. ...”. Thus, the Board cannot claim combining of offices is a plausible option. This must be seen to be false, because combining was not necessary. There was no lack of an eligible Association Member who was willing to serve. Appellant made known to the Board he was available and willing to serve (R. pp. 25 – 26, par. 46; R. p. 30, par. (vii); R. p. 31, par. 83; R. p. 58, par. Question 1, RWP [Ray Wedlake Position]; R. p. 176, par. L; R. p. 217, ll. 19 - 23;

R. p. 220, ll. 1 – 6; R. p. 244, ll. 20 - 22; R. p. 245, ll. 12 - 15; R. p. 439, par. 45; R. p. 463, par. 29 – 30). Any contention that combining of offices was necessary represents an Error of Fact.

H) Physical incapacity of Counsel for Appellant during trial led to mental aberrations

27. During trial, Counsel for Appellant asked for a few minutes' break (R. p. 253, ll. 24 – 25), because he suffered from sciatic pain (R. p. 254, ll. 11 – 12). This pain made it difficult for him to stand. He had not slept the previous night. His brain was muddled by pain, and by lack of sleep. Both these conditions led to a performance during trial which must be termed incompetence. Due to this, this Court can readily recognize that some leeway must be factored into any conclusions arrived at by the Court.

I) As an alternative, Appellant requests Rehearing *en banc*

28. Because this proceeding involves a question of exceptional importance, Appellant requests Rehearing *En Banc*. The question of when, and how, a Judge may exercise judicial discretion to ignore evidence that is the basis of a case should not be swept under the rug with an unpublished opinion. The question is of immense precedential value. The very basis for Court administration of justice will be eroded if evidence can be ignored, discounted, and disregarded, at the whim of a Judge, or of a Master. Excerpts from Rule 219, SCACR (emphasis added), show:

RULE 219 - Hearing or rehearing of cases by the court of appeals *en banc*
(a) When Hearing or Rehearing *En Banc* Will Be Ordered. It shall require the affirmative vote of six (6) members of the Court of Appeals to hear or rehear an appeal or other proceeding *en banc*. A hearing or rehearing *en banc* is not favored and ordinarily will not be ordered except (1) when

consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the **proceeding involves a question of exceptional importance**.

CONCLUSION

No court can claim involuntary non-suit is valid as applied to Appellant's case without ignoring a mountain of evidence, all of which was presented to the Court as found in the Court Record, as found in testimonial evidence, and the Record On Appeal. For strictly procedural grounds to be used to exclude this mountain of evidence contradicts the Court's-basic function, which is to be a "Court of Law" where rulings are based upon factual evidence. By ignoring this mountain of evidence, multitudinous **Errors of Fact** have been used to come to a conclusion of "... no evidence ..." and thus "... did not prove ...", leading to an erroneous granting of involuntary non-suit.

Appellant prays for his mountain of evidence to be properly considered. Appellant prays for this Petition to be fully considered. Appellant prays for all **Errors of Fact** to be wiped away, leading to rescission of involuntary non-suit, and remand for trial on the merits.

Dated this 20th day of April 2021.



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

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Raymond A. Wedlake, individually and derivatively, on
behalf of all Members of the Woodington Homeowners'
Association, Inc., Appellant,

v.

Benjamin Acord, William Craigo, Denis Esteve, and
Brian James in their capacity as the current Board of
Directors of the Woodington Homeowners' Association,
Inc., Respondents.

Appellate Case No. 2018-001209

Appeal From Greenville County
Charles B. Simmons, Jr., Master-in-Equity

Unpublished Opinion No. 2021-UP-113
Submitted February 1, 2021 – Filed April 7, 2021

AFFIRMED

Grant Henry Gibson, of G. Gibson & Associates, LLC, of
St. Augustine, Florida, for Appellant.

Ely Owen Grote of McCabe, Trotter & Beverly, P.C., of
Columbia for Respondent.

PER CURIAM: Raymond Wedlake appeals the Master-in-Equity's grant of the Woodington Homeowner Association (WHOA) Board's Rule 41(b), SCRC motion for involuntary non-suit on seven stipulated issues for trial as to whether Wedlake, on behalf of WHOA: (1) was entitled to a declaration the Board must comply with and enforce WHOA's By-Laws; (2) was entitled to a declaration the By-Laws place a duty on the Board to fill a vacancy on the Board and the Board must make reasonable efforts to do so; (3) was entitled to a declaration the By-Laws require a majority of all members to both enter into and to renew a management contract; (4) was entitled to a declaration the By-Laws do not permit a Board member to remain beyond a five-year term; (5) was entitled to a declaration the By-Laws do not permit delegation of the role or authority of the Board; (6) was entitled to a declaration the By-Laws require the Board to send out a ballot to the membership for voting if a proposed amendment to the By-Laws is submitted by an eligible member; and (7) whether Wedlake, in his individual capacity, was entitled to nominal damages if it was found the Board improperly failed to appoint him to the Board. Wedlake also asserts the Master erred in failing to take judicial notice of a copy of the WHOA By-Laws or to allow Wedlake to admit the By-Laws into evidence after the close of his case. We find the Master did not err in granting an involuntary non-suit, in refraining from taking judicial notice of the By-Laws, or in declining to reopen to record to allow the By-Laws to be admitted at trial. Accordingly, we affirm.¹

1. The Master did not err in refraining from taking judicial notice of the copy of the By-Laws Wedlake attached to his complaint. *See* Rule 201(b), SCRE ("A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."). First, the content of the WHOA By-Laws is not general common knowledge, nor can the accuracy of the version Wedlake included in the complaint be ascertained or authenticated by "readily available sources of indisputable reliability." *Eadie v. H.A. Sack Co.*, 322 S.C. 164, 172, 470 S.E.2d 397, 401 (Ct. App. 1996) ("A fact is not subject to judicial notice unless the fact is either of such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability."). Instead, the proper

¹ Nothing in this opinion shall be construed as a comment on the appropriateness of the attorneys' fees accrued by the Board's counsel during the trial and appeal of this case, or on the actions and assessments of the Board in order to pay the attorneys' fees while this case was on appeal.

avenue for proving what the WHOA By-Laws stated was to introduce and authenticate a copy of the By-Laws at trial. *See State v. Green*, 427 S.C. 223, 229, 830 S.E.2d 711, 714 (Ct. App. 2019) ("All evidence must be authenticated."); *see also Moss v. Aetna Life Ins. Co.*, 267 S.C. 370, 377, 228 S.E.2d 108, 112 (1976) (holding judicial notice could not be taken of the fact business was sold, as proof of the sale could only be ascertained from the records of the corporation or from someone with personal knowledge of the sale).

2. The Master did not abuse his discretion in declining Wedlake's request to admit a copy of the By-Laws into evidence immediately following the Board's motion for non-suit. *See Brenco v. S.C. Dep't of Transp.*, 377 S.C. 124, 127, 659 S.E.2d 167, 169 (2008) (stating "the trial judge is endowed with considerable latitude and discretion in allowing a party to reopen a case"); *id.* at 128, 659 S.E.2d at 169 (holding trial court did not abuse its discretion by refusing to allow the party who had the burden of proof a second opportunity to present evidence when it had ample opportunity to do so during trial).

3. Stipulated issue three—whether Wedlake, on behalf of WHOA, is entitled to a declaration that the By-Laws require a majority of all members to both enter into and to renew a management contract—was dropped at trial by agreement, and the Master found in his order that it was properly dismissed under Rule 43(k), SCRCP. Wedlake does not appeal this finding, and it is the law of the case. *See Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("An unappealed ruling is the law of the case and requires affirmance.").

4. As to stipulated issues one, two, four, and five, the Master did not err in finding they were moot at the time of trial. As to stipulated issue one, the Board admitted into evidence at trial the June 17, 2017 email from the president of the Board, stating, "The law must be followed. By election to the Board, we did agree to abide by the By-Laws." Accordingly, there was no controversy between the parties over the issue of whether the Board must comply with the WHOA By-Laws. *See S.C. Pub. Interest Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 121, 804 S.E.2d 854, 860 (2017) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy." (quoting *Sloan v. Greenville Cnty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009))). As to stipulated issue two, Wedlake admitted at trial there was no current vacancy on the Board, and he did not assert the matter was of public interest, had future or collateral consequences for the parties, or that the issue would truly evade review if it occurred again in the future. *See id.* (noting party bringing action has burden to show moot issues fall into an exception to the mootness doctrine); *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001) (explaining the three exceptions to

the mootness doctrine occur when an issue is of important public interest, when it affects future events or has collateral consequences for the parties, or when it is capable of repetition but evading review); *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430–31, 468 S.E.2d 861, 864 (1996) ("A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character."). Accordingly, issue two was moot at the time of trial. As to stipulated issue four, Wedlake admitted the members of the 2017 Board were elected to their position at the 2017 WHOA annual meeting and were serving the first year of their term. Wedlake did not assert that one of these Board members would be serving past the expiration of his term or that the hypothetical situation of a member serving past his term was a matter of public interest, had future or collateral consequences for the parties, or that the issue would truly evade review if it occurred again in the future. *See S.C. Pub. Interest*, 421 S.C. at 121, 804 S.E.2d at 860; *Curtis*, 345 S.C. at 568, 549 S.E.2d at 596; *Byrd*, 321 S.C. at 430–31, 468 S.E.2d at 864. Accordingly, we agree with the Master that issue two was moot at the time of trial. As to stipulated issue five, Wedlake testified he perceived that the Board secretary's delegation of minute keeping to the Board's management company was improper. However, at the time of trial, the management company in question no longer served as WHOA's management company and the secretary was no longer serving on the Board. Wedlake did not allege any other improper delegation of duty, and any declaration from this court on some other hypothetical delegation of authority would be advisory in nature and would have no practical legal effect on an existing controversy. *See Curtis*, 345 S.C. at 567, 549 S.E.2d at 596 ("An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy."). Accordingly, issue five was moot at the time of trial.

5. As to stipulated issue six, we find the issue was not moot at the time of trial, as it affected an on-going controversy—namely whether the Board was required to submit a ballot to the WHOA membership on Wedlake's proposed addition of an alternative-dispute resolution provision to the By-Laws. During his case in chief, Wedlake testified he helped draft the WHOA By-Laws, which included a "ballot provision" requiring the WHOA Board to send a ballot to all members of WHOA when an eligible WHOA member proposed an amendment to the By-Laws. Wedlake explained he had proposed an amendment to the By-Laws allowing for alternative dispute resolution when disputes arose between members and the Board, but the vote for his amendment had "been blocked by the current Board." On cross-examination, the Board asked Wedlake about this issue, and specifically, whether Wedlake was required to "force a special meeting" under the By-Laws in

order to have his amendment voted upon. Wedlake disagreed this was the necessary course to take; however, on re-direct, he did not further comment on the issue, did not produce any other evidence in support of his position, and no version of the WHOA By-Laws was admitted into evidence at trial. Because the Master may weigh evidence in a non-jury trial on a motion for non-suit after the plaintiff has rested its case, we find the record supports the Master's determination that Wedlake did not prove he was entitled to a declaration, on behalf of WHOA, that the WHOA Board must send a ballot to all members of WHOA when an eligible WHOA member proposed an amendment to the By-Laws. *See Johnson v. J.P. Stevens & Co.*, 308 S.C. 116, 118, 417 S.E.2d 527, 529 (1992) ("Under Rule 41 in a nonjury trial, the trial judge clearly may dismiss the action even though the plaintiff may have established a *prima facie* case. Rule 41(b) allows the judge as the trier of facts to weigh the evidence, determine the facts and render a judgment against the plaintiff at the close of his case if justified."); *id.* at 117, 417 S.E.2d at 528 (stating that on appeal from the grant of a motion for involuntary non-suit, this court must affirm the Master's findings if there is any evidence to support them).

6. As to stipulated issue seven, the Master made no specific findings of fact in denying Wedlake's individual action for damages resulting from the Board's failure to appoint him to the Board upon the secretary of the Board's resignation, stating only: "I find [Wedlake] is not entitled to an award of any damages against [the Board]." However, in granting involuntary non-suit on Wedlake's derivative action, the Master found Wedlake failed to satisfy his burden of proving he was entitled to a declaration "the Board had a duty to fill a vacancy." There is evidence in the record to support this finding. Specifically, during Wedlake's cross-examination, the Board introduced the Board president's June 17, 2017 email to Wedlake in which the president described the actions the Board took at WHOA's second-quarter meeting to assign the resigned member's duties to another Board member and provided several references to By-Law provisions in support of the Board's actions in this regard. Because this evidence indicates Wedlake's interpretation of the By-Law provisions regarding replacement of a Board member was not the only plausible interpretation of the By-Laws, we affirm the Master's grant of involuntary non-suit on Wedlake's individual action for nominal damages against the Board. *See Johnson*, 308 S.C. at 117, 417 S.E.2d at 528 (stating that on appeal from the grant of a motion for involuntary non-suit, this court must affirm the Master's findings if there is any evidence to support them).

7. The Master also granted involuntary non-suit on other grounds. Because we affirm on the issues above, we decline to address the remaining issues on appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518

S.E.2d 591, 598 (1999) (providing that an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

WILLIAMS, THOMAS, and HILL, JJ., concur.

AFFIRMED.²

² We decide this case without oral argument pursuant to Rule 215, SCACR.

EXHIBIT PFR2 - South Carolina Official Public Record (Register of Deeds)

BY-LAWS OF WOODINGTON HOMEOWNERS ASSOCIATION, INC.

File Edit View History Bookmarks Tools Help

Greenville County x +

https://viewer.greenvillecounty.org/countyweb/disclaimer.do

Greenville County SC ~ Register of Deeds

Home | Search Public Records | Search Guide | Preferences | Print Queue Need Help? | Log Out

Search Details - Verified (All Plats) 01/01/1985 Thru: 04/14/21

Certified Copy Email Image Hide/Show Details Back to Results Back to Criteria Print PDF

History: 2018097622 MISCELLANEOUS DEED

General Legal Description Associated Documents

Document Details

Instrument Number: 2018097622
Recorded Date: 12/28/2018 01:46:57 PM
Instrument Type: MISCELLANEOUS DEED
Book Type: DE
Book: 2555
Page: 2788
Consideration:
Number of Pages: 8
Remarks - External:

Names

Grantor:
WOODINGTON HOMEOWNERS ASSOCIATION INC

Grantee:
WOODINGTON HOMEOWNERS ASSOCIATION INC

BY-LAWS OF WOODINGTON HOMEOWNERS ASSOCIATION, INC.

Revision 3 16 August 2012 - Articles 1 thru 20

ARTICLE I - NAME AND LOCATION

The name of the Corporation shall be called "Woodington Homeowners Association, Inc.", hereinafter referred to as the "Association". The principal office of the Corporation shall be located at the home of the current President of the Association, but meetings of Members and directors may be held at such places within the State of South Carolina as may be designated by the Board of Directors.

ARTICLE II - PURPOSE

This Association does not contemplate pecuniary gain or profit to the Members thereof, and the purpose of the Association, as provided in the Certificate of Incorporation, is as follows:
"The purpose of the said proposed Corporation is to provide for an association for the betterment of the property and homeowners of Woodington Subdivision, Greenville County, South Carolina."

ARTICLE III - DEFINITIONS

Section 1: "Association" shall mean and refer to Woodington Homeowners Association, Inc., a non-profit corporation organized and existing under the laws of the State of South Carolina.
Section 2: "Member" shall mean and refer to those persons owning lots or homes in Woodington Subdivision, or their designated representative, providing they pay the initial annual dues of \$176.00, and future dues to be established annually by the Board of Directors as well as any special assessments that may be levied.
Section 3: "Vote" shall mean there will be one (1) vote per lot owned.

LIVE CHAT

Powered By KOFI FILE TECHNOLOGIES

BY-LAWS OF WOODINGTON HOMEOWNERS ASSOCIATION, INC.

Revision 3 15 August 2012 - Articles 1 thru 20

ARTICLE I - NAME AND LOCATION

The name of the Corporation shall be called "Woodington Homeowners Association, Inc.", hereinafter referred to as the "Association". The principal office of the Corporation shall be located at the home of the current President of the Association, but meetings of Members and directors may be held at such places within the State of South Carolina as may be designated by the Board of Directors.

ARTICLE II - PURPOSE

This Association does not contemplate pecuniary gain or profit to the Members thereof, and the purpose of the Association, as provided in the Certificate of Incorporation, is as follows:

"The purpose of the said proposed Corporation is to provide for an association for the betterment of the property and homeowners of Woodington Subdivision, Greenville County, South Carolina."

ARTICLE III - DEFINITIONS

Section 1: "Association" shall mean and refer to Woodington Homeowners Association, Inc., a non-profit corporation organized and existing under the laws of the State of South Carolina.

Section 2: "Member" shall mean and refer to those persons owning lots or homes in Woodington Subdivision, or their designated representative, providing they pay the initial annual dues of \$175.00, and future dues to be established annually by the Board of Directors as well as any special assessments that may be levied.

Section 3: "Vote" shall mean there will be one (1) vote per lot owned.

ARTICLE IV - MEETINGS OF MEMBERS

Section 1 - ANNUAL MEETINGS: The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular Annual Meeting of the Members shall be at a time, date, and place as designated in advance by the Board.

Section 2 - SPECIAL MEETINGS: Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of one-fourth (1/4) of the Members.

Section 3 - NOTICE OF MEETINGS: A sign posted at the neighborhood entrance shall be sufficient notice for each meeting of Association Members, to those who normally reside in the neighborhood. Meeting notice shall be given by, or at the direction of the Secretary, or person authorized to call the meeting, at least twenty-one (21) days before such meeting to each Member entitled to vote thereat. For any Member who does not normally reside in the neighborhood, or for any Member who may so petition the Secretary, written notice shall be delivered by US Mail, postage prepaid, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Meeting notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4 - QUORUM: The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one quarter (1/4) of the votes of membership shall constitute a quorum for any action except as otherwise provided in the "Covenants" (Reference 1) or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5 - PROXIES: At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his residence.

ARTICLE V - BOARD OF DIRECTORS, SELECTION, AND TERM OF OFFICE

Section 1 - NUMBER: The association shall be governed by a Board of Directors, normally five (5) in number, each of whom shall serve until his or her successor is elected and shall qualify as provided in these By-Laws. No more than one (1) representative of any single distinct membership may serve as a director of the Association at one time.



Section 2 - SELECTION AND TERM OF OFFICE: Annually, the membership shall normally elect five (5) directors from the membership for the term of one (1) year. Each Board Member must be elected every year. When a Board Member has served for five (5) consecutive terms, that person will not be permitted to seek a sixth consecutive term, unless the Board of Directors has been unable to find another eligible Association Member who is willing to serve on the Board. When this is true, the current Board by simple majority vote may waive the five (5) consecutive term limit. Any waiver is valid for only one year. After a Member has been off the Board of Directors for at least one term, that Member can seek re-election to the Board of Directors with the same rights of any other Member.

Section 3 - REMOVAL: Any director may be removed from the Board, with or without just cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4 - COMPENSATION: No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for actual expenses incurred in the performance of his/her duties.

Section 5 - ACTION TAKEN WITHOUT A MEETING: The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE VI - NOMINATION AND ELECTION OF DIRECTORS

Section 1 - NOMINATION: Nomination for election to the Board of Directors shall be made by the current Board of Directors. At least 90 days prior to the annual meeting, the current Board of Directors will request volunteers to fill expected vacancies on the Board. A notice will be sent to the membership advising them of the open positions and asking for volunteers to fill the positions. An election slate for members of the Board of Directors will be prepared to include incumbent members who are seeking re-election and new candidates. The election slate will be presented to the Members at the annual meeting. Nominations may also be made from the floor at the annual meeting. Such nominations must be made from among the Members who have voting privileges.

Section 2 - ELECTION: Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies may cast one vote for each vacancy on the Board. The person receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VII - MEETINGS OF DIRECTORS

Section 1 - REGULAR MEETINGS: Meetings of the Board of Directors shall be held on call of the President, minimum quarterly.

Section 2 - SPECIAL MEETINGS: Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) directors, after not less than three (3) days notice to each director.

Section 3 - QUORUM: A majority of the number of directors shall constitute a quorum for the transaction of business. Every act of decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VIII - POWERS AND DUTIES OF BOARD OF DIRECTORS

Section 1 - POWERS: The board of Directors shall have power to:

- a. Exercise for the Association all powers, duties, and authority vested in or delegated to this association and not reserved to the membership by other provisions of these By-Laws, or the "Covenants" (Reference 1).
- b. Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.
- c. Nothing in these By-Laws shall be construed to permit the Board of Directors to borrow or pledge the credit of the Association or sell or transfer all or part of the assets of the Association without the specific approval of a majority of the Members attending and voting at a duly held meeting.
- d. With the approval of a simple majority vote of the Members, the Board of Directors may enter into a contract with an association management company to assist in carrying out the duties and responsibilities specified below for the Board of Director positions

Section 2 - DUTIES: It shall be the duty of the Board of Directors to:

- a. Cause to be kept a complete record of all its acts and corporate affairs, and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote.
- b. Transact, either personally or through a management company, all Association business and make and amend rules and regulations for the use of the Association property.
- c. Supervise all officers, agents, and employees of the Association, and to see that their duties are properly

performed.

d. Fix, impose and remit penalties for violations of these By-Laws and rules of the Association.

e. Select from the Board of Directors a representative to fill the position of President, Vice President, Secretary, Treasurer, and Maintenance Director.

f. Fill any vacancy in the membership of the Board of Directors to serve until the next annual meeting of active Members at which time a permanent director will be elected by a simple majority vote of the membership.

g. The Board of Directors may delegate to a management company the responsibility to select a financial institution(s) to act as depositories of the funds of the Association and determine the manner of receiving, depositing, and distributing the funds of the Association and the form of checks to be used.

ARTICLE IX - OFFICERS AND THEIR DUTIES

Section 1 - ENUMERATION OF OFFICES: The officers of the Association shall normally be a President, Vice President, Secretary, Treasurer, and Maintenance Director, all of whom shall at all times be members of the Board of Directors. In addition, the Association may have such other officers as the Board may from time to time by resolution create. Similarly, the Board may combine one or more offices, for example those of Secretary and Treasurer.

Section 2 - INSTALLATION OF OFFICERS: The installation of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3 - SPECIAL APPOINTMENTS: The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine. The Board may elect members of the community to serve as architectural committee members. These individuals will serve the community by upholding architectural guidelines. The Architectural Committee will report all activity to the Board.

Section 4 - RESIGNATION AND REMOVAL: Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5 - VACANCIES: A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6 - MULTIPLE OFFICES: The Board of Directors may combine one or more offices when necessary due to a lack of eligible Association Members who are willing to serve on the Board. No person shall simultaneously hold more than two offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 7 - DUTIES: The duties of the officers are as follows:

a. **PRESIDENT:** The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; keep the corporate seal, if any, of the Association and affix it on all papers requiring said seal, shall sign all written instruments and shall co-sign all checks and promissory notes except when these functions are to be performed by an association management company. The President shall serve as the Board Liaison with the management company, if a contract is established for this service.

b. **VICE PRESIDENT:** The Vice President shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

c. **SECRETARY:** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; and keep appropriate current records showing the Members of the Association together with their addresses. These responsibilities may be delegated to an association management company. The Secretary shall perform such other duties as required by the Board.

d. **TREASURER:** The Treasurer shall receive and deposit in appropriate bank accounts all moneys of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall co-sign all checks and promissory notes of the Association; and keep proper books of account, except when a management company is under contract to provide these services. When a management company performs these services, the Treasurer shall monitor the receipt and disbursement of moneys by reviewing financial statements provided by the management company. The Treasurer shall prepare an annual budget or review and modify as necessary a budget prepared by an association management company, when used, A Balance Sheet and a Statement of Income and Expenditures shall be prepared by either the Treasurer or a management company for presentation to the membership at its regular annual meeting.

ARTICLE X - EXPENDITURE OF FUNDS

Section 1: The President and Treasurer are empowered to co-sign checks, drafts, or other instruments of payment of money drawn in the name of the Association, however, this function may be performed by a management company when this service is under contract.

Section 2: The President or Vice President, in the President's absence, is authorized to approve non-budgeted expenditures up to One Hundred Dollars (\$100.00) for any individual project.

Section 3: The Board of Directors, by a majority vote, must approve non-budgeted expenditures up to One Thousand Five Hundred Dollars (\$1,500.00) for any individual project.

Section 4: The non-budgeted expenditure of corporate funds in excess of One Thousand Five Hundred Dollars (\$1,500.00) for any individual project must be approved by a majority vote of the membership at a duly held meeting at which a quorum is present.

ARTICLE XI - MEMBERS

Section 1: An active membership is one in which the holder thereof has purchased a residence in Woodington Subdivision and is current in all dues, including annual and special assessments.

Section 2: Every person who is a record owner of a fee or undivided fee interest in any lot which is subject to the Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision (Reference 1), said covenants recorded in Book 1373 at Pages 912-922 in the office of the Register of Deeds for Greenville County, State of South Carolina. When more than one person holds interest in any lot, all such persons shall be Members.

Section 3: The vote for such lot shall be exercised as the owners determine, but in no event shall more than one vote be cast with respect to any lot, and further, no fractional vote shall be cast with respect to any lot.

Section 4: Any Member aggrieved by any disciplinary action by the Board of Directors may appeal to the membership at a special meeting called for such purpose upon a minimum of ten (10) days notice to the Members and at such meeting, a majority of the Members present in person shall be controlling.

Section 5: In voting for Directors, each lot may cast one (1) vote for each vacant seat to be filled without accumulation. Each lot may cast one (1) vote only upon each issue.

ARTICLE XII - DUES AND ASSESSMENTS

Section 1: The annual dues and the budget shall be presented to the membership at its annual meeting. Dues must be paid in full each year before a date which the Board shall specify.

Section 2: The annual dues assessment shall be based upon the residence only.

Section 3: Consistent with the "Covenants" Article V.5 and V.6 (Reference 1), if any dues or assessments are not paid within thirty (30) days of its due date, then such dues or assessments shall become delinquent and shall (together with interest thereon at the rate of Ten (10) percent per annum from the due date and the cost of collections as hereinafter provided) become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made. The amount of such dues or assessments, together with interest and reasonable attorney fees as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment became due. In the case of co-ownership, all such co-owners shall be jointly and severally liable for the entire amount of the dues or assessments. If the assessment or dues are not paid within thirty (30) days after the due date, the Homeowners Association may bring an action at law against the owner or owners personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessments or dues, all attorney fees and costs of collection and in the event a judgment is obtained, such judgment shall include prejudgment interest as hereinabove provided together with reasonable attorney fees as may be fixed by the court together with the costs of the actions. In addition, the Board may impose a \$15.00 late fee. Non-payment of dues and/or special assessments as specified shall bar a Member and his family from voting privileges until such dues or special assessments are paid. **Section 4:** Special assessments may be authorized by the Board of Directors and collected as contributions for the specific projects of the Association which were approved by a quorum of the membership of the Association at a duly held meeting. Consistent with the "Covenants" Article V.4 (Reference 1), in the event the Association's Board of Directors and Officers shall deem it necessary to expend any sum of money for the maintenance and upkeep of any improved or unimproved lot, the Board shall be empowered to levy a special assessment applicable to that lot, but only in an amount equal to any sum or sums which had to be expended for that purpose. Such special assessments will be maintained in a separate fund from the annual dues.

ARTICLE XIII - SUSPENSION OR REVOCATION OF MEMBERSHIP

Any person against whom an action is taken under this Article shall be given at least ten (10) days advance notice of the proposed action and shall be provided an opportunity to be heard at a meeting of the Board.

ARTICLE XIV - COMMITTEES

The Board of Directors shall appoint those committees as deemed appropriate in carrying out its purpose. Each year, committees may be appointed for one year. In a year where the Board does not appoint an "Architectural Review Committee", or does not appoint other committees whose services may be required, all Directors of the Board shall be recognized as serving on these committees. (Reference to an "Architectural Review Committee" may be noted as coming from the "Covenants", Reference 1.)

ARTICLE XV - BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The "Covenants" (Reference 1) and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, or at the offices of the Management Association, where copies may be purchased at a reasonable cost.

ARTICLE XVI - CORPORATE SEAL

The Association has a seal, having within its circumference the words: "Woodington Homeowners Association, Inc." This Corporate seal is to be located at the home of the Association President or at the offices of an Association Management Company.

ARTICLE XVII - AMENDMENTS AND VOTING

Section 1: These By-Laws may be amended at a regular or special meeting of the Members, by a vote of 75% of Members of the Association, either in person or by proxy. Additionally, these By-Laws may be amended per the result of vote by ballot; see Section 3.

Section 2: In the case of any conflict between the "Covenants" (Reference 1) and these By-Laws, the "Covenants" shall control.

Section 3: Any and all issues may be resolved per the simple majority result of vote by ballot by all Association Members. The Board Secretary shall deliver a ballot to every Member, with a specified return date determined by the Board. The return date shall be no earlier than twenty-one (21) days from date of delivery. The voting period shall include at least three Saturdays, and three Sundays, where end of the voting period shall be neither Saturday nor Sunday. Ballots of Members not returned by the specified return date shall be voted by the Board. The Board's vote for non-returned ballots shall be clearly specified on ballots at the time they are delivered to Members.

ARTICLE XVIII - DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than 75% of the Members. Disposition of assets will be recommended by the Board and must be approved in writing and signed by a majority of the Members.

ARTICLE XIX - MISCELLANEOUS

Section 1: The fiscal year of the Association shall begin on the first day of January, and end on the last day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 2: Consistent with the "Covenants" Article VI, (1) (Reference 1), no signs shall be permitted on any lots except that a single sign offering the property for sale or rent may be placed on such lot providing such sign is approved by the Architectural Committee. The Board may also approve one "For Sale" or "For Rent" sign offering a property for sale or for rent to be posted on Association property at the entry to Woodington from Tanner Road. No other "personal signs" are allowed on Association property, except as may be approved by the Board. The Board shall retain the right to remove any sign posted on Association property that is not related to business of, nor in the interest of, all members of the Association.

ARTICLE XX - INDEMNIFICATION

Section 1 - INDEMNIFICATION OF DIRECTORS AND OFFICERS:

a. **ELIGIBLE PERSONS:** Under the conditions listed in this section, the Association must

indemnify certain persons and hold them harmless who are parties to an "eligible proceeding" or are threatened to be parties. The persons eligible for indemnification are:

1. Directors, officers, employees, or agents of the Association; and
2. People requested by the Association to serve as directors, officers, employees, or agents of another Association, partnership, joint venture, trust or other enterprise.

A person is not eligible, however, unless the person is a party to the proceeding because the person had a relationship to the Association described in this paragraph.

b. **ELIGIBLE PROCEEDINGS:** Eligible persons may be indemnified in any civil, criminal, administrative or investigative proceeding that is threatened, pending, or completed; but the indemnification rules are not the same if the Association is not a party to the proceeding.

c. **WHEN THE ASSOCIATION IS NOT A PARTY:** Indemnification is available only if the eligible person acted in a manner that person reasonably believed to be in the best interests of the Association. If it is a criminal prosecution, the eligible person must have no reasonable

cause to believe that the conduct was unlawful. A judgment, order, settlement, conviction, or plea of nolo contendere (or the equivalent of any of those) will not alone create a presumption that the person seeking indemnification acted unlawfully or against the Association's best interests.

d. **WHEN THE ASSOCIATION IS A PARTY:** Indemnification is available only if the eligible person acted in a manner that the person reasonably believed to be in the best interests of the Association. There may be no indemnification if the eligible person is adjudged negligent or liable for misconduct in performing duties to the Association. If a court determines that the person is entitled to indemnity for certain expenses, however, the Association must indemnify that person to the extent the court required.

e. **WHEN THE ELIGIBLE PERSON IS SUCCESSFUL:** If a suit is brought as an eligible proceeding and the eligible person successfully defends the claim on the merits, the eligible person must be indemnified against expenses (including reasonable attorney's fees) actually and reasonably incurred in connection with the defense.

f. **WHEN THE PERSON IS NOT SUCCESSFUL:** Unless indemnification is ordered by a court, indemnification may be paid only if the eligible person has met the standards of conduct set forth in this section. If these standards of conduct are met, indemnification must include reasonable defense expenses actually incurred, judgments or fines. A finding of proper conduct may be made:

1. By the Board of majority vote of a quorum consisting of the directors who are not parties to that proceeding;
2. With or without such quorum, if directed by a quorum of disinterested directors, by the Association's independent legal counsel in a written opinion; or
3. By the affirmative vote of a majority of the shares entitled to vote on this issue.

g. **PREPAID DEFENSE EXPENSES:** The Association may pay an eligible person's expenses in defending an eligible proceeding before the final disposition of that proceeding if the Board authorized the early payment. However, early payment may not be made unless the eligible person agrees to repay any amounts advanced if it is found that the person is not entitled to be indemnified by the Association.

h. **OTHER PROVISIONS AND RESOLUTIONS:** Other provisions of these By-Laws or a resolution approved by the affirmative vote of the holders of the majority of the shares entitled to vote on this issue may specify their rights of indemnification. If indemnification is approved at a shareholders' meeting, the notice of that meeting must state that the issue of indemnification will be discussed. The notice must also state whether indemnification will continue for a person who has ceased to be a director, officer, employee or agent and that it will inure to the benefit of the heirs, executors, and administrators of that person.

i. **INSURANCE:** Even if the Association would not have the power to indemnify a director, officer, employee or agent, the Association may purchase insurance on behalf of a person for liability asserted against that person while acting in an official capacity connected with the Association or a related partnership, joint venture, trust or other enterprise.

j. **SPECIAL NOTICE:** In some circumstances, notice must be given to shareholders if a person is indemnified. The notice does not apply if amounts are paid under a court order or by an insurance carrier for insurance maintained by the Association. The notice must be sent by first-class mail to each shareholder of record who at that time was entitled to vote for the election of directors. The notice must be sent no later than the next annual meeting of the shareholders, unless that meeting is held within three (3) months from the date of the indemnification payment; in any event, the notice must be sent within fifteen (15) months from the date of the indemnification payment. The notice must list the persons paid, the amounts paid, the nature and statute at the time of the payment of the litigation or threatened litigation.

Section 2 - REIMBURSEMENT: The Association may deduct from its income for income tax purposes, payments to employees in the form of salaries, commissions, bonuses, reimbursements, or deductible employee benefits. If the Internal Revenue Service or the appropriate state taxing authority disallows one of these deductions, the benefited employee must reimburse the Association to the full extent of the disallowance when the disallowance becomes final. The disallowance becomes final when the Association agrees to the disallowance or when it is made final by the Internal Revenue Service, the appropriate taxing authority, or by final judgment of a court of competent jurisdiction.

when no appeal is taken or any longer available. The Association must give reasonable notice to any employee of an attempt to disallow the deduction so that the employee may protect his or her interests. However, a good-faith settlement by the association of the amount to be disallowed binds the employee, unless the employee request in writing that additional measures be pursued, agrees to pay the additional costs of those measures (including reasonable attorney's fees), and furnishes security to the Association satisfactory in the opinion of the Board to cover those additional costs and also any potential liability for disallowance. It is the duty of the Board to enforce the repayment. To secure repayment, the Board may withhold payments to the employee until the amount owed is recovered. If the employee sells shares of the Association to the Association at the time when the issue is unresolved or the amount due the Association has not been paid, the price otherwise payable for those shares may be reduced by a reserve to cover that contingency or obligation. The reserve must be paid to the employee or the employee's estate or heirs or it will be retained by the Association when the issue is settled.

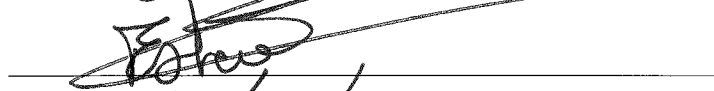
IN WITNESS WHEREOF, we, being all of the Directors of Woodington Homeowners Association, Inc., have hereunto set our hands this 27 day of December, 2018.



Christopher W. Edwards, President



Charles Koshis, Vice-President



Denis Esteve, Treasurer



Michael Keels, Secretary



William Craig, Maintenance

Reference 1: State of South Carolina, County of Greenville, "Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision", recorded in Book 1373, Page 912" through "Book 1373, Page 922" in the office of the Register of Deeds. A survey entitled Woodington and dated April 5, 1989, is recorded in the Register of Deeds Office for Greenville County, South Carolina, in Plat Book 17-E at Page 56.

STATE OF SC
COUNTY OF Greenville

ACKNOWLEDGMENT

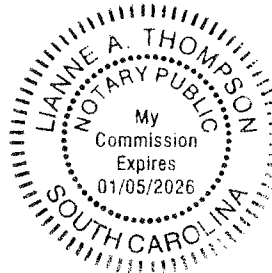
I, the undersigned notary public, do hereby certify that the within named Directors of Woodington Homeowners Association, Inc. personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 27 day of December, 2018.

Lianne A. Thompson
Signature of Notary Public

Lianne A. Thompson
Printed Name of Notary Public

Notary Public for SC (State)
My Commission Expires: 1/5/26
(SEAL)



RECEIVED

Apr 19 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Charles B. Simmons, Jr., Master in Equity

Civil Action No. 2017-CP-23-06301 Appellate Case No. 2018-001209

Raymond Wedlake, individually, and derivatively, on behalf of all Members of the
Woodington Homowners' Association, Inc., Appellant,

v.

Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as
the current Board of Directors of the Woodington Homeowners' Association, Inc., Respondents.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of "Petition for Rehearing with a New Panel of Judges; or,
Alternately *En Banc*", along with Exhibits PFR1 and PFR2, were served upon the following:

Ely O. Grote, Esq.
McCabe Trotter & Beverly, PC
P.O. Box 212069
Columbia, SC 29221
Tel: (803) 724-5000
ely.grote@mccabetrotter.com
Attorney for Respondents

via electronic mail (e-mail) on April 19, 2021.



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