THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Appeals

The Honorable Judges: Williams, Thomas, and Hill

Appellate Case No. 2021-_____
Court of Appeals Case No. 2018-001209
Case No. 2017-CP-23-06301

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.

NOTICE OF APPEAL

Pursuant to Rule 203, SCACR, Raymond A. Wedlake appeals the "Unpublished Opinion No. 2021-UP-113" (U113, submitted February 1, 2021 – Filed April 7, 2021; Exhibit NOA.1) issued from the Court of Appeals by Honorable Judges: Williams, Thomas, and Hill. Appellant submitted a petition for rehearing after receipt of U113. Appellant received written notice of an

Order that denied his petition after June 15, 2021 (Exhibit NOA.2). U113 affirmed dismissal, via granting of involuntary non-suit, of Appellant's case by a Master's-Court Order of May 29, 2018 (Exhibit NOA.3). Appellant attaches Proof of Service to Counsel of Record. A filing fee of $250 is remitted by Priority Mail.

June 22, 2021

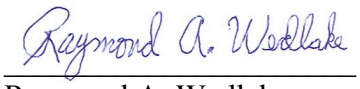

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EXHIBIT NOA.1

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Unpublished Opinion No. 2021-UP-113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), SCRCP 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 effects future events or has collateral consequences for the parities, 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 NOA.2

The South Carolina 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

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Rule 221, SCACR. In his petition for rehearing, Appellant Raymond Wedlake indicates the Woodington Homeowners' Association Bylaws are recorded with the Greenville County Registrer of Deeds. This argument has not been presented before, and we cannot address it at the rehearing stage. Accordingly, the petition for rehearing is denied.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina

cc:
Raymond A. Wedlake
Grant Henry Gibson, Esquire
Ely Owen Grote, Esquire
The Honorable Charles B. Simmons, Jr.

EXHIBIT NOA.3

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Raymond A. Wedlake, individually and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc., Plaintiff(s), 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., and, Association Management Group SC, Inc., Defendant(s).	IN THE COURT OF COMMON PLEAS FOR THE 13TH JUDICIAL CIRCUIT C/A No.: 2017-CP-23-06301 **ORDER OF JUDGMENT**

This matter came before me on April 20, 2018, for a non-jury/bench trial. At the trial, Plaintiff was represented by attorney Grant H. Gibson. Defendants Benjamin Acord, William Craigo, Denis Esteve, and Brian James (collectively, ***"Defendants"***) were represented at the trial by attorney Ely O. Grote. Association Management Group SC, Inc. had previously been dismissed from the case and was no longer a party at the time of the trial.

FACTS AND BACKGROUND

Plaintiff, Raymond Wedlake, is a homeowner in the Woodington subdivision and is a member of the Woodington Homeowners' Association, Inc. (the ***"Association"***), a South Carolina nonprofit corporation. On October 5, 2017, Plaintiff filed this lawsuit against the

Defendants, primarily relating to various corporate governance matters, legal principles applicable to nonprofit corporations and their directors, and interpretation of the bylaws for the Association.

Defendants are four out of the five directors that were elected to the board of directors at the Association's annual meeting held on January 10, 2017. Stacey Krause was the fifth director elected to the board of directors at the same annual meeting, but she subsequently resigned. The vacancy on the board of directors created by Stacey Krause's resignation had been filled prior to the time of trial. At the time of the trial, Defendants were serving in their first terms, rather than serving in consecutive terms. At the time of the trial, Defendants constituted four out of the five directors serving on the board of directors for the Association.

STIPULATED ISSUES

Prior to trial, the parties stipulated to the issues for trial and filed a Stipulation of Issues for Trial on March 29, 2018. The stipulated issues for trial are as follows:

1. Plaintiff seeks a declaratory judgment and declaratory relief as follows:
    a. A declaration that the Board of the Association must comply with, and enforce in accordance with their terms, the Association's bylaws.
    b. That the court construe the Bylaws of the Association and declare that the bylaws place a duty on the Board of Directors to fill a vacancy on the Board of Directors and the Board of Directors must make reasonable efforts to do so.
    c. That the court construe the Bylaws of the Association and declare that the bylaws require a majority of all members to both enter into, and to renew, a management contract.
    d. That the court construe the Bylaws of the Association and declare that the bylaws do not permit a Director to remain beyond a five-year term, and in any event, for not more than one additional year beyond such five-year period.

e. That the court declare that the Bylaws of the Association do not permit delegation of the role or authority of the Board.

f. That the court construe the Bylaws of the Association and declare that the Bylaws require the Board of Directors to send out a ballot to the membership for voting if a proposed amendment to the Bylaws is submitted by an eligible member.

2. Plaintiff seeks an award of Nominal Damages against Defendants.

3. Plaintiff seeks an award of court costs and legal fees if such costs and fees are paid by the Association's insurance carrier.

4. Defendants preserve all defenses to Plaintiff's claims and nothing herein shall be construed to infer a waiver of any defenses by Defendants or that Defendants in any way stipulate that the matters raised by Plaintiff or the relief sought by Plaintiff are proper matters before the Court or proper matters to be heard by the Court.

DISCUSSION/ANALYSIS

Plaintiff was presented as the only witness in Plaintiff's case in chief. Plaintiff was subject to direct examination and was also cross-examined by defense counsel. Plaintiff did not call any further witnesses and then rested his case. At the conclusion of Plaintiff's case, Defendants moved for directed verdict, which the Court deemed to be and treated as a motion for involuntary non-suit under Rule 41(b), SCRCP. Rule 41(b), SCRCP, provides in relevant part:

> After the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief.
>
> The court as trier of the fact may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all evidence.

"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." Johnson v. J.P. Stevens & Co., 308 S.C. 116,

118, 417 S.E.2d 527, 529 (1992). "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. See also, Waterpointe I Prop. Owner's Ass'n, Inc. v. Paragon, Inc., 342 S.C. 454, 458, 536 S.E.2d 878, 880 (Ct. App. 2000).

After considering the evidence and applicable law, I GRANT Defendant's motion for involuntary non-suit under Rule 41(b), enter judgment against Plaintiff, and specifically find and conclude as follows:

I. Plaintiff's request that the court construe the Bylaws of the Association and declare that the bylaws require a majority of all members to both enter into, and to renew, a management contract (Stipulated Issue 1(c))

During the trial, the parties stipulated in open court and on the record that they mutually agreed to an interpretation of the bylaws in substance as follows:

> Approval by a majority vote of the members of the Association is not needed for the Board of Directors of the Association to renew a contract with an association management company that was previously approved by a majority vote of the members of the Association, as long as the contract contains provisions for automatic renewal. Likewise, approval by a majority vote of the members of the Association is not needed for changes in the amount of consideration or rate paid to an association management company under a contract with an association management company that was previously approved by a majority vote of the members, as long as the contract contains provisions providing for such rate/consideration adjustments.

I find that the stipulation is binding pursuant to Rule 43(k), SCRCP, and it is also hereby incorporated into and made part of the Court's ruling and order by consent of the parties.

II. Plaintiff's request for a declaration that the Board of the Association must comply with, and enforce in accordance with their terms, the Association's bylaws (Stipulated Issue 1(a))

Before a court may render a declaratory judgment, an actual, justiciable controversy must exist. Pee Dee Elec. Co-op., Inc. v. Carolina Power & Light Co., 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). Courts "will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." Byrd v. Irmo High Sch., 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). Further, South Carolina courts "will not issue advisory opinions for which no meaningful relief can be granted." In Interest of Kaundra C., 318 S.C. 484, 486, 458 S.E.2d 443, 444 (Ct. App. 1995). Further, "[q]uestions of statutory interpretation, by themselves, do not rise to the level of actual controversy." Tourism Expenditure Review committee v. City of Myrtle Beach, 403 S.C. 76, 81-82, 742 S.E.2d 371, 374 (2013).

I find that the evidence presented shows that Defendants had already admitted or stipulated pre-suit that they have an obligation to follow the law and the bylaws. Specifically, by email dated June 17, 2017, Defendants admitted to Plaintiff that "The law must be followed" and that "By election to the Board we did agree to abide by the By-Laws." Based on the admission or stipulation of Defendants, there really appears to be no actual, justiciable controversy as to this issue. Nonetheless, in light of the Defendants' admission, 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. However, as set forth more fully below, except as stated above regarding the parties' stipulation as to Stipulated Issue 1(c), no other specific finding or determination is made as to the specific terms of the Bylaws and/or the specific meaning of the terms of the Bylaws for the Association, nor is any finding made as to whether Defendants have violated the terms of the bylaws.

III. Plaintiff's Remaining Requests for Declaratory Relief (Stipulated Issues 1(b), 1(d), 1(e), and 1(f))

It appears that Plaintiff has attempted to bring claims derivatively on behalf of the Association and all of its members. Defendants have asserted as a defense that Plaintiff cannot maintain a derivative action because Plaintiff's claims do not comply with the requirements of Rule 23(b)(1), SCRCP. Specifically, Defendants have asserted that Plaintiff does not fairly and adequately represent the interests of the other members of the community that are similarly situated. Rule 23(b)(1), SCRCP, provides, in relevant part that: "The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association."

After considering the evidence, I find that there is simply a lack of evidence to support a claim that Plaintiff is acting derivatively on behalf of the Association and its members. The record is devoid of any evidence that Plaintiff is actually acting in any representative capacity or representing the interests of the members of the Association. Instead, based on the evidence presented, it appears that Plaintiff's views and interests are significantly different from and are in conflict with the views and interests of the majority of the members. Additionally, the evidence indicates that Plaintiff lacks the support of a majority, if any, of the other members of the Association. Plaintiff did not provide any evidence tending to suggest that any other members of the Association supported this action or supported Plaintiff in pursuing this action, but rather, there was evidence to the contrary. Consequently, I find that the Plaintiff does not fairly and adequately represent the other members of the Association that are similarly situated. As a result, to the extent Plaintiff's claims were brought derivatively or must be brought derivatively, such claims must be dismissed.

In addition to the foregoing, I also find that Stipulated Issues 1(b), 1(d), 1(e), and 1(f) are moot, advisory in nature, or otherwise fail to present actual justiciable controversies as to the Defendants, therefore, I decline to issue those requested declarations on this ground as well.

I also find that the evidence admitted at trial nonetheless lacks sufficient information to allow the Court to issue the declarations requested by Plaintiff per Stipulated Issues 1(b), 1(d), 1(e), and 1(f). Bylaws are construed in the same manner as a contract. Shuler v. Tri-Cty. Elec. Co-op., Inc., 374 S.C. 516, 523, 649 S.E.2d 98, 101 (Ct. App. 2007), aff'd, 385 S.C. 470, 684 S.E.2d 765 (2009). "The purpose of all rules of contract construction is to ascertain the intention of the parties and that intention must be gathered from the entire agreement and not from any one particular phrase thereof." Reyhani v. Stone Creek Cove Condo. II Horizontal Prop. Regime, 329 S.C. 206, 212, 494 S.E.2d 465, 468 (Ct. App. 1997). See also, Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 498, 649 S.E.2d 494, 502 (Ct. App. 2007) (noting that the parties' intentions must be gathered from the contents of the entire agreement and not from any particular clause thereof and also noting that documents will be interpreted so as to give effect to all of their provisions, if practical); and Koon v. Fares, 379 S.C. 150, 155, 666 S.E.2d 230, 233 (2008) (the purpose of the rules of contract construction is to ascertain the intention of the parties as gathered from the contents of the entire document and not from any particular provision within the contract). Additionally, in an action for declaratory judgment, "the burden of proof rests with the party seeking the declaration, and that party must meet its burden by a greater weight or preponderance of the evidence." SPUR at Williams Brice Owners Ass'n, Inc. v. Lalla, 415 S.C. 72, 82, 781 S.E.2d 115, 121 (Ct. App. 2015).

In this case, I find that Plaintiff did not admit into evidence a true, accurate, authentic, and complete set of the bylaws. While there may be some testimony or evidence at trial as to

what Plaintiff asserts that certain clauses or phrases of the bylaws mean or say, without a true, accurate, and authentic set of the bylaws, the Court is simply without sufficient information to evaluate the truth, veracity, or accuracy of such contentions. In other words, based on the trial evidence, the Court is simply without sufficient information to independently assess whether the bylaws actually say or mean what Plaintiff contends they say or mean. Further, without a complete set of the bylaws being admitted into evidence, the Court would be forced to view particular phrases or clauses in isolation, and is deprived of the ability to independently review and construe the contents of the entire bylaws as a whole, contrary to contract construction principles. Without a complete set of the bylaws, the Court is deprived of the ability to independently evaluate and determine what provisions of the bylaws are the relevant and controlling provisions, and is deprived of the ability to otherwise construe the provisions of the bylaws in light of the terms of the entire document. Based on the foregoing, at the close of Plaintiff's case, insufficient evidence was presented as to the terms and contents of the bylaws to allow the Court to independently evaluate, interpret, and construe the bylaws. However, even had the bylaws been introduced, from what the record does show, Plaintiff would still not be entitled to the relief he seeks. Therefore, the Court grants judgment against Plaintiff and declines to issue the declarations requested by Plaintiff per Stipulated Issues 1(b), 1(d), 1(e), and 1(f) for this reason as well.

Based on all of the foregoing, except as stated above regarding the parties' stipulation as to Stipulated Issue 1(c), no other specific finding or determination is made as to the specific terms of the Bylaws and/or the specific meaning of the terms of the Bylaws for the Association, nor is any finding made as to whether Defendants have violated the terms of the bylaws.

Based on all of the foregoing, the Court declines to award the relief sought by Plaintiff as to the declarations requested per Stipulated Issues 1(b), 1(d), 1(e), and 1(f) and declines to issue those requested declarations.

IV. Plaintiff's request for an award of Nominal Damages against Defendants (Stipulated Issue 2)

I find that Plaintiff is not entitled to an award of any damages against Defendants and I deny Plaintiff's request for an award of nominal damages.

V. Plaintiff's requests for award of court costs and legal fees if such costs and fees are paid by the Association's insurance carrier (Stipulated Issue 3)

I find that Plaintiff is not entitled to an award of attorney's fees and costs. First, Plaintiff is not the prevailing party in this action, as judgment is granted against Plaintiff pursuant to Defendants' motion for involuntary non-suit under Rule 41(b), SCRCP. Further, the "general rule is that attorney's fees are not recoverable unless authorized by contract or statute." Seabrook Island Prop. Owners' Ass'n v. Berger, 365 S.C. 234, 238, 616 S.E.2d 431, 434 (Ct. App. 2005). "In South Carolina, the authority to award attorney's fees can come only from a statute or be provided for in the language of a contract." Id. at 238-239, 616 S.E.2d at 434. "There is no common law right to recover attorney's fees." Id. at 239, 616 S.E.2d at 434. The Court is unaware of any statute providing for attorney's fees in this case, nor was any evidence presented that attorney's fees are provided by contract. Further, Plaintiff did not provide any evidence that that such costs and attorney's fees would be paid by the Association's insurance carrier, and Plaintiff testified that he is not asking that his attorney's fees be paid by Defendants. Based on the foregoing and the evidence presented, I find that Plaintiff is not entitled to an award

of attorney's fees and costs and therefore deny the Plaintiff's request for attorney's fees and costs.

CONCLUSION

Based on the all of the foregoing, I GRANT Defendant's motion for involuntary non-suit under Rule 41(b) and enter judgment as set forth herein.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE TO FOLLOW]

Greenville Common Pleas

Case Caption: Raymond A Wedlake , plaintiff, et al vs. Benjamin Acord , defendant, et al

Case Number: 2017CP2306301

Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

RECEIVED
Jun 22 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Appeals

The Honorable Judges: Williams, Thomas, and Hill

Appellate Case No. 2021-_____
Court of Appeals Case No. 2018-001209
Case No. 2017-CP-23-06301

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.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of "Notice of Appeal", along with Exhibits NOA.1 - .3, were served upon the following:

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