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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr., Master in Equity

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

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.

RECORD ON APPEAL
VOLUME I

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ELECTRONICALLY FILED - 2018 Jan 23 2:45 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

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-23-6301 **ORDER APPROVING SETTLEMENT BETWEEN PLAINTIFF AND ASSOCIATION MANAGEMENT GROUP SC, INC. AND DISMISSING ASSOCIATION MANAGEMENT GROUP SC, INC.**

(017402.00009)

This matter came before me on January 3, 2018, for a hearing concerning approval of a proposed settlement between Plaintiff and Association Management Group SC, Inc. ("AMG"), pursuant to Rule 23(b)(1), SCRCP. A copy of the proposed settlement was attached as Exhibit A to AMG's Motion for Approval of Settlement that was filed on December 19, 2017. After fully considering the proposed settlement and the attendant facts and circumstances, I find that the settlement should be approved.

THEREFORE, IT IS ORDERED that the settlement between Plaintiff and AMG is approved and a copy of the settlement being approved is attached as **Exhibit 1**. It is further ordered that AMG is dismissed from this action with prejudice.

IT IS SO ORDERED.

_____
Robin B. Stilwell, Circuit Court Judge

Date:_____

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Greenville Common Pleas

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

Case Number: 2017CP2306301

Type: Order/Approval Of Settlement

So Ordered

s/ Robin B. Stilwell 2158

ELECTRONICALLY FILED - 2018 Jan 23 10:45 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**THIRTEENTH JUDICIAL CIRCUIT**
Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc.	Civil Action No. **2017-CP-23-06301**
Plaintiff(s)	
vs.	**ORDER DENYING MOTION TO DISMISS, AND IN THE ALTERNATIVE MOTION TO STRIKE OR FOR A MORE DEFINITE STATEMENT**
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.,	
Defendants	

This matter came before me on January 3, 2018, for a hearing regarding a Motion to Dismiss, or in the Alternative, to Strike or for a More Definite Statement on behalf of Defendants Benjamin Acord, William Craigo, Denis Esteve and Brian James, (the "Board Defendants"). The aforementioned motion was heard following approval by this Court of a settlement between Plaintiff and Defendant Association Management Group SC, Inc. ("AMG"). Upon the Court's approval of the settlement between Plaintiff and AMG, counsel for Plaintiff and AMG entered a stipulation on the record that all claims against the Board Defendants relating to AMG, including all claims relating to or arising out of AMG's contract(s) with Woodington Homeowners' Association, Inc. were dismissed. Such Stipulation did not include Plaintiff's request for the Court to interpret the By-Laws with regard to voting requirements for management contracts and renewals thereof. After hearing oral argument of counsel, and following review of Plaintiff's

Complaint, the Board Defendants' Motion, Board Defendants' Memorandum in Support and related Affidavits and Exhibits, and Plaintiff's Memorandum in Opposition and related Affidavits and Exhibits, I find in favor of Plaintiff, denying Board Defendants' Motion in all respects.

THEREFORE, IT IS ORDERED, that Board Defendants' Motion to Dismiss, and, in the alternative, to Strike or for a More Definite Statement is DENIED. Further, by stipulation of counsel, all claims against the Board Defendants relating to AMG, including all claims relating to or arising out of AMG's contract(s) with Woodington Homeowners' Association, Inc. are dismissed

IT IS SO ORDERED.

_____
Robin B. Stilwell, Circuit Court Judge

Date: _____

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ELECTRONICALLY FILED - 2018 Jan 23 10:45 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301



Greenville Common Pleas

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

Case Number: 2017CP2306301

Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

ELECTRONICALLY FILED - 2018 May 29 3:36 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

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

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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.

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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,

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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))

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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))

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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.

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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

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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.

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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]

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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)

ELECTRONICALLY FILED - 2017 Oct 05 4:30 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	)	
	)	**THIRTEENTH JUDICIAL CIRCUIT**
Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc.	)	Civil Action No.
	)	**-CP - -**
Plaintiff(s)	)	
vs.	)	
Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of the Woodington Homeowners' Association, Inc.	)	**SUMMONS (NON-JURY)**
and,	)	
Association Management Group SC, Inc.,	)	
Defendants	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint to the subscriber at his office: 1200 Woodruff Road, Bldg A-3, Greenville, SC, 29607, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully Submitted,
G. GIBSON & ASSOCIATES, LLC
By: s/Grant H. Gibson, Esq.
Grant H. Gibson, Esq., SC Bar # 9269

1200 Woodruff Rd. – Bldg. A-3, Greenville, SC 29607
(864) 630-7471
e-mail: atty@ggibsonassociates.com

Greenville, South Carolina
October 5, 2017

ELECTRONICALLY FILED - 2017 Oct 05 4:30 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**THIRTEENTH JUDICIAL CIRCUIT**
Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc. **Plaintiff(s)** **vs.** 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., **Defendants**	Civil Action No. **-CP - -** **COMPLAINT** **DECLARATORY JUDGMENT** **AND** **INJUNCTIVE RELIEF**

COMES NOW, Raymond A. Wedlake ("Plaintiff"), and brings this action for Declaratory Judgment, derivatively on behalf of the Woodington Homeowners' Association, Inc. ("WHOA") , and seeking injunctive relief, based upon the allegations below.

PARTIES

1. Plaintiff: Raymond A. Wedlake is, and at all relevant periods, has been, a resident of Greenville County (Affidavit 7).
2. Defendants: Benjamin Acord, Denis Esteve, William Craigo, and Brian James, who constitute the four members of the current Board of Directors of the WHOA, in their capacity as Board members ("Board Defendants"), and Defendant: Association Management Group, SC, Inc. ("AMG") the management company for the WHOA, have each been and continue to be, residents of Greenville County (Affidavit 8, 10).

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3. Defendant, AMG, is a South Carolina management company, with a principal place of business in Simpsonville, S.C., in Greenville County (Affidavit 10).

NATURE OF THE CONTROVERSY

4. Genuine disputes exist, and are ongoing, between Plaintiff, Raymond Wedlake individually, and the members of the WHOA collectively, and the Board Defendants regarding proper interpretation of the By-Laws of the WHOA on several issues.

5. Plaintiff is a dues-paying member, in good-standing of the WHOA, has suffered injury personally, and also collectively, as a member of the WHOA, and accordingly has standing to bring this action derivatively on behalf of the WHOA.

6. Board Defendants have apparently interpreted the By-Laws of the WHOA (Exhibit A), and the South Carolina Nonprofit Corporation Act ("NPCA"), to preclude Plaintiff from receiving various documents ("Requested Information"), including a request for the insurance policy, or policies, and for 2015 and 2016 payments made to AMG and to the law firm for the WHOA: McCabe, Trotter, and Beverly ("McCabe"), despite Plaintiff having submitted his request in writing, and stating a proper purpose (Exhibit B, Affidavit 11).

7. There has been no explanation from the Board Defendants as to the basis for refusing Plaintiff such Requested Information (Exhibit B, Affidavit 12).

8. There is a dispute between Plaintiff and the Board Defendants with regard to the duty of the Board Secretary under the By-Laws, to send a ballot, following submission by an eligible Member of a proposed amendment for adding an "Alternative Dispute Resolution (ADR)" process to the By-Laws (Exhibit C, Affidavit 13).

9. The Board Defendants have apparently interpreted the By-Laws to empower the Board of Directors ("Board") of the WHOA to increase the fees paid to AMG unilaterally, without

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approval of all the members of the WHOA ("Members") and in violation of an existing Management Agreement ("Contract"), which interpretation Plaintiff disputes (Exhibit D, Affidavit 51 - 56).

10. Plaintiff disputes the Board Defendants' authority under the By-Laws Article VIII, Section 1(d), to renew the Contract with AMG without approval of a majority of Members (Exhibit A, Affidavit 46 - 49).

11. The Plaintiff and the Board Defendants are in dispute as to the proper interpretation of the WHOA By-Laws regarding the term limits of members of the Board of the WHOA. Plaintiff's position is that the By-Laws, when read together with the applicable NPCA, limits the Board of the WHOA to a maximum term of five years (Affidavit 32 – 33).

12. The parties dispute whether a current vacancy must be filled or not; it being the position of the Plaintiff that the provisions of the By-Laws clearly mandate that vacancies on the Board be filled and that the express language of the By-Laws prevails on this issue and not the language of the NPCA (Exhibit E, Affidavit 41 - 45).

13. The parties further dispute whether the WHOA Board may delegate duties at all, including delegation of duties to AMG; it being the position of Plaintiff that since it is not provided for in the Articles of Incorporation of the WHOA, such delegation is not permitted (Affidavit 59, Exhibit F).

14. The Parties disagree as to whether an action taken at the last Annual Meeting, at the request of the 2016 Board and McCabe, in which all prior actions of the 2016 Board and of AMG were ratified and approved without explanation or discussion, was valid; it being Plaintiff's position that implicit in the By-Laws is a duty of good faith and a duty of loyalty, which the 2016 Board breached by taking such action (Affidavit 22, Exhibits G, H & L).

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15. The Board Defendants and the 2016 Board before them, have engaged in continuing violations of the By-Laws despite clear and repeated notification and explanation by Plaintiff, and will continue to do so to the detriment of Members without confirmation of violations as claimed by Plaintiff, and without clear direction from this Court that the By-Laws must be followed (Affidavit 14 – 23, 49, 61 – 63, 66).

JURISDICTION AND VENUE

16. This is an action for declaratory judgment pursuant to S.C. Code Ann. Title 15, Chapter 53, Section 15-53-10. *et.seq.*, as amended, known as the "Uniform Declaratory Judgment Act." It arises out of a "contract," namely the By-Laws of the WHOA, and interpretation and assertion of rights pursuant to such contract and, accordingly, falls directly under the auspices of Code Section 15-53-30.

17. This Court has jurisdiction of the subject matter of this complaint and personal jurisdiction of the parties.

18. Venue is proper.

FACTS

19. This action is being brought before this Court by Plaintiff, for Declaratory and Injunctive relief, derivatively, on behalf of Plaintiff and Members, to resolve disputes regarding interpretation of the By-Laws and to make clear that the Board of the WHOA are required to abide by the By-Laws (Affidavit 3).

20. Plaintiff is a Member in good standing of the WHOA (Affidavit 4).

21. WHOA is a South Carolina Nonprofit Corporation, initially formed in 1993 (Exhibit F, Affidavit 5).

22. The WHOA consists of 66 voting units (Affidavit 6).

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23. Plaintiff is a long-time resident of Greenville, having lived in the Woodington Community, and been a Member of the WHOA, since 1999 (Affidavit 7).

24. These four Board members remain from five who were elected at a January 10, 2017 Annual Meeting of Members, and are in their first elected term (Affidavit 8 - 9).

25. In late 2016 and early 2017, due to disputes between Plaintiff and the 2016 Board about proper interpretation of the By-Laws, and after several efforts by Plaintiff to have the Board address and seek to resolve such disputed matters, Plaintiff requested his Attorney, Grant H. Gibson, Esq. to proceed with an action seeking Declaratory Judgment and Injunctive relief (Affidavit 14).

26. Plaintiff requested Mr. Gibson to advise counsel for the WHOA, Ely Grote, Esq., of McCabe, that he was preparing such an action to seek a resolution of disputed interpretations of the By-Laws and seeking an injunction to forestall the Annual Meeting of Members, which Mr. Gibson did (Affidavit 15).

27. The purpose of forestalling the Annual Meeting was because the 2016 Board, in Plaintiff's interpretation had violated the By-Laws in several respects, including by remaining beyond the five-year term provided by law, as set forth in various e-mails Plaintiff sent to the 2016 Board (Affidavit 16, Exhibit G).

28. Plaintiff agreed to not file such action on the basis that Plaintiff's appearance at the Annual Meeting would not constitute a "waiver" of his objections to holding such meeting and to the authority of the 2016 Board, and that a written statement of objections would be attached to the minutes of such Meeting (Affidavit 17, Exhibit I).

29. McCabe agreed in writing to Plaintiff's proposal to attach his objections, and to appear at the meeting without waiving any objections (Affidavit 18, Exhibit J)

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30. Plaintiff's attorney, Mr. Gibson, also submitted a similar letter of understanding (Affidavit 19, Exhibit K).

31. Such statement(s) included objections to the authority of the 2016 Board to act, and all actions taken by such 2016 Board, as well as objections to the retention of AMG as not being in accordance with the By-Laws, and to any alleged renewals of the contract between the 2016 Board and AMG (Affidavit 20, Exhibit I).

32. Plaintiff gave a copy of such objections prior to the meeting to McCabe attorney Mr. Ely Grote (Affidavit 21, Exhibit I).

33. Mr. Gibson gave a copy of his letter to Mr. Grote prior to the meeting (Exhibit K).

34. At such Annual Meeting, the 2016 Board permitted the McCabe firm to take over the meeting to solicit votes seeking blanket ratification of "all actions" taken by the 2016 Board, as well as "all actions" taken by the Management Company, AMG, and ratification of the contract with AMG and any and all renewals (Affidavit 22, Exhibits G, H & L).

35. Such "ratification" was voted upon without explanation or discussion (Affidavit 23).

36. The Minutes from the 2017 Annual Meeting which were disseminated, were filled with inaccuracies, untrue and disparaging comments about Plaintiff, and also, improperly contained comments from non-member third parties; all in violation of the Board Secretary's duties under the By-Laws (Affidavit 24).

37. Board Defendants refused Plaintiff's request to hold off dissemination of a revision to minutes to allow time for his further review, but they disseminated such minutes promptly after his request, still containing objectionable verbiage, which was sent out without attaching the agreed upon "Objections of Plaintiff" (Affidavit 25 - 26).

38. Although the Board Defendants promised to consider Plaintiff's revision to such transmitted

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Minutes at a July 8, 2017 meeting, another such meeting for further review of minutes has never been scheduled despite Plaintiff's follow-up inquiries (Affidavit 27 - 31).

39. On March 12, 2017, Plaintiff sent questions to the Board Defendants, including asking the Board to confirm that they agreed with Plaintiff's interpretation of the By-Laws regarding term limits (Affidavit 32 - 33, Exhibit M) .

40. Board Defendant Acord, who serves as President of the Board, refused to review or respond to any of the questions poised, stating that they were a "distraction" to the Board. (Affidavit 34 - 35, Exhibits M & N).

41. On March 29, 2017, Plaintiff proposed mediation or, in a "last ditch effort to resolve differences", to simply meet to resolve such disputes, and no response has ever been received to the idea of mediation; after one short meeting the Board Defendants put off meeting despite the disputes being unresolved (Affidavit 36 -40, Exhibits O, P & Q).

42. On May 9, 2017, the Board Secretary resigned as a member of the Board, creating a vacancy on the Board (Affidavit 41).

43. The By-Laws state that a vacancy on the Board must be filled if an eligible Member is available, as specified in Article VIII, Section 2(f) (Affidavit 42, Exhibit A).

44. On May 9, 2017, Plaintiff informed the Board Defendants of his eligibility and desire to serve on the Board to fill the vacancy created by resignation of a member of the Board (Affidavit 43, Exhibit E).

45. The Board Defendants informed Plaintiff that one of the remaining Board members was appointed to fill the position of Board Secretary, mistakenly believing that a filling of an officer's position resolved the Board vacancy issue (Affidavit 44, Exhibit E).

46. On July 8, 2017, the Board Defendants were informed they had misinterpreted the By-Laws,

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and violated the By-Laws by not appointing an eligible Member to serve on the Board to fill such vacancy, and that the By-Laws also do not permit combining of offices when an eligible Member is available and willing to serve; one of the Board Defendants cannot be appointed to fill such vacancy per By-Laws Article IX, Sections 1 and 6 (Affidavit 45, Exhibits A & E).

47. To Plaintiff's knowledge and belief, prior to 2017, AMG Contract renewals were not approved by a majority vote by Members (Affidavit 46).

48. It is Plaintiff's position, as disputed by the Board Defendants, that such renewals are required to be approved by Members pursuant to the By-Laws, Article VIII, Section 1(d) (Affidavit 47, Exhibit A).

49. There currently exists disagreement between Plaintiff and the Board Defendants regarding: (i) the failure of the Board Defendants to abide by the By-Laws; (ii) the delegation of fundamental Board duties to AMG by the Board Defendants; and (iii) whether a renewal of a contract is the same under the law as a formation of a contract (Affidavit 48).

50. Plaintiff's positions are that the Board Defendants: (i) have not abided by the By-Laws; (ii) have acted improperly and in violation of NPCA Section 33-31-801(c) for their own self-interest to the detriment of WHOA; and (iii) that formation or renewal of a contract are both the same under the law (Affidavit 49, Exhibit R).

51. Such disputes and positions are known to the Board Defendants (Affidavit 50).

52. On May 26, 2017, the Board Defendants were asked by Plaintiff to: 'Please provide a most recent, signed, copy of WHOA's "Management Agreement" contract with AMG. ...', and were also informed by Plaintiff: '... In my possession is a contract from 15 Jan 2008, which was signed by Starr Hammond and Brian James. This contract shows a "Management Fee" of $250/month. ...' (Affidavit 51, Exhibits B & D).

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53. In the meeting of July 8, 2017, the Board Defendants stated to Plaintiff that no other contract showing more than $250/month fee to be paid to AMG is known to exist (Affidavit 52).

54. In a document presented at the 2017 Annual Meeting, management company fees paid by WHOA to AMG were shown: "Fees: Initial fee $275.00/month. $250.00/month 2008-2012. $285.00/month 2013-2016." (Affidavit 53, Exhibit S).

55. Based on Plaintiff's knowledge and belief, a fee increase to $285/month was never disclosed to Members at the time of the fee increase, nor was any approval for such increase voted upon by Members as required by the By-Laws (Affidavit 54).

56. Plaintiff demanded that the Board Defendants take action to recoup the excess, and while the Board Defendants agreed to do so, no such action has taken place (Affidavit 55 - 56).

57. It is Plaintiff's position, in contrast to that of the Board Defendants, that the Board may not delegate duties since it is not specifically permitted in the WHOA Articles of Incorporation (Affidavit 57 - 59, Exhibit F).

58. The NPCA Section 33-31-801 provides a Board may delegate "... some or all of the powers which would otherwise be exercised by a board ..." in subsection "(c)", where the Act reads: "... articles [of incorporation] ..." (the Act does **not** say By-Laws) (Affidavit 60, Exhibit R)

59. The WHOA By-Laws state in pertinent part: "Each Board member must be elected every year" in Article V, Section 2 (Affidavit 61, Exhibit A).

60. In both years of 2015 and 2016 no elections to elect Board members were held (Affidavit 62).

61. Based upon information and belief, Plaintiff believes that this precedent of wrongdoing has influenced the Board Defendants to continue to ignore, and to violate, the By-Laws (Affidavit 63).

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62. The Board Defendants have repeatedly ignored educational materials from HOA industry experts sent to them by Plaintiff, (Affidavit 64, Exhibit T).

63. Plaintiff has acted in good faith on behalf of Members in his dealings with the Board Defendants (Affidavit 65).

64. The Board Defendants have repeatedly shown a lack of good faith through their actions or inaction:

(i) ignoring without explanation, my inquiries, requests, including those specifically authorized under the NPCA, and suggestions, such as asking why only closed Board meetings are held, without invitation to Members to attend (Exhibits U & V);

(ii) refusing to publish a Board-meeting schedule, or provide a Board meeting agenda;

(iii) failing to inform Members of committees which they appointed;

(iv) failing to comment upon, or to send a July 9, 2017, all-Member ballot which proposed an "ADR" process to be included as an addition to By-Laws(Exhibit C);

(v) Return of Certified Mail sent by Plaintiff to Board Defendants (Exhibit W);

and,

(vi) misstating facts by Board Defendant Ben Acord concerning the number, and content, of e-mails sent by Plaintiff (Exhibit X) (Affidavit 66).

65. Because of the refusal of the Board Defendants to respond to Plaintiff's requests for information and to provide answers to questions and to give explanations about their rationale for their positions involving the WHOA, Plaintiff has been disenfranchised and his dignity, integrity, and reputation within WHOA have been severely damaged (Affidavit 67).

FOR A FIRST CAUSE OF ACTION

DECLARATORY JUDGMENTS

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66. The allegations in the preceding paragraphs are incorporated as if repeated verbatim herein.

67. Interpretation of the By-Laws in this case is the very essence of why the legislature enacted Title 15, Chapter 53 Sections 20, *et. seq.*, which provides in pertinent part:

"Any person interested under a …written contract….may have determined any question of construction or validity arising under the …contract…and obtain a declaration of rights, status or other legal relations thereunder."

68. That there are disputes that have not been able to be resolved surrounding interpretation of the By-Laws of WHOA, despite efforts to do so as clear from the facts in this case, as supported by Plaintiff's Affidavit.

69. The Plaintiff, both individually, and as a member of the WHOA collectively, has tangible legal interests that have been abridged by the Defendants.

70. The actions and failure to act where a duty is imposed pursuant to the By-Laws is opposed to Plaintiffs' tangible legal interests.

71. The nature of the disputes is, in each case, distinct and subject to full resolution, by an immediate and definitive resolution by this Court of the parties' rights, thereby avoiding the necessity of litigation.

72. Pursuant to the South Carolina Code of Laws, Title 15, Chapter 53, Section 15-53-70, AMG has been added as a party (Defendant) since AMG has a "interest which would be affected by the declaration."

73. We seek Declaratory Judgments regarding each of the following matters:

(i) That Plaintiff is entitled to the Requested Information;

(ii) That Board Defendants do not have unilateral authority to increase the fees for AMG;

(iii) That previous years' Contracts with AMG are null and void since they were never

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properly authorized by Members;

(iv) That the purported "ratification" of all prior acts by the 2016 Board at the Annual Meeting of the WHOA on January 10, 2017 was improper and ineffective, and a breach of duty of good faith as implied in the By-Laws;

(v) That the purported ratification of prior AMG Contracts at such Annual Meeting was improper and ineffective, and a breach of duty of good faith as implied in the By-Laws, and also based upon the facts such Contract was not provided to Members for review and the increase in fees to AMG not disclosed at the time of the increase;

(vi) In the event the contract with AMG is upheld, that the fees paid to AMG in excess of the amount provided for in the Contract with AMG were improper and must be disgorged by AMG;

(vii) That the Board Defendants are incorrect in their interpretation of the By-Laws provision regarding filling a vacancy on the Board, and must fill the vacancy if a Member is willing to serve.

FOR A SECOND CAUSE OF ACTION

INJUNCTIVE RELIEF

74. The allegations set forth in the preceding paragraphs are incorporated as if repeated verbatim by Plaintiff.

75. The Facts clearly evidence repeated efforts by the Plaintiff, Raymond Wedlake, to obtain compliance by the Board Defendants with the By-Laws, which efforts were either ignored or rejected, including improper payments made by the Board Members and received by Defendant AMG.

76. Should the Board Defendants and, in the case of such payments, AMG, be allowed to

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continue violating the By-Laws, the Plaintiff, individually, and the members of the WHOA collectively will continue to be harmed.

77. This Court has jurisdiction to declare rights, status and to grant injunctive relief pursuant to the South Carolina Uniform Declaratory Judgment Act.

78. Plaintiff requests this Court to enjoin any future delegation of duties by the Board Defendants unless and until such delegation is authorized by an amendment to the Articles of Incorporation of the WHOA.

79. Plaintiff seeks an injunction prohibiting the Board Defendants from paying AMG any amount in excess of the amount specified in the Contract.

80. Plaintiff asks this Court, upon a finding that amounts in excess of the AMG Contract have been paid, to require AMG to disgorge immediately all such amounts in excess of the amount provided for in the Contract.

81. Plaintiff asks this Court to require the Board Defendants to provide Plaintiff's Requested Information within 20 days of its Order;

82. Plaintiff requests that the Court require the Board Defendants to send out a ballot to Members containing Plaintiff's proposed Amendments to the By-Laws requiring ADR, within 20 days of the Order.

83. Plaintiff requests that the Court require the Board Defendants to fill the open vacancy on the Board within 20 days of the Order, since there is an eligible member willing to serve.

84. Plaintiff further requests the Court to require the Board Secretary to assure accuracy of the Minutes, including those relating to the 2016 Annual Meeting; and to permit Members reasonable opportunity to provide input on such Minutes before transmitting them as final (Exhibits Y & Z).

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Raymond A. Wedlake, prays for judgment on behalf of Members of the WHOA, as follows:

A. That this Court immediately issue an Injunction to restrain the Board Defendants from making payments to AMG in excess of the amount contractually provided for unless and until a majority of Members have approved such increase after full disclosure of such contract terms.

B. That this Court require an accounting by the Board Defendants of the amounts paid to AMG since inception of the contract.

C. That this Court require AMG to disgorge any and all funds received from the WHOA Board, whether from the current or past Board(s), in excess of the amount provided for in the Contract.

D. That this Court issue a Declaratory Judgment confirming the right of Plaintiff to the previously Requested Information, including the WHOA insurance policy, and require the Board Defendants to provide the Requested Information.

E. That this Court tender a Declaratory Judgment confirming Plaintiff's position that the Board may not extend its term beyond five years, even where their successor has not been elected or appointed, without first seeking nominees for such position, and, failing such, soliciting a vote by ballot or special meeting.

F. That this Court confirm Plaintiff's position that the By-Laws require a majority of all Members to renew a management contract.

G. That the Court confirm the Plaintiff's understanding that the Board Defendants must fill any open Board vacancies, pursuant to the By-Laws.

H. That this Court adjudge, declare and decree the rights and other legal relations with the subject matter here in controversy, in order that such declaration shall have the force and effect of a final judgment.

I. That this Court retain jurisdiction of this matter for the purpose of enforcing this Court's order.

J. That this Court award Plaintiff nominal damages.

K. That this Court award Plaintiff the reasonable costs and expenses of this action, including reasonable attorney's fees, if paid for by WHOA insurance.

and,

L. That this Court grant such other and further relief as this Court deems equitable and just under the circumstances.

Dated this 5th day of October, 2017.

Respectfully Submitted,

G. GIBSON & ASSOCIATES, LLC

By: s/Grant H. Gibson, Esq.
Grant H. Gibson, Esq.

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ELECTRONICALLY FILED - 2017 Oct 05 4:30 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP230301

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**THIRTEENTH JUDICIAL CIRCUIT**
Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc. **Plaintiff(s)** **vs.** 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., **Defendants**	**VERIFICATION**

I, Raymond A. Wedlake, appearing first before the Notary Public, state that I am the Plaintiff in this matter. I have read the attached Complaint and know or believe the contents and allegations are true to the best of my knowledge, except for those matters stated which are alleged on information and belief.

Sworn to before me this
5 day of October, 2017

Martha Rogers
Notary Public of South Carolina
My Commission expires: May 30, 2024

Rymd A. Wedlake
Plaintiff

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EXHIBIT A

BY-LAWS OF WOODINGTON HOMEOWNERS ASSOCIATION, INC.
Revision 3 15 August 2012 - Articles 1 thru 20

ARTICLE 1 - 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 of the Board of Directors, or upon written request of one-fourth (1/4) of the Members.

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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 this 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.

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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 or 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:

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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 of 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.

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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

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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 Registrar 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.

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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 herein above 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 Associations' 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.

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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

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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 (of 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 attorneys 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 or majority vote or 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

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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 of 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 requests 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 22nd day of July, 2012.

Kristine Lynch, President
Dawn Vonderbecke, Vice-President
Richard LaCroix, Treasurer
Dawn Vonderbecke, Secretary
Vacant, 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 Registrar of Deeds. A survey entitled Woodington and dated April 5, 1989, is recorded in the Registrar of Deeds Office for Greenville County, South Carolina, in Plat Book 17-E at Page 56.

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EXHIBIT B - Requested Information

Summary: (showing date in format mmddyy)

- Please Provide WHOA Account Information 032717
- RE: Please Provide WHOA Financial Info 051117
- RE: Please Provide Financial Information - CAI Info 051717
- Current Management Agreement 052617
- Board Meeting Schedule / Post Minutes 052717
- RE: Current Management Agreement - No Reply Received 060117
- Please Provide WHOA Insurance Information 060217

Original Message

Please Provide WHOA Account Information 032717
denisesteve@bellsouth.net
ben.acord@gmail.com, craigow@bellsouth.net, remaj616@aol.comstaceybkrause@gmail.com
Bcc: atty@ggibsonassociates.com, cjuliesmile@gmail.com

703 Creekview Drive.
Greenville, SC 29607
March 27, 2017

Mr. Denis Esteve
205 Woodington Drive
Greenville, SC 29607

Dear Mr. Esteve:

Please be informed it is my ongoing hope to work in good faith with the 2017 Board for the betterment of Woodington Homeowners. In that regard, I hope to remain an active member, providing insights to the 2017 Board, and offering my service, such as with any By-Laws Review Committee that might be formed per the past President's recommendation.

In order to assist, I would appreciate receiving the following information:

- disbursements of WHOA funds made to the McCabe law firm by the 2017 Board year to date, if any,

and,

- disbursements made to AMG

I know that you and the new Board will want to assure transparency in all your dealings. As the excerpted, included message, and as a conscientious member of WHOA acting with the best interest of our Association in mind, I would like to know details of any disbursements.

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As the WHOA Treasurer, and as a matter of good faith on your part, please provide requested information. Please be informed H.3886 "South Carolina Homeowners Association Act" shows (CAPS emphasis mine):

"Section 27-30-130.
(A) . . .
(B) At the request of a homeowner, a homeowners association shall provide him, at no charge, copies of ALL governing documents and FINANCIAL INFORMATION of the association in either printed or electronic format. Such a request must be completed within three business days."

If you will not provide requested information, please explain to me why.

Thanks in advance!

Sincerely,

Raymond A. Wedlake

Cheers . . . . . wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
Stop organized crime. Re-elect no one !

----- Excerpted, Included Message -----

703 Creekview Drive
Greenville, SC 29607
November 19, 2016

Mr. Richard LaCroix Mrs. Dawn Vonderbecke

Mrs. Kristine Lynch . . .

Dear Mr. LaCroix, Mrs. Lynch, and Mrs. Vonderbecke:

As Mr. LaCroix and I spoke on 24 Sep 2016, I requested that he inform me about the bank(s) that manage(s) Woodington Homeowners Association ("WHOA") account(s). To date, Mr. LaCroix has not supplied this requested information! So to all, please provide answers to these questions:

1) Which bank, or banks, manage a WHOA account, or accounts ?
2) What are the account numbers ?

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Please also provide a list of **all** payments made to Association Management Group ("AMG") for both entire years of 2015 and 2016 from any and all WHOA accounts. . . .

Very Sincerely,

Raymond A. Wedlake

Original Message (as excerpted in relevant part)

RE: Please Provide WHOA Financial Info 051117
cndesteve@gmail.com
ben.acord@gmail.com, craigow@bellsouth.net, remaj616@aol.com
Bcc: atty@ggibsonassociates.com, cjuliesmile@gmail.com

703 Creekview Drive
Greenville, SC 29607
May 11, 2017

Mr. Denis Esteve
205 Woodington Drive
Greenville, SC 29607

Dear Mr. Esteve:

Thank you for a reply which informed me about some WHOA financial information which was requested. . . .

Your previous reply did not inform me about other requested information. These requests include:

Other Information Requests

1) 2015 payments made to AMG
2) 2016 payments made to AMG
3) 2015 payments made to MTB [McCabe]
4) 2016 payments made to MTB
5) Which banks manage WHOA accounts?
6) What are the account numbers?
7) the name as signed on checks for disbursements made to AMG and to MTB

As the WHOA Treasurer, and as a matter of good faith on your part with compliance with law which suggests Association members are entitled to know "all underlying details" of

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financial transactions, please provide "Other Information Requests" (seven items as listed). If you will not provide all listed items, please explain to me in each case why not.

Thanks in advance!

Sincerely,

Raymond A. Wedlake

Original Message (as excerpted in relevant part)

RE: Please Provide Financial Information - CAI Info 051717
cndesteve@gmail.com
ben.acord@gmail.com, craigow@bellsouth.net, remaj616@aol.com

Dear Mr. Esteve:

What do you think? If bank names and account numbers are given to me, I can look into the possibility of:

"... access by homeowners to HOA bank accounts on a read only basis ..."

myself. Here's a reference:

arizonahoa.blogspot.com/2017/02/hoa-attorneys-and-hoa-insurers.html
" Monday, February 13, 2017
HOA Attorneys and HOA Insurers

We had two hearings down at the Office of Administrative Hearings this week. The issue was access by homeowners to HOA bank accounts on a read only basis. So that any homeowner can log in, check things out, but not transact. Whatever the result, there was no doubting that's feasible. We were not allowed to bring it into evidence, but even CAI advertises this as good practice for fraud prevention. Nor did the bankers turn up. "

This is a file which was noted per above:

"Preventing Fraud and Embezzlement"

by "Community Associations Institute(CAI)", see contents as appended.

Excerpts from this file - and I hope you will verify these two things are true:

1) WHOA processes do not violate these "common sense" safeguards against fraud and embezzlement;

and,

2) AMG does **not** have **sole** signature authority to disburse WHOA funds - particularly to themselves, or to McCabe, Trotter, and Beverly law firm;

show (CAPS emphasis mine):

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7. Know the association's insurance company ... At LEAST ONCE A YEAR, ... DISCUSS the association's POLICIES and whether additional ... coverage is recommended.

9. ... MANAGEMENT AGREEMENT includes specific TERMS TO REQUIRE THESE SAFEGUARDS. ... REVIEW the original AGREEMENT and any RENEWAL ... NOT riddled with lopsided TERMS that are DETRIMENTAL TO THE ASSOCIATION.

There is much food for thought, here. Your comments stating that WHOA **has** adequate safeguards would be appreciated.

Cheers ..... wedlakera@mail.com

-------- Appendix --------

"Preventing Fraud and Embezzlement"

Community association boards should consider implementing the following practices and procedures to safeguard association funds.

This is a modified excerpt from "Whodunit," published in the July - August 2007 issue of Common Ground , the flagship magazine of Community Associations Institute. The article was written by Darcy Mehling Good, Esq., a partner with Kaman & Cusimano, LLC, which represents community associations throughout Ohio, with offices in Cleveland and Columbus.

Original Message

Current Management Agreement 052617
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com
Bcc: atty@ggibsonassociates.com, cjuliesmile@gmail.com

Woodington Board:

Please provide a most recent, signed, copy of WHOA's "Management Agreement" contract with AMG.

In my possession is a contract from 15 Jan 2008 which was signed by Starr Hammond and Brian James. This contract shows a "Management Fee" of $250/month. Kindly provide a current contract which shows $285/mo. which is my understanding of an agreed to, current-

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contractual fee. Kindly recall a quote for $200/mo. from a much **better** management company:

Cedar Management Group

was brought to your attention previously.

Thanks in advance!

Cheers ..... wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

Original Message (as excerpted in relevant part)

Board Meeting Schedule / Post Minutes 052717
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com, staceybkrause@gmail.com
Bcc: atty@ggibsonassociates.com, cjuliesmile@gmail.com

Woodington Board:

Please inform me about scheduled times when the Board plans to meet. Kindly post this information, and also post minutes from Board meetings at a URL which is accessible to all WHOA Members.

Cheers ..... wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

-------- Appendix --------

Original Message (as excerpted in relevant part)

RE: Current Management Agreement - No Reply Received 060117
ben.acord@gmail.com
craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com

ELECTRONICALLY FILED - 2017 Oct 05 4:30 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

Bcc: atty@ggibsonassociates.com, cjuliesmile@gmail.com

Dear Mr. Acord:

Since no reply was received, please accept a more adequate response to your question.

As you may recall, I was a nominee for the Board at the last annual meeting with an agenda of reducing fees for Members of WHOA. A major expense is the fee paid to the Management Company, AMG - thus, the reason for my request for a copy of the latest contract with AMG. I hope you agree this is a "proper purpose" which justifies my request?

Thanks in advance for providing a most-recent-signed copy of a contract showing $285 per month contractual fee!

Cheers ..... wedlakera@mail.com

Original Message (as excerpted in relevant part)

Please Provide WHOA Insurance Information 060217
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com
Bcc: atty@ggibsonassociates.com, cjuliesmile@gmail.com

Woodington Board:

Please provide information for where I may find a copy of the insurance policy, or policies, for which $1111 was shown in 2016 "Woodingtion Income /Expense Statement". This one item is nearly 7% of total expenses of $16960 as shown in the 2016 statement. If I have no access to this information, please send me a copy of our current WHOA policy, or policies.

As you may recall, I was a nominee for the Board at the last annual meeting with an agenda of reducing fees for Members of WHOA. A major expense is the fee paid for insurance - thus, the reason for my request for (a) cop(y/ies). I'll bet with a bit of shopping around, a benefit can be realized for all WHOA members of lower cost for insurance coverage. To do this, however, details from a current insurance contract are needed.

An interesting article from "Cedar Management Group" titled "Why do HOAs Need Insurance" is appended. Thanks in advance for supplying requested information.

Cheers ..... wedlakera@mail.com

ELECTRONICALLY FILED - 2017 Oct 05 4:30 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

EXHIBIT C - Send Ballot for "ADR" addition to By-laws

Summary: (showing date in format mmddyy)

- Proposed By-Laws Amendments - Set 1, Rev 0. 070917
- RE: Proposed By-Laws Amendments - Set 1, Rev 0 --> Rev 1 072717

Original Message

Proposed By-Laws Amendments - Set 1, Rev 0 070917
ben.acord@gmail.com
craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com
Bcc: atty@ggibsonassociates.com

July 09, 2017

To: Mr. Benjamin Acord
cc: Mr. Denis Esteve
cc: Mr. William Craigo
cc: Mr. Brian James

Dear Mr. Acord:

Please receive a working draft proposal for a first, very minimal, selective "Set 1" of required amendments to our WHOA By-Laws. Per my understanding from yesterday's meeting, the Board is acting as a "By-Laws Review Committee(BLRC)". In this stead, I see BLRC proper actions to be:

- verify Rev 0 as ready for ballot

or

- propose desired additions, deletions, changes or other modifications to create a Rev 1

or

- propose an alternative Rev 1

If the Board may desire an alternative Rev 1, this does not preclude a ballot which contains both Rev 0 and Rev 1 from being presented to WHOA members. In this instance, explanatory comments should be added to the ballot. It would be extreme bad faith, and contrary to a best interest of all WHOA members, on the part of the Board to continue to block a ballot, which intends to provide improvements to WHOA, from coming before the membership!

Please ask for explanations of proposed amendments if Rev 0 draft is not completely clear. As per my stated position at yesterday's meeting, please let me receive initial thoughts from the Board within five business days (by Friday, 14 July 2017).

Thanks in advance!

File: < blsamend1rev0.rtf >

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Cheers ..... wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

Original Message (as excerpted in relevant part)

RE: Proposed By-Laws Amendments - Set 1, Rev 0 --> Rev 1 072717
ben.acord@gmail.com
craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com
Bcc: atty@ggibsonassociates.com, cjuliesmile@gmail.com

July 27, 2017

To: Mr. Benjamin Acord
cc: Mr. Denis Esteve
cc: Mr. William Craigo
cc: Mr. Brian James

Dear Mr. Acord:

In an ongoing effort to improve the existing By-Laws, and to frankly address some deficiencies, although it has been over two weeks without hearing back from you on my last transmittal, I am transmitting in good faith a revised "Rev 1" set for initial By-Law changes.

I look forward to hearing back from you. Realizing that you may need some time to review attached "Rev 1", I would nonetheless appreciate your acknowledgment of receipt and an approximate date for your response/ comments. Of course, if you need clarification, or have any question, I am available! Kindly indicate the date on which a ballot will be sent to all WHOA members.

Please explain to me why a delay beyond Friday, 04 Aug, will required from the Board's perspective, if that may be the case. Thanks in advance!

File: < blsamend1rev1.rtf >

Cheers ..... wedlakera@mail.com
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EXHIBIT D – Management Company Agreement ("Contract")

THIS AGREEMENT IS SUBJECT TO MANDATORY BINDING ARBITRATION UNDER THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, 15-48-10 ET SEQ., SOUTH CAROLINA CODE OF LAWS 1976, AS AMENDED

MANAGEMENT AGREEMENT

This Agreement is made and entered into by and between: WOODINGTON HOMEOWNERS ASSOCIATION, hereinafter referred to as "ASSOCIATION" and ASSOCIATION MANAGEMENT GROUP SC, INC. a South Carolina Corporation having its business office at 3104 GRANDVIEW DRIVE, SUITE B, SIMPSONVILLE, SC, hereinafter referred to as "MANAGER". In consideration of the terms, conditions and covenants contained herein, the parties mutually agree as follows:

SERVICE: MANAGER will provide complete, full-service administrative, fiscal and physical management services as specified in the Terms and Conditions of the Agreement. The MANAGER will attend one annual meeting and up to 4 meetings of the Board of Directors of the ASSOCIATION annually.

APPOINTMENT OF MANAGER: The ASSOCIATION hereby appoints MANAGER and MANAGER hereby accepts such appointment on the terms and conditions herein contained as the sole and exclusive MANAGER of the ASSOCIATION in accordance with the terms and provisions of this Agreement and to otherwise perform the obligations as hereinafter set out. The officers entering this Agreement represent that they are duly elected and are authorized by the Association's Board of Directors to enter into this Agreement.

All actions taken by MANAGER under the provisions of this Agreement shall be done for and on behalf of the ASSOCIATION and therefore all obligations or expenses Incurred thereunder shall be for the account, on behalf of, and at the expense of the ASSOCIATION, except that the ASSOCIATION shall not be obligated to pay overhead expenses of MANAGER's off-site office including the salaries, office expense or other expenses of officers and employees of the MANAGER. Any payments to be made by the ASSOCIATION shall be made out of the funds of the ASSOCIATION, or as may be provided by the ASSOCIATION. MANAGER shall not be obligated to make any advance to or from the account of the ASSOCIATION or to pay any sum, except out of funds held or provided as aforesaid, nor shall MANAGER be obligated to incur any liabilities or obligation for the ASSOCIATION without assurances that the necessary funds tor reimbursement will be provided.

TERM: This Agreement shall commence on February 8, 2008 and shall continue tor a period of one year. If neither party has given the other 60 days written notice of Its desire to terminate this Agreement at the end of any given year, then the term shall automatically renew for an additional one year term and such renewals shall continue on a year-to-year basis unless terminated.

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CANCELLATION: This Agreement may be terminated with 30 days written notice as provided in Article IV. Upon termination, all obligations hereunder shall cease except liabilities or claims that accrued or arose prior to such termination or as specifically provided.

MANAGEMENT FEE: In consideration of MANAGER'S services, it shall receive fees in the amount of $250.00, per month, due and payable on the first day of each month during the term of this Agreement. In addition to the Management Fee, MANAGER will be entitled to receive reimbursement for all out-of-pocket expenses and may be entitled to additional fees as provided herein. The parties acknowledge that this Agreement is for services as agreed to by the parties. Other levels of service (and pricing) are available, and may be negotiated by the parties at the end of the current term of this Agreement.

ORIGINATION FEE: MANAGER shall also be paid an origination fee of 0 dollars per lot or homeowner herewith for account setup.

AMENDMENTS: This Agreement may be modified only in writing signed by the President of MANAGER and by the duly authorized representative of the ASSOCIATION.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on this the 15th day of January, 2008.

MANAGER:	ASSOCIATION:
s/Starr Hammond	s/Brian James
President	President

SEE PAGES 2-4 FOR STANDARD TERM AND CONDITIONS
WHICH ARE INCORPORATED HEREIN BY REFERENCE

1 of 4

ELECTRONICALLY FILED - 2017 Oct 05 4:30 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

EXHIBIT E - Board Vacancy that Board must fill

Summary: (showing date in format mmddyy)

- Please Appoint Me to the Board 050917
- Minutes of Meeting 08 July 2017 - Preliminary Draft 070817

Original Message (as excerpted in relevant part)

Please Appoint Me to the Board, 050917
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com
Bcc: atty@ggibsonassociates.com, cjuliesmile@gmail.com

Woodington Board:

As a result of the resignation of Mrs. Krause, which I learned about today, please select me to fill her position on the Board. . . .

As the only other nominee for election to the Board at our recent Annual Meeting, I am a logical (and only real) candidate to serve for the rest of 2017 as the Board Secretary. . . . Excerpts from our By-Laws, as appended, make it clear the remaining Board Members should act to fill this vacancy.

Thanks in advance for appointing me to fill this vacancy on the Board. Please let me know as soon as possible that the Board has acted per our By-Laws.

Cheers . . . . . wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
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Stop organized crime. Re-elect no one !

-------- Appendix --------

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

Section 3 - REMOVAL: Any director ... 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.

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ARTICLE VIII - POWERS AND DUTIES OF BOARD OF DIRECTORS

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

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.

Original Message (as excerpted in relevant part)

Minutes of Meeting 08 July 2017 - Preliminary Draft 070817
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com

A first meeting to negotiate resolution of issues within Woodington Homeowners' Association (WHOA) convened at 8 AM. Six questions as posed per the Agenda were discussed.

Positions are denoted by:
WBP : Woodington Board Position
RWP : Ray Wedlake Position

Question 1 - Board Vacancy

WBP: only three directors are required per [Nonprofit Corporation Act] NPCA. Board member Denis Esteve was appointed as Secretary (in addition to his elected role as Treasurer) to fill the vacancy. . . .

RWP: [By-Laws] BLS require a 5 member board. Mr. Esteve's appointment is not sanctioned by the BLS. The Board "may combine one or more offices when necessary due to a lack of eligible Association Members who are willing to serve on the Board". With no lack, as was previously documented to the Board, offices can not be combined. BLS require the Board to fill a vacancy.

* * * * PRELIMINARY DRAFT * * * *

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EXHIBIT F - "Articles of Incorporation"

DECLARATION AND PETITION FOR INCORPORATION
APPLICATION MUST BE TYPEWRITEN
DO NOT FILE IN DUPLICATE

s/Jim Miles
Secretary of State
FILER
Aug 27, 1993

The undersigned declarants and petitioners.

Name	Street Address and City
David L. Sikkelee	700 Creekview Dr., Greenville, SC 29607
Judy Swilley	702 Creekview Dr., Greenville, SC 29607

being two or more of the officers or agents appointed to supervise the affairs of Woodington Homeowners' Association, Inc. a Corporation which has been duly and regularly organized for the purposes hereinafter to be set forth, do affirm and declare:

That at a meeting of the aforesaid organization, held pursuant to the by-laws or regulations of the said organization, they were authorized and directed to apply for incorporation.

That the said organization holds, or desires to hold, property in common for a Religious, Educational, Social, Fraternal, Charitable or other eleemosynary purpose, or any two or more of said purposes, and is not organized for the purpose of profit or gain to the members, otherwise than is above stated, or for the insurance of life, health, accident or property; and that the three days' notice in the Greenville News a newspaper published in the County of Greenville has been given that the aforesaid Declaration would be filed.

The said Declarants and Petitioners further declare and affirm:

FIRST Their names and residences are as above given.

SECOND The name of the proposed Corporation is Woodington Homeowners' Association, Inc.

THIRD The place at which it proposes to have its headquarters or to be located is 104 Woodside Crossing in the City of Greenville, SC 20607

FOURTH 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.

FIFTH The names and residence of all Managers, Trustees, Directors or other officers, are as follows:

NAMES TITLE ADDRESS

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Chip Koshis	President	104 Woodside Crossing, Greenville, SC 29607
Mark Taylor	Vice President	302 Woodington Drive, Greenville, SC 29607
David Sikkelee	Treasurer	700 Creekview Drive, Greenville, SC 29607
Judy Swilley	Secretary	702 Creekview Drive, Greenville, SC 29607

SIXTH That they desire to be incorporated in perpetuity (or number of years_____).

Wherefore your petitioners pray that the Secretary of State do issue to the aforesaid

Woodington Homeowners' Association, Inc.

a Certificate of Incorporation, with all rights, powers, privileges and immunities, and subject to all the limitations and liabilities conferred by Title 11, Chapter 11 1976 Code, and Acts amendatory thereto, to provide for the incorporation of Religious, Education, Social, Fraternal or Charitable Churches, Lodges, Societies, Associations, or Companies, and for amending the Charters of those already formed and to be formed.

(Sign here) s/David L. Sikkelee
s/Judy Swilley

Date _____, 19____

93-017444BC

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EXHIBIT G - 2016 Board (as excerpted in relevant part)

Summary: (showing date in format mmddyy)

- RE: Woodington Board Nomination 091516
- FW: RE: Letter sent? 091816
- Talk with Richard LaCroix - You Judge 092516
  [Richard LaCroix purported himself to be 2016 Board Treasurer, without being elected to a 2016 Board]

Original Message (as excerpted in relevant part)

RE: Woodington Board Nomination 091516
[Kristine Lynch purported herself to be 2016 Board President, without being elected to a 2016 Board]

Dear Kristine:

Kindly refrain from disseminating misleading, or inaccurate information. . . .

. . . My rights as a member to require current "2016 Board Pretenders (BP)" to comply with our By-Laws to elect a "2016 Board" shall not be circumvented, abridged, nor otherwise discounted. All WHOA members should also be aware that "2016 BP" are **IN VIOLATION** of our By-Laws which say:

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

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 . . . Any waiver is valid for only one year. . . ."

All BP have served on the Board for far longer than 5 years. For many years BP have continued with their assumption that this is acceptable behavior for WHOA. It is **NOT**! All BP need to comply with our By-Laws! Furthermore per By-Laws, this did NOT happen:

" 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."

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Cheers ..... wedlakera@mail.com
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Original Message (as excerpted in relevant part)

FW: RE: Letter sent? 091816

Dear Kristine and other BP [Board Pretenders]:

. . . Please review the **truth** of matters, as shown by "Statement S:" [per Kristine Lynch] and "Fact F:" [per Ray Wedlake] appearing below.

S: " ... alleges that the current Board was not properly elected. That allegation is incorrect."
F: All current BP were **never** elected to serve in 2016. Proper election to the Board in a previous year does not apply for 2016 per our By-Laws, which say:
" ARTICLE V - BOARD OF DIRECTORS ....

Section 2 - SELECTION AND TERM OF OFFICE: ... 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 ..."

All BP know they are **INELIGIBLE** to be on a 2016 Board since they have been "the Board" for consecutive terms longer than 5 years. . . .

S: " ... Due to the legalities of the situation the board needs our HOA lawyer to send correspondence to a homeowner first."
F: There are **no** "South Carolina" legalities involved with anything done to date (except to those who have a **total** disregard for our Woodington "By-Laws"). Plus, I received BP Sep 12, 2016 letter, but have not received any correspondence from "our HOA lawyer".

Our By-Laws say:
" ARTICLE XVII - AMENDMENTS AND VOTING

Section 3: Any and all issues may be resolved per the simple majority result of vote by ballot by all Association Members. . . ."

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I challenge any BP to claim our "By-Laws" do not apply for how we act as members of WHOA.

Cheers ..... wedlakera@mail.com
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Original Message (as excerpted in relevant part)

Talk with Richard LaCroix - You Judge 092516

Woodington Homeowners Members:

We agreed on two points per our By-Laws (Rev 3):

"Each Board Member must be elected every year"
- BP were not elected for 2016
and
"When a Board Member has served for five(5) consecutive terms, that person will not be permitted to seek a sixth consecutive term . . ."
- All BP completed five years, or more, in 2014

No agreement was reached on other [By-Laws] points:
" . . . 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."
- True, no eligible members came forward to serve [at the Annual Meeting] in 2015, nor in 2016. So, in 2015, BP waived the 5 year term limit. But, this waiver was claimed, again, in 2016!

Applying a waiver to 5 year term limit for more than one year is a violation of our By-Laws, which say:
" . . . Any waiver is valid for only one year."

Cheers . . . . . wedlakera@mail.com

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EXHIBIT H - Ratify Current and Past Board (as excerpted in relevant part)

Annual Meeting Minutes, Revised 28 Feb 2017 "Rev 1"

WOODINGTON HOMEOWNERS ASSOCIATION
ANNUAL MEETING MINUTES REVISED
January 10, 2017
Horizon Church on Butler Road
Greenville, SC 29607

*At this time Eli Grote responded by proposing ratification, by vote, for current & past boards so the meeting could move forward without addressing the same challenge being presented. Member discussion continued regarding validity of the board. Mr. Grote again clarified that a passing ballot by the community would put the old issue to rest by validating the current board & allowing new incoming board to begin their term with no legal action against them.

*Motion was made by a member to use a ballot to ratify current & past board. Motion seconded & passed (37 for/ 4 against).

Motion made and seconded to adjourn meeting. Meeting was adjourned at 8:06 pm.

Submitted by Dawn Vonderbecke, Secretary

==========

Explanatory Note - A request for information to AMG for them to supply the exact text of the motion:

"... to use a ballot to ratify current & past board. ..."

to date has been ignored!

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EXHIBIT I - "... Objections ..." for Annual Meeting Minutes

[Use of "we" as below denotes Plaintiff as assisted by his attorney]

Raymond A. Wedlake
MEMORANDUM

Date: January 10, 2017
From: Raymond A. Wedlake
To: Purported Board of Woodington HOA, Inc. ("WHOA")
Subject: **List of Basic Issue/Objections per WHOA Counsel Request**

Introduction - Thank you for the opportunity to avoid having to object on the record at today's Annual Meeting regarding all my issues by responding with the list of basic issues and objections relating to the WHOA, the Board, and the management company, AMG. We trust that this list will avoid the necessity of raising issues on the record in order to avoid waiving such objections.

As stated in a letter from my counsel to yours, my objectives are three-fold:

(i) To help assure that Woodington is a great place to live and raise a family;

(ii) To assist in the protection and enhancement of property in the Community, and,

(iii) To assure the Board functions in accordance with the By-Laws, and with proper due process to protect all the members.

Basic List –

1. We believe that the Board has not consistently followed the By-Laws that we view as a contract between the Members and the WHOA;

2. We interpret the most recent (2012) By-Laws as requiring a vote of a majority of all the Members before engaging a management company; and thus, since there has been no such vote since 2012 the continuation of AMG as the managing company is improper, and invalid. Accordingly, it was not, and is not, entitled to function as the WHOA management company, nor receive payments. As a result, we object to their presence at the meeting and to taking any action.

3. We also interpret the By-Laws as requiring that in the event of a lack of a quorum, the proviso permitting the Board to waive the five-year term limit for one term, means for only one term as provided, and no longer. The existing purported Board members have each been in place for at least seven years, they have not stepped down nor held a special election and we believe that they are not properly appointed and thus are not authorized to act as WHOA Board members in any capacity.

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4. We interpret the By-Laws as requiring a hearing and notice in advance of suspending any member's status as a member, which has not been followed.

5. We object to the refusal of the purported Board members to accept and/or to respond to correspondence addressing WHOA member issues.

6. We believe the purported Board has delegated core functions of the Board to the management company, or the latter has simply assumed the role of the Board without objection. For example, in requesting members send to AMG all nominations, and by AMG advising members they are not eligible to run for election (a proper Board function after a hearing and notice).

7. We believe it is the right, and even the duty, of members to raise issues impacting the WHOA, and not the role of the Board, directly or indirectly, to try to stifle member input, as has occurred in my case, regardless of whether the Board agrees or not with such input, and regardless of any personal bias.

8. Finally, we believe that the By-Laws need revision and that a Committee be established to do so, a function for the new Board of course.

Thank you once again for your agreement to permit this list of concerns to be voiced, thus permitting avoidance of having to protest on the record on each issue, which we all agree could be disruptive.

/RAW/

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EXHIBIT J - McCabe Approval for "... Objections ..." in Annual Meeting Minutes

Quick Note from Grant Gibson - Woodington HOA -
Sent: 1/9/17 at 6:09 AM
From: atty@ggibsonassociates.com
To: Ely Grote ely.grote@mccabetrotter.com

Mr. Grote,

Respecting your comment that you will likely not check emails over the weekend while trying to meet my schedule of hitting the road soon, I wanted to send a note thanking you for providing records through AMG per the records request of my client Mr. Wedlake.

We also appreciate your commitment to moving forward in good faith.

With that in mind, I would like to once again request that my client not be required to disrupt the Annual Meeting by having to put on the record "contemporaneously" his objections which are well known to you, and the purported Board. It would be unfortunate for the Board to require that he do so when it is his hope to avoid conflict at the Annual Meeting.

Thank you.

Grant H. Gibson, Esq.

Original Message (as excerpted in relevant part)

On Jan 9, 2017, at 6:22 PM, Ely Grote <Ely.Grote@mccabetrotter.com> wrote:

Mr. Gibson,

I think everyone would like to try to avoid conflict if possible and my intent is not to try to create conflict. I think if your client wants to submit a list of running objections to holding the meeting (which can be the document you previously sent me), it would probably be fine if he just submitted those objections to me in advance of the meeting and they could be made a part of the minutes if needed, rather than him having to state them from the floor. . . .

Ely O. Grote
Attorney
McCabe, Trotter, & Beverly, P.C.
140 Stoneridge Drive, Suite 650 (29210)
P.O. Box 212069
Columbia, South Carolina 29221
Main: 803-724-5000
Direct: 803-724-5018
Fax: 803-724-5001
Email: ely.grote@mccabetrotter.com

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EXHIBIT K – Gibson Memo to Grote of McCabe

G. GIBSON & ASSOCIATES, LLC
GRANT H. GIBSON, ESQ.*
CONFIDENTIAL MEMORANDUM

*Admitted: S.C. & Hawai'i

Date: January 3, 2017 By: Email-Ely.Grote@mccabetrotter.com

To: Ely Grote, Esq.
McCabe, Trotter & Beverly, P.C.

cc. Raymond A. Wedlake

From: Grant H. Gibson,Esq.

In our letter to your colleague, J. Ryan Oates, on December 4, 2016, we spelled out some concerns of our Client, Mr. Wedlake. We subsequently spoke with you concerning specific concerns about the current purported Board Members, and their presiding, along with AMG, at the Annual Meeting, currently scheduled for January 10, 2017. These concerns have only heightened since then. Thus, my email of yesterday advising you that unless we can agree upon a method for a neutral to officiate at the Annual Meeting, without the current purported Board members or AMG's participation, or, at the option of the purported Board, postpone the meeting for a couple of weeks, we plan to file this Wednesday afternoon a Motion for a Temporary Injunction to enjoin the current Board and AMG from serving at the scheduled Board Meeting.

We also have prepared, for filing as a Derivative Suit against the three purported Board Members, a Request for Declaratory Judgment concerning interpretation of By-Laws and concerning what we perceive is a Board that is not adhering to the By-Laws, which is the fundamental contract between the members and the Association.

You have mentioned correctly that the NFP Corporation Law envisions that it is the Board's function to preside at Annual Meetings. I agreed and asked for you to try to come up with a solution, as would I. One approach would be for at least two of the three current Board members to resign now and appoint from the list of Nominees two to replace them. They have served either seven or eight years consecutively we believe, so that should be a relief for them. We would suggest that the third member, who would remain for continuity and assist with the Annual Meeting, be Mr. LaCroix, and that the two members chosen from the nominees be new members of the Community who would not be as aware of the ongoing dispute between my Client and the purported Board. In that case, the three Board members could preside.

Ideally, we will be able to resolve this Annual Meeting issue matter today, or at least the timing. To repeat, this could be done by either appointment of a neutral or, at the option of the Board, by

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postponing the meeting for a period to assure the 21-day notice period is met and give time to try to resolve our issues. If so, then we will stand down for now in terms of filing either actions, and in hopes of doing so. If the meeting were to be rescheduled, we would not want our Client to be publicized as the reason for such change in Board dates. (Please note, the Board meeting in 2016 was also changed).

You requested some specifics, and below in summary form are several of the key concerns:

1. AMG was never properly engaged in accordance with the By-Laws – this is a matter of argument, I understand, but we believe a majority vote is required to engage any management company and that the Court would agree – we believe that this issue of having a management company should be balloted asap – including the issue of renewals;

2. We believe the proper interpretation of the By-laws is that even if the "waiver" provision to the five-year term limit restriction were to apply, and even assuming the purported Board members followed proper procedure (which we do not believe they did), the maximum is one additional year, not re-upping each year again utilizing the waiver in perpetuity. We believe that the Court would agree, and agree that the Board has a duty to find eligible replacements for them if they are serving beyond the five-year term.

3. We believe that AMG has improperly assumed the role of the Board in various functions, resulting in the Board effectively acting as a "caretaker" Board – such as determining who is eligible to serve as a nominee for the Board.

4. We believe that Board has not adhered to the provisions of the By-Laws in several areas, such as due process, and that it is the fundamental duty of the members of the Board to comply with them. For example, the By-Laws provide for the Board to determine who is suspended or whose memberships is revoked not AMG – and calls for NOTICE and a right to be heard by the Board before any such suspension. That has not been followed, for example, in my Client's case when he was told he was ineligible by AMG to have be a nominee for the 2016 Board.

5. We believe it is incumbent on the Board of a HOA to be transparent – we would like to see the minutes posted or distributed, although we realize the By-Laws do not technically require that – We believe going forward that a Committee of the Board should be formed to review the By-Laws for possible recommendations for amendment to the Board and then, if deemed appropriate, for a vote of the membership. Mr. Wedlake would be a benefit to any such Committee.

6. A further concern is that my client has tried to communicate with Board Members only to have his letters "Refused" per the USPA or not accepted at the Post Office. However a Board member may feel personally about a member of the HOA, it is incumbent on them

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to accept HOA related correspondence; all the more when it voices concerns or makes suggestions for change.

Please note that my client is motivated to do what he believes is right and proper, and in the best interests of all the homeowners of the WHOA. The Declaratory Judgment action at this point only seeks vindication in the form of "nominal damages." He wants to work in good faith with the Board and the Community, to make the Board efficient, compliant, and transparent.

I am driving back to Greenville this morning, and will be passing through Columbia around 3:30 today if you wish to meet. I would appreciate hearing back from you asap if you have concrete information regarding a resolution to the Annual Meeting issue, to avoid further costs and filing fees.

Thank you, and please feel free to call me at: 864-630-7471.

Sincerely,

G. Gibson, Esq.

Grant H. Gibson, Esq.

1200 Woodruff Road, Bldg. 3-A, Greenville, S,C, 29607
Fax: 866-667-2509
Tel: 864-630-7471

Ratify, validate, and approve all contracts that have been entered into with AMG and all prior contract renewals

YES _____

NO _____

Authorize renewal of AMG contract for another year

YES _____

NO _____

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EXHIBIT M - Questions to the Board

Summary: (showing date in format mmddyy)

Questions to the Board 031217

Original Message (as excerpted in relevant part)

1. In view of your comment that the Management Company is handling the Minutes, should I simply send any comments or concerns to AMG directly? Is so, do you want to be copied? What Board Duties have been delegated to AMG, and what preserved, if any, by the Board?

2. Why did the Board (or AMG) send out "revised Minutes" to Members right after I asked to see a revised draft before you sent them out?

3. Why did the Board refuse to correct the Minutes by clarifying that I never threatened litigation against WHOA?

4. Why has the Board decided not to appoint a By-Laws Review Committee, as recommended by the prior purported Board?

5. Specifically, do you agree with the prior President and purported Board Member that the "Term" provision in the By-Laws needs revision?

6. Do you agree that the existing "Term" provision would prohibit Board Members from appointing themselves for longer than one year total in the event there is no quorum to elect Board Members at an Annual Meeting?

7. What is your interpretation of the By-Laws regarding appointment of a managing agent? Do you agree that it requires a "majority of all the Members"? What about renewal? Same requirement?

8. In terms of the By-Laws, do you agree that a provision for Mediation in lieu of litigation would be a good idea?

9. Are you in favor of posting the Minutes on a WHOA Web site, as was done in prior years? Will the Board consider doing so?

10. Do you agree that a Member has the right to challenge actions taken and policies adopted by a HOA Board either directly to the Board or to the Members themselves?

Thank you. I look forward to your responses in a timely manner.

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EXHIBIT N (as excerpted in relevant part)

Re: Questions to the Board

Sent: 3/29/17 at 7:38 PM

From: Ben Acord

To: Raymond Wedlake, craigow@bellsouth.net, remaj616@aol.com, staceybkrause@gmail.com, cndesteve@gmail.com

Hello,

After a brief period of back and forth regarding the annual minutes I felt it necessary to close the comments and have the minutes sent out. This was not done to slight you. If one thing was made clear in the annual meeting it is that this neighborhood wishes to move forward.

With that said while the board will research and address items brought forward by members are [our] primary focus is to discharge our duties. There are many items [questions] below that are a distraction from those duties and we will not be responding to them. . . .

Ben Acord

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EXHIBIT O - Mediation

Summary: (showing date in format mmddyy)

- No Response / Rights of Homeowners at Board Meetings 032917
- Mediation / Meeting with Board in Lieu of Litigation – No Response from Board 060817

Original Message (as excerpted in relevant part)

No Response / Rights of Homeowners at Board Meetings 032917
ben.acord@gmail.com
craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com, staceybkrause@gmail.com
Bcc: atty@ggibsonassociates.com, cjuliesmile@gmail.com

703 Creekview Drive
Greenville, SC 29607
March 29, 2017

Mr. Benjamin Acord
20 Southfield Drive
Greenville, SC 29607

Dear Mr. Acord:

If the Board will not invite me to a meeting, may I welcome the entire Board to participate in non-binding mediation? This process was contained as a "preliminary draft" in my note asking the Board to accept "Alternate Dispute Resolution" as a required addition to our By-Laws.

Thank you. I will anticipate your positive replies!

Cheers ..... wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
Stop organized crime. Re-elect no one !

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Original Message (as excerpted in relevant part)

Mediation / Meeting with Board in Lieu of Litigation – No Response from Board 060817
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com
Bcc: atty@ggibsonassociates.com, cjuliesmile@gmail.com

June 08, 2017

To: Mr. Benjamin Acord cc: Mr. William Craigo
cc: Mr. Denis Esteve cc: Mr. Brian James

Dear Mr. Acord:

. . . I requested a private meeting or mediation in lieu of litigation, and requested a response "before June 7". It is now June 8, and not having heard anything or received even an acknowledgment of a previous email, or a request for an extension of the response date, I can only assume that you have decided that neither a meeting in person nor mediation is acceptable. That unfortunately, leaves only litigation as an option, with a court or jury, to help us to resolve our differences.

If you are in the process of responding, or wish to pursue either of two non-litigation avenues:

1) a private meeting
2) voluntary mediation

please advise immediately (no later than June 12). . . . A show of good faith on your part would be very beneficial at this time.

Cheers . . . . . wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

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EXHIBIT P - Mediation

703 Creekview Drive
Greenville, SC 29607
May 30, 2017

Mr. Benjamin Acord
20 Southfield Drive
Greenville, SC 29607

Mr. William Craigo
18 Southfield Drive
Greenville, SC 29607

Mr. Denis Esteve
205 Woodington Drive
Greenville, SC 29607

Mr. Brian James
4 Southfield Drive
Greenville, SC 29607

(all sent via "Certified Mail", return receipt requested)

Subject: Follow-up on Prior Recommendations and Request for Mediation

WHOA Board of Directors:

As you may recall, when the past President of WHOA emphasized the need for changes to the By-Laws at the Annual Meeting in January, the concept of seeking to **avoid litigation** by including a provision for **Mediation** came up as well. Here's an overview:

MEDIATION OVERVIEW:

As you aware, I **requested Mediation** in the past since no Board Member has made much of any attempt to recognize, nor to meet to discuss or negotiate, various issues addressed to the Board's attention. Since apparently the Board has no wish to meet and/or to negotiate, please accept this as a **request for Voluntary Mediation**, i.e., an effort to resolve our differences short of litigation. Once again this is consistent with a prior communication, shown as the excerpted, included message (below, no reply was received) from **29 March**:

"... may I welcome the entire Board to participate in **non-binding mediation**? ..."

RESPONSE REQUESTED:
Would the Board be so kind, please, to **reply before 07 June 2017**? Please also be informed that failure to reply, or rejection of mediation, will leave me **no other option but to file in court** to assure WHOA issues are resolved. . . .

Raymond A. Wedlake
wedlakera@mail.com

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EXHIBIT Q - Negotiation Schedule (as excerpted to relevant part)

One Last Opportunity to Resolve Open Issues
ben.acord@gmail.com
craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com
Bcc: atty@ggibsonassociates.com, cjuliesmile@gmail.com

Sent by e-mail and by Priority Mail June 25, 2017

To:	Mr. Benjamin Acord	cc:	Mr. William Craigo
cc:	Mr. Denis Esteve	cc:	Mr. Brian James

Dear Mr. Accord:

Thank you for recent replies. However, they did **not address the issues** raised in, nor reflect the **seriousness** of, my recent messages. This suggests that either they were not read carefully or that the **Board is not seeking a resolution** of such issues, short of my taking judicial action on behalf of the WHOA membership.

So, here is a last-ditch proposal: four short meetings (more if necessary) to work together to listen and respond to open issues. Indeed, you may have some points to raise as well! Please consider the following schedule for hour-long private meetings:

+	Wednesday 28 June	7 - 8 PM
+	Saturday 08 July	8 - 9 AM
+	Wednesday 12 July	7 - 8 PM
+	Saturday 15 July	8 - 9 AM
+	(... other W / S as needed ...)	

Note no times are proposed around the 04 July Holiday. One last time, I respectfully request that the Board **get serious** about **committing** to time required for **negotiation** with intent to **resolve** open issues.

In other words, these meetings should be **"full up" negotiations**, where both sides **strive to understand** each other's positions. Once positions are understood, **my hope** is the Board **will realize** there are areas that **need correcting / improvement** resulting in **changes benefiting all members of WHOA,** thus helping to fulfill the proper duty of the Board!

Please take advantage of this proposed **"last chance"** for us to **resolve our disputes** short of **judicial action** on behalf of the WHOA membership. Your **response** is requested **by June 28, 2017**.

Thank you.
Cheers ..... wedlakera@mail.com

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EXHIBIT R - The articles may authorize [delegation] ... (as excerpted in relevant part)

South Carolina Nonprofit Corporation Act of 1994

SECTION 33-31-801. Requirement for and duties of board.

(a) Each corporation must have a board of directors.

(b) Except as provided in this chapter or subsection (c), all corporate powers must be exercised by or under the authority of and the affairs of the corporation managed under the direction of its board.

(c) The articles may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized, the person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from the duties and responsibilities.

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EXHIBIT S – AMG Services
[Woodington Homeowners' Association Annual Meeting January 10, 2017]

ASSOCIATION MANAGEMENT GROUP (AMG) CONTRACT

Background: Board minutes dated 18 April, 2006 - Board expressed interest in investigating whether Woodington could benefit by contracting the services of a management company. Board members were Debbie Hallmark - Maintenance Director, Peter Knoblauch -Vice-President, Kristine Lynch Treasurer, George Padgett - President, and Ray Wedlake - Secretary.

Board minutes dated 25 July, 2006 - Board decided to hire a management company for a six-month trial period.
Board minutes dated 3 Oct 2006 - Contract with AMG began on 1 Aug 2006 and was to end on 1 Feb 2007.
Board minutes dated 14 Dec 2006 - Board agreed to recommend approval of a one-year extension of AMG's contract at the 2007 annual meeting. Minutes also indicate the Board had no volunteers to serve on the 2007 Board and included this comment "without a Board, a management company is an absolute requirement".

Annual meeting minutes dated 8 Jan 2007 - A majority of members at annual meeting (18 yes/7 No) approved funding for the one-year extension.

January 2008 - Board signed a new one-year contract with AMG to become effective on February 8, 2008. Agreement contains a provision for automatic contract renewal at the end of each year unless either party has given a 60-day written notice of intent to terminate the contract.

Contract has been allowed to renew automatically each subsequent year.

By-laws were amended in 2012 to include a requirement for majority vote of members to **enter into a contract** with an association management group.

A question has recently arisen whether the contract renewal provision is the same as entering into a contract. The current board's position is that a contract already exists and there is no requirement to obtain a majority vote for automatic renewal.

Association Board manages actions of AMG in support of Association.

Fees: initial fee $275 .00/month. $250.00/month 2008-2012. $285.00/month 2013-2016.

Specific AMG Responsibilities:
Administrative Services:

- ✔ Prepare communications to Association members. AMG communications to Association members are generated as requested and approved by the Board of Directors. AMG does not independently issue such communications.

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- ✔ Assist the Board in organizing annual meetings, reserve meeting facility, prepare notices to members, agendas, and other necessary documents as requested by Board.
- ✔ Assist Board in administration of the provisions of the Association's governing documents, rule and regulations and policies.
- ✔ Provide advice as requested by the Board in the development of policies and procedures.
- ✔ Maintain records of the affairs of the Association and the Board proceedings although such records belong to the Association.
- ✔ Serve as Registered Agent of the Association with the SC Secretary of State and receive official communications pertaining to the Association.
- ✔ Arrange legal services for the Association as requested by the Board thus avoiding having an attorney on retainer.

Fiscal Services:

- ✔ Open and administer bank accounts with funds belonging to the Association.
- ✔ Collect and deposit assessments and other charges as determined by the Board.
- ✔ Make disbursements for normal, recurring expenses as provided in the budget.
- ✔ Expenditures up to $1,500 which are not budgeted shall be made only with the approval of the Board.
- ✔ Furnish monthly financial statements that account for all receipts and disbursements and reflect the cash position of the Association.
- ✔ When instructed by the Board, mail notice of delinquency to any Association member in arrears on payment of assessments and assist board with collection efforts.
- ✔ Engage attorney to take legal action when necessary to collect assessments.
- ✔ Prepare and submit annual Corporate tax reports.
- ✔ In coordination with the Board, prepare an operating budget for approval by the Board and presentation to the membership at the annual meeting.

Physical Management Services:

- ✔ Negotiate and execute on behalf of the Association, contracts for water, electricity, landscaping and such other services as may be necessary and advisable.
- ✔ With approval of the Board, obtain liability insurance coverage for the Association.

Summary: Each year since 2006, the Board has had difficulty getting volunteers to serve on the Board. The agreement was initiated to relieve Board members of the time-consuming responsibilities outlined above. That would become even more difficult if Board members were expected to perform these responsibilities. The need for a management company as determined in 2006 has not diminished.

Recommendations:

1. Members vote to ratify previous contract renewals with AMG.
2. Members vote to ratify Board's interpretation of the Bylaws that there is no requirement to obtain a majority vote for automatic renewal and to authorize board to renew contract each year without obtaining a majority vote of membership. A majority vote to be required only if a contract is to be entered into with another management company.

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EXHIBIT T - Board Education

Summary: (showing date in format mmddyy)

- Thank You for 24 Feb Letter 022617 ["Board Ethics", By-Laws Review Committee]
- Annual Meeting Minutes - Fines - Please be informed 033117
- RE: Please Provide Financial Information - CAI Info 051717
  ["Preventing Fraud and Embezzlement"]
- Rights and Responsibilities for Better Communities 052317
- It Is Board's Job To "Deal With Difficult People" 052817
- Is Board Conducting Required Meetings? 090217

Original Message (as excerpted to relevant part)

Thank You for 24 Feb Letter 022617
ben.acord@gmail.com, craigow@bellsouth.net, denisesteve@bellsouth.net, remaj616@aol.com,staceybkrause@gmail.com

WHOA 2017 Board:

. . . With hopes that 2017 Board may accept and comply with proper ethics, may I presume another minutes draft will be proffered for further review, before a second general mailing of revised minutes to all WHOA Members occurs?

May hearing back from you concerning the idea, as was raised at the Annual Meeting, of creating a committee to consider changes to the "By-Laws" also be anticipated ? Please recall I would like to be part of this committee.

Thank you once again!

File: < boardmemberethics.pdf >

Cheers . . . . . wedlakera@mail.com

Original Message (as excerpted to relevant part)

Annual Meeting Minutes - Fines - Please be informed 033117
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com, staceybkrause@gmail.com

https://carolinacommonelements.com/2017/02/18/553

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Can My HOA Do This?
February 18, 2017 · by Mike Hunter

This week's column was written by my law partner Cynthia Jones, who is licensed to practice law in North and South Carolina.

Q: . . . Is it legal for my homeowners' association to amend the covenants to impose mandatory HOA assessments or fines on all the owners?

A: . . . governing documents for an HOA—typically, a declaration of restrictive covenants, along with the HOA's bylaws and articles of incorporation—control the rights and obligations of the HOA and the owners. If the documents are silent on a matter, such as the authority to levy fines or assessments, it is not permissible for an HOA to fine owners for covenant violations or levy assessments in the absence of an amendment to the restrictions that grants the HOA that authority. . . . Furthermore, if a homeowner brings a judicial challenge to an amendment, courts sometimes do not look kindly on amendments that add new provisions that were not in the original restrictions.

. . . Until the South Carolina legislature adopts a planned-community act, however, the community's governing documents will be the primary source of authority.

This column was originally published in the Charlotte Observer on December 2, 2016. © All rights reserved.

Original Message (as excerpted to relevant part)

RE: Please Provide Financial Information - CAI Info 051717
cndesteve@gmail.com
ben.acord@gmail.com, craigow@bellsouth.net, remaj616@aol.com

Dear Mr. Esteve:

This is a file which was noted per above:

"Preventing Fraud and Embezzlement"

by "Community Associations Institute(CAI)", see contents as appended.

show (CAPS emphasis mine):

1. Know the association's federal tax identification number(FTI) and KEEP SEPARATE ACCOUNTS. ... When using professional management, COMMINGLED FUNDS make it very difficult to ascertain which funds belong to whom. ... ensure FUNDS ARE NOT COMMINGLED. ...

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2. Use a lock box system for deposits and REQUIRE DUAL SIGNATURES for all withdrawals. ... professionally managed, REQUIRE DUAL SIGNATURES ON ALL CHECKS ...

3. SEGREGATE and SAFEGUARD your association's RESERVES. ... RESERVE ACCOUNT(S) should be under the CONTROL ... of AT LEAST TWO people. ... professional management ... any transfers or WITHDRAWALS should also REQUIRE THE NAME AND SIGNATURE OF A BOARD MEMBER. Do NOT give ONE board member ... TOTAL CONTROL over reserve accounts. ...

4. Require that DUPLICATE MONTHLY STATEMENTS of operating and reserve accounts be sent every month. ... DUPLICATE to a BOARD member, who does NOT HAVE AUTHORITY TO SIGN the checks or make any ... withdrawal. ...

6. Shop around for bank services. ... bank ... DEMAND that it DEMONSTRATE THE SAFEGAUARDS it has in place to MINIMIZE the THREAT of theft ...

7. Know the association's insurance company ... At LEAST ONCE A YEAR, ... DISCUSS the association's POLICIES and whether additional ... coverage is recommended.

8. Insure the association's money. ... just as important as carrying adequate property and liability insurance ... the board should require EVIDENCE that the MANAGEMENT COMPANY CARRIES ITS OWN fidelity coverage, ... first line of RECOVERY in the event of a THEFT ...

9. ... MANAGEMENT AGREEMENT includes specific TERMS TO REQUIRE THESE SAFEGUARDS. ... REVIEW the original AGREEMENT and any RENEWAL ... NOT riddled with lopsided TERMS that are DETRIMENTAL TO THE ASSOCIATION.

There is much food for thought, here. Your comments stating that WHOA **has** adequate safeguards would be appreciated.

Cheers ..... wedlakera@mail.com

-------- Appendix --------

"Preventing Fraud and Embezzlement"

Community association boards should consider implementing the following practices and procedures to safeguard association funds.

This is a modified excerpt from "Whodunit," published in the July - August 2007 issue of

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Common Ground , the flagship magazine of Community Associations Institute. The article was written by Darcy Mehling Good, Esq., a partner with Kaman & Cusimano, LLC, which represents community associations throughout Ohio, . . .

Original Message (as excerpted to relevant part)

Rights and Responsibilities for Better Communities 052317
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com

Woodington Board:

Please be informed about precepts found from "CAI" "Community Associations Institute" web site. I hope all the Board is interested in improving skills as a Board and becoming educated about how a better community is facilitated, per:

"PRINCIPLES FOR COMMUNITY ASSOCIATION SUCCESS
Rights and Responsibilities for Better Communities"

Where important excerpts are (CAPS emphasis mine):

Homeowners have the RIGHT to:

2. HONEST, FAIR AND RESPECTFUL TREATMENT BY COMMUNITY LEADERS AND MANAGERS.

3. PARTICIPATE IN GOVERNING the community association by ATTENDING MEETINGS, SERVING ON COMMITTEES ...

4. ACCESS APPROPRIATE ASSOCIATION BOOKS AND RECORDS.

9. APPEAL TO appropriate community LEADERS THOSE DECISIONS AFFECTING non-routine FINANCIAL RESPONSIBILITIES ...

Homeowners have the RESPONSIBILITY to:

7. REQUEST RECONSIDERATION OF MATERIAL DECISIONS that personally affect them.

Community LEADERS have the RIGHT to:

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5. RECEIVE SUPPORT AND CONSTRUCTIVE INPUT FROM OWNERS and non-owner residents.

Community LEADERS have the RESPONSIBILITY to:

1. FULFILL THEIR FIDUCIARY DUTIES TO THE COMMUNITY and exercise discretion in a manner they reasonably believe to be in the BEST INTERESTS OF THE COMMUNITY.
2. EXERCISE SOUND BUSINESS JUDGMENT and follow established management practices.

8. ENCOURAGE INPUT FROM RESIDENTS on issues affecting them personally and the community as a whole.

10. Conduct business in a TRANSPARENT MANNER when feasible and appropriate.
11. ALLOW HOMEOWNERS ACCESS TO appropriate community RECORDS WHEN REQUESTED.

14. PROVIDE A PROCESS RESIDENTS CAN USE TO APPEAL DECISIONS affecting their non-routine financial responsibilities or property rights — where permitted by law and the association's governing documents.

16. Make covenants, conditions and restrictions as UNDERSTANDABLE as possible, ADDING CLARIFYING "LAY" LANGUAGE OR SUPPLEMENTARY MATERIALS WHEN DRAFTING OR REVISING THE DOCUMENTS. "

Excerpts as above are shown in their entirety in the appendix. The downloaded file is also attached. Please reply with your positive comments about proper Board actions in the future.

File: < cai-rights-responsibilities.pdf >

Cheers ..... wedlakera@mail.com

-------- Appendix --------

PRINCIPLES FOR COMMUNITY ASSOCIATION SUCCESS
(888) 224-4321
www.caionline.org
»
Rights and Responsibilities for Better Communities
PAGE 1 OF 2

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Perhaps the greatest achievement for any association is creating and sustaining a sense of community . . .

Homeowners have the right to:

1. A responsive and competent community association..

Original Message (as excerpted to relevant part)

It Is Board's Job To "Deal With Difficult People" 052817
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com

Woodington Board:

For your further education and reading enjoyment, please see an article as found from the site of:

Community Association Management (dispute resolution)
"Difficult People: How Do You Deal with Them?"
By: Debra J. Oppenheimer

whose contents are appended.

A main message of this article is :

It is the **Board's job** to "deal with difficult people"!

Pertinent excerpts (CAPS emphasis mine) are:

"... we make our OWN LIVES EASIER BY SIMPLY IGNORING THEM ...

... So how do associations handle these types of situations? ... you have no choice. You REMAIN PROFESSIONAL and you FOLLOW THE RULES.

... try to EMPATHIZE WITH the "OPPOSITION". ... try to UNDERSTAND {not agree} with the difficult PERSON'S POSITION. UNDERSTANDING the basis for THEIR POSITION may lead to a QUICKER RESOLUTION. ...

... a LITTLE TIME AND EFFORT CAN ASSIST you to work with these types of homeowners. ...

... No matter HOW LONG THE LIST is, the BOARD NEEDS TO INVESTIGATE ... the ISSUES still MUST BE REVIEWED. If ASSOCIATIONS FOLLOW THEIR POLICIES ... then

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they will have INVESTIGATED THE COMPLAINTS and TAKEN ACTION on those matters ...

The URGE TO IGNORE PEOPLE ... WILL NOT HELP ASSOCIATIONS. While it is difficult, it IS THE JOB OF THE BOARD OF DIRECTORS working with community managers to INVESTIGATE COMPLAINTS.... "

Please be encouraged to **act properly** as the Board!

Cheers . . . . . wedlakera@mail.com

-------- Appendix --------

communityassociationmanagement.com/c25-dispute-resolution/c28-preventing-disputes/difficult-people-how-do-you-deal-with-them

Difficult People: How Do You Deal with Them?
By: Debra J. Oppenheimer

How do we as humans deal with people who yell and scream at us or refuse to be rational? . . .

The urge to ignore people who attack or to try to turn the other cheek will not help associations. While it is difficult, it is the job of the board of directors working with community managers to investigate complaints and to enforce covenants. . . .

By: Debra J. Oppenheimer

Original Message (as excerpted to relevant part)

Is Board Conducting Required Meetings? 090217
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com
Bcc: atty@ggibsonassociates.com

Woodington Board:

For your reading enjoyment and education, please see a recent article regarding Board meetings from HOA Member Services, as appended. Kindly accept it as useful HOA Board Meeting and Governance information.

Here's a few excerpts (CAPS emphasis mine):

"... To **PROPERLY CONDUCT** the association's **BUSINESS**, the **BOARD** of directors **MUST HOLD MEETINGS** ..."

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"... **FAILURE TO HOLD MEETINGS** is indicative of a homeowners association that is **NOT BEING PROPERLY MANAGED** ..."

"... Association members are **PERMITTED TO ATTEND** all regular meetings ..."

"... hold **SPECIAL MEETINGS** ... on as **AS-NEEDED BASIS** ..."

"... If an association's **BOARD** of directors is **NOT CONDUCTING MEETINGS, IMMEDIATE ACTION SHOULD BE TAKEN TO <u>REPLACE THE DIRECTORS</u>** and/or to COMPEL THEM TO **<u>CONDUCT NECESSARY MEETINGS</u>**. ..."

There is much more authoritative guidance in the appended Article, which you may want to keep for yourselves and for future Boards.

Some other words to the Board -
While I fully expect the Court to agree with my interpretations of the By-Laws, regardless of the outcome, as a member who feels responsible to help assure we are all acting in the best interests of the WHOA (that is: its Members), I will continue to present the Board with my input, including Board Governance guidance from recognized authorities, such as the appended Article.

Cheers . . . . . wedlakera@mail.com

-------- Appendix --------

https://www.hoamemberservices.com/required-hoa-board-meetings/?mc_cid=65a48915a5&mc_eid=a4e92187d1

Is Your Association's Board of Directors Conducting Required Meetings?
by Lawrence Szabo, Esq. | Sep 1, 2017

The business of operating a homeowners association is conducted by the association's board of directors. . . .

. . . If such action becomes necessary, legal counsel should be consulted for proper guidance on the appropriate procedure.

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EXHIBIT U - Open Board Meetings are Desired

Summary: (showing date in format mmddyy)

- No Response / Rights of Homeowners at Board Meetings 032917
- Board Meeting Schedule / Post Minutes 052717
- FW: 5 HOA board mistakes you might be making 060117

Original Message (as excerpted in relevant part)

No Response / Rights of Homeowners at Board Meetings 032917
ben.acord@gmail.com
craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com, staceybkrause@gmail.com

703 Creekview Drive
Greenville, SC 29607
March 29, 2017

Mr. Benjamin Acord
20 Southfield Drive
Greenville, SC 29607

Dear Mr. Acord:

Other than any 'Executive' Board Meeting, would you be so kind, please, to invite me to a next regular meeting? . . . Here's some excerpts from the Appendix (CAPS emphasis mine) : "Find out when and where the meetings are held. ... Your HOA board SHOULD BE SENDING OUT the information for EVERY MEETING in a newsletter, mass EMAIL, or on their NEIGHBORHOOD WEBSITE. ... It is ONE OF YOUR RIGHTS as a homeowner TO ATTEND HOA BOARD MEETINGS ..."

Thank you. I will anticipate your positive replies!

Cheers ..... wedlakera@mail.com

Original Message (as excerpted in relevant part)

Board Meeting Schedule / Post Minutes 052717
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com, staceybkrause@gmail.com

Woodington Board:

Please inform me about scheduled times when the Board plans to meet. Kindly post this information, and also post minutes from Board meetings at a URL which is accessible to all WHOA Members.

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As appended please see an exhibit which was excerpted from:
"2015 Best Manuscript"
per "College of Community Association Lawyers" as found at: caionline.org, Community Associations Institute

Some highlights (CAPS emphasis mine) are:
"Is your board heading into another **CLOSED SESSION**? **FEW THINGS BREED AS MUCH SUSPICION AND DISTRUST** as the perception that **SOMEONE IS KEEPING A SECRET**. ...
... board decided to **EXCLUDE HOMEOWNERS** ... board insists on **CLOSED-DOOR SESSIONS** and that the **MINUTES** of these meetings, **IF DISTRIBUTED**, are **RELEASED** often **MONTHS AFTER** ...

... EXCEPT for those instances WHERE **CLOSED SESSIONS** are **TRULY NECESSARY**, the **COST TO THE ASSOCIATION IN TERMS OF CONTROVERSY AND SUSPICION MAY DO MORE HARM THAN GOOD**."
Cheers ..... wedlakera@mail.com

Original Message (as excerpted in relevant part)

FW: 5 HOA board mistakes you might be making 060117
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com
Bcc: atty@ggibsonassociates.com, cjuliesmile@gmail.com

Woodington Board:

For your further education and reading pleasure, please see the forwarded message as below.

Here's a few highlights from "5 mistakes that HOA boards commonly make" (CAPS emphasis mine):
"

* **HOLDING CLOSED MEETINGS**. Generally, **ALL BOARD MEETINGS MUST BE PUBLICIZED** ahead of time and **OPEN TO ALL ASSOCIATION MEMBERS**. ...

"

Please apply all of these precepts to our WHOA. Thanks in advance!
Cheers ..... wedlakera@mail.com

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EXHIBIT V

Model Code of Ethics for Community Association Board Member

This model code of ethics is not meant to address every potential ethical dilemma encountered by a community association board member, but is offered as a basic framework that can be modified and adopted by any common-interest community.

Board members should:

- Strive at all times to serve the best interests of the association as a whole regardless of their personal interests.
- Use sound judgment to make the best possible business decisions for the association, taking into consideration all available information, circumstances and resources.
- Act within the boundaries of their authority as defined by law and the governing documents of the association.
- Provide opportunities for residents to comment on decisions facing the association.
- Perform their duties without bias for or against any individual or group of owners or non-owner residents.
- Disclose personal or professional relationships with any company or individual who has or is seeking to have a business relationship with the association.
- Conduct open, fair and well-publicized elections.
- Always speak with one voice, supporting all duly-adopted board decisions even if the board member was in the minority regarding actions that may not have obtained unanimous consent.

Board members should not:

- Reveal confidential information provided by contractors or share information with those bidding for association contracts unless specifically authorized by the board.
- Make unauthorized promises to a contractor or bidder.
- Advocate or support any action or activity that violates a law or regulatory requirement.
- Use their positions or decision-making authority for personal gain or to seek advantage over another owner or non-owner resident.
- Spend unauthorized association funds for their own personal use or benefit.
- Accept any gifts—directly or indirectly—from owners, residents, contractors or suppliers.
- Misrepresent known facts in any issue involving association business.
- Divulge personal information about any association owner, resident or employee that was obtained in the performance of board duties.
- Make personal attacks on colleagues, staff or residents.
- Harass, threaten or attempt through any means to control or instill fear in any board member, owner, resident, employee or contractor.
- Reveal to any owner, resident or other third party the discussions, decisions and comments made at any meeting of the board properly closed or held in executive session.

Center for **Community** Association Volunteers

Visit www.caionline.org; write cai-info@caionline.org;
call (888) 224-4321 (M–F, 9–6:30 ET)

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EXHIBIT W - Certified Mail Sent By Plaintiff

Almost two-thirds (63%) were ignored

Request Mediation

Tracking Number	Who	Sent	Delivered
7017 0660 0000 1404 7928	Ben Acord	05/30/17	(returned)
7017 0660 0000 1404 8581	William Craigo	05/30/17	06/05 16:11
7017 0660 0000 1404 8598	Denis Esteve	05/30/17	(returned)
7017 0660 0000 1404 8604	Brian James	05/30/17	(returned)

Reply, or Court

Tracking Number	Who	Sent	Delivered
7015 1520 0001 1464 8386	Ben Acord	06/23/17	06/24 16:09
7015 1520 0001 1464 8393	William Craigo	06/23/17	07/03 14:54
7015 1520 0001 1464 8409	Denis Esteve	06/23/17	(returned)
7015 1520 0001 1464 8416	Brian James	06/23/17	(returned)

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EXHIBIT X - List of all e-mails

Summary: 58 sent over 224 days; less than 2 e-mails / week (1.81)

mmdd 2017 Date	Name	Description
0205	sent563wboard-blrcom	By-Laws rev comte
0226	sent604wb-minsblrc	Board ethics; rev2 Ann Meet minutes; blrc?
0228	sent609wjb-timeneeded	Ann Meet revised minutes
0301	sent611wb-fessup	Board needs to apologize to Dawn
0312	sent629wb-boardques	Rev minutes sent - stunned; 10 questions; ethics violations
0321	sent665sk-minutes	Recall minutes request; post minutes, explain if no post
0327	sent680wb-whoaaccts	Financial info requests
0329	sent687wb-meetings	Confirm Board ethics; invite me to next Board meeting
0331	sent692wbac-acfines	No fines may be imposed
0417	sent738wbac-p'val'infor'q	HOA property value sham; explain delay for 0327
0424	sent750wb-xxamgxx	AMG fees rip-off; 3 things: term AMG, no auto renew; make change to low cost mang't company; inform of plans
0504	sent793sk-minsreq	Provide minutes; please post minutes
0505	sent796sk-minsreq	FWD to AMG; verify and supervise delegation(s)
0508	sent813sk-minreq	Reply to SK; answer 2 questions SK asked
0509	sent816wb-boardvacancy	Appoint me to B'rd vacancy
0509	sent817wb-xxamgxx	RE: AMG is a _High_Cost_ Provider
0511	sent830de-fininfo	Provide all financial info
0517	sent855ggwb-fininfo-cai	Read only access; CAI safeguards
0518	sent860wb-inspremium	Bid for lowest insurance premium
0523	sent868ggwb-rights-respons	CAI info - Board improve, educate themselves
0524	sent871wb-apmchecks	FW All Prop Mgt - checks
0526	sent876wb-curmgtagreement	Send copy of current AMG contract
0527	sent887wb-amgcontrac2	Answer BA's question 0526: "intent of request"
0527	sent888wb-secrets	Post Board meet schedule/minutes
0528	sent890wb-boardsjob	Board's job to "deal wiith difficult people"
0530	sent896wb-medreq schedule-mediation053017.rtf	Mediation requested
0530	sent898wb-camintrolet	FW intro letter from CAM

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0601	sent908wb-apm5mistakes	FW All Prop M'gt 5 mistakes
0601	sent914wb-amgcontract	Follow up on AMG contract request "proper purpose" reply per 0526
0602	sent917wb-inspolicy	Insurance policy info request
0602	mediationwb-060217.rtf	Reply to "med'n not req'd"
0604	sent933de-fininfo	Reply to 0514; re-request info
0606	sent945wb-mnoticereq	Request direct notice for meetings and events
0608	sent961wb-medlitnoreply	Mediation/litigaton - no reply
0612	medlitwb-061217.rtf	Reply to BA; agree "yes" or "see you in court"
0613	sent978wb-amrecords	Request Annual Meeting agenda, ballots, and other records
0622	sent026wb-midyearmeet	Provide a meeting agenda
0622	rw0622wboard6ans.rtf	Reply to Acord 0617 6 questions
0625	rw0625wb-lastoppy.rtf	Notice to Board last opportunity to resolve before court
0626	rw0626wb-lastoppy-bareply.rtf	Reply to Acord 0626; start private meetings 08 July
0628	rw0628wb-amstuffoutwhy.rtf	Details for Ques2 = AM mins Rev 2 not sent before on Jun 22
0629	sent049wb-noagenda	No agenda supplied as requested
0630	rw0630wb-privatebm.rtf	Object on record for another private Board meeting with no agenda sent as was requested
0703	sent055wb-meetroom	MFD Station 3 for Sat 08 Jul meeting
0706	sent057wb-agenda0708.17	Meeting agenda (timed) for 6 questions
0708	sent063wb-mom070817pdraft	Board "negotiation" meeting minutes preliminary draft
0709	sent066wb-blsamend1v0	Proposed BLS amends Set 1 Rev 0
0713	sent078wc-pogoofs	PO PM received question to Craigo
0727	sent152wb-blsamend1rev1	Proposed BLS amends Set 1 Rev 1
0817	sent238wb-pendinglit	Notice of Pending Judicial Action (NoPJA)
0818	sent244wb-pendinglit	NoPJA
0821	sent250wb-dingbd5	NoPJA
0822	sent253wb-fwcam	CAM experts; HOA custom web sites
0825	rw0825wb-dingbd6.rtf	Board's e-mail misstatement
0829	rw0829wb-dingbd7.rtf	no good faith from Board
0901	rw0901wb-dingbd8.rtf	Four sample Court issues
0902	sent294wb-bdreqdmeetings	HOA Member Services "Is Board Conducting Req'd Meetings" excerpts
0913	rw0913wb-dingbd9.rtf	Courtesy copy of court Complaint

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EXHIBIT Y - Annual Meeting Minutes and Agenda

Summary: (showing date in format mmddyy)

- List of stuff that MUST be modified in Annual Meeting Minutes 062817
- Annual Meeting Agenda 011017

Original Message (as excerpted in relevant part)

List of stuff that MUST be modified in Annual Meeting Minutes - **Rev 2 28 June 2017**

Removal/replacement rationale for: non-truthful and libelous content is provided.
MBR: denotes "Must Be Removed" or "Must Be Replaced"
WHY: gives rationale for WHY content must be removed or replaced.

MBR: Board Members Present ...
WHY: Those listed as "Board" were **not elected** in 2016; thus they must be deemed:
"Not Elected 2016 Board Pretenders (BP)"
since they **fraudulently pretended**, only, to be "the Board"

. . . Per Slaughter, "Running a Darn Good Meeting ...", Exhibit B, Minutes:
THEME: Minutes are a record of what was done at the meeting
NOT what was said by members or guests.
DO _NOT_ INCLUDE:
x Remarks of guest speakers
x Personal opinion on anything said or done
no remarks of "what was said by members or guests" are appropriately included in minutes. . . .

MBR: At this time Eli Grote responded by proposing ratification, by vote, for current & past boards so the meeting could move forward without addressing the same challenge being presented. Member discussion continued regarding validity of the board. Mr. Grote again clarified that a passing ballot by the community would put the old issue to rest by validating the current board & allowing new incoming board to begin their term with no legal action against them.

WHY: It is improper for a meeting guest to elicit a motion for meeting business. Comments of meeting guests should never be included in minutes. Statements of opinion should never appear in minutes. Further, wrongdoing which occurred over a previous history of many years cannot be "undone" by any vote of a current member body. Similarly, "equal protection of the law" does not allow a dictum of "no legal action against them" to preclude litigation.

MBR: Motion was made by a member to use a ballot to ratify current & past board. ...

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WHY: More properly, this part of minutes should read:
'Motion was made by a member to use Mr. Grote's pre-prepared, undiscussed ballot whose text read:

> "Ratify, validate, and approve the legitimacy and validity of current Board and prior all Boards for WHOA, including all terms of service for the current board members and the number of directors on each Board."

to ratify current and past boards. ...'

MBR: ... a dispute resolution process be put in place.
WHY: This minutes part should read:
"... a dispute resolution process be recognized as a required addition to the By-Laws."

MBR: A member asked that a prepared statement of his objections be added to the meeting minutes. (see attached)
WHY: A prior to meeting agreement was honored by Mr. Grote, such that this part of minutes should read:
"Mr. Grote advised that an agreement had been made prior to this meeting that, in return for a member not objecting during the meeting (and thus not disrupting the meeting), a prepared statement of his objections be added to these meeting minutes (as attached)."

In summary, much of what was said (unrelated to any meeting agenda item) was to further a **"smear campaign"** against Ray Wedlake, a nominee for 2017 board, to be sure he would **not be elected**. This "low-down" tactic was effective; Ray Wedlake **was not elected**!

Original Document (transcribed; not provided prior to Annual Meeting as requested)

Agenda 2017

January 10, 2017

Call meeting to order

Welcoming and opening remarks

Introduce guests

Motion to approve minutes from 2016 annual meeting

Present treasurer's report (2016 financial info and 2017 proposed budget)

Discuss old business ~ status of fence

Validity of current board to govern WHOA

Open floor for discussion

Call for vote to ratify current board members as legitimate board

- AMG contract
    - o — provide justification of need for management group
    - o — Discuss services provided by AMG
    - o — Discuss contract cost

Call for vote to ratify contract renewal with AMG for all years since 2007 and authorization to continue contract

Call for additional new business

Introduce nominees for board positions and call for any further nominees

Call for vote to select new board

Announce results of election

Call for motion and second to adjourn

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EXHIBIT Z - Guide for Minutes per James H. Slaughter (expert authority)

cai-college-ofca-lawyers-2015best-manuscript.pdf
Excerpts from: 2015 CAI Law Seminar Best Manuscript Award

"Running a Darn Good Meeting: What You Need to Know About Parliamentary Procedure"
"Running a Darn Good Meeting: What Community Association Attorneys Need to Know About

Parliamentary Procedure"
James H. Slaughter, Esq., Rossabi Black Slaughter, PA ISBN: 978-1-59618-078-9

Exhibit B (page 70) Minutes

Based on Robert's Rules of Order Newly Revised (11th Edition)

THEME: Minutes are a record of what was done at the meeting NOT what was said by members or guests.

INCLUDE:

- v First Paragraph:
  - o Kind of meeting (regular, special, adjourned)
  - o Name of board
  - o Date and time of meeting
  - o Place of meeting, if varies
  - o Fact that Chairman and Clerk were present or name of substitute
  - o Whether minutes of previous meeting were read and approved

- v Separate paragraph for each subject matter with name of mover:
  - o All main motions or motions to bring a main question again before the assembly (except any withdrawn, see below) stating
    - + The wording in which adopted or disposed of
    - + The disposition of motion (including amendments or motions)
  - o Secondary motions that were not lost or withdrawn
  - o All notices of motion
  - o All points of order and appeals, whether sustained or lost

- v Last Paragraph:
  - o Hour of adjournment
- v Number of votes if count ordered or ballot vote
- v Names and votes if roll call vote
- v Signature of Clerk ("Respectfully submitted" unnecessary)

DO **NOT** INCLUDE:

- x Seconder's name
- x Remarks of guest speakers
- x Motions that were withdrawn (see RONR § 48, page 469 for exceptions)
- x Personal opinion on anything said or done

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS FOR THE 13TH JUDICIAL CIRCUIT C/A No.: 2017-CP-23-6301
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).	**ANSWER TO PLAINTIFF'S COMPLAINT BY DEFENDANTS BENJAMIN ACORD, WILLIAM CRAIGO, DENIS ESTEVE AND BRIAN JAMES**

(017402.00009)

Defendants Benjamin Acord, William Craigo, Denis Esteve, and Brian James (hereinafter the "Board Defendants"), answering the Plaintiff's Complaint herein, would respectfully show unto the Court the following:

FOR A FIRST DEFENSE
(General Denial)

1. Board Defendants deny each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted.

2. Paragraph 1 is admitted, upon information and belief.

3. As to Paragraph 2, Board Defendants admit that they are currently four members of the Board of Directors of Woodington Homeowners' Association, Inc. (hereinafter the "Association") and are residents of Greenville County, but deny that Association Management Group SC, Inc. (hereinafter "AMG") is still the management company for the Association;

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otherwise; Board Defendants lack sufficient knowledge or information form a belief as to the remaining allegations of Paragraph 2 and therefore deny the same and demand strict proof thereof.

4. As to Paragraph 3, Board Defendants admit that AMG is a provider of homeowners' association management services; otherwise, Board Defendants lack sufficient knowledge or information to form a belief as to the remaining allegations of Paragraph 3 and therefore deny the same and demand strict proof thereof.

5. As to Paragraph 4, Board Defendants admit that Plaintiff apparently disagrees with Board Defendants and/or past Boards of the Association regarding certain issues and apparently seeks to challenge actions of the Board Defendants and/or prior Boards; otherwise, Paragraph 4 is denied as stated.

6. As to Paragraph 5, Board Defendants admit that Raymond Wedlake is a member of the Association in good standing; otherwise, Paragraph 5 is denied.

7. As to Paragraph 6, Board Defendants assert that they have properly responded to Plaintiff's various document requests; otherwise, Paragraph 6 is denied.

8. Paragraph 7 is denied.

9. As to Paragraph 8, Board Defendants admit that Plaintiff apparently disagrees with Board Defendants and/or past Boards of the Association regarding certain issues, including voting on an ADR amendment to the bylaws proposed by Plaintiff, and apparently seeks to challenge actions of the Board Defendants and/or prior Boards; otherwise, Paragraph 8 is denied as stated.

10. As to Paragraph 9, Board Defendants assert that the allegations of Paragraph 9 specifically pertaining AMG's contract and payments made pursuant thereto are moot. To the extent the allegations of Paragraph 9 are not moot, Board Defendants deny that they have unilaterally increased fees paid to AMG, but also deny that doing so without membership

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approval would be improper under the bylaws or AMG's former contract with the Association. Otherwise, any remaining allegations of Paragraph 9 are denied.

11. As to Paragraph 10, Board Defendants assert that the allegations of Paragraph 10 specifically pertaining AMG's contract are moot. To the extent the allegations of Paragraph 10 are not moot, Board Defendants deny that they have renewed any contract with AMG without approval of a majority of the members of the Association, but admit that Plaintiff apparently disagrees with Board Defendants and/or past Boards of the Association regarding certain issues, including whether management contract renewals require membership approval, and that Plaintiff apparently seeks to challenge actions of Board Defendants and/or prior Boards. Otherwise, any remaining allegations of Paragraph 10 are denied.

12. As to Paragraph 11, Board Defendants deny that they are in violation of any term limits, but admit that Plaintiff apparently disagrees with Board Defendants and/or past Boards of the Association regarding certain issues, including term limits, and that Plaintiff apparently seeks to challenge actions of Board Defendants and/or prior Boards. Otherwise, any remaining allegations of Paragraph 11 are denied.

13. As to Paragraph 12, Board Defendants deny that there is currently a vacancy on the Board, as any vacancy has been filled, thus the allegations of paragraph 12 are moot. However, Board Defendants admit that Plaintiff apparently disagrees with Board Defendants and/or past Boards of the Association regarding certain issues, including the filling of vacancies on the Board, and that Plaintiff apparently seeks to challenge actions of Board Defendants and/or prior Boards; otherwise, Paragraph 12 is denied.

14. As to Paragraph 13, Board Defendants assert that the allegations of Paragraph 13 specifically pertaining to AMG are moot. To the extent that the allegations of Paragraph 13 are not moot, Board Defendants admit that Plaintiff apparently disagrees with Board Defendants and/or past Boards of the Association regarding certain issues, including the ability to delegate

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duties or responsibilities, and that Plaintiff apparently seeks to challenge actions of Board Defendants and/or prior Boards. Otherwise, any remaining allegations of Paragraph 13 are denied.

15. As to Paragraph 14, Board Defendants assert that the allegations of Paragraph 14 are moot. To the extent that the allegations of Paragraph 14 are not moot, Board Defendants deny that they were directors of the Association at the time of the acts complained of, but Board Defendants admit that Plaintiff apparently disagrees with Board Defendants and/or past Boards of the Association regarding certain issues, including actions taken as the last annual meeting of the Association, and that Plaintiff apparently seeks to challenge actions of Board Defendants and/or prior Boards. Otherwise, any remaining allegations of Paragraph 14 are denied.

16. Paragraph 15 is denied.

17. As to Paragraph 16, Board Defendants admit that Plaintiff is seeking declaratory judgment relating to the Bylaws of the Association; otherwise, Paragraph 16 is denied.

18. Paragraph 17 is denied.

19. Paragraph 18 is admitted.

20. As to Paragraph 19, Board Defendants admit Plaintiff has brought this action seeking relief, but deny that such action is proper or that such relief should be granted. Any remaining allegations of Paragraph 19 are denied.

21. Paragraphs 20, 21, and 22 are admitted.

22. As to Paragraph 23, Board Defendants admit that Raymond Wedlake is a member of the Association; otherwise, Board Defendants lack sufficient knowledge or information to form a belief as to the remaining allegations of Paragraph 23 and therefore deny the same and demand strict proof thereof.

23. Paragraph 24 is admitted.

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24. As to Paragraph 25 through 28, Board Defendants lack sufficient knowledge or information to form a belief as to the allegations of Paragraph 25 through 28 and therefore deny the same and demand strict proof thereof.

25. As to Paragraph 29, Board Defendants admit that counsel for the Association agreed to allow Plaintiff to submit a list of objections in advance of the annual meeting as opposed to having to state such objections from the floor; otherwise Paragraph 29 is denied.

26. As to Paragraphs 30 through 33, Board Defendants admit that counsel for Plaintiff, Grant Gibson, provided counsel for the Association with a "Confidential Memorandum" dated January 3, 2017, and a "Memorandum" dated January 10, 2017, and Board Defendants crave reference to a true and accurate copy of such documents as to their terms and contents and deny any allegations of Paragraphs 30 through 33 inconsistent therewith.

27. As to Paragraph 34, Board Defendants deny that they were directors at the time of the acts complained of, but admit that certain ratifications were voted upon and approved at the last annual meeting, and Board Defendants crave reference to the ratification forms as to their terms and contents and deny any allegations of Paragraph 34 inconsistent therewith. Otherwise, any remaining allegations of Paragraph 34 are denied.

28. Paragraphs 35 and 36 are denied.

29. As to Paragraphs 37 and 38, Board Defendants assert that they have given Plaintiff's concerns over the contents of the draft meeting minutes from the last annual meeting due consideration and have acted properly and in good faith with respect to the draft meeting minutes; otherwise Paragraphs 37 and 38 are denied.

30. Paragraph 39 is admitted, upon information and belief.

31. Paragraph 40 is denied.

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32. As to Paragraph 41, Board Defendants admit that Plaintiff has proposed mediation and that this case has been mediated, and Board Defendants further admit that they have worked with Plaintiff in good faith to try to resolve differences; otherwise Paragraph 41 is denied.

33. Paragraph 42 is denied as stated, and Board Defendants would assert that Stacey Krause, the Association's Secretary, actually resigned from the board of directors of the Association on May 8, 2017.

34. As to Paragraph 43, Plaintiff craves reference to the Bylaws of the Association and denies any allegations of Paragraph 43 inconsistent therewith.

35. Paragraph 44 is admitted, upon information and belief.

36. As to Paragraph 45, Board Defendants admit that they filled the secretary position, but deny any wrongdoing in doing so; otherwise Paragraph 45 is denied.

37. As to Paragraph 46, Board Defendants admit that Plaintiff apparently disagrees with the Board Defendants' handling of any vacancy on the Board created by the resignation of Stacey Krause, and that Plaintiff has expressed such disagreement to the Board Defendants; however, Board Defendants lack sufficient knowledge or information to recall to the exact date(s) of each such communication(s) at this time; otherwise, Paragraph 46 is denied.

38. As to Paragraph 47, Board Defendants assert that the allegations of Paragraph 47 are moot. To the extent that the allegations of Paragraph 47 are not moot, Board Defendants lack sufficient knowledge or information to form a belief as to the allegations of Paragraph 47 and therefore deny the same and demand strict proof thereof.

39. As to Paragraph 48, Board Defendants assert that any issues specifically pertaining to renewal of AMG's contract(s) are moot. To the extent the allegations of Paragraph 48 are not moot, Board Defendants admit that they disagree with Plaintiff's position and specifically deny Plaintiff's position; otherwise Paragraph 48 is denied

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40. As to Paragraph 49, Board Defendants admit that Plaintiff apparently disagrees with Board Defendants and/or past Boards of the Association regarding certain issues, including those set forth in Paragraph 49, and that Plaintiff apparently seeks to challenge actions of Board Defendants and/or prior Boards; otherwise, Paragraph 49 is denied.

41. Paragraph 50 is denied.

42. As to Paragraph 51, Board Defendants admit that Plaintiff apparently disagrees with Board Defendants and/or past Boards of the Association regarding certain issues and has informed the Board Defendants of certain disagreements; otherwise, Paragraph 51 is denied.

43. As to Paragraph 52, Board Defendants assert that such allegations are moot. To the extent the allegations of Paragraph 52 are not moot, Board Defendants admit that Plaintiff requested a copy of AMG's contract with the Association, but Board Defendants lack sufficient knowledge or information to form a belief as to the exact date of the request or the exact statements made in the request at this time and therefore deny the remaining allegations of Paragraph 52 and demand strict proof thereof.

44. As to Paragraph 53, Board Defendants assert that such allegations are moot. To the extent the allegations of Paragraph 53 are not moot, Paragraph 53 is denied as stated.

45. As to Paragraph 54, Board Defendants assert that the allegations of Paragraph 54 are moot. To the extent that the allegations of Paragraph 54 are not moot, Paragraph 54 is admitted, upon information and belief.

46. As to Paragraph 55, Board Defendants assert that the allegations of Paragraph 55 are moot. To the extent that the allegations of Paragraph 55 are not moot, Paragraph 55 is denied.

47. As to Paragraph 56, Board Defendants assert that the allegations of Paragraph 56 are moot. To the extent that the allegations of Paragraph 56 are not moot, Board Defendants admit that Plaintiff asserted that he believed that overpayments had been made to AMG and

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requested that Board Defendants seek to recoup any such asserted overpayments; otherwise, Paragraph 56 is denied as stated.

48. As to Paragraph 57, Board Defendants admit that they disagree with Plaintiff's position and specifically deny Plaintiff's position; otherwise Paragraph 57 is denied.

49. To the extent Paragraph 58 is an allegation of law, Board Defendants are not required to admit or deny that paragraph; subject to the above, Board Defendants crave reference to the terms of S.C. Code Ann. § 33-31-801 and deny any allegations of Paragraph 58 inconsistent therewith.

50. As to Paragraph 59, Board Defendants crave reference to the terms of the applicable bylaws and deny any allegations of Paragraph 59 inconsistent therewith.

51. Paragraph 60 is admitted, upon information and belief.

52. Paragraph 61 is denied.

53. Paragraphs 62 through 65 are denied, including all subparts.

54. As to Paragraph 66, Board Defendants repeat, reiterate, and restate their responses to Paragraphs 1 through 65, as if fully set forth verbatim herein.

55. To the extent Paragraph 67 is an allegation of law, Board Defendants are not required to admit or deny that paragraph; subject to the above, Board Defendants crave reference to the terms of Uniform Declaratory Judgments Act and deny any allegations of Paragraph 67 inconsistent therewith; otherwise, Paragraph 67 is denied.

56. As to Paragraph 68, Board Defendants admit that Plaintiff apparently disagrees with Board Defendants and/or past Boards of the Association regarding certain issues, and that Plaintiff apparently seeks to challenge actions of Board Defendants and/or prior Boards. Otherwise, any remaining allegations of Paragraph 68 are denied.

57. Paragraphs 69, 70, and 71 are denied.

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58. As to Paragraph 72, Plaintiff asserts that the allegations of Paragraph 72 are moot. To the extent the allegations of Paragraph 72 are not moot, Board Defendants lack sufficient knowledge or information to form a belief as to the allegations of Paragraph 72 and therefore deny the same and demands strict proof thereof.

59. Paragraph 73, including all subparts, is denied.

60. As to Paragraph 74, Board Defendants repeat, reiterate, and restate their responses to Paragraphs 1 through 73, as if fully set forth verbatim herein.

61. Paragraphs 75 through 78 are denied.

62. As to Paragraph 79, Board Defendants assert that the allegations of Paragraph 79 are moot. To the extent the allegations of Paragraph 79 are not moot, Paragraph 79 is denied.

63. As to Paragraph 80, Board Defendants assert that the allegations of Paragraph 80 are moot. To the extent the allegations of Paragraph 80 are not moot, Board Defendants assert that the allegations of Paragraph 80 are directed toward another party and not Board Defendants, therefore, no response is required. To the extent that a response is required, Paragraph 80 is denied.

64. Paragraphs 81 and 82 are denied.

65. As to Paragraph 83, Board Defendants assert that there no longer exists any vacancy on the board of directors of the Association; therefore, the allegations of Paragraph 83 are moot. To the extent the allegations of Paragraph 83 are not moot, Paragraph 83 is denied.

66. Paragraph 84 is denied.

67. Plaintiff's Prayer for Relief, including all subparts, is denied.

68. All other allegations in Plaintiff's Complaint that are not specifically addressed herein are hereby denied.

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FOR A SECOND DEFENSE
(Service of Process; Lack of Personal Jurisdiction – Rule 12(b)(2) and Rule 12(b)(5), SCRCP)

69. Board Defendants would show, upon information and belief, that they have not been properly served with the Summons and Complaint that was filed with the Court, thus, upon information and belief, dismissal is appropriate under Rule 12(b)(2) and Rule 12(b)(5), SCRCP for insufficiency of service of process and lack of personal jurisdiction.

FOR A THIRD DEFENSE
(Dismissal Pursuant to Rule 12(b)(6), SCRCP)

70. Plaintiff has failed to state facts sufficient to constitute a cause of action against Board Defendants and therefore Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6), SCRCP, in whole or in part.

FOR A FOURTH DEFENSE
(Mootness, Ripeness, and Lack of Justiciable Controversy)

71. Board Defendants would show, upon information and belief, that some or all of Plaintiff's claims are moot and/or unripe. Board Defendants would further show, upon information and belief that Plaintiff's Complaint fails to allege a justiciable controversy, in whole or in part.

FOR A FIFTH DEFENSE
(Immunity)

72. To the extent Plaintiff's Complaint seeks damages or an award of money, which is denied, then Board Defendants are immune from monetary damages, including, but not limited to, pursuant to S.C. Code Ann. § 33-31-202.

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FOR A SIXTH DEFENSE
(Failure to Comply with Requirements for Derivative Suit)

73. Board Defendants would show, upon information and belief, that some or all of Plaintiff's claims must be asserted derivatively and that Plaintiff has failed to meet the applicable requirements for a derivate suit, including, but not limited to the requirements of Rule 23, SCRCP.

FOR A SEVENTH DEFENSE
(Lack of Subject Matter Jurisdiction)

74. Board Defendants would show, upon information and belief, that Plaintiff lacks standing to bring some of all of the claims asserted in the Complaint; therefore, dismissal is proper under Rule 12(b)(1), SCRCP, for lack of subject matter jurisdiction.

FOR AN EIGHTH DEFENSE
(Failure To Name Necessary Parties, Rule 12(b)(7), SCRCP)

75. Board Defendants would show, upon information and belief, that Plaintiff has failed to name proper parties to seek the redress requested and has failed to include necessary parties. Rule 12(b)(7), SCRCP.

FOR A NINTH DEFENSE
(Unclean Hands)

76. Some or all of the Plaintiff's claims are barred by the doctrine of unclean hands.

FOR A TENTH DEFENSE
(Statutes of Limitations and Repose/Laches)

77. Some or all of the Plaintiff's claims are barred by the applicable Statutes of Limitations and Repose and/or the equitable doctrine of laches.

FOR AN ELEVENTH DEFENSE
(Waiver)

78. Some or all of Plaintiff's claims are barred by the doctrine of waiver.

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FOR A TWELFTH DEFENSE
(Estoppel)

79. Some or all of Plaintiff's claims are barred by the doctrine of estoppel.

FOR A THIRTEENTH DEFENSE
(Business Judgment Rule)

80. Board Defendants would show, upon information and belief, that their actions are subject to the Business Judgment Rule, and Board Defendants assert the Business Judgment Rule as a defense to the Plaintiff's claims.

FOR A FOURTEENTH DEFENSE
(Compliance with S.C. Code Ann. § 33-31-830)

81. Board Defendants would show, upon information and belief, that Board Defendants complied with the applicable standard of care set forth in S.C. Code Ann.§ 33-31-830.

FOR A FIFTEENTH DEFENSE
(Re-Assertion of Matters Raised in Motion to Dismiss and Alternatively to Strike and for a More Definite Statement)

82. Board Defendants re-assert an re-allege all defenses and matters contained in their Motion to Dismiss and Alternatively to Strike and for a More Definite Statement filed on November 6, 2017, as well as in all supporting memoranda, affidavits, and exhibits, as if fully set forth verbatim herein.

FOR A SIXTEENTH DEFENSE
(Reservation and Non-Waiver)

83. Board Defendants reserve and do not waive any additional or further defenses as may be revealed by additional information acquired through discovery or otherwise.

WHEREFORE, having fully answered, Board Defendants pray that Plaintiff's Complaint be dismissed with costs and that Board Defendants be awarded attorney's fees should Plaintiff's claims be deemed to be frivolous.

/s/ *Ely O. Grote*
Ely O. Grote (SC Bar No.: 75379)
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P.O. Box 212069, Columbia, SC 29221
Phone: (803) 724-5000 Fax: (803) 724-5001
Email: ely.grote@mccabetrotter.com
ATTORNEYS FOR BENJAMIN ACORD, WILLIAM CRAIGO, DENIS ESTEVE, AND BRIAN JAMES

Columbia, South Carolina
January 18, 2018

ELECTRONICALLY FILED - 2018 Jan 18 12:05 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

ELECTRONICALLY FILED - 2017 Nov 06 4:56 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP230301

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS FOR THE 13TH JUDICIAL CIRCUIT C/A No.: 2017-CP-23-6301
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).	)	**MOTION TO DISMISS BY DEFENDANT ASSOCIATION MANAGEMENT GROUP SC, INC., AND ALTERNATIVELY TO STRIKE AND FOR A MORE DEFINITE STATEMENT**

017402.00009

TO: GRANT GIBSON, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorneys for Defendant Association Management Group SC, Inc. ("AMG") will move before the Presiding Judge of the Greenville County Court of Common Pleas at the Greenville County Courthouse at 10:00 a.m. on the 10th day after service hereof or as soon thereafter as possible for an Order dismissing Plaintiff's Complaint against it pursuant to Rule 12, SCRCP, and if the Complaint is not dismissed, to strike portions of the Complaint pursuant to Rule 12(f), SCRCP, as set forth herein. The grounds for dismissal include, but are not limited to the following:

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1. Rule 12(b)(6), SCRCP. Plaintiff's Complaint fails to state a claim and fails to state facts sufficient to constitute a cause of action against AMG. The grounds include, but not limited to the following:

    a. Plaintiff has failed to meet the requirements of Rule 23, SCRCP, and therefore lacks standing to bring a derivative suit. The grounds specifically include, but are not limited to the following. Plaintiff does not fairly and adequately represent the members of the Woodington Homeowners' Association, Inc., and Plaintiff's Complaint fails to allege that he does. In fact, the allegations of Plaintiff's Complaint, on their face, actually demonstrate that Plaintiff does not fairly and adequately represent the members of Woodington Homeowners' Association, Inc. Notably, the members of Woodington Homeowners' Association, Inc. voted overwhelmingly to ratify many of the issues alleged by Plaintiff in this suit at the last Annual Meeting, such ratification being noted and identified in Plaintiff's Complaint. Such ratifications, as referenced in Plaintiff's Complaint, are a clear indicia that Plaintiff does not represent the interests of the members of the Woodington Homeowners' Association, Inc. or the community. Therefore, Plaintiff's claims must be dismissed.

    b. Pursuant to South Carolina law, including but not limited to S.C. Code Ann. § 33-31-304, a suit to set aside or enjoin a corporate action where a third party has already acquired rights, including contracts already entered into or completed, is improper and cannot be maintained. Thus, a suit seeking to set aside or nullify any management contract with Association Management Group SC, Inc.,

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including any funds paid pursuant thereto, is not allowed under South Carolina law and must be dismissed.

c. Plaintiff lacks contractual privity with AMG and, therefore, lacks standing to bring a claim relating to any contract involving AMG.

d. Many of the issues alleged in Plaintiff's Complaint have been ratified by the membership (as opposed to the Board of directors) as acknowledged in Plaintiff's Complaint.[1] An action against the AMG and the current board of directors for Woodington Homeowners' Association, Inc. cannot set aside a ratification that was done by the membership.

e. Plaintiff's Complaint fails to allege a justiciable controversy as to AMG.

f. Plaintiff appears to challenge contract renewals that have been fully performed and actions clearly beyond the statute of limitations.

g. The hiring of a management company to assist the board of directors is authorized by the bylaws asserted by Plaintiff in his Complaint to be controlling, and Plaintiff's Complaint acknowledges the same.[2] Plaintiff fails to allege any specific duties or authority that have been improperly delegated to Association Management Group SC, Inc. Further, any functions that have been performed by Association Management Group SC, Inc. do not constitute an improper delegation as a matter of law.

h. Such further grounds as may be set forth in a memorandum of law in support of this motion.

[1] See Paragraph 34 of Plaintiff's Complaint.
[2] See, e.g., Paragraphs 47-48 of Plaintiff's Complaint.

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2. As set forth above, Plaintiff lacks standing to bring a derivative claim for failing to meet the requirements of Rule 23, SCRCP. Therefore dismissal is proper under Rule 12(b)(1), SCRCP, for lack of subject matter jurisdiction and pursuant to Rule 12(b)(6), SCRCP.
3. Upon information and belief, AMG has not been properly served with the Summons and Complaint that was filed with the Court, thus, upon information and belief, dismissal is appropriate under Rule 12(b)(2) and Rule 12(b)(5), SCRCP for insufficiency of service of process and lack of personal jurisdiction.
4. If the suit is not dismissed against AMG for the foregoing reasons, then any dispute arising out of or in connection with AMG's Management Agreement must be decided by arbitration conducted in Greensboro, North Carolina; thus AMG would seek to compel arbitration, which deprive the Court of further subject matter jurisdiction pursuant to Rule 12(b)(1), SCRCP.
5. Such further grounds as may be set forth in a memorandum of law in support of this motion.

Should Plaintiff's Complaint not be dismissed in its entirety, AMG moves to strike the exhibits to Plaintiff's Complaint pursuant to Rule 12(b)(f), SCRCP on the grounds that such exhibits contain improper evidentiary matters, unofficial versions of records, impertinent matters, excerpted documents, and otherwise inadmissible matters.

Further, Plaintiff's Complaint is vague and ambiguous as to which claims are being asserted individually versus derivatively. Should Plaintiff's Complaint not be dismissed in its entirety, AMG moves pursuant to Rule 12(e) to require Plaintiff to make a more definite statement to clarify which claims Plaintiff is seeking to assert individually as to those that he is purporting to assert derivatively.

This motion may be further supported by a memorandum of law. AMG further seeks an award of attorney's fees and costs.

s/ Ely O. Grote
Ely O. Grote (SC Bar No.: 75379)
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Attorney for Defendants

Columbia, South Carolina
November 6, 2017

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ELECTRONICALLY FILED - 2017 Nov 06 4:46 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

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-23-6301 **MOTION TO DISMISS BY DEFENDANTS BENJAMIN ACORD, WILLIAM CRAIGO, DENIS ESTEVE, AND BRIAN JAMES, AND ALTERNATIVELY TO STRIKE FOR A MORE DEFINITE STATEMENT**

017402.00009

TO: GRANT GIBSON, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorneys for the Defendants Benjamin Acord, William Craigo, Denis Esteve, and Brian James will move before the Presiding Judge of the Greenville County Court of Common Pleas at the Greenville County Courthouse at 10:00 a.m. on the 10th day after service hereof or as soon thereafter as possible for an Order dismissing Plaintiff's Complaint against them pursuant to Rule 12, SCRCP, and if the Complaint is not dismissed, to strike portions of the Complaint pursuant to Rule 12(f), SCRCP, and to make a more definite statement pursuant to Rule 12(e), SCRCP, as set forth herein. The grounds for dismissal include, but are not limited to the following:

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1. Rule 12(b)(6), SCRCP. Plaintiff's Complaint fails to state a claim and fails to state facts sufficient to constitute a cause of action against these Defendants. The grounds include, but are not limited to the following:

    a. These Defendants, as current directors of the Woodington Homeowners' Association, Inc., a nonprofit corporation, are immune to suit for monetary damages, including, but not limited to, pursuant to S.C. Code Ann. § 33-31-202.

    b. Plaintiff has failed to meet the requirements of Rule 23, SCRCP, and therefore lacks standing to bring a derivative suit. The grounds specifically include, but are not limited to the following. Plaintiff does not fairly and adequately represent the members of the Woodington Homeowners' Association, Inc., and Plaintiff's Complaint fails to allege that he does. In fact, the allegations of Plaintiff's Complaint, on their face, actually demonstrate that Plaintiff does not fairly and adequately represent the members of Woodington Homeowners' Association, Inc. Notably, the members of Woodington Homeowners' Association, Inc. voted overwhelmingly to ratify many of the issues alleged by Plaintiff in this suit at the last Annual Meeting, such ratification being noted and identified in Plaintiff's Complaint. Such ratifications, as referenced in Plaintiff's Complaint, are a clear indicia that Plaintiff does not represent the interests of the members of the Woodington Homeowners' Association, Inc. or the community. Therefore, Plaintiff's claims must be dismissed.

    c. Pursuant to South Carolina law, including but not limited to S.C. Code Ann. § 33-31-304, a suit to set aside or enjoin a corporate action where a third party has already acquired rights, including contracts already entered into or completed, is improper and cannot be maintained. Thus, a suit seeking to set aside or nullify

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any management contract with Association Management Group SC, Inc., including any funds paid pursuant thereto, is not allowed under South Carolina law and must be dismissed.

d. Many of the issues alleged in Plaintiff's Complaint have been ratified by the membership, as acknowledged in Plaintiff's Complaint. Such ratifications were voted upon by the membership and not solely done by the Board or Directors.[1] Further, these Defendants were not even serving as directors when the ratifications occurred, as acknowledged by Plaintiff's Complaint.[2] An action against the current board of directors for Woodington Homeowners' Association, Inc. cannot set aside a ratification that was done by the membership as a whole and also one that occurred while these Defendants were not even directors of the Woodington Homeowners' Association, Inc. These Defendants are not proper parties to such claims and Plaintiff has failed to name proper parties and/or necessary parties to seek the relief requested. See also, Rule 12(b)(7), SCRCP.

e. Plaintiff's Complaint purports to seek relief against these Defendants for alleged actions and conduct that was allegedly performed by other persons, including the actions of prior board members for Woodington Homeowners' Association, Inc. For example, the ratifications that Plaintiff seeks to set aside were voted upon by the membership as a whole and solely not by the directors of Woodington Homeowners' Association, Inc. and such ratifications took place prior to these Defendants' terms as directors.[3] By way of further example, Plaintiff seeks to challenge contract renewals and conduct at meetings that occurred prior to these

[1] See Paragraph 34 of Plaintiff's Complaint.
[2] See Paragraph 34 of Plaintiff's Complaint stating that it was the 2016 Board that permitted the membership vote on the ratifications.
[3] See Paragraph 34 of Plaintiff's Complaint.

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Defendants' tenure as directors. These Defendants were not directors at the time of the ratifications, nor has Plaintiff alleged that they were.[4]

f. These Defendants are not the proper parties as to all of the claims and relief requested by Plaintiff, and Plaintiff has failed to name the proper parties and/or necessary parties to seek all of the relief requested.[5]

g. Plaintiff's Complaint fails to allege a justiciable controversy as to these Defendants. Many of the issues alleged by Plaintiff are moot and/or cannot be redressed by an action against these Defendants. For example, Plaintiff appears to challenge prior contract renewals that have been fully performed as well as actions and matters clearly prior to these Defendants terms as directors and also beyond the statute of limitations. Further, some claims are unripe as to these Defendants, such as the requested declaration that these Defendants (the current board of directors) do not have unilateral authority to increase management company fees, when there is no allegation that these defendants have made such a unilateral increase. By way of further example, Plaintiff appears to seek redress over annual meeting minutes that are not yet final and have not been placed before the membership for approval and adoption. Additionally, there is no allegation that these Defendants have served terms in excess of five years, therefore, such a claim against them is unripe. Further, to the extent such claim involves terms of prior directors, these Defendants are not proper parties for such claims and such claims would be moot in any event.

h. The hiring of a management company to assist the board of directors is authorized by the bylaws asserted by Plaintiff in his Complaint to be controlling, and

[4] See Paragraph 34 of Plaintiff's Complaint.
[5] Including pursuant to Rule 12(b)(7), SCRCP.

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Plaintiff's Complaint acknowledges the same.[6] Plaintiff fails to allege any specific duties or authority that have been improperly delegated to Association Management Group SC, Inc. Further, any functions that have been performed by Association Management Group SC, Inc. do not constitute an improper delegation as a matter of law.

i. Plaintiff's Complaint fails to state legally cognizable claims against these Defendants in several respects. As an example, upon information and belief, there is no legally cognizable claim to require the directors of a nonprofit corporation to send out a ballot on a bylaw amendment proposed by a member. Plaintiff has failed to allege that he has fulfilled the necessary requirements for calling a special meeting for a vote upon such proposed amendment.

j. Such further grounds as may be set forth in a memorandum of law in support of this motion.

2. As set forth above, Plaintiff lacks standing to bring a derivative claim for failing to meet the requirements of Rule 23, SCRCP. Therefore dismissal is proper under Rule 12(b)(1), SCRCP, for lack of subject matter jurisdiction and pursuant to Rule 12(b)(6), SCRCP.
3. These Defendants are not proper parties for the relief sought by Plaintiff. Plaintiff has failed to name proper parties to seek the redress requested and has failed to include necessary parties pursuant to Rule 12(b)(7).
4. Upon information and belief, these Defendants have not been properly served with the Summons and Complaint that was filed with the Court, thus, upon information and belief, dismissal is appropriate under Rule 12(b)(2) and Rule 12(b)(5), SCRCP for insufficiency of service of process and lack of personal jurisdiction.

[6] See, e.g., Paragraphs 47-48 of Plaintiff's Complaint.

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5. Such further grounds as may be set forth in a memorandum of law in support of this motion.

Based on the foregoing, Plaintiff's Complaint should be dismissed. Should Plaintiff's Complaint not be dismissed in its entirety, these Defendants move to strike the exhibits to Plaintiff's Complaint pursuant to Rule 12(b)(f), SCRCP on the grounds that such exhibits contain improper evidentiary matters, unofficial versions of records, impertinent matters, excerpted documents, and otherwise inadmissible matters. Further, Plaintiff's complaint contains numerous allegations that are immaterial and impertinent to the requested relief and asserted causes of action, and such immaterial and impertinent allegations should be stricken.

Further, Plaintiff's Complaint is vague, ambiguous, and conflicting as to the relief sought against these Defendants, and is vague and ambiguous as to which claims are being asserted individually versus derivatively. Should Plaintiff's Complaint not be dismissed in its entirety, these Defendants move pursuant to Rule 12(e) to require Plaintiff to make a more definite statement to clarify the relief sought and which claims Plaintiff is seeking to assert individually as to those that he is purporting to assert derivatively.

This motion may be further supported by a memorandum of law. These Defendants further seek an award of attorney's fees and costs.

s/ Ely O. Grote
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Columbia, South Carolina
November 6, 2017

ELECTRONICALLY FILED - 2017 Dec 01 2:18 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

STATE OF SOUTH CAROLINA	
	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	
	THIRTEENTH JUDICIAL CIRCUIT
Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc.	Civil Action No.
	2017-CP-23-06301
Plaintiff(s)	
vs.	
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.,	
Defendants	

MEMORANDUM IN OPPOSITION TO MOTION TO DISMIS BY DEFENDANTS BENJAMIN ACORD, WILLIAM CRAIGO, DENIS ESTEVE, AND BRIAN JAMES, AND, ALTERNATIVELY TO STRIKE FOR A MORE DEFINITE STATEMENT

Plaintiff, Raymond A. Wedlake, by and through it legal counsel, Grant H. Gibson, Esq., hereby submits this Memorandum in Opposition to Defendants' Motion to Dismiss, or in the Alternative to Strike (sic) for More Definite Statement. In opposition to the Motion, Plaintiff states as follows:

Defendants' Arguments and Points of Law in Support of Motion(s):

1. Defendants' Motion to Dismiss Plaintiff's Complaint is founded upon Rule 12, SCRCP, and more specifically, Rule 12(b)(6) for failure to state a cause of action; further alleging that Plaintiff has failed to meet the requirements of Rule 23, SCRP to bring a derivative

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action, and thus should be dismissed under Rule 12(b)(1) and 12(b)(6); that Defendants are not proper parties and Plaintiff has failed to include necessary parties pursuant to Rule 12(b)(7), and that upon information and belief Defendants have not been properly served with the Summons and Complaint, and thus should be dismissed pursuant to Rule 12(b)(2) and Rule 12(b)(5).

2. In the alternative, Defendants move to strike the Exhibits under Rule 12(b)(f) SCRP, also alleging that the Complaint contains immaterial and impertinent allegations which should be stricken.
3. Finally, Defendants allege that the Complaint is vague, ambiguous, seeks conflicting relief, and if not dismissed in its entirety seek, pursuant to Rule 12(e) a more definite statement.

Plaintiff's Memorandum in Response:

As supported by Plaintiff's Verified Complaint and Affidavit in Support of this Petition in Opposition to Defendants' Motion to Dismiss (or Strike):

1. The Complaint has strong factual support, including evidentiary Exhibits, a detailed Affidavit of Plaintiff, coupled with an Affidavit of Plaintiff in support of the Memorandum in Opposition and Exhibits hereto. As the Court is well aware, a motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. See, *Gentry v. Vance*, 337, S.C. 1, 522 S.E.2d 137 (1999). The question to consider is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E. 2d 8 (1987).

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2. The Complaint properly meets the statutory requirements for seeking a Declaratory Judgment inasmuch as there is an ongoing dispute between Plaintiff and Defendants regarding interpretation of a contract, the By-Laws of the Woodington Homeowners' Association, Inc. ("WHOA"), and thus is properly before this Court. Such Verified Complaint, together with Exhibits and supporting Affidavit of Plaintiff, fully establishes a factual basis for pursuing such an action. Indeed, the Verified Complaint specifically states claims numbered 66 to 84, additionally showing "Prayer For Relief" items lettered A to L, and states supporting facts numbered 19 to 65.
3. In response to Defendants' general comment that Plaintiff does not fairly and adequately represent the members of the WHOA, as stated in the Verified Complaint and supporting Affidavit, Plaintiff is a long-time member in good standing of WHOA, who has served as a member of the Board of the WHOA on two prior occasions. Moreover, the fact that the Board felt it necessary to provide a blanket ratification to the actions of the Board as well as to ratification of the Management Contract, at the last Annual Meeting, simply underscores the fact that such practices were in violation of the By-Laws, mandating judicial intervention. Nor does this blanket ratification address the issue of interpretation of the By-Laws, and the need to follow same.
4. Regarding the claim that a contract may not be set aside if it has already been entered into, pursuant to S.C. Code Ann. 33-31-304, is incorrect, since it assumes it was properly entered into, which Plaintiff disputes. Plaintiff is not alleging that the management contract was ultra vires but rather is asking the Court to confirm that the By-Laws require a favorable vote of all members of the WHOA to enter into such a contract, and is also asking this Court to confirm its understanding that such would also apply to renewals of

such management agreement.

5. Defendant's Motion to Dismiss states: "... current directors ... are immune to suit for monetary damages, including, but not limited to, pursuant to S.C. Code Ann. § 33-31-202." This goes to Defendant's continuing misunderstanding of this action which is not against the Board Members individually, and certainly does not seek monetary damages, and is simply, once again, an action seeking a Declaratory Judgment regarding interpretation of the By-Laws. Plaintiff is simply asking this Court to interpret the By-Laws, which would have implications for the prior Board since the By-Laws have not been amended, just as it would for the current Board and for future Boards, to the extent relevant sections were not amended.
6. Regarding Defendant's contention that an increase in management fees is moot, we are seeking the Court's confirmation that under the By-Laws such action would require a vote of the Membership;
7. Defendant is incorrect that Plaintiff is seeking redress for the current Board Members regarding their having stayed beyond the five-year term limit provided in the By-Laws. As stated in the Verified Complaint, as supported by Plaintiff's Affidavit thereto, and the related Exhibits, members of the prior Board remained beyond five-years and Plaintiff sought confirmation from the current Board that the By-Laws do not permit such and that the current Board would not follow such practice. Since there was no response from, or resolution with, the current Board of such issue, this matter is before the Court for clarification of the By-Laws.
8. Regarding Defendants' allegation that the Defendants were not properly served, such service was made personally, by a licensed process server, and counsel for Defendants

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have been provided Affidavits of Service, as filed electronically with the Court. Moreover, per Plaintiff's Affidavit in Support of this Memorandum in Opposition, the content of Summons and Complaint served to Defendants is exactly what was filed with the Court.

9. Regarding Defendants Motion to Strike in the Alternative, pursuant to Rule 12(b)(f) SCRCP, other than quoting the statute, with a blanket statement that Exhibits to the Verified Complaint contain improper evidentiary matters, unofficial versions of records, and impertinent matters, there is no basis for the Court to Strike such Exhibits. Each Exhibit is evidentiary, and supports a claim of the Plaintiff found in the Complaint, as further supported by the Plaintiff's Affidavit in Support of the Verified Complaint.

10. Defendants' assert that Plaintiff's Verified Complaint is vague and ambiguous and appear to seek a more definite statement under Rule 12(e) to clarify the relief sought. It is clear however, that the Plaintiff's prayer is very specific, enumerating precisely what it is requesting from the Court. It is equally clear from the Complaint that all matters are being brought derivatively requesting a Declaratory Judgment and that there are not actions individually against Defendants.

11. Plaintiff is not alleging that the By-Laws do not permit the hiring of a Management Company. Indeed, we are asking the Court to confirm that the By-Laws require a majority of all the members to make such appointment (and any renewals) and also that since the Articles of Incorporation do not authorize delegation, that such delegation is improper. Accordingly, we have added AMG as a necessary party, as required by statute. We are not alleging breach of contract, and thus the mandatory arbitration provision contained in the AMG management agreement does not apply.

For the reasons set forth herein, the Plaintiff, through his counsel, Grant H. Gibson, Esq., respectfully requests this Court to DENY Defendants' Motion to Dismiss by Defendants Benjamin Acord, William Craigo, Denis Esteve, and Brian James, and Alternatively to Strike (sic) for a More Definite Statement.

This Memorandum in Opposition is supported by Plaintiff's Verified Complaint, Plaintiff's Affidavit in Support thereof, the Affidavit of Plaintiff in Support of this Memorandum in Opposition, any affidavits which may be submitted subsequently, applicable statutes and case authority, along with the applicable Rules of Civil Procedure.

Dated this 1st day of December, 2017.

Respectfully Submitted,

G. GIBSON & ASSOCIATES, LLC

By: s/Grant H. Gibson, Esq.
Grant H. Gibson, Esq.

1200 Woodruff Rd. – Bldg. A-3
Greenville, SC 29607
(864) 630-7471
SC Bar # 9269
e-mail: atty@ggibsonassociates.com

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ELECTRONICALLY FILED - 2017 Dec 19 4:06 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 13TH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C/A No.: 2017-CP-23-06301
	)	
Raymond A. Wedlake, individually and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc.,	)	
Plaintiff(s),	)	**ASSOCIATION MANAGEMENT GROUP SC, INC.'S MOTION FOR APPROVAL OF SETTLEMENT PURSUANT TO RULE 23(B)(1), SCRCP**
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).	)	

017402.00009

TO: GRANT GIBSON, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorneys for Defendant Association Management Group SC, Inc. will move before the Presiding Judge of the Greenville County Court of Common Pleas at the Greenville County Courthouse at 10:00 a.m. on the 10th day after service hereof or as soon thereafter as possible for an Order approving the proposed settlement between Plaintiff and Defendant Association Management Group SC, Inc., pursuant to Rule 23(b)(1), SCRCP.

Plaintiff filed this action as a purported derivative action. With respect to derivative actions, Rule 23(b)(1), SCRCP, provides that "The action shall not be dismissed or compromised without the approval of the court and notice of the proposed dismissal or compromise shall be given to

shareholders or members in such manner as the court directs." Defendant Association Management Group SC, Inc. filed a Motion to Dismiss in response to the Complaint, disputing whether Plaintiff had met the requirements for a derivative action and whether Plaintiff had properly asserted a derivative action. Thereafter, Plaintiff and Defendant Association Management Group SC, Inc. were able to reach a proposed settlement as to the claims against Association Management Group SC, Inc. Without admission that a derivative action was properly brought, Association Management Group SC, Inc., out of an abundance of caution, seeks court approval of the proposed settlement pursuant to Rule 23(b)(1), SCRCP. A copy of the proposed settlement is attached as **Exhibit A**. Defendant Association Management Group SC, Inc. further seeks direction from the Court as to the manner in which notice of the proposed settlement shall be given to the members of Woodington Homeowners' Association, Inc. prior to the hearing on this motion.

s/ Ely O. Grote
Ely O. Grote (SC Bar No.: 75379)
MCCABE, TROTTER & BEVERLY, PC.
140 Stoneridge Dr., Suite 650 (29210)
P.O. Box 212069 · Columbia, SC 29221
Phone: (803) 724-5000 · Fax: (803) 724-5001
Email: ely.grote@mccabetrotter.com
ATTORNEY FOR DEFENDANTS

Columbia, South Carolina
December 19, 2017

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS FOR THE 13TH JUDICIAL CIRCUIT C/A No.: 2017-CP-23-06301
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).	)	**STIPULATION OF SETTLEMENT BETWEEN PLAINTIFF AND ASSOCIATION MANAGEMENT GROUP SC, INC.**

017402.00009

Raymond A. Wedlake, individually, and derivatively on behalf Woodington Homeowners' Association, Inc. and its Members (hereinafter referred to as ***"Plaintiff"***); and Association Management Group SC, Inc. (hereinafter referred to as ***"Defendant"***) hereby agree to the terms of settlement set forth in the SETTLEMENT AGREEMENT BETWEEN PLAINTIFF AND ASSOCIATION MANAGEMENT GROUP SC, INC. AND RELEASE OF ASSOCIATION MANAGEMENT GROUP SC, INC. (the ***"Settlement Agreement and Release"***) attached hereto as **Exhibit 1**, subject to the necessary Court approval pursuant to Rule 23, SCRCP. Plaintiff and Defendant hereby covenant and agree that they shall petition the appropriate Court for approval of the Settlement Agreement and Release. Plaintiff and Defendant further covenant and agree that they shall execute the Settlement Agreement and Release within 10 days of approval of the same by the appropriate Court. Should the appropriate



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Court not approve of the Settlement Agreement and Release in all material respects, any settlement between Plaintiff and Defendant shall be cancelled and terminated and the parties hereto shall be restored to their respective positions in the above-captioned lawsuit as of the date immediately preceding the execution of this STIPULATION OF SETTLEMENT BETWEEN PLAINTIFF AND ASSOCIATION MANAGEMENT GROUP SC, INC., unless the parties hereto mutually agree otherwise in writing. Otherwise, the settlement set forth in the Settlement Agreement and Release shall not modified, cancelled, revoked, or terminated, unless the parties hereto mutually agree in writing to do so. In the event that the Settlement Agreement and Release is not approved by the appropriate Court or if the parties hereto mutually agree in writing to a cancellation, revocation, or termination of the settlement set forth in the Settlement Agreement and Release, then all negotiations, proceedings, documents prepared, and statements made in connection therewith: (1) shall be without prejudice to Plaintiff and Defendant; (2) shall not be deemed or construed to be an admission by Plaintiff or Defendant; and (3) shall not be used in any manner for any purpose in any subsequent proceeding in the above-captioned lawsuit, or any other action or proceeding.

In entering this STIPULATION OF SETTLEMENT BETWEEN PLAINTIFF AND ASSOCIATION MANAGEMENT GROUP SC, INC., the parties hereto do not admit any issue of fact or law in the above-captioned lawsuit or otherwise. It is further understood and agreed that nothing herein shall be construed as an admission of liability on the part of the parties hereto, liability by them being expressly denied. It is further understood and agreed that the settlement set forth in the Settlement Agreement and Release is a compromise disputed claims with all allegations denied and made merely to avoid further litigation, including the costs and expenses associated therewith.

The parties hereto further state that they have carefully read the foregoing STIPULATION OF SETTLEMENT BETWEEN PLAINTIFF AND ASSOCIATION

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MANAGEMENT GROUP SC, INC. and know the contents thereof, and they sign the same as their own free acts.

WITNESS our hands and seals this 13 day of December, 2017.

IN THE PRESENCE OF:

WITNESS 1

WITNESS 2

Raymond A. Wedlake, individually, and derivatively on behalf of Woodington Homeowners' Association, Inc. and its Members — Date 13 Dec 2017

Acknowledged by:

Grant H. Gibson (SC Bar No.: 9269) — Date
G. Gibson & Associates, LLC
1200 Woodruff Rd., Bldg. A-3
Greenville, SC 29607
Phone: (864) 630-7471
Email: atty@ggibsonassociates.com
Attorney for Plaintiff

WITNESS 1

WITNESS 2

Association Management Group SC, Inc.

By:
Print Name: Paul K. Mengert
Its: President
Date: 12/13/2017

Acknowledged by:

Ely O. Grote (SC Bar No.: 75379) — Date 12/13/17
McCabe, Trotter & Beverly, PC
P.O. Box 212069, Columbia, SC 29221
Phone: (803) 724-5000 Fax: (803) 724-5001
Email: ely.grote@mccabetrotter.com
Attorney for Association Management Group SC, Inc.

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Exhibit 1

ELECTRONICALLY FILED - 2017 Dec 19 4:06 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

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 **SETTLEMENT AGREEMENT BETWEEN PLAINTIFF AND ASSOCIATION MANAGEMENT GROUP SC, INC. AND RELEASE OF ASSOCIATION MANAGEMENT GROUP SC, INC.**

017402.00009

THIS SETTLEMENT AGREEMENT BETWEEN PLAINTIFF AND ASSOCIATION MANAGEMENT GROUP SC, INC. AND RELEASE OF ASSOCIATION MANAGEMENT GROUP SC, INC. (the ***"Agreement"***) is made and entered into as of the 13 day of December, 2017, between Raymond A. Wedlake, individually, and derivatively on behalf Woodington Homeowners' Association, Inc. and its Members (hereinafter referred to as ***"Plaintiff"***); and Association Management Group SC, Inc. (hereinafter referred to as ***"Defendant"***). Both the Plaintiff and Defendant shall be referred to jointly as the ***"Parties"***

WHEREAS, at all times relevant hereto, Defendant has provided association management services to Woodington Homeowners' Association, Inc. (the ***"Association"***);

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WHEREAS, at all times relevant hereto, Raymond Wedlake has been a member of the Association.

WHEREAS, Plaintiff instituted the above-styled lawsuit against Defendant (the *"Lawsuit"*);

WHEREAS, Plaintiff, in the Lawsuit, alleges various claims and issues, including but not limited to, relating to the validity of Defendant's contract(s) or agreement(s) with the Association, the fees/amounts paid by the Association to Defendant for services provided, the scope of services provided by Defendant, the alleged delegation of duties to Defendant by the Association, the interpretation of the bylaws, the ratifications at the annual meeting of the Association on January 10, 2017, document requests to the Association, and other matters pertaining to the corporate governance of the Association and services provided by Defendant; reference being craved to the pleadings in the Lawsuit as to the full issues and allegations asserted therein; and

WHEREAS, the Parties now desire to fully and finally resolve and settle the Lawsuit as between the Parties and all other potential claims between the Parties related to or arising out of the events set forth above and set forth in the pleadings in the Lawsuit, including all claims that were brought or could have been brought in the Lawsuit;

WHEREAS, in entering this Agreement, the Parties do not admit any issue of fact or law in the Lawsuit or otherwise; and

NOW THEREFORE, in consideration of the mutual covenants, agreements, and conditions set forth herein and the exchange of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties to this Agreement, without admission of liability, do for themselves, their successors, successors in title, and assigns

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hereby agree as follows:

1. No later than 10 days after the execution of this Agreement by all parties hereto, Defendant shall give notice of termination of its management agreement/contract with the Association, and the management agreement/contract shall be terminated pursuant to its terms.

2. Upon Defendant giving its notice of termination of its management agreement/contract with the Association, Raymond A. Wedlake, individually, and derivatively on behalf of the Association and its Members, does for himself, the Association, and the Members of the Association, and their assigns, successors, affiliates or those claiming through them, hereby remise, release, acquit, void and forever discharge Defendant, its successors, assigns, partners, agents, insurers, sureties, affiliates, subsidiaries, parent companies, predecessor companies, attorneys, officers, directors, experts, consultants, servants and employees (past, future, and present) from any and all claims, demands, debts, rights, actions, damages (including direct, indirect, incidental and consequential damages, whether known or unknown, developed or undeveloped), costs, causes of actions, and any and all claims of any nature or kind whatsoever, whether known or unknown, in any way relating to or arising out of the events, conduct, transactions, occurrences, acts, omissions, or other matters alleged in the pleadings in the Lawsuit, including without limitation those which were asserted or could have been asserted in the Lawsuit.

3. Upon termination of Defendant's management agreement/contract with the Association, Defendant agrees that it will not act as nor seek to act as the agent or community manager for the Association for so long as Raymond Wedlake remains a member of the Association.

4. Plaintiff agrees to and consents to dismissal of Defendant from the Lawsuit with

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prejudice. The Parties to this Agreement agree to execute, or cause their counsel to execute, a Stipulation, Order, or other document required to dismiss Defendant from the Lawsuit with Prejudice, upon any necessary court approval of this settlement and this Agreement.

5. Nothing herein shall be construed as an admission of liability on the part of Defendant, liability by Defendant being expressly denied. This Agreement is a compromise of disputed claims with all allegations denied and is made merely to avoid further litigation, including the costs and expenses associated therewith.

6. This Agreement contains the entire agreement between the Parties and supersedes all prior agreements, understandings and representations between the Parties, whether written or oral, concerning the subject matter hereof. The terms of this Agreement are contractual and not a mere recital. The Parties agree that proper consideration has been given in exchange for the mutual promises, agreements, and obligations set forth herein, and the Parties expressly waive any claim or defense for lack of consideration in any subsequent proceeding that may result herefrom.

7. The Parties hereby declare and represent that in making this Agreement, it is understood and agreed that they rely wholly upon their own judgment, and upon the advice of their counsel, and that they have not been influenced to any extent whatsoever by any representations or statements made by the persons being released or by anyone representing them or their employment, and they have entered into this Agreement of their own free will and accord without threat, duress, or other coercion of any kind whatsoever. Neither party shall be considered the drafter of this Agreement, and the Parties acknowledge and agree that this Agreement shall not be construed more favorably in favor of any party based contribution to

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drafting the Agreement, it being acknowledged that all Parties contributed substantially to the negotiations and preparation of this Agreement.

8. The Parties agree to bear their own litigation costs and attorneys' fees incurred in connection with the Lawsuit.

9. If any provision of this agreement is held or found to be void or unenforceable, the remainder of this Agreement shall not be affected, and shall remain in full force and effect.

10. This Agreement shall be binding upon the Parties and their respective predecessors, successors, assigns, parent companies, subsidiary companies, partners, affiliates and representatives, and shall inure to the benefit of the Parties and their respective predecessors, successors, assigns, parent companies, subsidiary companies, partners, affiliates and representatives.

11. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement, and all of which shall constitute one Agreement. A facsimile, photocopy or electronic copy of signatures is deemed an original. Photocopies, electronic copies, or facsimile copies of the executed Agreement may be treated as an original.

12. Each party to this Agreement represents and warrants that they have the complete authority to execute this Agreement and compromise the claims as described in this Agreement. Further, the Parties warrant that they have not assigned any claims described in this agreement to anyone.

13. This Agreement shall cover and does cover and include any and all known and future damages not now known to any of the Parties, but which may later develop or be discovered, including the effects and consequences thereof, and including all causes of action thereafter.

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14. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

The Parties further state that they have carefully read the foregoing Settlement Agreement and Release and know the contents thereof, and they sign the same as their own free acts.

WITNESS our hands and seals this 13 day of December 2017.

IN THE PRESENCE OF:

WITNESS 1

WITNESS 2

Raymond A. Wedlake 13 Dec 2017

Raymond A. Wedlake, individually, and derivatively on behalf of Woodington Homeowners' Association, Inc. and its Members — Date

Acknowledged by:

Grant H. Gibson (SC Bar No.: 9269) — Date
G. Gibson & Associates, LLC
1200 Woodruff Rd., Bldg. A-3
Greenville, SC 29607
Phone: (864) 630-7471
Email: atty@ggibsonassociates.com
Attorney for Plaintiff

WITNESS 1

WITNESS 2

Association Management Group SC, Inc.

By:
Print Name: Pam K. Mengert
Its: President
Date: 12/13/2017

Acknowledged by:

12/13/17

Ely O. Grote (SC Bar No.: 75379) Date
McCabe, Trotter & Beverly, PC
P.O. Box 212069, Columbia, SC 29221
Phone: (803) 724-5000 Fax: (803) 724-5001
Email: ely.grote@mccabetrotter.com
Attorney for Association Management Group SC, Inc.

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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-23-6301 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND ALTERNATIVELY TO STRIKE AND FOR A MORE DEFINITE STATEMENT MADE BY DEFENDANTS BENJAMIN ACORD, WILLIAM CRAIGO, DENIS ESTEVE, AND BRIAN JAMES**

017402.00009

This matter is before the Court on the Motion to Dismiss and Alternatively to Strike and for a More Definite Statement made by Defendants Benjamin Acord, William Criago, Denis Esteve, and Brian James (collectively the ***"Board Defendants"***). The Board Defendants respectfully submit this memorandum in support of the foregoing motion.

STATEMENT OF FACTS

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. The Board Defendants are the current board of directors of the Association, each having been duly elected at the Association's annual meeting held on January

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10, 2017. (*See* Aff. of Kristine Lynch - **Exhibit A**; Complaint ¶ 24). Plaintiff has purported to bring a derivative action against the Board Defendants, primarily relating to various corporate governance matters, which will be further addressed herein. The Board Defendants assert that Plaintiff's Complaint must be dismissed, and if the Complaint is not completely dismissed, that portions of the Complaint should be stricken pursuant to Rule 12(f), SCRCP, and Plaintiff should be required to make the Complaint more definite and certain pursuant to Rule 12(e), SCRCP.

LAW/ANALYSIS

I. PLAINTIFF'S COMPLAINT MUST BE DISMISSED BECAUSE THE CLAIMS MUST BE ASSERTED DERIVATIVELY AND PLAINTIFF HAS FAILED TO COMPLY WITH THE REQUIREMENTS FOR A DERIVATIVE SUIT

1. Requirement for Derivative Action

Corporations Generally

"An action seeking to remedy a loss to the corporation is generally a derivative one." Patterson v. Witter, 418 S.C. 66, 80, 791 S.E.2d 294, 302 (Ct. App. 2016), reh'g denied (Oct. 27, 2016), cert. granted (Sept. 29, 2017) (quoting Brown v. Stewart, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App. 2001)). "The fiduciary obligation of dominant or controlling stockholders or directors is ordinarily enforceable through a stockholder's derivative action." Brown v. Stewart, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App. 2001) (quoting 19 Am.Jur.2d *Corporations* § 2268, at 166 (1986)). "A derivative action is, in essence, a challenge to a board's managerial authority." Patterson, 418 S.C. at 80, 791 S.E.2d at 302. "[A] shareholder's suit is derivative if the gravamen of his complaint is an injury to the corporation and not to the individual interest of the shareholder." Id. "A shareholder may maintain an individual action only if his loss is

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separate and distinct from that of the corporation." Brown v. Stewart, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App. 2001).

Nonprofit Corporations – Challenges To Corporate Action Premised On Lack Of Power to Act or Lack Of Authority Must Also be Brought Derivatively

In addition to the foregoing, South Carolina law also requires challenges to the corporate action of a nonprofit corporation based on lack of power or authority to act to be brought derivatively. Specifically, S.C. Code Ann. § 33-31-304 provides:

> **§ 33-31-304. Ultra vires.**
>
> (a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.
>
> (b) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights. The proceeding may be brought by the Attorney General, a director, or by a member or members in a derivative proceeding.
>
> (c) A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee, or agent of the corporation. The proceeding may be brought by a director, the corporation, directly, derivatively, or through a receiver, a trustee, or other legal representative, or in the case of a public benefit corporation, by the Attorney General.

The South Carolina Reporters' Comments to Section 33-31-304 make clear that any claims predicated on lack of power or authority of a nonprofit corporation to act must be brought derivatively and the comments specifically provide that:

> Under this section of the Nonprofit Act, a member of a nonprofit corporation has no right to bring a direct attack against a proposed action. The claim may only be brought derivatively. If an action has been accomplished and the members believe that the directors or others in charge have done something wrong, have acted "ultra vires," the members may bring a derivative action against the alleged wrongdoers.

2. Plaintiff's Claims, With the Exception Of the Records Request, Must Be Brought Derivatively

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A plain reading of Plaintiff's Complaint demonstrates that the claims asserted therein, with the exception of the records request, must be asserted derivatively. A plain reading of Plaintiff's Complaint demonstrates that the crux of the Complaint is a challenge to the managerial authority of the board of directors and that the gravamen of the Complaint is to address asserted wrongs affecting the corporation and its members as a whole as opposed to any individual injury sustained by Plaintiff, and the Complaint is replete with challenges to the Association's authority to act. *See, e.g.*, Complaint, ¶ 15 (alleging that violations by the board are to the detriment of the members of the Association); ¶ 27 ("the 2016 Board, in Plaintiff's interpretation had violated the By-Laws in several respects, including remaining beyond the five-year term provided by law"); ¶ 31 (referencing Plaintiff's "objections to the authority of the 2016 Board to act" and retention of the property manager not being in accordance with the bylaws); ¶ 46 (referencing Plaintiff's position that the Board Defendants had misinterpreted the bylaws and had violated the bylaws by not appointing an eligible member to fill a vacancy on the board); ¶¶ 49-50 (referencing Plaintiff's position that the Board Defendants have not abided by the bylaws and have improperly delegated duties of the board to the detriment to the Association); ¶ 57 (alleging that the board may not delegate duties); ¶ 61 (alleging that the Board Defendants have been influenced to continue to ignore and violate the bylaws); ¶ 73 (seeking declaratory judgment regarding: (1) the board's authority to unilaterally increase management fees, (2) voiding prior management contracts due to lack of authorization from the members, (3) the validity of the ratifications that took place during the annual meeting on January 10, 2017, (4) the propriety of funds paid to AMG, and (5) interpretation of bylaws provision regarding filling vacancy on the board); ¶ 76 (alleging that if the Board Defendants continue violating the bylaws, the members of the Association will be collectively be harmed); ¶ 78 (seeking to enjoin the

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Board Defendants from delegating any duties); ¶¶ 79-80 (seeking to enjoin the Association from paying AMG certain amounts and requiring AMG to return alleged overpayments to the Association); ¶ 82 (seeking to compel the Board Defendants to send out ballots on a proposed bylaw amendment submitted by Plaintiff); ¶ 83 (seeking to require the Board Defendants to fill a vacancy on the board); ¶ 84 (allegations concerning accuracy of meeting minutes); and the Prayer for Relief (realleging requested relief).

Additionally, the Affidavit of Raymond Wedlake filed on October 5, 2017, states that he is seeking "Declaratory and Injunctive relief, derivatively, on behalf of myself and all the members of the Woodington Homeowners' Association, Inc." and also references objections to the authority of the Board to act. (Affidavit of Raymond Wedlake, ¶¶ 3, 20)(Emphasis added). Further, the Affidavits filed by Raymond Wedlake on December 1, 2017, state that "*all Complaint matters are being brought derivatively in the best interest of WHOA and for the betterment of homeowners*" and that Plaintiff was "forced to bring this action on behalf the WHOA members...."(emphasis added).

Further, Plaintiff's Complaint is replete with allegations of bad faith and breach of fiduciary duties. *See e.g.*, ¶ 14 (alleging 2016 Board violated duty of good faith and duty of loyalty); ¶ 64 (alleging that Board Defendants have repeatedly shown a lack of good faith); ¶ 73(v) (alleging breach of duty of good faith).

Based on the foregoing, it is clear that, with the exception of Plaintiff's record request claim, Plaintiff's allegations relate to matters affecting the membership of the Association as a whole rather than affecting Plaintiff individually. It is further clear that Plaintiff's claims primarily amount to a challenge to the managerial authority of the board of directors and their authority to act, including allegations of breaches of fiduciary duties. Consequently, Plaintiff's

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claims, with the exception of the records request, must be brought derivatively and cannot be brought individually, a principle that Plaintiff must acknowledge, as he purports to bring a derivative suit.

3. Derivative Claims Must Comply With Special Requirements Set Forth In Rule 23(b)(1), SCRCP.

Derivative actions must comply with the requirements of Rule 23(b)(1), SCRCP. Rule 23(b)(1) provides:

> **(b)(1) Derivative Actions by Shareholders.** In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. 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. The action shall not be dismissed or compromised without the approval of the court and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

The South Carolina Court of Appeals has explained the background and requirements of Rule 23(b)(1) as follows:

> In South Carolina, the authority to direct the business and affairs of a corporation is delegated to a board of directors, not the shareholders. *See* S.C. Code Ann. § 33–8–101 (1990). Rule 23(b)(1) adopts the federal derivative suit provision. *See* Rule 23(b)(1) Reporter's Note, SCRCP. The federal rule was designed to protect against two kinds of potential abuse stemming from derivative actions. *See* 5 James Wm. Moore et al., *Moore's Federal Practice,* ¶ 23.1.02[4] (3d ed.2000). "First, Rule 23.1 seeks to prevent the unrestrained use of derivative actions by minority shareholders, which would undermine the basic principle of corporate governance that the decisions of the corporation should be made by its management or, in certain situations, by an affirmative vote of a majority of the shareholders." *Id.* (citing *Daily Income Fund, Inc. v. Fox,* 464 U.S. 523, 530, 104

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S.Ct. 831, 78 L.Ed.2d 645 (1984)). The second reason, not applicable to the states, is to prevent collusive creation of diversity jurisdiction. *Id.*

The protective principles underlying the pleading requirements of Rule 23(b)(1) have long been recognized as important gatekeepers in South Carolina corporate jurisprudence. In *Latimer v. Richmond & D.R. Co.,* 39 S.C. 44, 51–52, 17 S.E. 258, 260–61 (1893), our supreme court recognized that equity will afford relief in a proper case to shareholders bringing an action on behalf of a corporation against the directors, notwithstanding the general rule that only the corporation may pursue redress of a wrong committed against it. However, quoting extensively from *Hawes v. Oakland,* 104 U.S. 450, 26 L.Ed. 827 (1881), the court noted:

> [I]t is equally important that, before the shareholder is permitted, in his own name, to institute and conduct a litigation which usually belongs to the corporation, he should show to the satisfaction of the court that he has exhausted all the means within his reach to obtain, within the corporation itself, the redress of his grievances, or action in conformity to his wishes. He must make an earnest, not a simulated, effort with the managing body of the corporation, to induce remedial action on their part, and this must be made apparent to the court.... The efforts to induce such action as complainant desires on the part of the directors, and of the shareholders, when that is necessary, and the cause of failure in these efforts, should be stated with particularity....

Latimer, 39 S.C. at 52–53, 17 S.E. at 261 (quoting *Hawes v. Oakland,* 104 U.S. 450, 460–61, 26 L.Ed. 827 (1881)).

These same principles are recognized as underlying Rule 23. *See RCM Sec. Fund, Inc. v. Stanton,* 928 F.2d 1318, 1326 (2d Cir.1991) ("Whether a corporation should bring a lawsuit is a business decision, and the directors are, under the laws of every state, responsible for the conduct of the corporation's business, including the decision to litigate." (citations omitted)); *Houle v. Low,* 407 Mass. 810, 556 N.E.2d 51, 57 (1990) ("Our cases have long recognized that the question whether a corporation should pursue a given lawsuit involves factors other than the merits of the claim. It is often a question of business policy.").

A derivative action is, in essence, a challenge to a board's managerial authority. Derivative actions have been characterized as a remedy of last resort because these actions impinge on the inherent role of corporate management to conduct the affairs of the corporation, including the power to bring suit. *Renfro v. FDIC,* 773 F.2d 657, 658 (5th Cir.1985). For this reason, the law imposes certain prerequisites on a stockholder's right to sue derivatively. *Kaplan v. Peat, Marwick, Mitchell & Co.,* 540 A.2d 726, 730 (Del.1988).

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> The demand requirement of Rule 23 balances a shareholder's right to assert a derivative claim against a board's duty to decide whether to invest the resources of the corporation in pursuit of the shareholder's claim of a corporate wrong. *Blasband v. Rales,* 971 F.2d 1034, 1048 (3d Cir.1992) (applying Delaware corporate law); *see also Spiegel v. Buntrock,* 571 A.2d 767, 775–76 (Del.1990) (stating that "stockholders who ... make a demand which is refused, subject the board's decision to judicial review according to the traditional business judgment rule" and that once the shareholder makes a demand, the shareholder can no longer argue demand is excused).
>
> Rule 23 is a departure from the more liberal pleading requirements of Rule 8, SCRCP, in that it requires particularized allegations. Under Rule 23, "the shareholder must either make a demand or plead with particularity the exceptional circumstances that demonstrate why a demand would be futile, i.e., why the Board of Directors should not be allowed to decide whether to institute litigation." *Allison ex rel. General Motors Corp. v. General Motors Corp.,* 604 F.Supp. 1106, 1112 (D.Del.1985).
>
> "Demand is required in order to assure compliance with the most fundamental principle of corporate governance—directors are answerable to the shareholders and are charged with the duty and responsibility to manage all aspects of corporate affairs." *Id.* at 1117. As the United States Supreme Court explained, "The purpose of the demand requirement is to 'affor[d] the directors an opportunity to exercise their reasonable business judgment and waive a legal right vested in the corporation in the belief that its best interests will be promoted by not insisting on such right.' " *Kamen,* 500 U.S. at 96, 111 S.Ct. 1711 (alteration in original) (quoting *Daily Income Fund, Inc.,* 464 U.S. at 533, 104 S.Ct. 831). "Thus, the demand requirement implements 'the basic principle of corporate governance that the decisions of a corporation—including the decision to initiate litigation—should be made by the board of directors or the majority of shareholders.' " *Kamen,* 500 U.S. at 101, 111 S.Ct. 1711 (quoting *Daily Income Fund, Inc.,* 464 U.S. at 530, 104 S.Ct. 831); *see also Spiegel,* 571 A.2d at 773 ("The purpose of pre-suit demand is to assure that the stockholder affords the corporation the opportunity to address an alleged wrong without litigation, to decide whether to invest the resources of the corporation in litigation, and to control any litigation which does occur."). A demand alerts the board so that it may take the corrective action, if any, which it deems necessary.

Carolina First Corp. v. Whittle, 343 S.C. 176, 185–88, 539 S.E.2d 402, 407–09 (Ct. App. 2000).

"At a minimum, a demand must identify the alleged wrongdoers, describe the factual basis of the wrongful acts and the harm caused to the corporation, and request remedial relief." Id. at 189, 539 S.E.2d at 409. "Such pre-suit demand must be alleged, not in a conclusory

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fashion, but through particularized allegations. Id. at 189, 539 S.E.2d at 409-10. To comply with the requirements of Rule 23, the Complaint must set forth particularized allegations of efforts made to demand that the board take the action that the members now seek to compel. Id. at 189-190, 539 S.E.2d at 410. "The particularized allegations must support an earnest, and not a simulated, effort with the managing body of the corporation to induce remedial action on their part." Id. Whether Plaintiff has made a proper demand pursuant to the requirements of Rule 23 is based solely upon the allegations of the complaint. Id. at 188-189, 539 S.E.2d at 409.

4. Plaintiff Has Failed to Comply With the Demand Requirements of Rule 23(b)(1), SCRCP

In this case, Plaintiff appears to seek the following relief derivatively:

1. A declaration that the Board Defendants do not have unilateral authority to increase the fees for Associated Management Group SC, Inc. (***"AMG"***) (Complaint, ¶ 73, Prayer for Relief)
2. A declaration that previous years' contracts with AMG are null and void since they were never properly authorized by Members, as Plaintiff contends that the bylaws require a majority of members to renew a management contract. (Complaint, ¶ 73, Prayer for relief)
3. A declaration that certain ratifications at the annual meeting on January 10, 2017, are improper and ineffective (Complaint, ¶ 73)
4. A declaration that AMG must return certain funds paid to it by the Association (Complaint, ¶ 73, Prayer for Relief)

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5. A declaration that the board of directors misinterpreted the bylaws concerning filling a vacancy on the board and must fill the vacancy if a member is willing to serve. (Complaint ¶ 73)
6. An order enjoining "any future delegation of duties by the Board Defendants unless and until such delegation is authorized by amendment to the Articles of Incorporation…" (Complaint, ¶ 78)
7. An order enjoining the Board Defendants from paying AMG any amount in excess of the amount specified in the Contract and requiring AMG to disgorge such amounts. (Complaint, ¶¶ 79, 80, Prayer for Relief)
8. An order requiring the Board Defendants to send out a ballot on proposed amendments to the bylaws drafted by Raymond Wedlake (Complaint, ¶ 82)
9. An order requiring the board secretary to assure the accuracy of meeting minutes and to permit members of the Association to provide input on such minutes before transmitting them as final. (Complaint, ¶ 84)
10. An accounting of amounts paid to AMG since inception of its contract (Complaint, Prayer for Relief)
11. A declaration confirming Plaintiff's position on interpretation of the bylaws concerning term limits (Complaint, Prayer for Relief).

Plaintiff has not alleged that he made a proper demand in accordance with the above-listed requirements as to items 1, 2, 3, 6, 9, 10, and 11, therefore, such claims must be dismissed or limited, as set forth more fully below. Further, it should be noted that AMG has reached a proposed settlement agreement with Plaintiff and has put in its notice of resignation/termination as property manager in accordance with the proposed settlement. Such proposed settlement has

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been filed with the Court. Therefore, any issues concerning AMG would now be moot, assuming the settlement is approved by the Court. Specifically, item 4 pertains to relief only requested against AMG. Further, due to the settlement and the fact that AMG has terminated its contract, item 7 is now moot as well.

With respect to item 1, while Plaintiff alleges that he disputes whether the board of directors can unilaterally increase fees paid to AMG, he fails to allege that the named Board Defendants ever made any such unilateral increase or that the named Board Defendants were intending to make any such unilateral increase. Rather, the allegations simply complain about alleged actions of prior boards and alleged conduct of prior directors. Therefore, Plaintiff has failed to allege any wrongful acts of the Board Defendants in this respect or any harm to the corporation due to the acts of the Board Defendants in this respect. Therefore, Plaintiff has failed to allege a demand for relief relating to any actions or proposed actions of the Board Defendants. Further, AMG has reached a proposed settlement agreement with Plaintiff and has put in its notice of resignation/termination as property manager in accordance with that proposed settlement, which has been filed with the Court. Therefore, any issues concerning AMG would now be moot, as set forth further below, and no relief could be provided with respect to whether fees can be unilaterally increased to AMG, as AMG will no longer be the property manager.

With respect to item 2, while Plaintiff alleges that the prior contracts with AMG should be declared null and void, he fails to allege that he has demanded that the Board Defendants, as the current board of directors, nullify such contracts or that they would even have the power to nullify such contracts, since they had been fully performed prior to the Board Defendants' tenure on the board. Further, under S.C. Code Ann. § 33-31-304 (set forth above), an act of the Corporation cannot be enjoined once a third party has acquired rights.

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As to item 3, Plaintiff appears to seek to challenge ratifications that occurred at the last annual meeting on January 10, 2017. While he appears to dispute these ratifications, he fails to allege that he demanded any relief from the Board Defendants as to these ratifications. As set forth in the Affidavit of Kristine Lynch (**Exhibit A**) and as recognized by the allegations of the Complaint,[1] the ratifications occurred prior to the time that the Board Defendants were elected, and were voted upon by the membership and not solely done by the directors of the association. Therefore, Plaintiff apparently seeks to undo ratifications that were not done under the direction of the Board Defendants and that were done by the membership as a whole. As a result, Plaintiff has failed to plead any specific wrongdoing on the part of the Board Defendants with respect to the ratifications, and has also failed to plead any specific demand for relief to the Board Defendants or that the Board Defendants could even grant relief if it had been requested. The Board Defendants simply cannot undo a ratification that was voted upon by the membership and prior to their tenure as directors.

With respect to item 6, Plaintiff generally complains about delegation of duties by the Board Defendants; however, he fails to specify with any degree of particularity the duties that have been improperly delegated, i.e., the specific wrongful acts alleged. Additionally, Plaintiff has not alleged any specific relief as to any specific delegation of duties, other than general allegations that the Board Defendants cannot delegate duties in general. This simply fails to meet the requirements for a demand with specificity, as set forth above.

As to item 9, Plaintiff appears to seek a broad declaration as to corporate policy and procedure relating to the handling of meeting minutes. However, the allegations of alleged wrongdoing in the Complaint appear to relate solely to complaints concerning the minutes

[1] Complaint, ¶¶ 34-35.

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generated from the January 10, 2017, annual meeting. Therefore, Plaintiff has failed to allege any demand outside of relief pertaining to the contents of the January 10, 2017, annual meeting and thus he has failed to make a proper demand for anything other than claims of wrongdoing pertaining to the minutes of the January 10, 2017, annual meeting.

Concerning item 10, Plaintiff makes a demand for an accounting in his the Prayer for Relief at the end of the Complaint; however, there is no allegation in the Complaint that any demand for an accounting has been made or refused. Thus, Plaintiff has failed to plead the demand requirements in accordance with Rule 23.

As to item 11, Plaintiff seeks relief in the form of a declaration relating to Plaintiff's interpretation of the bylaws with respect to term limits. Although Plaintiff alleges that a dispute exists with regard to interpretation of a provision of the bylaws, he has failed to allege any wrongdoing on the part of the Board Defendants or that the Board Defendants could provide him with any relief. Plaintiff has failed to allege that the Board Defendants have violated any provision of the bylaws relating to term limits. In fact, Plaintiff concedes that the Board Defendants were elected on January 10, 2017, and are in their first elected term. (Complaint, ¶ 24). Thus, Plaintiff has failed to allege any wrongdoing on the part of the Board Defendants or damage caused to the Association by the Board Defendants with respect to term limits.

5. *Even if Plaintiff Has Made a Proper Demand Under Rule 23(b)(1), the Claims Must Still Be Dismissed, As The Complaint Fails To Allege Facts with Particularity That Would Create Reasonable Doubt That the Board Defendants Are Entitled To the Presumption of the Business Judgment Rule*

Even if Plaintiff's Complaint is deemed to have alleged a proper demand under Rule 23(b)(1), Plaintiff's Complaint must still be dismissed under Rule 23, SCRCP. If a stockholder or member of a corporation makes a demand which is refused, the board's decision is subject to

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review according to the business judgment rule. See, Carolina First Corp., 343 S.C. at 187, 539 S.E.2d at 402. If a demand is made and rejected, the board rejecting the demand is entitled to the presumption of the business judgment rule unless facts are alleged with particularity creating reasonable doubt that the board is entitled to the benefit of the presumption. Grimes v. Donald, 673 A.2d 1207, 1219 (Del. 1996). If a Complaint fails to include particularized allegations which would raise a reasonable doubt that the board's decision to reject a demand was the product of valid business judgment, the Complaint must be dismissed pursuant to Rule 23. See Id. at 1220.

Pursuant to the business judgment rule, "absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action." Baumann v. Long Cove Club Owners Ass'n, Inc., 380 S.C. 131, 138, 668 S.E.2d 420, 424 (Ct. App. 2008), *quoting* Goddard v. Fairways Dev. Gen. P'ship, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993).

In this case, Plaintiff primarily seeks to substitute his own judgment and opinion for that of the board of directors of the Association, and seeks to usurp the role of and autonomy of the board of directors in contravention of black letter law that the authority to direct the business and affairs of a corporation is delegated to a board of directors and not the members or shareholders. Plaintiff primarily seeks to challenge the prior and current directors' interpretation of the bylaws and substitute his own interpretation instead. The board of directors of a corporation, as the governing body, is afforded discretion and autonomy to manage the affairs of the corporation, including interpreting and applying the bylaws, which is buttressed by the business judgment rule. Plaintiff has simply failed to allege particularized facts showing that the prior and current board of directors' interpretation and application of the bylaws, including any refusal to adopt

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Plaintiff's interpretations, create reasonable doubt that the Board Defendants are entitled to the presumption of the business judgment rule. Absent a showing of bad faith, dishonesty, or incompetence on the part of the Board Defendants, Plaintiff, as a member of the Association, is bound to and must accept the board of directors' interpretation and application of the bylaws. Plaintiff has simply failed to allege particularized facts in this case that would create a doubt as to the presumption of the business judgment rule. For example, Plaintiff seeks to challenge the prior board of directors' interpretation of the bylaws that only new management contracts require membership approval, but automatic renewals of a management contract do not. While Plaintiff may disagree with the board of directors' interpretation, he must accept the decision and interpretation of the board of directors in the exercise of their business judgment as the governing body of the Association. Plaintiff simply cannot override, usurp, or question the board of directors' discretion and business judgment in this respect and the Complaint fails to allege particularized facts creating reasonable doubt as to the application of the business judgment rule. The same rationale would also apply to the other allegations of the complaint, including but not limited to Plaintiff disputing payments made to AMG based on the board's interpretation of the contract and the bylaws, Plaintiff questioning any interpretation of the term limit provision in the bylaws, Plaintiff demanding that an amendment he drafted be endorsed by the Board and put to a vote of the membership at the request of the Board, Plaintiff challenging alleged delegation of duties, and that Plaintiff's opinion on the proper contents of meeting minutes should override that of the board's.

6. Plaintiff's Complaint Must Be Dismissed Pursuant to Rule 23(b)(1) Because He Does Not Fairly and Adequately Represent the Members of the Association.

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Rule 23(b)(1), SCRCP, provides 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." Thus, if Plaintiff does not fairly and adequately represent the interests of the members, he would lack standing to pursue this action and it must be dismissed. Lack of standing affects subject matter jurisdiction. See, Lennon v. South Carolina Coastal Council, 330 S.C. 414, 417-418, 498 S.E.2d 906, 907-908 (Ct. App. 1998). Affidavits and other evidence outside of the pleadings may be used and considered in support of a motion to dismiss based on lack of jurisdiction without converting the motion to dismiss into one for summary judgment. Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999).

In this case, it is clear that Plaintiff does not fairly and adequately represent the interests of the Association. First, in response to the Complaint, the membership of the Association has pursued an action by written consent pursuant to S.C. Code Ann. § 33-31-704, which allows corporate action to be approved and taken without a meeting, upon written consent of members holding at least 80% of the voting power of the Association. In this case, 53 out of the 66 lots have signed the action by written consent so far, which is at least 80% of the voting power of the Association. A copy of the corporate records of the Association relating to the action by written consent are attached as **Exhibit B** and are incorporated herein by reference. The action by written consent expresses the position of the Association and is an official corporate action of the Association, by and through the members, that (1) this lawsuit and Raymond Wedlake via the lawsuit do not fairly and adequately represent the interests of the members of the Association, (2) that the Association opposes the lawsuit, and (3) that the lawsuit shall be dismissed on behalf of the Association and its members. This action by written consent is clear, unequivocal, and

undeniable evidence that the membership does not support this lawsuit and that Raymond Wedlake does not fairly and adequately represent their interests. Further, the action by written consent will become a binding official corporate action.

Further, as acknowledged in Plaintiff's Complaint, the members of the Association voted to ratify many of the issues alleged in the Complaint. As set forth in the Affidavit of Kristine Lynch (**Exhibit A**), members representing 46 Lots appeared in person or by proxy at the annual meeting held on January 10, 2017. Due to complaints raised by Raymond Wedlake prior to the annual meeting, a vote of the members was held to ratify several matters pertaining to the concerns raised by Raymond Wedlake in an effort to end any further disputes and questions. (Aff. of Kristine Lynch – **Exhibit A**). The membership passed a motion to ratify the validity of the then-acting board of directors and the prior boards of directors, including their terms of service. (Aff. of Kristine Lynch – **Exhibit A**). The motion passed by a vote of 42 votes in favor and 4 votes against. (Aff. of Kristine Lynch – **Exhibit A**). The membership also passed a motion to ratify and approve all prior contracts with AMG, including all contract renewals by a vote of 41 votes in favor and 5 votes against. (Aff. of Kristine Lynch – **Exhibit A**). The membership also passed a motion to authorize renewal of AMG's contract for another year by a vote of 41 votes in favor and 5 votes against. (Aff. of Kristine Lynch – **Exhibit A**). Yet, despite the ratifications done by the membership itself, a clear indicia of their interest, Plaintiff still continues to raise the same or similar issues to those matters in this lawsuit, contrary to the expressed interest in the membership. Further, Plaintiff apparently seeks to undo the ratifications that were overwhelmingly approved by the membership that he purports to represent, which is clearly contrary to their interests.

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Further, as set forth in Plaintiff's Complaint, including Exhibits I, J, and K to the Complaint, Plaintiff raised many issues in advance of the January 10, 2017, annual meeting that are the same or similar to those alleged in this lawsuit. (See also, Supplemental Aff. of Benjamin Acord – **Exhibit C**). Plaintiff also ran for election to the board of directors at the annual meeting held on January 10, 2017, and his campaign platform included some of the same or similar issues as raised in this lawsuit. (Supplemental Aff. of Benjamin Acord – **Exhibit C**). However, Plaintiff lost a landslide election, only receiving 5 votes. (Supplemental Aff. of Benjamin Acord – **Exhibit C**). By contrast, Benjamin Acord, William Craigo, Denis Esteve, Brian James, and Stacey Krause were elected, receiving 43, 42, 41, 41, and 41 votes respectively. (Supplemental Aff. of Benjamin Acord – **Exhibit C**). The landslide election loss clearly evidences that Raymond Wedlake's views and tactics are not supported by the community. This lawsuit simply amounts to an improper attempt to turn political matters into a legal dispute, as Plaintiff cannot garner sufficient political support for his views.

II. PURSUANT TO S.C. CODE ANN. § 33-31-304, ANY CLAIMS SEEKING TO SET ASIDE OR NULLIFY ANY MANAGEMENT CONTRACTS WITH AMG MUST BE DISMISSED PURSUANT TO RULE 12(B)(6)

Plaintiff's Complaint, in part, seeks to void and invalidate prior contracts or contract renewals with AMG, including a claim to have AMG refund certain alleged overpayments. The Board Defendants contend that these allegations are moot given the proposed settlement between Plaintiff and AMG, which is filed as a matter of record with the Court. Further, as set forth more fully below, the Board Defendants contend that such issues are also moot due to the ratifications that took place at the last annual meeting. Therefore, such claims should be dismissed on the basis of mootness. To the extent that the issues are not deemed to be moot, such claims are in contravention of S.C. Code § 33-31-304, which is set forth fully above. The plain language of

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section 33-31-304 and the official comments thereto make clear that if a corporation has already entered into or completed a transaction that is alleged to be ultra vires, the alleged ultra vires action cannot be enjoined or set aside and would still be enforceable by the third party.[2] Based on the foregoing, Plaintiff has failed to state a cause of action or claim for which relief can be granted as to setting aside prior contracts with AMG and payments made pursuant thereto, in accordance with Rule 12(b)(6), SCRCP. Consequently, such claims must be dismissed.

III. PLAINTIFF'S CLAIMS RELATING TO THOSE ISSUES RATIFIED AT THE LAST ANNUAL MEETING MUST BE DISMISSED PURSUANT TO RULE 12(B)(6)

Plaintiff's Complaint recognizes that several of the issues raised in the Complaint were ratified at the last annual meeting. (See, e.g. Complaint, ¶¶ 34, 35) The Board Defendants were not in office at the time that the ratifications were voted upon, and the membership itself voted upon the ratifications as alleged in the Complaint. (See Complaint, ¶¶ 34, 35)[3]. Plaintiff's action against the current board of directors cannot set aside the ratifications that were voted upon by the membership as a whole and that also occurred prior to their terms as directors and therefore, Plaintiff's Complaint fails to state a claim for relief in this respect. Likewise, all of the members present in person or by proxy at the last annual meeting would be necessary parties to set aside an action that they voted upon and Plaintiff has failed to name necessary parties pursuant to Rule 12(b)(7). Based on the foregoing, the requested relief cannot be granted and the claims relating to setting aside the ratifications and challenging the actions that were ratified must be dismissed.

[2] The official comments note that the purpose of Section 33-31-304 was to do away with the ultra vires doctrine and also note that if a corporation has entered into or completed an ultra vires transaction, a third party who had acquired rights could still enforce the ultra vires transaction even though the transaction violated the corporation's governing documents.

[3] Indicating that it was the 2016 Board that permitted the membership vote on the ratifications.

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IV. PLAINTIFF'S CLAIMS RELATING TO CONDUCT OF PERSONS OTHER THAN THE BOARD DEFENDANTS MUST BE DISMISSED PURSUANT TO RULE 12(B)(6)

Plaintiff's Complaint makes allegations concerning the conduct of the 2016 Board at the last annual meeting as well as conduct of prior board members and events that occurred prior to the Board Defendants taking office. Likewise, Plaintiff's Complaint makes allegations relating to and seeking relief concerning ratifications that were voted upon by the membership and not solely done by or at the direction of the Board Defendants. Plaintiff has not alleged that the Board Defendants were directors at the time of the ratifications. Plaintiff simply cannot seek relief or redress through a suit against the Board Defendants for actions that they didn't perform, thus, as to those claims, Plaintiff has failed to state a claim for relief pursuant to Rule 12(b)(6), SCRCP and has failed to name necessary parties pursuant to Rule 12(b)(7).

V. SEVERAL ASPECTS OF PLAINTIFF'S COMPLAINT FAIL TO ALLEGE A JUSTICIABLE CONTROVERSY AND SUCH PORTIONS OF THE COMPLAINT MUST BE DISMISSED

Several of Plaintiff's claims for relief fail to allege a justiciable controversy and therefore, the Court lacks subject matter jurisdiction to hear those matters and those matters should be dismissed pursuant to Rule 12(b)(1) as well as Rule 12(b)(6).

> Before any action can be maintained, there must exist a justiciable controversy. *Midland Guardian Co. v. Thacker,* 280 S.C. 563, 314 S.E.2d 26 (Ct.App.), *cert. denied,* (1984). 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. *Guimarin & Doan, Inc. v. Georgetown Textile & Mfg. Co.,* 249 S.C. 561, 155 S.E.2d 618 (1967). This Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy. *Jones v. Dillon–Marion Human Resources Dev. Comm'n,* 277 S.C. 533, 291 S.E.2d 195 (1982). Mootness has been defined as follows: "A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual

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relief." *Mathis v. South Carolina State Highway Dep't,* 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973).

Byrd v. Irmo High Sch., 321 S.C. 426, 430–31, 468 S.E.2d 861, 864 (1996).

Many of the issues alleged by Plaintiff are moot and/or cannot be redressed by an action against these Defendants. For example, Plaintiff appears to challenge prior contract renewals that have been fully performed as well as actions and matters clearly prior to the Board Defendants' terms as directors. Further, some claims are unripe as to these Defendants, such as the requested declaration that the Board Defendants (the current board of directors) do not have unilateral authority to increase management company fees, when there is no allegation that these defendants have made such a unilateral increase. By way of further example, Plaintiff appears to seek redress over annual meeting minutes that are not yet final and have not been placed before the membership for approval and adoption. Additionally, there is no allegation that these Defendants have served terms in excess of five years, therefore, such a claim against them is unripe. Further, to the extent such claim involves terms of prior directors, these Defendants are not proper parties for such claims and such claims would be moot in any event. Additionally, the proposed settlement with AMG, which is filed as a matter of record with the Court, makes moot any issues involving the contract with AMG. Further, since AMG will no longer be the management company pursuant to the proposed settlement agreement, any issues concerning delegation of duties to AMG would be rendered moot.

VI. PLAINTIFF FAILS TO ALLEGE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION RELATING TO DELEGATION OF DUTIES TO AMG AND SUCH CLAIMS MUST BE DISMISSED PURSUANT TO RULES 12(B)(6) AND 12(B)(1)

Plaintiff's Complaint fails to specify exactly what duties and functions have been allegedly improperly delegated and whether it was the Board Defendants or prior boards' that

made the allegedly improper delegation. Further, to the extent such claims center on allegedly improperly delegating duties to AMG, the proposed settlement would moot such claims, as AMG will no longer be the management company for the Association pursuant to the terms of the proposed settlement agreement. Based on the foregoing, Plaintiff's claims for improper delegation of duties should be dismissed pursuant to Rule 12(b)(6) and Rule 12(b)(1).

VII. PLAINTIFF'S COMPLAINT FAILS TO STATE A LEGALLY COGNIZABLE CLAIM REGARDING REQUIRING THE BOARD TO SEND OUT BALLOTS TO VOTE ON A PROPOSED BYLAWS AMENDMENT DRAFTED BY PLAINTIFF

Plaintiff's Complaint purports to seek to require the Board Defendants to send out a ballot for the members to vote upon an amendment drafted and proposed by Plaintiff concerning alternative dispute resolution. (See, Complaint ¶ 82). There is simply no legal theory or basis for the requested relief and Plaintiff seeks to usurp the role of the Board of Directors and substitute his judgment for their own. Both the bylaws alleged by Plaintiff to be controlling as well as the South Carolina Nonprofit Corporation Act provide Plaintiff with a remedy in this situation, which is to garner the requisite number members to sign written demands to force a special meeting to be called to vote on his proposed amendment. S.C. Code Ann. § 33-31-702;[4] Bylaws, Art. IV.[5] Plaintiff has failed to pursue or exhaust the proper remedy available to him under the Nonprofit Corporation Act and the Bylaws Plaintiff alleges to be controlling. It is simply improper for Plaintiff to try to circumvent the proper remedy through this legal action. If he cannot garner the requisite amount of support to force a special meeting for a vote on his proposed amendment, then it would seem that such an amendment would have no chance of succeeding in any event. Based on the foregoing, Plaintiff's remedy is to garner the requisite

[4] Allowing members to force a special meeting if the holders of at least five percent of the voting power make written demand for a special meeting.
[5] Stating that special meetings of the members may be called upon written request of one-fourth of the members.

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written demands for a special meeting to force a special meeting for a vote on his proposed amendment as opposed to suing the Current Board to try to force them send out a ballot on his proposed amendment. Consequently, Plaintiff has no legally cognizable claim to enjoin the board of directors to send out a ballot on his proposed amendment and such claim must be dismissed as failing to state a cause of action pursuant to Rule 12(b)(6).

VIII. PLAINTIFF LACKS STANDING TO BRING A CLAIM RELATING TO FILLING THE VACANCY ON THE BOARD OF DIRECTORS AND THUS THE CLAIM MUST BE DISMISSED PURSUANT TO RULE 12(B)(1) AND 12(B)(6)

As set forth above, since standing is a jurisdictional issue, evidence outside of the complaint may be considered without turning the motion into one for summary judgment. The vacancy on the board was created when Stacey Krause resigned her position on May 8, 2017. (Aff. of Stacey Krause – **Exhibit D**). Stacey Krause resigned her position due to what she felt to be excessive and harassing communications from Plaintiff, Raymond Wedlake. (Aff. of Stacey Krause – **Exhibit D**). Plaintiff now seeks to complain about a vacancy on the board which he created. Plaintiff should not be allowed to complain about a vacancy he caused, and has unclean hands in that respect. Therefore, he should be deemed to lack standing to assert claims relating to a vacancy on the board of directors that would not exist, but for his own actions. Thus, such claim should be dismissed pursuant to Rule 12(b)(1) and Rule 12(b)(6).

IX. PLAINTIFF HAS FAILED TO PROPERLY SERVE THE BOARD DEFENDANTS WITH THE SUMMONS AND COMPLAINT, THEREFORE, DISMISSAL IS APPROPRIATE PURSUANT TO RULE 12(B)(2) AND RULE 12(B)(5)

Plaintiff did not serve the Board Defendants with an exact filed copy of the Summons and Complaint. (Affs. of Benjamin Acord, William Craigo, Denis Esteve, and Brian James – **Exhibits E, F, G, H**). Instead, at a minimum, Plaintiff changed the caption to insert the case

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number and the pleadings served to not include the filing stamp; however, a line by line analysis has not been done to determine whether any other discrepancies exist between what was filed and what was served. Board Defendants contend that service was improper, as they were not served with a filed copy of the Summons and Complaint,[6] thus dismissal is appropriate pursuant to Rule 12(b)(2) and Rule 12(b)(5).

X. THE RECORDS REQUEST CLAIM MUST BE DISMISSED AS TO THE BOARD DEFENDANTS AND IF NOT DISMISSED, MADE MORE DEFINITE AND CERTAIN

Plaintiff's Complaint makes allegations seeking to be provided with corporate records of the Association. However, Plaintiff has asserted the claim against the Board Defendants, as opposed naming the corporation itself. S.C. Code Ann. § 33-31-1604 governs actions relating to court ordered inspection of the corporate records for a nonprofit corporation. Section 33-31-1604 is couched in terms of relief against the corporation itself, as opposed to the directors of the corporation, indicating that the claim must be made against the corporation itself as opposed to the directors. Consequently, the Board Defendants assert that they are not the proper party to the records request claim and the claim must be dismissed against them. To the extent that the records request claim is not dismissed, the Board Defendants request that the Complaint be made more definite and certain as to what records Plaintiff is contending that have been requested, but not yet provided.

XI. MOTION TO STRIKE PURSUANT TO RULE 12(F), SCRCP

If this action is not dismissed in its entirety, the Board Defendants move to strike pursuant to Rule 12(f), SCRCP. Pursuant to Rule 12(f), SCRCP, the Court may "order stricken

[6] Rule 4(a), SCRCP requires copies of the original summons to be served upon each defendant.

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from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." Further, Rule 8, SCRCP requires a Complaint to contain a short and plain statement of facts showing that the pleader is entitled to relief, which "requires a litigant to plead ultimate facts which will be proved at trial, not evidence which will be used to prove those facts." Clark v. Clark, 293 S.C. 415, 416, 361 S.E.2d 328, 328 (1987). See also, RoTec Services, Inc. v. Encompass Services, Inc., 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004) (stating that a pleading must contain "ultimate facts" rather than "evidentiary facts" to state a cause of action). "Ultimate facts fall somewhere between the verbosity of evidentiary facts and the sparsity of 'legal conclusions'". Id. "Evidentiary matter need not, and should not, be pleaded." Johnson v. Abney Mills, 219 S.C. 231, 237, 64 S.E.2d 641, 643 (1951).

In this case, Plaintiff's Complaint contains immaterial and impertinent allegations relating actions and conduct of persons other than the Board Defendants, such as actions and conduct of the prior board members, and conduct predating the Board Defendants' terms as directors, as set forth above. The Complaint also includes allegations that are immaterial to any relief sought. For example, Plaintiff alleges that Benjamin Acord misstated the number and content of emails sent by Plaintiff and that Plaintiff's dignity, integrity and reputation have been damaged. (Complaint, ¶¶ 64, 65). However, Plaintiff asserts no cause of action relating to those allegations and in fact asserts that he is not claiming any monetary damages in his affidavit filed with the Court on December 1, 2017. All such immaterial and impertinent allegations should be stricken.

Further, the exhibits to Plaintiff's Complaint contain numerous improper evidentiary matters, unofficial/re-typed versions of records, impertinent matters, excerpted documents, and other inadmissible matters. For example, the exhibits contain numerous emails which are simply

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evidentiary and may be potentially objectionable as to admissibility. Additionally, many of the emails are simply excerpts and do not appear to necessarily be the emails in original form, posing further evidentiary issues. Plaintiff is required to plead only ultimate facts and it is improper to include and attach evidentiary facts and matters to the Complaint. Further, several of the Exhibits to the Complaint do not appear to be the original or official versions or records and appear to be versions that have been re-typed by Plaintiff or someone on his behalf. For example, Exhibit A to the Complaint appears to be a retyped version of what Plaintiff asserts to be the bylaws. By way of further example, Exhibit D to the Complaint appears to be a re-typed version of the Management Agreement whereby Plaintiff or someone on his behalf has inserted "/s" signatures in place of the actual signatures contained on the true and accurate copy of the Management Agreement. As another example, Exhibit F to the Complaint appears to be some re-typed version of the Articles of Incorporation for the Association, but it has been reformatted and "s/" signatures have been substituted for the actual signatures contained in the original documents, including the signature of the Secretary of State contained on the filing stamp. The original records will be provided for inspection at the hearing for comparison. Also, it appears that some of the other exhibits, including correspondence may also be re-typed and/or reformatted versions as well. In addition to any improper evidentiary matter, any modified documents should be stricken as well. Further, certain exhibits, including, but not limited to Exhibit W, appear to be irrelevant and impertinent to the claims alleged and should be stricken as well.

XII. MOTION FOR MORE DEFINITE STATEMENT PURSUANT TO RULE 12(E), SCRCP

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If this action is not dismissed in its entirety, the Board Defendants also move to make Plaintiff's Complaint more definite and certain pursuant to Rule 12(e). Specifically, the Board Defendants request that the Complaint be made more definite and certain to specify what, if any, corporate records Plaintiff contends have been requested, but not yet provided. Further, the Board Defendants request that the Complaint be made more definite and certain as to what, if any, allegations Plaintiff intends to pursue in light of the proposed settlement with AMG. Finally, the Board Defendants request that the Complaint be made more definite and certain as to whether Plaintiff is seeking any monetary damages or compensation, including an award of costs and attorney's fees. The Prayer for Relief in the Complaint indicates that Plaintiff is seeking an award of "nominal damages" and "reasonable costs and expenses of this action including reasonable attorney's fees, if paid for by WHOA insurance". However, Plaintiff also filed affidavits on December 1, 2017, stating that he is not seeking monetary damages.

Respectfully submitted,

s/ Ely O. Grote
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Attorney for Defendants

Columbia, South Carolina
December 30, 2017

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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)** **vs.** 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., **Defendants**	**IN THE COURT OF COMMON PLEAS** **THIRTEENTH JUDICIAL CIRCUIT** **Civil Action No.** **2017-CP-23-06301** **MEMORANDUM IN RESPONSE TO DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND ALTERNATIVELY FOR A MORE DEFINITE STATEMENT MADE BY BENJAMIN ACORD, WILLIAM CRAIGO, DENIS ESTEVE, AND BRIAN JAMES**

Plaintiff, by and through his undersigned legal counsel, Grant H. Gibson, Esq., hereby submits the following memorandum in response to Defendants' Memorandum in Support of Motion to Dismiss and is in response to the e-filing made by Ely Grote, Esq. which was noticed as accepted on Tuesday morning, January 2, 2018 at approximately 8:30 AM. Mr. Grote, counsel for Defendant, did send to Plaintiff's counsel his Memorandum in Support, and exhibits at Plaintiff Counsel's request, which was received by email Sunday afternoon of our long weekend. This brief Memorandum incorporates the Complaint, and Exhibits thereto, along with Plaintiff's Petition in Opposition to the Motion to Dismiss.

Recognizing the Court's desire for clarity and brevity, and our own severe time constraints, we would like to highlight the following for the Court:

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A. References to Association Management Group, SC, Inc. (AMG) are Moot – Much of Mr. Grote's Memorandum is devoted to the Defendant with which the parties have settled, AMG; thus, all such matters are moot (assuming the Court approves such Settlement);

B. Redundancy - Much of Defense Counsel's Memorandum in Support is repetitious with his prior Motion to Dismiss, other than his inclusion of a purported Written Consent (Consent) and Affidavits from the Board Defendants.

C. Objection to Written Consent- Court Should Exclude - The purported Consent is not effective technically since it was not sent out as required to those that did not vote (20%), as required by statute (S.C. Code 33-31-704(d) requires written notice to all members who did not sign and member approval is effective ten days from such notice). In addition, it reflects a door to door solicitation by the party to the action, the party in authority, the Board Defendants themselves (Affidavit), without apparent clarification as to what was stated during the solicitation, what was asked by Members, and why the other 20% did not sign as well. In addition, there is no showing that the language is designed to solicit signatures, and, of course, the reason for the action (interpretation and enforcement of the by-laws) or the nature of the action, being declaratory, was explained. It is not authenticated, not in verified form, by oath or otherwise (S.C. Rules of Evidence, Rule 901). Finally, it must be excluded since it constitutes Hearsay, not subject to an exception, an out of court statement, in this case statements, being proffered to prove the truth of the matter asserted, i.e., that since they have 80% Plaintiff cannot properly represent the Association (SC Rules of Evidence, Rule 802). While we object to its entry into evidence and move to have it excluded, there is a more fundamental point.

D. The Heart of the Matter – Rule 23(b)(i): The law is clear, and Defendant's counsel is in error, when he states that the representative must fairly and adequately represent all members of

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the Association. If that were the case then a minority shareholder/member would never have standing. In the 2008 case of *Cattano v. Bragg;* the Virginia Supreme Court recognized the right of an individual shareholder to file a derivative suit (along with an individual suit), finding the shareholder could fairly and adequately represent the interest of the corporation; despite apparent animosity in that case since such animosity is typical in derivative actions (727 S.E. 2d 625; 283 V. 638 (Sup. Ct. Va. 2012)). In so finding, after citing numerous cases in support of a single shareholder having standing to sue derivatively in support, the Court adopted the factors used *in Jennings v. Kay Jennings Family Limited Partnership,* 275 Va. 594 (2008), taking aim in particular at the reason for the derivative suit (return of funds), which, as here was for protection of Members, which the court found was very appropriate. (Id). It focused its attention "on whether the totality of the circumstances suggest that the plaintiff will vigorously pursue the suit and that the remedy sought is in the interests of the corporation." (Cattano at 627). Defense counsel is, of course. correct that the statute was designed to assure filing a derivative action was not taken lightly, thus requiring the five elements of (i) that the Plaintiff be a member at the time the issue(s) arose (Complaint); (ii) specific demand(s) must be made (or explanation why it would be futile) enumeration of the steps taken to have such demands met (Complaint - numerous specific examples); (iii) Complaint must be Verified, and. (iv) it 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." (emphasis added). As noted, although a minority, Plaintiff does adequately and jealously represent his constituents, and has meet all the requirements for filing derivatively (Complaint).

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E. Rule 23, S.C.R.C.P. is modeled after Rule 23, Fed.R.Civ.P., and therefore the Federal Standard that cases arising under such should be given "liberal rather than a restrictive interpretation" has been applied (See, Eisen v. Carlisle & Jacquelin, 391, F.2d 555, 563 (2d Cir. 1968). Rule 23 supersedes and supplants prior case law. Thus, reliance by counsel for Defendant on cases decided in 1888 and 1881 are misguided. The cases that have denied Plaintiff derivative status appear, in most cases, to be based on a failure to make a demand initially (*Carolina First Corporation, et. al., v. Whittle, Jr.*, et. al., 343 S.C. 176, 539 S.E. 402 (SC Ct. App., Oct. 30, 2000); *Allen Patterson, et. al, v. Herb Witter, et. al.*, 418 S.C. 66, 791 S.E. 2d 294 (S.C. Ct. App., Oct. 27, 2016). In our case, demands were explicitly and repeatedly made, without response in most cases (See, Affidavit) or by refusing to follow-up on demands. For example, when Plaintiff advised Mr. Acord, the President of the Board, that the By-Laws require a vacancy to be filled, he took no action, such as seeking candidates from the members or offering the position to Plaintiff who was eligible and willing to serve at the time (Affidavit); and, in a similar instance, when Plaintiff noted that the By-Laws do not permit a member of the Board to fill two officer positions, and that the By-Laws prevailed over the Nonprofit Corporation Act (NPCA), explicitly as stated per the statute, Mr. Acord simply said the NPCA did not require more than three Directors, without addressing the issue (Affidavit). When asked to confirm that the five-year term per the By-Laws and NPCA controlled and that the Board would not seek to extend beyond five years as the prior Board had done, there was no response (See, Complaint).

F. Adequately Represent - In terms of "adequately represent", counsel for Plaintiff has 45 years of active legal practice, starting on Wall Street, as in-house General Counsel, and more recently including multiple years serving as co-counsel in a class action suit. He is a former Comments

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Editor of the Law Review, has passed five Bar Exams, is a former Certified Mediator (SC) and has advised several homeowner associations and served on several Homeowner Association Boards as well. Currently he is a solo practitioner, assisting small companies and individuals. Plaintiff, Mr. Wedlake has shown he has the determination, and the personal interest necessary to carry and maintain such action for the benefit of the Woodington Homeowners' Association (WHOA). In addition, Plaintiff's interests, which are to promote the best interests of the WHOA, are aligned with those of all the Members. While there have been disputes that have arisen between Defendants and Plaintiff over Board Governance and By-Laws issues, he holds no animus toward them (Affidavit). In addition, Plaintiff is intimately familiar with the litigation, and with the issues, is a real party in interest, and is fully committed to pursuing the case in the best interests of the WHOA (Affidavit).

G. Fairly Represent: Regarding "fairly represent," prior to the past two boards, Plaintiff, Mr. Wedlake was an active, elected member of two Board of the WHOA, and also was an active member of such Boards' By-Laws Committee. (Affidavit). The Members of such Boards were dedicated to transparency, to open, noticed meetings, to published and posted minutes and, to abidance with the provisions of the By-Laws (and to proposing By-Law changes to Members where appropriate) (Affidavit). Thus, there is a group, like Plaintiff, that believes that the By-laws are governing documents which the Board must follow (Affidavit), absent preemption by statute.

Thus, the issue is not whether all or even a majority of the members may not wish to pursue interpretation and enforcement of the By-Laws (assuming they are aware), but whether Plaintiff can fairly represent those that do. He received several votes at the last Annual Meeting election of Directors, on his platform of reform (Affidavit).

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Failure of the Court to permit this action to proceed would mean that the contract between members and their Association cannot be enforced by like-minded members.

H. Defense Counsel's Reliance on Application of the Business Judgment Rule is Misguided

We recognize that the protections afforded under 23(b) arise in large measure to protect Board Members' ability to apply their business judgement in cases where they have discretion. However, where, as here it is not a matter of discretion, and not a matter of exercise of "business judgement," the Business Judgement Rule has no bearing. **This is not a matter of discretion; it is not whether or not to make an acquisition or buy-back stock. The Board does not have discretion as to whether or not to abide by the By-Laws, the contract entered into by the Members with the Association.** Thus, per Exhibit 1 to the Complaint, the By-laws provide that the Board shall "[f]ill 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." (Duties - Article VIII, Section 2f). This is not a matter of business judgment, nor are the other examples provided. The Board has been made aware specifically, and unfortunately repeatedly due to inaction, of the clear requirements of such provisions and **has elected, knowingly, to ignore their duties** (Complaint, Affidavit). Similarly, in cases of ambiguity, resulting in a need for interpretation, it is not a "business judgement" issue but one of analysis, perhaps legal advice and ultimately for the Court.

I. Basis and Reason for Bringing Declaratory Judgment Action - After all the efforts at dialogue, at mediation, and even petitioning the office of the AG for an advisory opinion, this is our last resort (as we understand it should be) – and it is being done for the benefit of the members of the WHOA, to get clarity for current and more importantly at this point, for future Boards; to enforce the By-Laws which protect the homeowners, rather than have them enforced,

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if at all, in an ad hoc manner; and it is brought for protection of all, including those that elected not to sign the Written Consent.

J. Good Faith - Our efforts, and clear evidence of our good faith include:

(i) We offered Mediation three times – proposing to use Upstate Mediation Center, per Complaint Exhibits O, P, and Q, and were refused or no response resulted in all three cases (Affidavit)

(ii) Our demands were basically requests for agreement on points, such as confirmation that all agreed that the By-Laws was a controlling document unless superseded by statute and the need for By-Laws Amendments, and that due to disputes judicial interpretation of the By-Laws was required, such as the need to appoint a Director if a vacancy is open;

(iii) Such requests only took the tone of demands when there was either no response or refusal to act in conformity with the By-Laws, as with the former Secretary of the Board (Affidavit),

(iv) Plaintiff provided a copy of the draft Complaint and notice of pending filing and asked again for mediation (response was that they would just forward it to their insurance carrier when received and we advised them that they may not be covered since our case is a Declaratory Judgment Action (Affidavit and Exhibit CS3, where CS denotes Court Summary);

(v) Provided Board Governance materials on open meetings, the need for transparency, minutes; written by such esteemed Board Governance experts as Jim Slaughter, Esq.

(vi) No "Impasse" – we in fact, offered to keep mediation going and advised that we would pay costs for both sides (Affidavit);

(vii) As noted, we asked the Board in writing to join in this action on more than one occasion, as it is not adversarial but simply declaratory and for benefit of the WHOA (Affidavit);

(viii) We did not ask for legal fees unless covered by insurance (Complaint); and,

(ix) Also as noted, we ultimately sought guidance from the SC Office of the Attorney General, hoping to resolve the matter ultimately, short of this action.

K. Issue of Service – In the event that the original Summons and Complaint did not have the electronic blue notation, we ask the Court's indulgence and note that Plaintiff, in the Verified Complaint, confirmed it was identical to what we filed with the Court. In addition, at this stage, with Defense Counsel seeking the AMG dismissal, and preparing the documents therefore, and after a continuance and mediation we would suggest that such issue has been waived.

L. Plaintiff's Actions Individually – Defense Counsel's statement that the only basis for Plaintiff to seek redress individually is the failure of the Association to provide financial information is incorrect. Plaintiff sought to enforce the requirement in the By-Laws that the Board fill vacancies and offered himself, as an eligible member willing to serve, yet was denied the opportunity, and thus could not address the issues of transparency, open meetings, minutes, and proper governance that he and others similarly situated seek (Affidavit, Complaint). The law is clear, Shareholders that seek to pursue an action for loss to the corporation must do so through a derivative suit. *Brown v. Steward*, 557 N.E.2d 676, 684 (S.C. Ct. App. 2001). However, if a shareholder suffers an injury that is "separate and distinct from that of the corporation," he or she may bring an individual action. (Id.)

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CONCLUSION

Accordingly, for all these reasons and as set forth in Plaintiff's Complaint, the Petition in Opposition, and related Exhibits and Affidavits, we respectfully request that the Court DENY Defendants' Motion to Dismiss or in the Alternative for a More Definite Statement.

Respectfully Submitted this 3rd day of January 2018.

Grant H. Gibson, Esq.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 13TH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C/A No.: 2017-CP-23-6301
	)	
Raymond A. Wedlake, individually and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc.,	)	
Plaintiff(s),	)	**STIPULATION OF ISSUES FOR TRIAL**
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).	)	

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The parties hereto, by and through their undersigned counsel, hereby stipulate and agree to the following issues for trial and that the trial shall be limited to such issues:

1. Plaintiff seeks a declaratory judgment and declaratory relief as follows:
   a. A declaration that the Board of the Woodington Homeowners' Association, Inc. (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.

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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 Benjamin Acord, William Craigo, Denis Esteve, and Brian James (collectively, ***"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.

The e-filer affirmatively states that he has obtained the required consent pursuant to Rule 5 of the E-filing Rules to use the electronic signature of Grant H. Gibson.

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Columbia, South Carolina
March 29, 2018

STATE OF SOUTH CAROLINA	)	
	)	**IN EQUITY COURT**
COUNTY OF GREENVILLE	)	
	)	**THIRTEENTH JUDICIAL CIRCUIT**
Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc.	)	Civil Action No.
	)	**2017-CP-23-06301**
Plaintiff(s)	)	
	)	
vs.	)	
	)	**MOTION IN LIMINE &**
Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of the Woodington Homeowners' Association, Inc.	)	**ARGUMENTS IN SUPPORT**
	)	
Defendants	)	

Plaintiff, Raymond Wedlake, by and through his undersigned counsel, files this **Motion in Limine** and moves this Court for an Order prohibiting counsel for the Defense from making any comment, directly or indirectly, in any manner whatsoever, including in his opening or closing statements, or in questions to witnesses, whether called by Defense Counsel or Plaintiff's counsel, concerning any of the matters set forth:

1. Plaintiff requests that Defense counsel first approach the Bench and obtain a ruling of the Court outside the presence and hearing of all non-court personnel, in regard to any alleged theory of such matters contained herein, at trial.

2. Plaintiff moves the Court for an Order directing Defense counsel to inform any and all defense witnesses of the Court order regarding these matters, until and unless, defense counsel has obtained a ruling in compliance with this order that such matters would be admissible as evidence in this case.

3. Plaintiff moves the Court to preclude any matters unrelated to the Stipulated Issues set forth in the Pre-Trail Briefs of counsel in this case; i.e., we would request the Court to limit testimony to matters relating to interpretation or adherence by the Board to the By-Laws of the Woodington Homeowners' Association, Inc. Specifically, Defense counsel in his Pre-Trial Brief states that testimony of certain unidentified witnesses would relate to a broad range of irrelevant topics, far afield of the Stipulated Issues. Such issues to include: testifying "as to the actions and conduct of Plaintiff, whether Plaintiff adequately represents the interests of the members of the community, their actions as directors, the corporate records of the Association, the operations and affairs of the Association, the facts and circumstances surrounding this suit, and their positions in this suit". Neither the "actions and conduct of the Plaintiff" nor of the Board Defendants is germane to the issue of interpretation of the By-Laws or their enforcement. The actions of the Board similarly are irrelevant to the issues raised. Similarly, Plaintiff's counsel is at a loss to understand the relevance of "corporate records" as they relate to the issues Stipulated, or as to how the Board witnesses' "positions" regarding the request for a Declaratory Judgment is germane, any more than "the operation and affairs of the Association." To permit such irrelevant information in testimony would only frustrate the administration of justice and the pursuit of equity for Plaintiff, resulting in disruption of the proceedings with otherwise unnecessary objections by counsel for Plaintiff.

4. Plaintiff moves to exclude any witnesses not specifically named (which specificity was requested by the Court) in Defense Counsel's Pre-Trail Brief. The statement by Defense Counsel that he may call all or certain members of the Board does not provide sufficient information for Plaintiff counsel to prepare. More specifically, Defense counsel states: "It is anticipated that some or all of them may testify ...".

5. Plaintiff further moves this Court to advise Defense Counsel to assure his witnesses refrain from any disparaging or defamatory statements concerning Plaintiff, to assure civility at Trial. Such request is based upon prior efforts by the Board members to paint Plaintiff in a false light, as supported by the Pre-Trial Brief, Affidavits and Exhibits.

6. Plaintiff further moves to preclude any statements regarding whether or not Plaintiff "fairly and adequately" represents the Members of the WHOA that are not limited to Plaintiff "fairly and adequately" representing Members "similarly situated" and which are based upon personal knowledge rather than opinion. In support thereof, we call the Court's attention to the fact that Defense Counsel has listed witnesses to testify on this issue, in his Pre-Trial Brief.

7. Plaintiff would ask this Court to exclude entry into evidence by Defense Counsel of an alleged "action by written consent" along with any related testimony. The basis of such request is that such consent was procured in a door to door solicitation by the Board Defendants themselves and without explanation that this cause of action was for Declaratory relief (Plaintiff's Response in Opposition to Defense Counsel's Motion to Dismiss, Affidavits & Exhibits). In addition, it constitutes Hearsay inasmuch as it relates to out of court statements made to show the truth of the matter, i.e., that Plaintiff lacks standing to file this derivative suit since he does not fairly and adequately represent the WHOA.

8. Plaintiff further requests the Court to preclude any testimony regarding Plaintiff informing a former Board member or members, per a letter he sent in October 2017, of the prospect of his bringing suit for Defamation arising from or relating to the 2017 Annual Meeting of Members and the Minutes generated from such Meeting, or otherwise. Such request is supported by the statement in Defense Counsel's Pre-Trial Brief in which he has listed Mr. Lacroix as a witness to testify as to Plaintiff asking Mr. Lacroix to refrain from defamatory comments or face litigation. It is Plaintiff counsel's position that such matter is totally unrelated and irrelevant to the case before the Court for a Declaratory Judgment and is intended for the sole purpose of portraying Plaintiff again in a false light.

Respectfully Submitted,

s/ Grant H. Gibson, Esq.

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ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2017-CP-23-06301
	)	
	)	
	)	
RAYMOND A. WEDLAKE, ET AL	)	
PLAINTIFFS	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
BENJAMIN ACORD, ET AL	)	
DEFENDANTS	)	

January 3, 2018
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

A P P E A R A N C E S:

GRANT H. GIBSON, ESQ.
Attorney for the Plaintiffs

ELY O. GROTE, ESQ.
Attorney for the Defendants

APRIL HERRON
OFFICIAL COURT REPORTER

There were no witnesses.

There were no exhibits.

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Certificate of Reporter 46

THE COURT: All right, let's see, next case up is Raymond A. Wedlake vs. Benjamin Accord or Acord. And that is case number 2017-CP-23-6301. Looks like there are two cases or two issues before The Court on this case. Approval of a settlement and a motion to dismiss; is that right?

MR. GIBSON: Correct.

MR. GROTE: Yes, Your Honor.

THE COURT: All right, y'all come on forward, I'll be happy to hear from you.

MR. GIBSON: Your Honor, I'm Grant Gibson, I represent the Plaintiff.

THE COURT: All right, good afternoon, how are you doing today?

MR. GIBSON: Your Honor, if I understand the roster properly, are we going to be addressing the AMG settlement first?

THE COURT: I entirely defer to y'all. Y'all know more about the case than I do and whatever makes sense to y'all I defer.

MR. GIBSON: Thank you, Your Honor, my client is Ray Wedlake.

THE COURT: Okay.

MR. GROTE: I'm Ely Grote, I represent the Defendants in this case. I think it would make sense

probably to do to the settlement approval first. Because I think this settlement approval deals with some of the issues involved with the motion to dismiss.

THE COURT: All right. Good. But some of the same issues but it won't have an effect on the motion to dismiss? That is a dispositive effect on the motion to dismiss?

MR. GIBSON: Well, I think if the settlement is approved it may --

THE COURT: Okay.

MR. GIBSON: -- some of the issues in the motion to dismiss.

THE COURT: Okay. All right. Well, I'm really existed to know what this is all about. I usually don't have a motion to set and a motion to dismiss in the same case back to back. So, we'll see how this all works. Okay, good, I'll be happy to hear from you.

MR. GROTE: Your Honor, again, I represent the Defendants, my name is Ely Grote. I would say that there's really two classes of Defendants in this case. In a nutshell, this is a dispute between a homeowner and a homeowner association and the management company. And we'll get to the details of

that and a lot more detail. But Mr. Wedlake's brought the complaint alleging a variety of issues with a corporate governance and with the actions of a group called AMG, which is the property manager.

Benjamin Accord, William, Craigo, Denis Esteve, and Brian James are the current board of directors for the homeowners association. And they've been named as the Defendants and the association management group is the other Defendant. I would classify the individual Defendants as just the board and board members and that's who I'll be referring to.

THE COURT: Okay.

MR. GROTE: Essentially, we have an ongoing dispute with the board Defendants and the Plaintiff. However, AMG is the property manager has been able to reach a resolution with Mr. Gibson and his client, Mr. Wedlake. Settlement in nutshell is that AMG will agree to provide a notice of termination, essentially, terminate their contract with the homeowners association, walk away from this community and agree not to come back to the community as long as Mr. Wedlake is a member of the homeowners association. In exchange for that they have agreed to drop the claims against AMG and issue a release in

favor of AMG.

THE COURT: Okay. Good enough.

All right, Mr. Gibson, is that an accurate recitation of the terms of the settlement agreement, sir?

MR. GIBSON: It is, Your Honor.

THE COURT: All right. Is there anything you need to add to that or anything that you need to put on the record?

MR. GIBSON: Not at this time, Your Honor.

THE COURT: Okay. Good enough.

MR. GIBSON: I'll have more to say in moment, I'm sure.

THE COURT: Okay. All right, good enough.

All right, with respect to that settlement agreement, I'll accept it without objections. And if y'all want to give me just with respect to the settlement agreement, if y'all want to prepare an Order and send it to me, I'll be happy to upload it and execute it on e-file, okay.

MR. GROTE: Thank you, Your Honor.

THE COURT: Okay. All right. So, you have a remaining issue?

MR. GROTE: Yes, Your Honor.

THE COURT: Okay.

MR. GROTE: It's the board members motion to dismiss. And if it please the Court, I'd like to go into that.

THE COURT: Yeah.

MR. GROTE: As you can tell from the complaint, there have been a lot of issues raised. And this is an ongoing dispute that's kind of gone on for a long time. We're hoping to get some finality with it. But the factual background is that Mr. Wedlake is a member of the homeowners association. There was -- he raised in complaints with the prior board as set forth in his complaint and submittals to the court. There was an election of the board members that took place in January of 2017. This current board were elected at that election. There was also a fifth member of the association who was the -- elected as a board member, that was Stacy Crass. However, she resigned subsequently. It's undisputed from the complaint that these four board members are the -- they're serving their first term, they haven't been serving consecutive terms, they were elected at this last election.

Mr. Wedlake did run for election at the last annual meeting and records relating to that election have been submitted with our proposed memorandum.

And by and large he lost that landslide side election. To board members who were elected received, I think, between 43 and 41 votes, he got five votes. There's an affidavit of Ben Accord that goes into a little bit about Mr. Wedlake's platform and their complaint and the exhibits thereto references the complaint Mr. Wedlake made prior to the election. And that was part of his platform for his election to the board -- or excuse me, the membership by and large didn't buy into that and he lost the very lop side election on those things.

So, we end up here today. Rather than taking as a political loss, he's continuing to assert that political agenda through this lawsuit, seeking a derivative action to get relief as to his interpretations or his opinions on a lot of corporate governance issues and issues relating to the internal operations and affairs of the association, including how they apply to the bylaws. I don't know how much Your Honor has read into the complaint or -- did you get to see a copy of the memorandum that was submitted?

THE COURT: Yeah, I have. But in the flux of today's hearings, I haven't really read it with any detail. So, feel free to educate me.

MR. GROTE: All right. Well, I'll go through it in a little bit more detail just so you'll understand.

THE COURT: I do have it in front of me but it's on my computer right now.

MR. GROTE: All right. Well, very good. There is basically what I consider to be a listing of some of the relief that they've sought in the complaint. They want some type of declaration that the board Defendants don't have a unilateral authority to increase the fees for association management group. Again, that's an issue that I think is resolved by the settlement with AMG. Essentially, that that contract -- or there's a release as to that respect, they're no long a party. Which I think that's a non-issue now.

But if they are going to continue to challenge that management contract, even though the settlement -- I'll come back and address that. That's one thing I think we need to clear up today is what issues are they continuing to assert with settlement and what issues are basically done with. Because part of the compliant it's hard to tell whether this cause of action is solely against AMG or are they complaining about AMG's contract that's

really an action against the board to compelling the board to take some type of action.

THE COURT: Is it a DJ action or is it a non-jury matter?

MR. GROTE: They've sought to -- what I can tell is two different theories of relief. One is declaratory judgment and two is an injunction.

THE COURT: Okay.

MR. GROTE: That's the way I read the complaint.

THE COURT: I'm looking at it now.

MR. GROTE: They also want a declaration of the previous years contracts with AMG are null and void because they weren't properly authorized by the members. And they want some declaration that bylaws require approval of the membership not only for a new contract but for a renewal. I think that at least with regard to the previous years contracts with AMG, I think those are mute because the settlement has been resolved. And all the -- if they're going to continue to assert issues with that, I'll circle back to that.

Paragraph 73 of the complaint says they want some ratifications -- or some declarations that the ratifications that curred at this January 10, 2017 annual meeting are improper.

The background on that is that since Mr. Wedlake had raised some of these issues previously, in an effort to try to resolve this and prevent this case from being, the membership actually held a vote to ratify certain actions. Those actions are set forth in the memorandum, essentially, ratifying the validity of the prior board because he was challenging the terms of service for the prior board members. He raised this issue whether the contract the AMG was valid because he says that the bylaws require a renewal to have membership approval each year and you can't renew without membership approval, the board can't do that. The membership renew -- or ratified by vote of over the majority of the entire membership to say this contract is ratified for this year and for the prior years. Those are the type of things that were ratified at the last annual meeting. He's apparently seeking some declaration to challenge those or address those ratifications that were done.

Paragraph 73 seems to suggests that they're requesting some type of declaration that AMG return certain funds paid to it. Pursuant to the contract they say was not properly authorized. Again, I think that's probably an nonissue now because of the settlement with AMG. Again, if they -- if they're

continuing to assert that, I'll circle back around to that.

They want some type of declaration that the board of directors have misinterpreted the bylaws concerning filling a vacancy on the board. They want to enjoin the board from delegating any future duties. Although, our position is they haven't really specified what duties were properly delegated. But some general, I guess, proclamation that the board of directors can't delegate any type of duties to anybody. In other words, if you have a management company you can't, I guess, really have them do anything on your behalf because that's a delegation of the board's duties. They want an order enjoining the board from paying certain amounts to AMG. Again, I think that's probably been resolved by the settlement and the release thereof.

Mr. Wedlake is asking for relief to enjoin the board Defendants to send out some type of valid on an amendment that he proposed. It's my understanding he has some type of proposed alternative dispute resolution amendment that he submitted to the board and he wants the board to have a membership vote on it and the board's declined to do that. He's trying to force the board to, I guess, adopt or force the

membership vote on some type of amendment that he wants. He's raised some issues about the accuracy or the content of some of the meeting minutes from last year. He's talked about accounting amounts paid to AMG. I think that's probably a nonissue now given the settlement. And finally, a declaration regarding the validity of some terms or at least an interpretation of term limit provisions of the declaration.

So, that's kind of a mouth full but there are a lot of different things that Mr. Wedlake has requested in this case. And so, he is bringing the suit as a derivative suit. And as Your Honor probably knows, a derivative suit is essentially where a member or a shareholder, essentially, steps into the shoes of a corporation and tries to pursue the rights of the corporation on behalf of the members. In order to do that Rule 23 of the South Carolina Rules of Civil Procedure sets forth a lot of procedural requirements. I won't read each and everyone of those requirements but the two main ones are that you have to allege with a high level of specificity, the claims and demands that you've made for relief. The second is that is if is shown or it becomes apparent to the court that the person

attempting to assert the rights of other members or attempting to assert the rights of a corporation, doesn't represent the interest of those members or the corporation, that the lawsuit has to be dismissed.

Our Court of Appeals has said in this respect that Rule 23 seeks to prevent the unrestrained use of derivative actions by minority shareholders, which would undermine the basic principle of corporate governance of the decisions of the corporation should be made its management or in certain circumstances by an affirmative vote of the majority of the shareholders. And it goes on to say that, you know, a derivative action is an action of last resort because these types of actions have hinged on the inherent role of the corporate management to conduct the affairs of the corporation.

It's our position that simply this suit is an attempt to have Mr. Wedlake substitute his own judgment for the board. He wants the Court to basically do what he could not do politically, which is to get the board to implement certain policies, to adopt certain amendments and things like that that really are within the sound and discretion of the board of directors. And he's really seeking to

insert his interpretation or do an end around on the election loss to implement these things in his election flat form that he couldn't do politically, so he wants to try to do them legally.

The primary claim as it relates to the derivative action -- and again, I set forth in my memorandum quite a few pages of the law relating to derivative actions and which claims have been to be brought derivatively. I think they stipulate to the fact that these claims by and large have to be brought derivatively. They filed memorandum with the court saying that these claims are all being brought derivatively. They filed an affidavit stating that they're acting on behalf of the members. And that these claims are being brought derivatively. So, it's clear that right now it's a derivative action that's governed by Rule 23 of the South Carolina Rules of Civil Procedure.

They filed a memorandum, I think, it was the one back in December 1, saying it's being brought derivatively. As set forth in the case law in the memorandum, Rule 23 acts as a gatekeeping function to try to preclude a challenge in every single action the board takes. Because every time a homeowner disagrees with an action of the board, if they're

allowed to challenge it, then we're going to have a flood of lawsuits. And it really is a gatekeeping rule to try keep, you know, internal matters internally and not have them go over into the court.

Exhibit N to the complaint is somewhat of a example of the type of questions that are being posed to this board and kind of how these things arise. I don't know if Your Honor has that in front of you.

THE COURT: If you filed it and I have it, all you need to do is reference what it is. It's just an exhibit to the memo?

MR. GROTE: It's Exhibit M to the complaint.

THE COURT: To the complaint?

MR. GROTE: Yeah. Just an example of some of the questions that being posed to the board and how these things are arising. This is apparently an email of some sort or some type of letter that Mr. Wedlake has sent to the board. You know, he's asking for a whole bunch of things like why hasn't the board appointed a bylaws committee? Do you agree with the board president about the term -- needing to revise the term limit provision? Do you agree with of this interpretation about the board members appointing themselves for more than one year. What is your interpretation of the bylaws regarding the

management agent and majority of all members to approve renewals? Do you agree that the provision for mediation would be a good idea?

And these are the types of things that the board has considered. And although, they haven't apparently adopted his vies or his position on them, those are things that are in the province of the board to make decisions on. And this is really a challenge to their decision making authority as oppose to any type of legal issue.

As to whether Mr. Wedlake represents the members, our position is is that he does not. That he has not complied with Rule 23. Because several issues. Number one, these issues in large part, not wholly, but in large part been raised prior to the prior annual meeting and he had a flat form on that. And that's set forth in the supplemental affidavit of Benjamin Accord. It's also set forth in some of the exhibits to the actually complaint about some of the issues that he raised prior to the prior annual meeting. And the affidavit of Kristine Lynch, the former board president, actually includes all the ratifications. And the affidavit of Ben Accord also does set forth the vote that took place. And despite these issues being raised prior to the last annual

meeting, Mr. Wedlake lost and overwhelming election and that should be the end of it but we are today.

And the fact that the board -- the membership didn't vote for him, even though a lot of these issues had been raised previously, clearly shows that the membership wasn't interested or did not agree with his position on those things. Not only that, as we have done an action by written consent, which is done by South Carolina Code 33-31-704, I understand that Mr. Gibson this morning filed a memorandum to raise some issue with authenticating the records. As I was driving here, Mr. Accord did sign an affidavit authenticating those records. My paralegal filed that with the court prior to this hearing.

It simply says, That these are the corporate records of the association and that this action by written consent did take place and this is the amount of the records.

MR. GIBSON: I would be raising an objection.

THE COURT: Okay.

MR. GROTE: And with regard to that issue too, I would point out that 33-31-704 says, The consent signed under this section has the effect of a meeting vote maybe described in any such document filed with the Secretary of State.

So, all these are is votes. Apparently, they're objecting to the votes that are clearly signed, dated. There's an affidavit submitted before the court addressing the issue with the actual authentication and I'll get into that little bit. Apparently the challenge of those is one, I guess, they're challenging that on evidentiary issue but there was no affidavit authenticating them. I think that issue has been taken care of and if that hasn't been taken care of, Your Honor, I'd for an opportunity to supplement the record. That's simply a technical issue that they're raising. Whether you represent the interest in the community is a standing issue, standing effects subject matter jurisdiction which can be raised at any point. So, if that's a technical issue and the Court doesn't consider those, even though the affidavit's been submitted, we're just going to be back here next term of court once that's properly -- or once that affidavit is considered. Because subject matter jurisdiction can be raised at any time. So, hopefully we can short circuit that.

I think the other issue they've raised with that is hearsay. That these actions by written consent are hearsay. But my position and my client's

position is that these are not hearsay because actual corporate records.

THE COURT: You know, it seems to me that y'all are confusing motions practice with trial practice right now. You know, authentication, hearsay, goes to the admissible of evidence at the trial on the merits. Y'all are -- y'all are getting way beyond the scope of your motion for dismissal. So, I only stop you because you just need to know internally what I'm thinking is I'm not concerned about that right now. Really what I'm concerned about is justiciable causes of action and whether there material issues of fact, okay. And I'm not going to disallow anything that y'all put into the record based on whether it's admissible or not at the trial on the merits, okay. I'm going to consider everything that you give me. Whether you did it two weeks ago or whether you did it two seconds ago. We're wide opened right now.

MR. GROTE: Sure, Your Honor. And I should clarify and certainly take your point into consideration. Certainly for a 12(b)(6) motion, things outside of the pleadings normally wouldn't be considered. In my memorandum I cited some case law that if the issue raised is standing or a

jurisdictional issue, the law allows that submission and consideration of evidence outside the pleading for jurisdictional issues. It's our position that standing in whether you represent the interest of the community under Rule 23 is an issue of standing. And therefore, submission of external documents outside the complaint are properly submitted and properly considered.

And the purpose of Rule 23 as set forth in great deal in our memorandum as a gatekeeping function to prevent cases from getting to a hearing on the merits. From getting to a trial. It's supposed to stop the process. So--

THE COURT: I think -- I understand. I understand you entirely. I think you missed my point, okay. You don't need to argue that. I understand Rule 23 and I understand 12(b)(6), I understand 12(b)(1), I got all that. And what I'm telling you, and this adheres to your benefit.

You submitted a document for authentication and Mr. Grote's going to object to it, I'm going to consider it, okay? It adheres to your benefit.

MR. GROTE: All right, thank you, Your Honor. And to the extent that the court considers those, it's our position that the membership rule -- or

excuse me, the Statute 33-31-704, Your Honor, basically says That a corporation does not have to have a meeting to take a corporate action as long as you have 80 percent of the membership that actually signs off on it. And those records becomes part of the corporation. This was done in this case. More than 80 percent of the membership as set forth in the memorandum and the documents attached thereto, clearly show that these folks have considered this lawsuit and they said we don't want this lawsuit. Eighty percent of the membership says that Raymond Wedlake doesn't fairly and adequately represent them. That the association through its members opposing this lawsuit. That the lawsuit should be dismissed.

The issue here is that Mr. Wedlake is trying to represent entity -- he says he represents the interest of the community and that he's doing this for all the members of the association. But the association's taken a corporate action that says this is not what we want. This is 80 percent of the membership saying, No, stop doing this. You're pursuing something against our interest and that's the whole point of Rule 23 is to prevent some type of lawsuit basically brought against the interest and will of what the association wants.

So, that's the issue with that. Not only that is that -- is that -- I'll move on to the next issue with it. He's required under Rule 23 to make specific allegations to set forth the relief they sought. What relief they demanded, how it was rejected. Things like that. It's our position that they haven't met that command requirement as to all of the relief that they have requested. I'm not going to belabor that point, it's set forth in detail in the memorandum. Other than simply to note that that issue is raised and that simply that they have just not met those requirements. I don't need to read the memorandum again.

THE COURT: Okay.

MR. GROTE: Secondly, under Rule 23, even if they've met the pleading requirements saying that hey, look, we've made a proper demand, the proper demand has been rejected; the case law as cited in the memorandum as well is that the review is under the business judgment rule. And that they have to allege something that would be a violation of the business judgment rule. Or somehow cast doubt on the presumption of the application of the business judgment rule to get past a Rule 23 motion, which this is. That's set forth in memorandum as well.

But, essentially, as set forth before, they're alleging all of these issues about corporate interpretation of bylaws and which policies should be adopted, should there open meeting, should there be this type of amendment proposed. Those types of things are all within the sound discretion of the board of directors. There's been interpretation -- about the contract provision about contract renewal, whether you have to have -- renewal or an actual new contract. Those are all things that's invested in the board to make a decision on and apply to the best of their ability.

If any individual board member could submit a list of questions every week, this lawsuit or this type of lawsuit would continue on indefinitely. And that's the purpose of Rule 23 is to prevent something like this. Because he submitted this list like an Exhibit M to the complaint. What's to prevent him next week to say, Okay, I've reviewed the bylaws, now there's five other provisions I want your position on. And if you don't adopt my position we're going to then challenge that. And it's going to be an ongoing never ending thing. And again, the gatekeeping function of Rule 23 is to prevent that type of thing from happening. And that if it is a

business issue, business judgment issue and if the membership doesn't support it, then it's not something that should be before the court, it should be dismissed.

Again, I think all the issues with the AMG contract have been resolved by the settlement. To the extent that they haven't, there's some set from the memorandum about some of those claims. Rule -- or South Carolina Code 33-31-304 is the -- section of the nonprofit act. It says, That you have a transaction that's already been entered into or a third party has already acquired rights that you cannot challenge that corporate action. That third party's got the right and they can enforce it, no matter whether it was properly entered into or not. So, I don't think The Court can grant the remedy of setting aside a contract under that section. So, I think this resolves some of those issues.

Some of these issue in the complaint by and large relate to conduct not current of the board of directors. This issue with the past ratifications, that was an action done by the membership as a whole, it was voted on by the members, there's an affidavit to that effect. The actual voting forms are in the record with a memorandum that we submitted. And so,

I don't think The Court can set aside a ratification done by the members by suing the current board of directors for an action that they didn't want instituted. It wasn't even an action that they did. I mean, he would have to name all the members of the association to set aside something that they ratified at this annual meeting and he hasn't done that. So, there is no justiciable controversy or at a minimum he hasn't named all the proper parties to set aside a ratification. I mean, he's just trying to do something about a membership by suing the current board of directors and that's just not proper.

Some of this issue with the term limits, it's not really a ripe issue at the moment. There was some complaint about the prior board of directors serving too long. Now, they've translated that into the current board of directors asking for some interpretation of the bylaws and challenging, you know, the term limits and things like that. But the uncontested allegation in the complaint, their memorandum, their affidavits that this board was elected last year, they're not serving more than one term. And so, it's not really an issue with this board of directors and that can't be resolved in a lawsuit against them because it's not really a

justiciable controversy.

Some of these claims are unripe. Such as the ability to unilaterally increase management fees, the contract with AMG has now been terminated -- is being terminated. So, whether they can unilaterally increase fees or not it's really a mute issue at this point. As you can see in the complaint a lot of the issued dealing with conduct the of prior board. Not all but a lot of it does. The issue of the delegation and duties, again, our position is they haven't properly pled that under Rule 12(b)(6). They haven't really specified which duties have been I'm properly delegated, just kind of a general statement out there. Apparently, they're seeking some relief as to forcing the board of directors to propose a vote on these amendments that Mr. Wedlake has proposed.

Your Honor, there's just no legally cognizable claim to grant that type of relief. The bylaws provide a remedy and a nonprofit act provide a remedy and that's cited in my memorandum. And that is if you want to call a special meeting, you can get a vote on the amendment but you have to get the requisite number of members to sign a demand for a special meeting. And then, of course, a special

meeting with the board is then required to do. Instead of taking the proper legal route, he's just gone ahead and sued the board of directors without suing the actual remedy provided by law. And so, there is no legally cognizable claim for that and really no sound of business judgment rule on the board as to whether they want to propose an amendment or not.

One of the issues that he does raise is with -- I guess he wants an interpretation or some ruling relating to whether a board member has to be appointed to fill a vacancy. There was like I said a fifth board member that was appointed or elected in January of 2017. However, this board member resigned roughly May of 2017. There's an affidavit from that board member, Stacy Crass, also included in the materials that have been submitted. What that says is that this board member resigned because they were really tired of the successive communications and what they felt to be harassing communications from Mr. Wedlake. And so, this board vacancy is opened because of his conduct. It's our position that he can't challenge or -- basically create the problem and then have standing to challenge a problem that he created on how the board deals with it.

The records claim that he's asserting, to my knowledge I thought we produced it, he can ask for it if not. We certainly would ask for them to provide some clarification on what is out there. From a legal perspective, the records request statute, which is cited in our memorandum, says that the relief is against the corporation. That kind of claim should be brought against the corporation not the board of directors. And if he continues to pursue that, it's our position that that claim needs to be bought against the corporate name rather than the individual board members because that's the relief that the statute provides.

And as far as just out there for the record request, we would just -- if they're continuing to pursue that, that we would ask that they make that claim more definite and certain in the complaint. At least as I read it it's unclear as to what they're asking for, what they're asking for and so we can, at least, hopefully be able to address that with some clarity.

Another issue that's been raised in the motion to dismiss is the service of the summons and complaint. That's probably not a huge issue. I will advocate to my clients to allow me to accept service

of the complaint. The reason that this was raised, my clients received a copy of the summons and complaint that was not filed. It didn't have the filing information on it. They say it's the same. I haven't done it word by word, checked to see whether everything in there is the same but what is clear in the affidavits in the record from each of the board Defendants saying they provided a copy of the summons in the first page of the complaint.

What was actually filed with the court, of course, has a filing stamp on it, it doesn't have the case number on it. What was served on my client doesn't have the filing information on it, it has the case number written on there. Rule 4 requires that the original summons be served. That taken with all the other, I guess, pretyping or kind of reformatting of documents in the exhibits, which I'll touch on in a minute, just raises some concern--

THE COURT: Mr. Grote, I'm going to ask you, respectfully, to hurry up. You realize you've been talking at me for half an hour.

MR. GROTE: I apologize, Your Honor.

THE COURT: It's okay. You get into your argument, I recognize that. But just a constructive criticism as a form of advocacy, you need to be very

surgical in these arguments in nonjury terms. You're lucky enough that you have the last hearing of the day which means you have the luxury to wax poetic. But I call tell you if there was somebody behind you, I would have stopped you 20 minutes ago. So, all I ask of you is to be a little bit more surgical, make your points and move on.

MR. GROTE: Thank you, Your Honor, I apologize.

THE COURT: No, no you're okay. I understand that you're close to your case. You're closer to it than I am which that sometimes effects it.

MR. GROTE: The last issue with the service of the complaint. The issue with the motion to strike is that simply the court -- the law requires that they plead ultimate facts, not evidentiary facts. A lot of these exhibits to the complaint are evidentiary in nature. They're basically saying, this is the fact and here's exhibit A, B, C to prove this fact, that improper. Just think of a car wreck case where someone says I'm hurt, here's my medical records, Exhibit A, I got medical bills, here's my medical bills, Exhibit B. And those type of things are evidentiary creates a whole bunch of evidentiary issues attaching all that type of stuff to the complaint. Just simply -- if this case survives,

they need to plead just the ultimate facts and not the evidentiary issues that they have evidence to support it. And then that's, you know, for a trial or for a Court to determine the evidentiary value of those things.

The other issue is that these exhibits to the complaint are not necessarily, at least from what I've seen accurate copies of things. For example, they submitted affidavit -- or a copy of the management agreement. I'll be happy to provide Your Honor a copy of these things.

THE COURT: Have they been e-filed already? Okay, if they're e-filed, I got them.

MR. GROTE: The originals are actually -- they filed something as an exhibit to the complaint but the actual document itself was not filed with the court. I guess I can just kind of give you an example, if I can approach and provide one.

THE COURT: Yes, sir.

MR. GROTE: Your Honor, what I've handed you there is what they've purported to attach as Exhibit F to their complaint. And what they've attached as Exhibit F is a document similar to that that's been reformatted, signatures have S slashed. So, they're attaching things that have been, I don't know,

retyped or reformatted. If they're going to attach exhibits that are exhibits being allowed, they just need to clear or, I guess, official or correct copies and not their retyped version. A lot of these emails and all this other stuff attached there, appears to be reformat and stuff. Exerted emails, a lot of it probably contains a fair amount of hearsay, relevant matters, things like that. And that's the basis of the motion to strike some of things.

Exhibit D, the management agreement, same type of deal. The management agreement has actual signatures on it, they apparently had S slashed peoples signatures and reformatted the bylaws, which were Exhibit A to the complaint. Apparently, just a reformatted version of somebody's retyped. The page numbers are different, things like that. So, if there are going to be using exhibits or be allowed to, it's our position that they just use the official version and not retype them or reformat them. And that kind of raises the same issue with the complaint being served in the, I guess, the non-filed version.

THE COURT: Okay. Yes, sir.

Okay, Mr. Gibson, I guess the first question i have for you before you respond, is what causes of action are remaining subsequent to the settlement

agreement that was just put on the record?

MR. GIBSON: Thank you, Your Honor. We stipulate that all matters involving AMG, so all those issues that were raised by my young colleague, Ely Grote, as he went along saying this is AMG, we would stipulate that those are no longer part of the complaint.

THE COURT: Okay.

MR. GIBSON: And only those issues that address directly board Defendants, remain.

THE COURT: Okay.

MR. GIBSON: I'd like if I may to ask The Court, did you get a copy of the notice that I sent out, AMG? I meant to email but I do have a copy of the notice that was sent, if I may?

THE COURT: Sure, yeah.

MR. GIBSON: I know it's -- thank you very much.

Mr. Grote, you have a copy already but I'll give you a hard copy of that.

And secondly, I want to apologize to the court and to Your Honor. Because we shouldn't be here today. None of us should be here before you today. We -- my client has been working on this issue since early in the year. And as early as March of 2016 to oppose mediation with Upstate. And on three separate

occasions as set forth in the exhibits to the complaint, he proposed, in writing, mediation as well. Now, what's it all about? It does relate back in history a bit. I'm going to be brief and I'm going to try to be to the point.

The prior board -- Ray Wedlake, my client, was on two prior boards, he was on the bylaws committee, he was active, he was voted in and he was a participant in drafting of what is now some of the bylaws that we're discussing. Take a high vote of the membership to get those bylaws in. The prior board, not the current board, remain seven years. Well, beyond the term limits of five. He raised issues on that based upon the bylaws, which have a five year term, as this is a non for profit, subject to quorum other technical things that we're not going to get into.

There were issues. There were issues as well with the fact that the bylaws explicitly state that if there's a vacancy on the board, the board must fill it if there is a willing and eligible member. It's black letter. There's no ambiguity. It's not business judgment. Your Honor, it's not a business judgment case. We're not, you know, buying back stock or not. I'm not making an acquisition.

Business judgment applies when there's discretion. The is the terms of the bylaws themselves.

In multiple instances, the majority requirement of all voters to put -- to have a management company is explicit in the bylaws. That was not followed. We argue that the renewal provision, as well, would apply to the majority of all members. That is an ambiguity, requires declaratory relief with regard to that specific issue.

We have, as well, we mentioned the five year term, the required board said that it was their reading of the bylaws, it permitted them to continue on through seven years. We objected to that. And we still object to that. We asked the current board, do you agree or disagree with our interpretation that it's limited to five? They never responded, Your Honor. That leaves an opened issue with regard to the five year term. Which is important because it disenfranchises a group of people that Ray Wedlake basically represents. It's a small group, we recognize that. We're not arguing we're the majority. We aren't. We're a minority. But the action that we're bringing is based, in fact, upon impression. It's based, in fact, upon protecting minority interest.

I have in most recently, lately filed memorandum, submitted to you a -- a number of the points on this minority protection by being brought by derivative suits. And in that I make reference to a case which is a pretty similar case on that. And I'd like to -- you have a copy of the -- I'd like to provide a copy to the court. But basically what it says is that a single sole shareholder minority is proper if they can fairly and accurately represent the interest of the corporation of the association where there is a proper purpose.

And what is the purpose here? The purpose here is to get Ray Wedlake on the board. Although, that will help his flat forms of open meetings, minutes, none of which exist today, agendas and hopefully ADR, mediation. But what he's really interested in doing is assuring that the bylaws are adhered to. There are multiple instances where the bylaws are not being followed. They're being ignored. And that's the facts. Those are the issues before The Court.

We have for example, the managing agent issue I mentioned before. Where majority must have approval. I talked to you, also, about the term provision for five years. I mentioned to you explicitly which were the bylaws with regard to filling the vacancies.

Now, Mr. Wedlake was an eligible and willing member to fill that vacancy. Mr. Grote said we brought this totally derivatively. We brought it individually and derivatively. One of the individual actions is his complaint with regard to not being appointed because he was eligible and willing to serve. Okay. In addition, to the reporting issues and the financial and the rest that went on with that.

So, basically, Your Honor, we ask and continue to ask the board Defendants to join us. This is an issue for resolution of the bylaws. It will effect this board but it will effect the future of the association. Clarification is what is needed at this point in time for the benefit of both sides. So, we have in writing, in written form, ask both sides join together and work together and get these bylaws understood, agreed upon and acted upon. Because they're not doing what they're required to do, specifically, by the bylaws.

We went so far, Your Honor, to provide them with a copy of the draft complaint before we filed. We asked -- actually pleaded with them. Let's get together and let's mediate this thing. We're all in favor of mediation. I'm a mediator by background. I'm certified here in South Carolina some years ago.

Been away by now but quite a while back. But nonetheless that my temperament.

The flat form is important but it's not the essence because that doesn't go to the law. Nonetheless, for The Court to know, the flat form of my colleague, my client is open meetings, minutes agendas, hopefully mediation. None of which is acceptable in an entrenched board. Which isn't following the bylaws, isn't filling vacancies, has to ratify its actions because it knows it has done fault, that's the prior board. But this board is working in the same way. They are not adhering to the contract between the association and its members.

So, Your Honor, I can go into the details of 23(b). You know 23(b). I could -- in memorandum there's arguments in favor of one critical point. What is the purpose? And I mentioned that before. The purpose here for the association as a whole. Even though they may have 80 percent, the benefit to the association is to clarify and understand and to activate the bylaws. And to enforce the bylaws. They're the protection for the members of the association. I can go on.

I don't want to go into the various elements of 23 but once, again, Mr. Wedlake was an active,

elected member of two boards. He was on the bylaws committee. A lot of these bylaws are things that he helped draft and they're not being followed. You know, it was done for the protection of the association. He has the resources, the desire and the personal interest to do this. And to carry forward, Your Honor.

So, those are the essential points. There's much more obviously in my memorandum, the complaint. We would object to, obviously, to the consent -- any way, our point is that it's not valid at this juncture because they have to have sent it out to all of the members that didn't vote or didn't sign it, rather. And they haven't done that before it was effective. My memorandum talks about fairly represented, accurately represent. But it goes to the reason for bringing it.

Final point, we went even further than giving them a copy of the compliant. We contacted -- excuse me, Your Honor, a little bit of -- I'm from Florida these days and I moved from Greenville down there, I'm not use to this cold weather up here.

THE COURT: Yeah, we're not either. Believe me, we're not either.

MR. GIBSON: We went so far as to say we just

don't want to bring this action judicially. We're going to go to the Attorney General. So, we got Representative Henderson to assist and us went to the Attorney General, submitted extensive documentation and requests for a resolution of these open issues. And, of course, we got back this nonissue of public policy and it's more factual than legal. And I'm sorry but you should, as state in our exhibit, he sent back an email, This is a matter for the judiciary. That's from the Attorney General's office. So, we had nowhere else to go. This is as he points out, the last resort.

And we waited for it, hopping it wouldn't have to come to this. And we still hope it won't have to continue as this. We're ready for mediation. We are not -- we don't want to go to trial but we need to work in good faith together. And we need to acknowledge that the bylaws are controlling document, it must be followed. And regardless of the personalty of the member that raises these issues, that's required. The board has to accept that fact. And do their duty. Thank you, Your Honor.

THE COURT: All right, thank you, I appreciate it. Okay.

The motion to dismiss with respect to the cause

of action against AMG are granted pursuant to consent. The remaining causes of action, with regard to all the other Defendants, are respectfully denied. This is one of those issues where there are factual issues outstanding. As to which cause of action may be derivative in nature and which may be individual in nature. There may be some that are individual, there may be some that are derivative. It's difficult for me to ascertain that within the context of a motions hearing as opposed to a evidentiary hearing.

I'll also tell you this, this is one of those cases, again, and y'all heard me say it in the case before you this, that just needs a hearing on the merits or better yet, an accommodation agreement between the parties. Because what I find is there are a few lawsuits on the face of this earth that just have legs. That is, they never want to go away. Because people hold them so closely and so dearly. Among those are divorces and custody issues. Among those are probate matters. And the third one is homeowners association. They're very few cases that I see in this courtroom in circuit court that are more hotly contested the sensitive and emotionally charged than homeowners cases. And it seems to me

more often than not, we're making mountains out of mole hills. And probably that's the case in this case too. If I'm just subjectively surveying the landscape in this case.

If were to summarily dismiss it, given the fact that it is such a sensitive matter, and I don't think it's appropriate for that but let's just say that I did, then surely you would be at the appellate courts. And then you'd probably be back down. Which means that I would just add to the angst. And I would add to the timely expense of this case. So, I think the courts are better served to have hearings on the merits. The fully adjudicate the issues that come before the court. And I really, frankly, can't make an informed and intelligent decision of whether, in fact, the board is complying with the bylaws unless and until I hear everything. No the technical issues surrounding the substantive issue but the substantive issue. And I think that's what's fair to both parties. And it's not just fair to the defense, I think it's fair to the Plaintiff, too. Again, so that you don't have a summary disposition that's subject to appellate attack or appellate review.

So, again, I'm going to respectfully deny it with respect to all the claims with the exception of

AMG. Now, what I would suggest you do is you mediate and you have to mediate in accordance with the rules. But, perhaps, even decide on a -- either a arbitrator or refer it to the master and let the master hear the issues that you have outstanding. That's lot easier on y'all because you have a date certain. You know exactly when you're going to present those issues to The Court. But it is something that needs to be settled because I think until you have a final hearing it's really not going to -- or an agreement, there's not going to be any closure in this case. And you need a little bit of closure in this case.

So, having said that, what I'd ask you one of you to do please is draft me a proposed order and send it to me. Who feels comfortable with doing that?

MR. GIBSON: You want me to do that?

MR. GROTE: Yeah.

MR. GIBSON: I will, Your Honor.

THE COURT: All right, if you'll send it to me within the next 10 days. But if you need more time just let me know, I certainly will grant it.

MR. GIBSON: Thank you, Your Honor.

MR. GROTE: Thank you, Your Honor.

THE COURT: All right, good enough. Y'all have

a great afternoon.

(WHEREUPON, the proceedings were concluded.)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 3rd day of January, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 1, 2018

_____

APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

Raymond Wedlake,)
)
Plaintiff,)
)
-vs-) TRANSCRIPT OF RECORD
)
Benjamin Acord, et al,) April 20, 2018
)
Defendant.)
)

BEFORE: THE HONORABLE CHARLES B. SIMMONS, JR.

APPEARANCES:

Grant Gibson, Esquire
Attorney for the Plaintiff

Ely Grote, Esquire
Attorney for the Defendants

Danette P. Hanks, CCR
Court Reporter

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(WHEREUPON, Plaintiff Exhibit Numbers 1 through 11 were marked for identification.)

(WHEREUPON, Defendant Exhibit Numbers 1 through 34 were marked for identification.)

THE COURT: All right. This is 2017-6301. I initially want to disclose on the record that some weeks back counsel for both parties notified the Court that one of the named defendants, Mr. Esteve, had disclosed that some thirty years ago, I was involved in a law firm where his wife worked. And so that was disclosed. Also, she's involved with a local bakery and sometimes my office, for office lunches, purchases cakes from her. But I disclosed that. Everybody requested that I continue to hear the case. But I did want that on the record.

So gentlemen, any objection or anything that needs to be on the record about that?

MR. GIBSON: No, Your Honor.

MR. GROTE: No, Your Honor.

THE COURT: All right. You can call your first witness.

MR. GIBSON: Your Honor, I'd like, if I may, to make an opening statement.

THE COURT: No, sir, I don't need one. You can call your first witness. We've pre-tried the case. I've looked over everything. And if I don't understand it by now, we've got worse problems than that.

MR. GIBSON: Yes, Your Honor.

THE COURT: I have good lawyers, and we can move right into the testimony.

MR. GIBSON: Okay, Your Honor. If I may, Your Honor, call Raymond Wedlake.

THE COURT: All right. Sir, come around to the witness stand, please.

THE WITNESS: Might I use my memory aid, Your Honor?

MR. GROTE: Your Honor, I think if there's a specific thing he needs to refresh his recollection on, I think he can refresh his recollection. I don't know exactly what he's looking at. I don't know that he can read his testimony from a computer.

THE COURT: All right. You can come around. And if there are any objections during the testimony, you can certainly raise them at that point.

THE WITNESS: Thank you, Your Honor.

MR. GIBSON: And for the record, I'm Grant Gibson, counsel for Plaintiff Ray Wedlake.

THE COURT: All right. So, sir, if you'd raise your right hand. Do you swear to tell the truth, whole truth and nothing but the truth?

THE WITNESS: I do.

THE COURT: If you'll come around and have a seat, please, sir. If you'd state your full name, please.

THE WITNESS: Raymond A. Wedlake.

MR. GIBSON: Thank you, Your Honor.

RAYMOND A. WEDLAKE,

HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. GIBSON:

Q. Mr. Wedlake, will you give us information with regard to your residence and how long you've been living in Woodington and in what capacity, if any, you've served on prior Boards?

A. I moved to Greenville in August 1999. Since that time I had served as Board secretary on two previous times for two-year terms. And was there another thing?

Q. Well, with regard to your service on Bylaw committees, specifically were your efforts involved with any of the current Bylaws, or are they reflected it in some of the current Bylaws?

A. In Bylaws Revision 2, which is an exhibit we have brought to the Court, I was one of five authors creating that Revision, which brought the ballot provision into the Bylaws.

Q. And have you had any disputes with regard the Bylaw provisions of this or any prior Boards of Directors with Woodington Homeowners Association?

A. Yes. I have consistently tried to seek improvement of the Association for the -- in the best interest of the Association and for the benefit of the homeowners. And here to date that has been rebuffed by both a previous acting Board in 2016, as well as a 2017 Board.

Q. So it goes back to 2016. What was the issue or issues in 2016 and how did you communicate those?

A. I had sought election in 2016 to the Board. In neither of 2015 nor in 2016 were there elections held in the Association to have Board members be elected. The Bylaws are quite clear on this point. They say each Board member must be elected every year.

Q. And why were you not permitted on the ballot or on the Board?

A. That was never exactly clear to me other than a three-member Board that were not elected in 2016 indicated that because I had not come forth at the annual meeting to put my name in nomination that I was thereby precluded from being -- asking for an election be held as required by the Bylaws, and consequently could not be considered as a candidate for nomination and election to a 2016 Board.

Q. Were the Board members at that time in 2016 -- retract. With regard to the 2016 board, how many years had they served, some of the members?

A. The members had served consecutively in 2016 for seven years, which is a violation of both the Bylaws, as well as the nonprofit corporation, both of which say that five years is the maximum term limit.

Q. And in addition to -- what was your platform for running for the 2016 and did it differ from the 2016 Board?

A. At that time and also as a candidate for the 2017 Board, my platform has basically been, again, for improvement of the Association, primarily focused on the need for Bylaws Review Committee to clean up some of the ambiguousness and other unclear aspects of the current Bylaws. And more specifically, in recent time, I have proposed a ballot that we put alternative dispute resolution, ADR, as an addition to the current Bylaws, which has -- that suggestions has been blocked by the current Board.

Q. What's the benefit of that?

A. In this instance the proposed language is to make it such that when there may be a dispute between a member and a Board, that the Board cannot simply deny discussion on it, as this Board has done, and completely ignore the issue such that no action to improve the Association occurs.

Q. Did you believe the 2016 Board to be legitimate, given their seven-year terms?

A. No. That again is a direct violation of both the Bylaws and the Nonprofit Corporation Act.

Q. Okay. You indicated you were not permitted on the Board and that you believed that it was an illegitimate Board. Did you, in fact, write to members in the community suggesting that the Association be dissolved?

A. I did, with the intent, again, to bring to member interest that they had to have participation to come onto the Board and recognize that a sitting Board may not violate the law and assume

that they may reappoint themselves without election and to continue and stay on as the Board.

Q. Did it have its desired effect in the next annual meeting of participation?

A. No, it did not. The acting Board in 2016 took this up and started a smear campaign against me where they went out to all the members saying that I was against the law and that I was breaking the law and that I was the one who was improper and incorrect, when factually, under the law, I was not any of those things, and it was them who were improper and outside of the law.

Q. Did you receive a copy of a letter from the McCabe Law Firm with regard to your seeking ballots for dissolution?

A. That occurred after such event, and as a matter of fact, that letter from McCabe was sent after they were informed that no such action would be pursued. They did it again on, I presume, on request of the acting 2016 Board, again, with intent to smear me specifically in front of the entire membership of the Association, making many claims that what I had done was unjustified and outside of the law. When, in fact, everything that I had done was consistent with both the Bylaws and with the law. And again, they did this with intent to continue the smear campaign, which has resulted in the current status of my standing in the Association where everyone sees me as a bad guy, which is not the case at all. I am a good guy trying to act for the best interest of the Association, improvement of the Association and

to bring benefits to the members of the Association.

MR. GIBSON: Your Honor, this has been entered into evidence, the letter from McCabe Law Firm. I'm sorry to say I didn't mark it numerically, so my apologies.

Q. Is this the letter that we're discussing and referring to?

MR. GIBSON: Mr. Grote, do you have a copy?

THE COURT: There are a large number of exhibits, so you don't know the exhibit number?

MR. GIBSON: I don't. I'm sorry, Your Honor.

THE COURT: All right. If you could identify it then for the record as far as the date.

MR. GIBSON: Yes, sir. I apologize, Your Honor. It is dated September 20th; letter from McCabe Firm.

A. Yeah, September 20, 2016. Yes, this is my transcription of the letter because as is noted on this, I have added bold emphasis on page two in the last paragraph.

THE COURT: I'm sorry. Give me just a moment, sir. Is it -- is this the document?

THE WITNESS: This is it.

THE COURT: I'm going to show this to your lawyer.

MR. GIBSON: I apologize, Your Honor. That's what happens when I -- I'm a mediator, not a litigator, so I have to apologize.

THE COURT: So is this the letter?

MR. GIBSON: Yes, it is, sir.

THE COURT: And it's marked as Plaintiff's Number 10.

MR. GIBSON: Thank you, sir.

MR. GROTE: I would object to this letter in the sense that it's not actually the letter. It's his retyping of it and rechanging the formatting of it. I mean, the rules of evidence require original or a duplicate. This isn't either. It's just his transcription. I don't know whether it accurately reflects the letter or not. It's him retyping the letter with adding emphasis to things that were said in the letter that weren't in the original letter.

THE WITNESS: That is incorrect, sir.

THE COURT: Sir, we've got lawyers and lawyers really do have a purpose in all this. And a Judge really does have a purpose in all this; okay?

So is this the original email that your client received?

MR. GIBSON: This is the original letter with one change which is bolding on the second page of the cease and desist.

THE COURT: So it's not the same letter?

MR. GIBSON: It's not.

THE COURT: Okay. Then subject to the objection -- and I don't know what the letter says and I don't know what it doesn't say. But ---

MR. GIBSON: It's verbatim, but there is one section that is in bold.

THE COURT: So it's not verbatim.

MR. GIBSON: It's word-for-word, but there's one section that has been bold typed.

THE COURT: Okay. Then subject to his tying it together.

(WHEREUPON, Plaintiff Exhibit Number 10 was admitted into evidence.)

Q. And is this letter a request for you to cease and desist?

A. It states, as I have bolded in the paragraph, the last paragraph, the Association, by and through counsel, has attempted to contact this member to cease and desist this unwarranted action, all of which is incorrect.

Q. Mr. Wedlake, did you bring to the attention of the Board the fact that they had, in your opinion, exceeded their term of five years?

A. I did. But like the current Board, there generally is no reply or response to any of my contact nor request for information nor seeking to enter into discussions to resolve things which are questionable or disputed.

Q. Nevertheless, you ran for election in 2016, that would be?

A. 2017.

Q. 2017, yes.

A. I was a nominee for the 2017 Board.

Q. Did you get any votes?

A. I did receive votes. And as a matter of fact, I think

they're documented in an exhibit that the Defense counsel has entered.

Q. Okay. And again, you've already given us your platform. We're dealing today, though, with stipulated issues, as you know, regarding the current Board. What gave rise to the issues with regard to the current Board in regard to what is now a narrowly refined set of stipulated issues which was provided by yours truly? What gave rise to those and can you give me a little indication of how that process went? How did you raise them and how did they unfold?

A. I have attempted many times to interest the Board into a discussion to come to a place of recognition that our current Bylaws do need revision and we need a Bylaws Review Committee to do that. They did meet with me on July 8th one time for one hour where we began to address these issues and they took action items. And the July 8th meeting minutes are an exhibit which was entered into e-file previously. They did take action items to continue discussions and promised they would do more work to try to resolve the issues. But then never thereafter scheduled any meetings or never thereafter referred to the fact that they said they were going to do that and nothing since has happened.

Q. Okay. Well, did you -- so you tried to meet? You did get to meet one time. Then you sought additional meetings to resolve issues?

A. Yes, I did seek additional meetings to resolve issues.

Q. What were some of the issues?
A. The issues were as documented in the exhibit of the July 8th meeting minutes. And a lot of them are similar to the stipulated issues being brought before the Court, if my recollection is correct.
Q. Those stipulated issues, could you tell the Court from your memory, or if you want to pull it up on your computer, feel free, those stipulated issues in terms of why you raised them and why they are important?
A. Well, in terms of, again, the stipulated issues, one of which we've already discussed the proposal for an amendment to the Bylaws to add ADR to the Bylaws. The reason that is important, again, is to make it such that the Board cannot simply deny discussion, ignore the issues and tell a member -- just ignore him and ---
Q. You were involved in the drafting of the Bylaws Rev 2, including presumably -- or tell me, this valid provision?
A. I was the main proponent as an author of Bylaws Rev 2, ---
Q. Okay.
A. --- to bring the ballot provision into the Bylaws.
Q. Okay. But what was the legislative intent with regard to that provision? And could you recall how it reads?
A. The specific language is that the Board -- I guess it says Board secretary shall sign the ballot. And the specific purpose of that was, again, in terms of legislative intent to prevent a

Board from taking a position that they would not let the membership be the ones to decide a disputed issue, but would impose their will only in place of just bringing the vote to the entire membership.

Q. Okay. So it's your thinking, then, that that valid provision was violated when they didn't send out ballots with regard to your proposed amendment?

A. Per the strict language of the Bylaws that the Board shall send a ballot, that's correct.

Q. Okay. What other stipulated issues are you familiar with and what are the importance? For example, I believe -- I shouldn't be the witness -- but the issue with regard to filling vacancies?

A. There, again, that stipulated issue for this court is very clear. The Bylaws state plainly the Board shall fill a vacancy.

Q. Okay. It's a duty of the Board and they shall fill the vacancy. Did a vacancy arise?

A. In May, and I believe it was early May of 2017, the then presiding Board secretary decided to resign, opening up such vacancy. I petitioned the Board at that time that I was willing and eligible to fill the vacancy, and they did not fill the vacancy until January of 2018, with the sole purpose of being able to come to this Court and say they had filled the vacancy.

Q. Well, who ---

MR. GROTE: Your Honor, I object. He's offering his

opinion on that.

THE COURT: I sustain the objection.

Q. How did that vacancy arise?

A. The Board secretary resigned, which is, again, specifically specified and allowed in the Bylaws.

Q. Okay. And did they give you a reason why they weren't appointing you to that -- oh, are there any qualifications to the provision that says the Board shall -- or has the duty and they shall fill the vacancy? Are there any qualifications? Doesn't it require that the individual be eligible and available or willing?

A. Yes. And I specifically stated such to the current Board in my request that I was eligible and was willing to fill the vacancy. But, again, they basically ignored my request and did nothing.

Q. And you are still carrying forward the same platform, or not, that you talked about earlier? Could you expand a little on that platform?

A. My platform has always been in the interest of the best interest of the Association and to bring improvements to the Association and to also provide benefits to the members.

Q. Can you be specific with regard to any Board meetings or agendas or anything else that you might have put into your platform?

A. I have -- I guess I'm not recalling anything such there.

Q. Okay. Does the current Board sent out, in advance, agendas?

A. That's incorrect. They do not. And as a matter of fact, the current Board has taken it upon themselves to work in absolute secrecy, generally never informing the members of anything that is being done by the Board nor discussed by the Board and hiding all pertinent details, such as the fact that they had been asked to resolve the disputes and had been told that if they did not resolve these disputes that I would be forced to file in Court, all of which, basically, they just ignored.

Q. Okay. What about minutes? Do they send out and post minutes?

A. They do not. And I had asked ---

MR. GROTE: Your Honor, I would object to this line of testimony. I don't think it has anything to do with any of the stipulated issues. The minutes -- whether they send out minutes, I don't think that has anything to do with any of the stipulated items.

MR. GIBSON: If I may, Your Honor?

THE COURT: Yes, sir.

MR. GIBSON: We're looking at a two-term Board member with a specific agenda, platform, which differs markedly from the current and prior Boards, inasmuch as this is an issue of transparency and Board governance. What we have here is an

individual that sought to present his platform of openness and transparency, which is markedly different, a minority view currently, and get on the Board so that he will have that opportunity and basically got disenfranchised when not being permitted to do so. And that's the individual action on his part. Not derivative but both derivatively and individually. Thus the reason I'm raising this issue, Your Honor.

THE COURT: All right. How is it relevant to the six stipulated issues that both counsel have told me are before the Court?

MR. GIBSON: It just gives background with regards to the dispute, Your Honor. I'm finished with it, if I may move on?

THE COURT: All right. Let's move on.

MR. GIBSON: Thank you, Your Honor. I appreciate it.

Q. Mr. Wedlake, can you tell me the efforts, if any, that were made with regard to avoiding being here today and the time line?

A. Yes. I sent several letters to the current Board asking them to resolve the issues. Again, basically all were ignored. I sent a draft copy of the Complaint which I ---

Q. If I may back up. Let's do a time line. Back in March of 2017, did you ask them to sit down and do mediation? And if so, was that the only time you requested mediation?

A. That's correct. In March of 2017, I did request that the Board consider mediation. Subsequently, I believe it was both July and perhaps then towards September, I reiterated such

requests. Basically, again, ---

MR. GROTE: Your Honor, I would object again. I don't know that the whole series of settlement communications and who's more reasonable and less reasonable during the settlement discussions has much to do with anything in this case. Obviously the parties haven't reached an agreement and we're here. I think they're just going down the line that they were reasonable and we were unreasonable. I don't see that that has a lot to do with this.

MR. GIBSON: If counsel will stipulate that they were unreasonable -- Your Honor, it's a matter of good faith. This is a court of equity, and we want to show properly that this individual acted in good faith because we anticipate testimony that will seek to paint him in a false light, Your Honor.

THE COURT: All right. Go ahead.

Q. Let's move forward; okay. So did you offer to pay for this mediation?

A. After we attended a mediation session in December of 2017, there was indication that the Board was unwilling to continue because of costs involved. I did come forward and offer to pay mediation costs for both sides. And again, there was never any active response from the Board about that other than their attorney sending a letter to the mediator saying, thank you very much, but you're dismissed. We have stated impasse.

Q. Okay. So did you jump in and file at that point in time or

did you think about the next step, what might be done to avoid ---

A. The filing of my initial Complaint was done in October of 2017.

Q. Before that did you take any steps to avoid going to Court?

A. Yes. I had sent several letters, again, to the current Board, all of which were ignored where I suggested they resolve or I would see them in Court.

Q. Did you also ask for an advisory opinion using Representative Henderson to her good offices to ask the Attorney General's Office for an advisory opinion on these issues so as -- in order to avoid going to Court?

A. As a matter of fact, I did. And we did bring many of these same questions to the Attorney General. Unfortunately, he declined to opine and directed us that this was a matter to bring to the judiciary.

Q. Okay. At this juncture did you immediately file or did you sent a draft Complaint to the Board defendants?

A. I did indeed send a draft Complaint to the Board defendants indicating to them that they should recognize that this would be done if they would not agree as per the July 8th meeting in minutes where they said they would continue to try to resolve, and they have not since that time.

Q. Okay. But what did they say in reply? Did they give any response at all? Did they talk to you in terms of taking any

steps?

A. That's a detail now I do not recall without research.

Q. Did they says that they -- or did they indicate in any way that they would send it to the insurance company or carrier?

A. That is correct. The response was that they would have the insurance carrier provide an attorney, I believe, was the details of that response.

Q. And did you respond in turn before filing to that information?

A. I also replied to them and told them that due to the nature of the case that it was likely that insurance coverage would not apply.

Q. And why did you decide to go declaratory judgment and not simply sue for breach of fiduciary duty?

A. Again, the Attorney General was the one who directed us, I believe, specifically stating that we should bring declaratory judgment. And that is exactly what we did.

Q. Yeah. And did you also consider the fact that it was not as conflictual, not as much conflict, with declaratory judgment, simply asking for interpretation?

A. Yes. And that was always the intent to provide, again, improvement to the Association and not, as much as possible, be conflictual.

Q. So you filed. And then did you recommend mediation after filing or did you just go forward on that basis?

A. We did have a mediation session in December, which was after the October filing.

Q. Okay. Very good.

MR. GIBSON: If I may, Your Honor, I just need a little more water.

THE COURT: Yes, sir.

Q. Mr. Wedlake, I know you're probably tired by now. We're both senior citizens, let's admit it; okay. So if I may just a little longer and then perhaps I'll ask the Judge for a short break. If I may, a few additional things that we need to discuss. So are you suing the Board members individually for monetary damages?

A. Our original Complaint had always quoted nominal damages, were my understanding, is that meant one dollar in damages.

Q. But are you asking for all the legal fees to be paid by the Board defendants?

A. No. As a matter of fact, that will only be considered if we are awarded such damages as liability against the Board and then only if it is covered by insurance.

Q. Now, when was that filing done on the Complaint?

A. October 5, 2017.

Q. Okay. How soon after that did the Board defendants call a meeting of the members and advise them and go into details of the litigation?

A. It was not until towards February 5th where they called a

special meeting where they stated to discuss the litigation, which again is not really correct; it's just declaratory judgment.

Q. And before that time did you take it upon yourself to send out a note to the members ---

A. Yes. I have made many attempts to contact the members to give them pertinent information. And part of that intent was to try to inform them properly of the proper facts and also that the Board did not send any information whatsoever to any of the members.

Q. In these communications did you emphasize the desire for mediation or, in the alternative, to seek a Master in Equity?

A. That's correct. And we did ultimately decide to bring this case for declaratory judgment before the Master.

Q. And in the -- so you had -- there was mediation. Who called -- or was there an impasse called?

A. There was an impasse called and that was documented, I believe, in an exhibit we filed.

MR. GROTE: Your Honor, I would objection. Mediation and the process is confidential. If they're getting into the details of mediation, I ---

THE COURT: All right. I think that's appropriate.

MR. GIBSON: Okay. Yes, Your Honor. Sorry.

Q. Now, do you object -- well, let me go back. Did you, in your correspondence, tell members that there would likely be a

special assessment arising from this because your sense was that it would not be covered by insurance?

A. That's correct. As I had informed the Board, their case would likely not be covered by insurance. And with the amount of money that I presumed that they have spent, I fully expect, at the next annual meeting, they will call for a special assessment. And that had been aired to the members, again, to educate and inform the members, as well as to indicate to them that they had a voting power to deny such assessment; that they had to approve such assessment, as required by the Bylaws.

Q. Aren't they authorized to enter into expenses as a Board? Or do they have limitations under the Bylaws?

A. The Bylaws specifically state that the Board may elect to spend up to fifteen hundred dollars on a project. But after fifteen hundred dollars, they must seek member approval.

Q. And did you threaten litigation to block payment of fees to the -- or are you willing to accept any member ballot decision with regard to this issue of legal fees?

A. That was our suggestion to the Board, which, again, they have not acted on, that they ballot this question and let the members decide by a ballot to all the members, again, which has not been done.

Q. Okay.

MR. GIBSON: Your Honor, I need a few minutes' break if it's all right with you? Do you want to wait a few minutes?

THE COURT: We've only been going for about thirty minutes.

MR. GIBSON: Is that right?

THE COURT: We were twenty minutes late starting getting exhibit premarked. I want to move this along. If you tell me you need a break, I'll give you a break.

MR. GIBSON: Okay.

THE COURT: I prefer to go ahead and move along. We've got a lot of witnesses and a lot of ground to cover from what I understand.

MR. GIBSON: Yes, sir. Very good. I'll keep up. I have a little sciatica, that's all.

Q. Okay. So we discussed the issue of the Board's legal fees. Now, doesn't this really relate back to an incident regarding the architectural committee and your garage door, in which you painted it a certain way and a certain color and they didn't like it. Isn't that the reason that you've gone forward and done all this in a way to get back at the Association and the Board for their refusal to permit you to paint your garage door the way you want?

A. Not factually, although that was an event back in 2016 that was resolved and my door was repainted per their specifications, as per mutual agreement. And again, my intent has always been, since that time, is to act in the best interest of the Association and to provide benefits to the members.

Q. Okay. Going back to this opening and vacancy briefly, Your Honor, that you were asking to be nominated -- accept your nomination for -- accept it as a nominee, did you get information -- who was the individual that stepped down?

A. The Board secretary, Stacy Krause, resigned.

Q. And did she state -- have you been in communication with her as Board secretary with all the communications you provided to the Board before her stepping down?

A. I have always made it a point to include all the Board in any and all communications that I have sent.

Q. And you're fairly prolific in your communications, I understand; right? You send out a fair amount of information?

A. That has been documented explicitly in terms of an exhibit to our original Complaint. And in my judgment, it has not been excessive. All of it has been done as related to legitimate Association business.

Q. And what's the nature of the communications? How would they break out? Is it all requests for information or is it -- do you have categories?

A. A good number of educational content materials were sent. There was also a number of requests; again, primarily ignored by the current Board. And then I have actually itemized other communications which dealt with issues. But they're primarily a minority of the set of law. And did you enter that into an exhibit for the Court?

Q. I'm sorry?

A. The itemization of the number of emails?

Q. No. But I think you probably know that by memory. Roughly, a breakout between, for example, Board governance, educational material would be ---

A. Yeah, primarily in 2017, one -- about one-third of the emails were not simply forwards of educational material or requests.

Q. Okay. And how many of the emails were follow-up requests for information, roughly, as a percentage?

A. Perhaps ten to fifteen percent, because generally, again, there's been no response to any of my requests.

Q. Okay.

MR. GIBSON: We're just skipping around a little bit here, Your Honor. I apologize.

Q. You learned of an effort by the Board to get signatures on a document, written consent document, regarding this action from the membership; is that correct?

A. Yes. And I believe they actually filed an exhibit that resulted that action.

Q. Okay. Did you get a copy or opportunity to weigh in on that?

A. I was not aware of the specific petition that they brought to members' doors.

Q. They didn't bring one to your door?

A. No, they did not.
Q. Did they provide it to you afterward within ten days?
A. No. I actually obtained what was given to members from another member in the neighborhood. And I believe, as we discussed, as we were handed exhibit by defense counsel, their notice that they had done this; I did not receive either.
Q. Okay. Now, it's been said that you are -- I've heard it said that you are a litigious individual. Have you ever sued anyone -- putting this aside, this declaratory judgment, have you ever sued anyone in your life?
A. I have never been involved in any court action nor brought any action against anyone ever at any time before.
Q. Isn't it correct, however, that you did advise the Board, the 2016 Board, of a potential action for deformation?
A. Yes. I had done that with letters to those persons advising them, again, that if they will not reply to me, I will be forced to bring them to Court on such claims.
Q. And have you?
A. That is still pending at this time. It has not been completed.
Q. Very good. All right. And does that relate back to the -- and who, specifically, did you address in the context of this suit for deformation or the threat of suit?
A. The acting 2016 Board were comprised of three persons. And shall I name them?

Q. Sure.
A. Richard Lecroy, Christine Lynch, Dawn Vonderbeck.
Q. Very good. And would you say that you are a zealous, ardent worker for the betterment of the Association?
A. Yes. And I believe that is reflected by many and various emails that have been sent with intent to inform the members, as well as the Board, of things that need to be improved and should be improved in our Association.
Q. With regard to the stipulation that require -- for the requirement of a majority of members to approve management contracts or their renewals, are you okay in modifying such language to permit no renewal in the event that the original contract has a renewal provision?
A. My understanding was there would be some stipulation to remove that item from the stipulated issues before the Court, and I'm not aware of the status at this time.
Q. Okay. And would you further agree that in the event that there was an automatic escalation or a cost of living or CPI adjustment for the compensation in the original agreement, that that, too, should be allowed?
A. This was the intent of originally asking the Court to declare that renewals without member approval shouldn't be allowed because a lesson learned has shown that the prior management company continually modified the terms of their contract and relied on the automatic renewal provision to

effectively slip it by the members who were not approving it, so they were basically unaware that such changes in the contract had occurred.

MR. GIBSON: If I may, Your Honor, I believe that Mr. Grote is going to speak on the issue of stipulation on this point.

MR. GROTE: I guess this maybe should have been done before the witness got on the stand. But before this started, Mr. Gibson and I did reach an agreement, and I think we're willing to stipulation to at least one of the issues, to try to resolve that whenever the appropriate time would be to limit whatever testimony on that issue.

THE COURT: All right.

MR. GROTE: If you would like, I could ---

THE COURT: Is it one of the six that are set out in ---

MR. GIBSON: Yes, sir.

MR. GROTE: Yes, Your Honor.

THE COURT: Hold on. I haven't even finished my statement, so I don't know what y'all are agreeing to. It may be something different than what I'm agreeing to. Defendant's Pretrial Brief, that was -- well, it's not dated, but it's a twenty-two-page document. On page two and on page three, it has six stipulations. Are these the stipulations we're referring to, gentlemen?

MR. GIBSON: Yes, sir.

MR. GROTE: Yes, Your Honor. And there is a stipulation of issues for trial. There was a separate document that was actually e-filed with the Court on March 29, 2018, as well.

THE COURT: Okay. Thank you.

MR. GROTE: But I essentially copied and pasted that into the Pretrial Brief. There may be some slight differences, but should be pretty close.

THE COURT: So which of the six ---

MR. GROTE: That the Court construe the Bylaws of the Association and declare that the Bylaws require a majority of all members to enter into and to renew a management contract. It's my understanding that the parties have come to an agreement that they're willing to stipulate to an interpretation of the Bylaws that an automatic -- if there is an automatic renewal provision in the contract itself that the contract can automatically renew each year without having to get membership approval. Likewise, if there's a provision already in the contract that is approved by the members that has a provision that provides for a rate increase or change of rate, when the contract automatically renews that also would not require an automatic renewal. Or excuse me, would not automatically require a membership approval for the automatic renewal.

Essentially the issue was -- I think they had taken the

position that, okay, you have to get membership approval of the contract every year, even though it has an automatic renewal provision. I believe they were willing to stipulation between the both of us that as long as the contract has the automatic renewal provision it can renew each year without having to get a majority of the members to approve it. Likewise, the rate can change without the majority of members approving it, if that provision is in the contract. So that was approved by the membership.

THE COURT: So that is on page two of the Brief, paragraph one, subparagraph C; is that correct? Let me read what I think y'all are telling me. That the Court construe that 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. That's the language?

MR. GIBSON: That is, sir.

THE COURT: All right. So you're telling me that's no longer a contested issue?

MR. GROTE: Right. I mean, we're not stipulating that that's -- I guess we're not stipulating that a majority of all members has to be required to renew. We're stipulating to the opposite essentially.

MR. GIBSON: If it's in the original contract.

MR. GROTE: If it's in the contract that's been approved by the membership.

THE COURT: All right. Thank you. Then let's move on to the testimony.

MR. GIBSON: Excellent, Your Honor. Thank you so much.

Q. Speaking of the stipulated issues, one of them, 1(d), is 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. Which sounds a little like something that arose out of the 2016 Board remaining on for seven years. Can you speak to this -- the importance of this?

A. Yes. And that was the issue. They were in their seventh consecutive year and ignoring the non-profit corporation, which says shall not exceed five years. And again, were acting as a Board, not being elected, where the Bylaws say each Board member must be elected every year. And -- well, I've lost train of thought.

Q. Would you -- let's accept the fact that as long as it's consistent with law, with statute, with the Nonprofit Corporation Act, that that would be permitted?

A. I think the issue here was a waiver provision in the current Bylaws which indicated that for one year the Board could elect to waive the five-year term limit if they could not find people to come forward to serve on the Board. But since the Nonprofit Corporation Act specifically says shall not exceed five

years, my realization after that fact is that the waiver provision in the Bylaws is null and void because it isn't consistent with law.

Q. Then if it is not inconsistent with law, you would accept it?

A. That is my understanding of the language in the Nonprofit Corporation Act, that the Bylaws may contain any provision that is not inconsistent with law.

Q. So it could be agreed upon, at the moment, that we interpret that to -- provision to be subject to the Nonprofit Corporation Act provision, which would be -- have to be in accordance with law? Would that be satisfactory?

A. That's correct. And again, the Nonprofit Corporation Act says member terms shall not exceed five years.

MR. GIBSON: Mr. Grote, shall be stipulate it?

MR. GROTE: I'm not sure what you're asking me to stipulate to.

MR. GIBSON: Okay. I'm sorry. I was asking my client if he would agree -- stipulate that we agree the provision to read that as long as it's in accordance with and not in violation of ---

THE COURT: Gentlemen, let's move -- the stipulation is in writing.

MR. GIBSON: Yes, sir.

THE COURT: Let's move on with the testimony.

MR. GIBSON: All right.

THE COURT: If y'all want to stipulate, that's fine. You do it on your time. We're in the Court. We're not going to discuss stipulations on the record.

MR. GIBSON: I apologize, sir. Thank you, sir.

Q. And is the Court clear that the Bylaws of the Association do not permit delegation of the role or authority of the Board, 1(e), Delegation of the Role or Authority of the Board. Would you agree that it does permit delegation of duties with supervision?

A. Yes. And I believe this has been a misinterpretation, perhaps, on everyone's part to date. But the Nonprofit Corporation Act requires the Association's articles of incorporation ---

MR. GROTE: Your Honor, I would object to the extent that he's giving a legal opinion on what the nonprofit act says or means.

THE COURT: Let's move on, please, sir.

MR. GIBSON: Move on. Okay.

Q. Have we -- have you -- well, that's settled. I'm sorry. Has the Board defendants, to your knowledge, agreed to our stipulation? Stipulated issue?

A. That they are not permitted to delegate the role or authority ---

Q. Right.

A. --- of the Board. Not to my knowledge have they so agreed.
Q. Okay. Have we asked them?
A. Yes. I believe, again, that all of these issues were presented to them several times, and they have been asked to concur and resolve, but have not done so to date.
Q. Okay. Very good. We've asked this Court to weigh in on the issue of the Board be required to adhere to the provisions of the Bylaws. Why is that important?
A. Well, my understanding is the Bylaws are a contract between a Board and the members. And in many instances particularly relative to the expenditure of the funds, the Bylaws have specific intent to prevent the Board from doing actions and thus imposing or assessing additional obligations upon the membership. And I believe if the contractual nature of the Bylaws had been violated that every member has the duty and the right, as has also been stated in the South Carolina Attorney General opinion, to seek redress of such actions against the Board.
Q. Okay. And have you asked the Board to agree that they, like any other homeowner association, are subject to the Bylaws -- to adhere to the Bylaws?
A. Yes. And again, they will not so acknowledge to do.
Q. Okay. And the final one we've spoken on already, which is 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 to an eligible member. Let me ask you this question. You indicated earlier, if I'm correct, that this was a matter of having the authority or the power in the membership rather than the Board on this issue of ballots? You wanted to make sure, as I recall, that the members had the ability to ballot issues and that the Board would have the responsibility and the duty to send out the ballots; is that correct?

MR. GROTE: Objection, leading.

MR. GIBSON: Okay. Thank you.

Q. Could you speak to the issue of the ballots with regard to ---

A. Yes. The specific intent of the provision added in Rev 2 of the Bylaws was to assure that disputed issues would be brought to a vote of the entire membership rather than letting the Board assert their authority and preclude the members from voting on such issues.

Q. Logically, the issue that arises, does that suggest that every member in the Association could submit an issue for balloting and be required to be sent out?

A. This is a possibility; however, unlikely. But this is why a Bylaws Review Committee, I believe, is a requirement within the Association.

MR. GIBSON: Just a little bit further, Your Honor.

Q. Have you inquired or insisted that, in your communication to the Board, that they adopt resolutions following only your

specific verbiage or words to the letter and ... Could you speak to that issue?

A. Unfortunately, I think the current Board, with their lack of recognition that they need to discuss such disputes, has taken this stance that I am requiring them to do things my way or it's the highway. And I have a specific letter citing -- that I sent to them where I stated specifically, it is not my way or the highway. But again, that has been ignored to date.

MR. GIBSON: And, Your Honor, I apologize for not numbering these exhibits.

THE COURT: That's fine.

MR. GIBSON: I've been reluctant to provide any exhibits for that reason. I'm in the doghouse already. Your Honor, there is an exhibit marked that we ...

I hope you have this. My way or the -- it's not my way or the highway; June 25, 2017. If not, I have another copy right here, sir.

COURT REPORTER: I have an email marked. Is that it?

MR. GIBSON: Emails. Thank you so much.

COURT REPORTER: I think it's Plaintiff's 5, Judge.

THE COURT: This is the document you're referring to?

MR. GIBSON: Yes, sir.

THE COURT: Plaintiff's Number 5.

MR. GIBSON: Thank you, sir. Thank you, Your Honor.

THE COURT: Do you have a copy of it?

MR. GROTE: I'm trying to figure that out. Mine don't have numbers on them, whatever he handed me.

MR. GIBSON: Here you go.

(WHEREUPON, Plaintiff Exhibit Number 5 was admitted into evidence.)

Q. Mr. Wedlake, are you familiar with this letter -- email?

A. Yes. This is the exhibit labeled, it is not my way or the highway.

Q. And what was the purpose or intent behind this? Why did you feel it important to advise them it's not your way or the highway?

A. Because of their lack of response, generically, to most contacts I've made with them. And it states in the first paragraph that they have not addressed the issues. That they apparently do not recognize the seriousness. And that suggests that they weren't, indeed, reading or very much even looking at stuff I sent to them. And that indicated to me they were not seeking a resolution of such issues.

Q. So what are you hoping for the future of the homeowner's association?

A. As per my stated platform, I would hope to have a Board that is open, that publishes times for their Board meetings, invites members to attend the Board meetings, publishes in near real time the minutes from such meetings. And I have suggested they use available website resources to do that so that all

members may be informed about Board activities and the issues to which the Board is addressing. And also that, again, the Board recognize that they have a duty, as a Board, to represent all members of the Association, whether they may agree with those particular members or not.

MR. GIBSON: That's all I have, Your Honor.

THE COURT: All right. How long do you anticipate your cross?

MR. GROTE: I think it's going to be a little bit. I would say an hour.

THE COURT: I'm not real sure how to define a little bit.

MR. GROTE: I'm trying to formulate in my head. I would say it'll at least be an hour.

THE COURT: All right. We'll take a ten-minute break.

MR. GIBSON: Thank you, Your Honor.

(WHEREUPON, Court stood at recess for a short break.)

THE COURT: All right. Sir, if you'll come back to the witness stand.

All right. Your witness.

MR. GROTE: Your Honor, before I proceed, I guess I have a quick clarification. I'm a little bit unclear on what exactly they've admitted into evidence. They've marked several things. I think they referenced maybe two of them, but it doesn't appear to me that they moved ---

THE COURT: The only -- there have been two documents referenced, so I don't know, absence some stipulation that all the exhibits are in, then I think only two documents are in evidence.

MR. GIBSON: Well, if Mr. Grote would permit, I'd ask him to stipulate that they would all be in evidence.

MR. GROTE: I haven't really had an opportunity to review those. I think it's his obligation to admit his exhibits. At this point, Your Honor, ---

THE COURT: If you're objecting, then the only two documents that are in are Plaintiff's 5 and Plaintiff's 10.

MR. GIBSON: Your Honor, if I could ---

THE COURT: I'm sorry. I need you to be standing up when you're addressing the Court under the Rules of Civil Procedure.

MR. GIBSON: Yes, Your Honor. I apologize, Your Honor. Would this be an appropriate time to try to submit them in chronological order?

MR. GROTE: I think he's rested his questions at this point.

THE COURT: In light of Mr. Grote's objection, I have no option but to sustain the objection.

MR. GROTE: Your Honor, at this point, my request to the Court would be that I be granted leave to -- leave or the right to call Mr. -- you know, reserve my questions at this time,

but reserve my right to call Mr. Wedlake in the defendant's case-in-chief. And I think under Rule 611, under the Rules of Evidence, I would be allowed to ask any questions of him at that time.

THE COURT: I think if you want to cross, I think you've got to do it now. If you want to call him in your case-in-chief, I think at that point he becomes your witness and leading questions would, if objected to, probably not be appropriate.

MR. GROTE: Okay, Your Honor. If I may on that point, direct one -- I guess, just for the record I understand your ruling. Just so I state my -- I guess my position clearly.

THE COURT: You're noted on the record. So you can either cross examine him or I'll have him stand down.

MR. GROTE: Okay. Thank you, Your Honor. I'll proceed with the witness.

THE COURT: All right.

CROSS EXAMINATION

BY MR. GROTE:

Q. Mr. Wedlake, you ran for election at the annual meeting on January 10, 2017; didn't you?

A. Yes.

Q. And as part of your election campaign, you sent out correspondence to the membership stating your platform; did you not?

A. Yes.

MR. GROTE: If I can get my exhibits, please.

Q. Mr. Wedlake, I'm going to show you what we're marking as Exhibit -- what's been marked for identification as Exhibit Number 1. Can you tell me what that is, please?

A. This is a request of November 26, 2016, titled, please make your platform known, requesting that other nominees for the Board bring their platforms to the attention of the members.

Q. Okay. Is that a letter that you sent to the community?

A. It is titled, Woodington Homeowners Association members; yes.

Q. Is it a letter that you sent out?

A. It contains my signature.

Q. Okay.

MR. GROTE: Your Honor, I would move to admit Defendant's Exhibit Number 1 into evidence.

THE COURT: All right.

(WHEREUPON, Defendant Exhibit Number 1 was admitted into evidence.)

THE COURT: Thank you, I don't need it right now.

MR. GROTE: Actually I do have another copy for you of this one, Your Honor. I'm going to pass this back. I think some of them I have three copies and some four.

THE COURT: All right. Thank you.

Q. Did your campaign include getting rid of AMG as one of the

things that you wanted to do?

A. That was a stated platform item.

Q. Hundred dollar dues and proposed bylaw amendments; is that your platform?

A. That is as stated in this letter.

Q. Okay.

THE COURT: Just for the record and also for my edification, who is AMG or what is AMG?

MR. GROTE: AMG was the -- they're actually an association management group. They're the property manager for the --

THE COURT: All right.

MR. GROTE: They were the property manager for the neighborhood.

THE COURT: All right. Thank you.

Q. And Mr. Wedlake, you've raised some issues with smear campaigns and disparaging remarks; right?

A. Yes.

Q. But you, yourself, have engaged in that type of behavior; haven't you?

A. No.

Q. Well, look at page two of Exhibit Number 1. Don't you seek to get proxies to get rid of the malevolence that was AMG? Is that not disparaging?

A. It is every member's right to ask for proxies from other

members before an annual meeting.

Q. Sure. But you called the property manager the malevolence. Is that not disparaging to them?

A. Not in my opinion.

Q. And you consistently referred to the prior Board of Directors as the Board pretenders; right?

A. They were not elected in either 2015 nor in 2016.

Q. My question for you is you called them Board pretenders; right?

A. I believe that has been stated and seen in perhaps letters.

Q. And is that not derogatory to those Board members?

A. Not in my opinion.

Q. You also are familiar with something called Next Door; right?

A. Next Door is a social media that -- in which Woodington participates in.

Q. And you're an active poster on this social media Next Door site; are you not?

A. Yes. Primarily has swathed into a group called Group WHOA.

Q. And you frequently post there; correct?

A. That's a matter of definition.

Q. Well, you've posted several times, have you not?

A. I have posted there.

Q. Okay. I'm going to show you what's been marked for identification as Exhibit -- or Defendant's Exhibit Number 2 and

ask if you've seen that document before?
A. Yes, I have seen this document.
Q. What is the date on it?
A. December 10, 2016.
Q. Is this a correspondence that you sent out to the Woodington nominees on that date?
A. As so titled.
MR. GROTE: Your Honor, at this time I'd move Defendant's Exhibit 2 into evidence.
THE COURT: All right.
(WHEREUPON, Defendant Exhibit Number 2 was admitted into evidence.)
Q. What was the purpose of sending this communication?
A. Primarily to inform the members that thirty-four votes, a majority of the membership, is required before WHOA may disburse funds for or to a management company.
Q. Okay. And you've also informed -- or who did this go to?
A. To Woodington nominees, is the title of this email.
Q. Who were the Woodington nominees that you sent it to?
A. I believe they are shown at the top of the message, which reads: Craigo, Esteve, James, Krause.
Q. All right. And you took the opportunity -- and these were people who were running against you for the Board of Directors election that January 10, 2017 annual meeting; right?
A. That's correct.

Q. You took the opportunity to inform them that you were instituting litigation against the 2016 Board pretenders; right?
A. So stated in this letter.
Q. And you also threatened them that they could be subject to legal action, too; right?
A. Only if they had wilful and intentional violation of our Bylaws.
Q. So you got this slate of candidates, and they're not even elected yet, there's not an election, but you're still mentioning the threat of litigation before they're even on the Board; right?
A. Only if there was wilful and intentional violation of the Bylaws.
Q. All right. But it still mentions litigation; does it not?
A. Only if there is wilful and intentional violation of the Bylaws.
Q. And what was the point of warning these nominees that they may be subject to litigation from you before they're even elected?
A. This was litigation being brought against, as you pointed out, titled, 2016 Board pretenders. It had nothing to do with the 2017 Board nominees.
Q. My question for you is why did you even bring up to the nominees that they may be potentially subject to litigation in the future?
A. I have no comment.

THE COURT: Sir, that's not an option today. If he asks you a question, you're going to answer it.

A. At this date in time, I'm not sure I recall what the intent was other than to inform them that if they intended to act in the manner that the non-elected 2016 Board acted with wilful and intentional violation of our Bylaws that they would be subject to the same thing that was being brought against them, which was legal action to assure their compliance with the Bylaws.

Q. It wasn't an effort to threaten and intimidate them not to run?

A. Not in the slightest.

Q. Let me show you what's been marked for identification as Defendant's Exhibit Number 3. Would you take a look at that for me, please? Once you've had an opportunity to do so, just let me know.

A. And I have looked at it.

Q. What is Exhibit 3?

A. It is titled, regarding annual meeting - vote for Wedlake.

Q. Is it essentially another vote for you platform leading up to the January 10, 2010 (verbatim) annual meeting?

A. As so stated in this letter.

Q. Did you sent that letter out?

A. Yes.

MR. GROTE: At this time, Your Honor, I'd move to admit Exhibit Number 3 into evidence.

THE COURT: All right.

(WHEREUPON, Defendant Exhibit Number 3 was admitted into evidence.)

Q. What was your platform as stated in this letter?

A. I see five itemized numbered items.

Q. I guess reduce dues, you want to propose bylaw amendments, things like that?

A. That's correct.

Q. Okay. Was this distributed to all of the members of the community?

A. To the best of my knowledge.

Q. So is it fair to say that based on what we've seen so far, the community had knowledge of what your platform was and what your views were; right?

A. Per this letter.

Q. Despite your active campaign, you were not elected at the annual meeting; were you?

A. That's correct.

Q. How many votes did you actually receive?

A. I believe I received four votes, as stated in the minutes from -- the draft minutes from the meeting.

Q. Do you have any idea how many votes the other directors received, the people who were actually elected?

A. My recollection of the draft minutes showed that they received thirty-four or thirty-three votes.

Q. Is it fair to say that you lost a landslide election on this platform, including get rid of AMG?

A. No, that is not fair to say.

Q. It's not?

A. It is not. There are sixty-six voting units in the Association. If they had thirty-four votes, that is just one more than half.

Q. All right. Well, the fact is, you didn't -- you weren't elected? People didn't buy into your platform; right?

A. That was due primarily to the smear campaign by the previous non-elected 2016 Board, which they continued openly at the annual meeting.

Q. That's your contention then; huh?

A. And you also participated with them in such smear campaign to confirm as an attorney that suggested to the members that I was illegal and had broken the law, when none of that was true.

Q. You raised a lot of issues before the annual meeting in 2017; didn't you?

A. At my age, I'm not sure my recollection is specific for details of that nature.

Q. Well, you complained about the Board terms for the prior Board; right?

A. That was not a complaint. That was a fact-based observation that they had violated a five-year term limit.

Q. Well, you brought the issue up; right?

A. That's correct.
Q. And you raised it in advance of the annual meeting; did you not?
A. I believe that was as documented in these letters.
Q. And you ran on this platform to get rid of AMG; right?
A. In this exhibit, I don't see that particular phrase, get rid of AMG.
Q. But it was all in your prior letter we looked at; right, your prior platform letter?
A. I also don't see that in that prior letter.
Q. If you'll look at Exhibit Number 1.
A. Exhibit Number 1. That's correct. It's stated in this exhibit that was part of my position.
Q. All right. And you raised issues with AMG's contract before the last annual meeting; did you not?
A. The issue raised was per the Bylaws that member approval was required before such contract could be entered into.

MR. GIBSON: Your Honor, I'm going to ask the relevance of all this. AMG is not even a party.

THE COURT: What's the relevance?

MR. GROTE: I'm getting to it, Your Honor. I'm sorry it's taking a little bit. The relevance is going to be that it was put to a vote whether to keep AMG. And it's not the issue of whether the contract needed renewed or not. The issue is that the community did not adopt his platform; that the community

voted overwhelmingly to keep AMG, even though his -- the community just didn't accept his views. That's the point of this.

THE COURT: Let's move on then. Thank you.

MR. GROTE: Okay.

Q. Mr. Wedlake, do you agree that it was put a vote at the 2017 annual meeting whether to keep AMG, and the community ratified and adopted -- or chose to keep AMG despite your objections to them; right?

A. I don't believe that's an accurate statement. A vote was taken to allow AMG to continue as the management company.

Q. Right. And the membership decided that's what they wanted to do, despite your platform otherwise; right?

A. The thirty-four, whatever, members, one more than half that were at the annual meeting.

Q. Right. Those who appeared did not buy into your campaign; did they?

MR. GIBSON: Asked and answered, Your Honor. Asked and answered.

Q. Despite the community speaking on the issue, afterwards you continued to make efforts to this Board, to the current Board, to get rid of AMG; did you not?

A. No.

Q. You did not?

A. I did not. I suggested to them that it would be

appropriate to bid for management services, as is a customary practice by many Boards who act in the interest of the members of the Association.

MR. GROTE: Beg the Court's indulgence. Let me mark another exhibit, please.

MR. GIBSON: Again, Your Honor, I'm just curious as to developments of this issue. We've heard that he's objected to AMG.

THE COURT: Relevance being?

MR. GROTE: Yes, Your Honor. One of the defenses we've raised in this case is that Mr. Wedlake does not represent the interests of the community; that he's acting in a derivative capacity, which is essentially like acting as a representative for a class. The relevance is that the community put it to a vote. They spoke on the issue. And he continued to take actions contrary to what his constituents wanted. And so it shows he's not really acting as a true representative of the community like he claims, and it would disqualify him from being a derivative plaintiff.

THE COURT: I'm assuming we're going to move pretty quickly through this?

MR. GROTE: Yes, Your Honor.

THE COURT: All right. Thank you.

MR. GROTE: Exhibit 35.

(WHEREUPON, Defendant Exhibit Number 35 was marked for

identification.)

MR. GROTE: And Your Honor, I also believe this exhibit goes towards impeachment because he's denying taking these actions.

Q. Mr. Wedlake, I've showed you Defendant's Exhibit Number 35. Have you seen that document before? I'm sorry, I haven't given it to you? Exhibit 35.

A. Yes. This is titled, Mediation/Meeting ... in Lieu of Litigation.

Q. Is it dated June 22, 2017?

A. That's correct.

Q. Is this an email that you sent?

A. This was sent by email and by certified mail as indicated in the document.

MR. GROTE: I would move this into evidence, Your Honor.

THE COURT: All right.

(WHEREUPON, Defendant Exhibit Number 35 was admitted into evidence.)

Q. If you'll look under question number 5 for me, do you not state that, I think it's a no-brainer that AMG's contract should be terminated at this time?

A. Question number 5 says, it is a good practice to send out a request for bids for professional services.

Q. I'm asking you about the second paragraph there, does it

not say, I think it is a no-brainer that AMG's contract should be terminated at this time?

A. That is intended to mean send notice to them of terminated -- termination for their contract and procure bids with intent to change to a low cost provider, as stated.

Q. Right. The point being, you did, in fact, ask to get rid of AMG, even though the community voted in favor of it; right, in favor of keeping them? Is that fair?

A. No, it is not.

Q. Well, I guess the document speaks for itself then. Moving on, you purport to represent the interest of the community; is that fair? You're the good guy for the community, acting for their interests; right? That's how do you do it?

A. In various letters I've sent, I have suggested that is true for various items that are being brought in the best interest of the Association and for -- to provide benefit for the homeowners.

Q. And you're trying to represent their interests in this case; right?

A. I think it is clear that not any member represents every member in an Association. But that does not preclude the fact that every member has good ideas for improvements to the Association that should be brought.

Q. You were invited to an open Board meeting on June 29, 2017; weren't you, to speak on your issues?

A. I believe that was covered in various other contacts which

said that five or ten minutes was insufficient and it was an inappropriate forum for such things to take place.

Q. Right. So you're acting on behalf of the community, representing their interests, being the good guy, but you didn't want to present your issues in an open forum where your constituents were present? How does that make sense?

A. My understanding was that that was a closed Board meeting to which members were not invited.

Q. Well, didn't you say in correspondence that this is not an appropriate forum because it's open to members?

A. I'm not sure I recall that detail. The point was, it was suggested to them that they needed to make effort to meet with me to resolve disputed issues outside of a five or ten-minute window that was proposed.

Q. Well, don't you agree that if you're purporting to represent the interests of the community that the community should be involved in what you're trying to do on their behalf?

A. Not necessarily.

Q. You don't think so? Why not?

A. In most instances here, the issues are application and/or violation of the Bylaws, which being conflictual in nature, most members are not interested in participating for that purpose.

Q. Well, isn't that the point, the members really aren't interested in this battle you're engaging; are they?

A. I believe that's supposition.

Q. Yet you're continuing to do it for your own personal benefit; right?

MR. GIBSON: Your Honor, I'm going to object to this line of questioning. He's badgering and it's irrelevant.

THE COURT: All right. Overruled.

A. May I answer that last question, Your Honor? Would you repeat the question, please?

Q. We can read it back or I can re-ask it. The point is, is that you're continuing to, I guess, engage in a lawsuit against these Board members, purporting to represent the constituents, the members of the community, without really understanding or getting a feel for whether they want you to do it for them; right?

A. I don't believe there's any aspect of law that says I am not entitled to equal protection of the law as adjudicated in a court of law regardless of viewpoints of other members of an Association.

Q. But you do understand that you are bringing -- do you know what a derivative lawsuit is? You seem to have brought this and have stated a lot of stuff about that.

A. The intent of filing my original Complaint as an -- being brought individually or derivatively was because all of the issues that have been cited, and as also stipulated for this Court, are issues being brought in the best interest of all the members of the Association, regardless of whether every member

may agree with them.

Q. Well, is it in their best interest if they don't want you to continue doing this?

A. That's correct, particularly when the Board violates the Bylaws to spend many thousands of dollars that they are not authorized to do, as stated in the Bylaws.

Q. I just want to make sure, your position is, it's in the best interest of the community to pursue a lawsuit on their behalf that they don't support. Is that what you're saying?

A. That every member may not support, but I support, and perhaps up to twenty-some other member also support, but have remained silent.

Q. Well, you knew we've challenged whether you adequately represent the community; right? You've known that for a long time; haven't you?

A. That's your contention.

Q. Well, it's been raised in our motion to dismiss. It's been raised in our Answer. You're aware of that; right?

MR. GIBSON: I'm just at a loss as to what the relevance of all this is.

THE COURT: Where are we heading? What's the relevance?

MR. GROTE: Your Honor, the relevance is, it's one of our primary defenses that this is brought as a derivative suit and the question is whether he fairly and adequately represents

the interests of the community, and we intend to show that he's really acting against the interests of his constituents.

THE COURT: All right. Let's move ahead.

THE WITNESS: May I comment on that, Your Honor?

THE COURT: No, sir, you can -- if he asks a question you can certain respond to it.

Q. And the point I'm getting to is, is despite your knowledge that we're contesting this, you haven't brought a single witness here on your behalf to say, good job, Mr. Wedlake, we want you to do this; right?

A. There's so much irrelevancy that you are trying to bring in this action that bringing other witnesses that perhaps would just prolong the proceeding when our stipulated issues for Court are simple and straightforward, I believe is inappropriate.

Q. Well, I'm not asking whether you believe it's inappropriate or whether you like my question. My question is, you knew we challenged this issue and you -- still nobody has come forward on your behalf here today; have they?

A. No one was asked to come forward on my behalf because I did not want to subject anyone else to this sort of abuse.

Q. So now it's your position you didn't ask anybody to come support you?

A. In conjunction with my attorney, we decided most appropriately that I would be called as the only witness.

Q. I show you what's been marked as Defendant's Exhibit Number

4. Unfortunately I don't think I have another copy of this one. I can hand you mine if you would like to follow along.

THE COURT: No, go ahead.

MR. GIBSON: What number is that, Mr. Grote?

MR. GROTE: 4.

MR. GIBSON: Yes. Thank you, I have it.

Q. What is this document, Mr. Wedlake, that's been marked as Defendant's Exhibit 4?

A. That is a letter to members of the Woodington Homeowners Association.

Q. All right. It says Woodington Homeowners Association, Inc. at the top?

A. Yes, it does.

MR. GROTE: Your Honor, I would move Exhibit 4 into evidence.

THE COURT: All right.

(WHEREUPON, Defendant Exhibit Number 4 was admitted into evidence.)

Q. Now, again, you claim to represent the best interest of the corporation; right? That's what you're doing here?

A. I believe that's more than a claim.

Q. Okay. So back in August of 2016, you tried to dissolve the corporation that you purport to represent; right?

A. That is incorrect.

Q. Well, what is this then?

A. This is a ballot asking members if they would support such an action.

Q. It says, vote on the question: Dissolve Woodington Homeowners Association, Inc.; right?

A. That was the intent of the ballot.

Q. Right. It doesn't say anything about it being a poll; does it?

A. Did I understand you to say poll, p-o-l-l?

Q. Yes.

A. This is a ballot as specified in the Bylaws that say that if you would like to dissolve the Association, you must get seventy-five percent of the members to concur.

Q. And don't you think it's confusing that you're sending it out with Woodington Homeowners Association, essentially letterhead, but you were not a Board member at that time; were you?

A. I am a member of Woodington Homeowners Association, and my signature is at the bottom.

Q. Now, do you agree with me that dissolving the corporation would be adverse to the interests of the corporation, if you're representing them?

A. No.

Q. It's not?

A. I do not agree with you.

Q. Okay. So it's in the best interest of the Association to

dissolve itself, the corporation?

A. The intent of this ballot was to bring to the members realization that they can't simply sit back and do nothing; that they should participate actively in the Association. And this ballot elicited that response at the next annual meeting, so its purpose was served.

Q. I'm not asking for the intent. I'm asking you, is it or is it not against the interests of the Association to dissolve itself?

A. In situations of wrongdoing by the Board, it is in the best interest of the Association to dissolve itself when the Board actively violates the Bylaws.

Q. Let me show you Exhibit Number 5.

MR. GROTE: I apologize; I did have a copy of the last one for you. This came unstapled.

Q. I show you what's been marked as Exhibit Number 5. Are those your voting forms from the last annual meeting?

A. It appears to me that one is submitted from Susan Troutman; whereas, the others are from -- one, two from me; another from Hayden Vernon and another from me voting as proxy for other members.

MR. GROTE: All right. I'd move to admit Exhibit 5 into evidence.

THE COURT: All right.

(WHEREUPON, Defendant Exhibit Number 5 was admitted into

evidence.)

Q. Mr. Wedlake, you would agree that the Bylaws normally call for an election of five directors; right?

A. That's correct.

Q. And so as a friend of the corporation and a -- somebody who represents the interests of the corporation, you would agree that it would be best to try to get five directors; right?

A. That's correct.

Q. Yet when you voted in the election, you voted solely for yourself and nobody else; right?

A. That is indicated on these ballots, but my response is, so what.

Q. Well, how can you be a friend of the corporation if you're not willing to vote for anybody else to serve on the Board and -- if everybody voted the way you did, then maybe there could only be one director; right?

A. Supposition on your part.

Q. Well, the fact is, you voted for yourself and you didn't vote for anybody else; right?

A. I see nothing wrong with voting for yourself in an election for a Board.

Q. Now, leading up to the annual meeting, here again, you raised issues with the prior Board's terms; right?

A. That's correct.

Q. So-called Board pretenders as you call them; right?

A. They had violated the five-year term limit.
Q. And you say they violated that starting when?
A. At the end of their terms in 2014, they had served the five-year limit.
Q. All right. So you didn't do anything about it in 2014; did you?
A. It was not until the end of 2014 that they had served five years.
Q. Okay. So you didn't do anything about it in 2015; did you?
A. That was because of the waiver provision in the Bylaws, which I believe we've spoken about, which says that for one year only they may waive that term limit if they could not get other members to come forward to be on the Board.
Q. And you didn't bring any action against them in 2016 either, other than raise some complaints with them; right?
A. That was because of a deal that you made with my attorney to preclude such action, which otherwise would have been brought.
MR. GROTE: Your Honor, I would object to that. I don't think that has ---
THE COURT: Let's move ahead.
Q. All right. Mr. Wedlake, and so what we've got here, you agree that all four of these Board defendants are serving in their first term; right?
A. Correct.
Q. Okay. They're not in violation, as you would say, of any

provision of the Bylaws relating to term limits; are they?
A. No.
Q. And the fact because you raised the issue with the last Board terms, it was put to a vote at the last annual meeting to try to put that issue to bed; right?
A. I need more specific to understand what you're speaking about.
Q. There was a vote taken, due to your complaints, to ratify the terms of the prior Board to put it to bed so people didn't have to continue to argue with you about it; right?
A. I'm not sure that was ever stated in that light.
Q. Well, the fact is, a vote took place to ratify and validate the prior Board of Directors; right?
A. That was a vote that you brought forward, without discussion, that you basically rammed down the members' throats.
Q. The vote took place; right?
A. There was a ratification vote.
Q. And the members approved ratifying the terms of the prior Board of Directors; right?
A. In violation of the nonprofit corporation and in violation of the Bylaws.
Q. Per your opinion; right?
A. That's not an opinion. The nonprofit corporation is specific; Board members' terms may not exceed five years.
Q. You're not a lawyer; are you?

A. I am not a lawyer.
Q. And you never went to law school. You have no legal training; right?
A. That's correct.
Q. Therefore you're not an expert in the law; are you?
A. In this instance, the statement in the Nonprofit Corporation Act is clear; members' terms may not exceed five years.
Q. So despite your constituents, the people you were trying to represent, ratifying and putting to bed the issue with the Board terms, you then engaged this current Board into a debate about whether or not the prior Board did something wrong; is that right?
A. I don't believe that's an accurate statement.
Q. Wasn't that what you want? You want this Board to say you were right about the prior Board's terms?
A. No.
Q. Why are we here then?
A. I believe the issue stipulated is that the -- this Board acknowledge that a five-year term limit is a matter of law.
Q. Well, they're in their first term; right?
A. Yes.
Q. So why is it the Board has to, because you unilaterally want them to agree with you on the term limit, that we have to be here in Court with you?

A. This, again, is a best interest of the Association issue where a Board may not elect to circumvent having an election and reappoint themselves as members of the Board without election, particularly when they have directly violated the Nonprofit Corporation Act term limit of five years, and as also specified in the Bylaws that each Board member must be elected every year.

Q. But this Board hasn't done anything wrong in that respect; have they?

A. That's a matter of opinion.

Q. Well, if they're not serving more than their first term, how does the five-year term limit have anything to do with this Board of Directors that you've chose to sue individually or in their own names?

A. Because they were asked to acknowledge that the five-year term limit applies to actions of any Board member in this Association.

Q. Right. So you want to ask them some academic questions, even though there's no dispute, and you want to sue them if they don't want to engage on this academic dispute over it; right?

A. This is not an academic question. This is a matter of law.

Q. So even assuming that this Board of Directors continues on, this provision is not even ever going to come up for another at least four years; right?

A. If they were to continue on, at the end of their five-year term, this would come up.

Q. Right. So it's -- we have to assume, speculatively, that all four of these folks would continue on -- or at least one of them would continue on for another four years to even make this an issue; right?

A. That is when it would apply, after they have served five years.

Q. Are you contending that the prior Board of Directors didn't send out notices of prior meetings asking for people to serve on the Board?

A. No.

Q. In fact, they sent out a notice in 2015 asking for volunteers to serve on the Board; didn't they?

A. One notice.

Q. The annual meetings also requests volunteers for the Board for 2015; don't they?

A. I believe you would have to refer to the minutes to see what exactly was done.

Q. Notice was sent out for the 2016 annual meeting; was it not?

A. A notice of the 2016 annual meeting was sent out, but then the management company and the Board did a slight-of-hand to change the date to an earlier date for that meeting.

Q. You agree that those notices called for nominations; didn't they?

A. I believe that's correct. I'm not sure my recollection is

accurate in that regard.

Q. And so, you know, people just didn't step up for those annual meetings; right?

A. As I indicated previously, that was the intent of asking people to vote on the issue of dissolve the Association to heighten their interests such that they would come forward to serve the Association.

Q. And you agree that an Association or a nonprofit corporation has to have a Board of Directors; right?

A. Yes.

Q. And since nobody stepped up at those two annual meetings, somebody has got to fill the role; right?

A. Provisions in the law are provided for continuity of a Board such that a Board and corporation does not continue without leadership.

Q. Right. And so rather than attacking this prior Board, shouldn't the community be giving them, you know, a thanks or owe them a debt of gratitude for allowing the corporation's business to go on since nobody else wanted to take on the burden and obligation of doing it?

A. I petitioned actively in 2016 to come onto the Board, and was denied, illegally, per the Bylaws.

Q. Now, you're here trying to demand strict compliance by this Board of Directors and, I guess, future Board of Directors with the provisions of the governing documents, like the Bylaws;

right?
A. I believe that is an appropriate and in the best interest of the Association.
Q. Have you at least taken the position that you don't always necessarily have to follow the law or the rules; right?
A. That is incorrect.
Q. All right. Well, let me show you Defendant's Exhibit 6. All right. Have you had a chance to look at that?
A. Yes.
Q. What is Exhibit 6?
A. This is a letter that I sent to the Architectural Committee asking them, and stating to them, that now is the time for discussion about an issue.
Q. Is that email dated December 16, 2017?
A. Yes, it is.
Q. Okay.

MR. GROTE: I'd move Exhibit 6 into evidence.

THE COURT: All right.

(WHEREUPON, Defendant Exhibit Number 6 was admitted into evidence.)

Q. You've taken the position that you don't have to comply with the architectural restrictions in this neighborhood; haven't you?
A. I don't believe that's a fair statement.
Q. You say I'm going to paint the garage door whatever color I

desire; right?

A. That is my right under the law, as so specified per a Supreme Court decision that was ruled against an HOA that says, HOA may not restrict the paint color that a homeowner chooses to paint on their house.

Q. But you know there are architectural guidelines for this neighborhood that say differently; right?

A. As a matter of fact, and as a matter of a South Carolina Attorney General opinions, documents that come after the covenants where the covenants does not give an Association such power, are unenforceable documents, much like the architectural guidelines of Woodington Homeowners Association.

Q. Well, that's not my question. My question is, do you know there's architectural guidelines that say otherwise; right? That say that you can't change the paint on your garage door without seeking approval; right?

A. I don't believe that that's what those guidelines say, but my recollection may not be specific.

Q. That you have to get architectural approval for changes to your property; right?

A. Again, under the law, that is not something that can be required by a homeowners association, nor by an architectural committee.

Q. I'm not asking your opinion on the law. I'm just asking you what the documents for the community indicate; whether you

agree if they're enforceable or not?

A. I believe the architectural guidelines of the Association are an unenforceable document.

Q. Okay. Well, we've got documents out there that say, don't -- and the covenants also have architectural restrictions; right?

A. The covenants have architectural restrictions for things that relate to building plans and structural changes.

Q. Despite there being -- what is your understanding of why they have architectural -- let me rephrase that. You understand that communities have architectural restrictions to promote harmony, aesthetics, things like that to help promote the community from looking similar, improve property values and things like that; right?

A. That's a matter of opinion in terms of improving property values.

Q. But it's to promote harmony in the community; right?

A. I believe that's the stated intent, but it doesn't necessarily comply with my understanding of the law.

Q. Okay.

MR. GIBSON: Your Honor, I'm a little confused as to what this has to do with the six stipulated issues that we have.

MR. GROTE: Your Honor, I'm getting to that. It, again, goes to whether he has the interests of the community in mind ---

THE COURT: All right. Let's move on.

Q. And you agree if somebody changes the exterior of their property to something offensive that, you know, that affects the community as a whole; right?

A. No.

Q. You don't think so?

A. I do not.

Q. And so if somebody paints their house bright pink and the community thinks it's obnoxious, then that's somehow in the best interest of the community, in your mind?

A. It is outside of the law as stated in your Exhibit Number 6, so it's quoting the Supreme Court decision that says an HOA may not restrict the color a homeowner paints their house.

Q. Okay. And you've, in fact, taken liberty of painting your house; right? I show you Exhibit 7.

A. It is my right to maintain my house as I see fit.

Q. Is Exhibit 7 a photograph of how you painted your garage door?

A. This paint was applied at summer of 2016 or 2015 -- I've gotten confused on the year now -- and was not cited by the homeowners association as being objectionable until several months later.

Q. Right. But the point is you did it because it suited you and not the constituents you purport to represent; right?

A. The constituents of the homeowners association have absolutely no right under the law to require me to paint my house

in a manner that they like.

Q. All right. So even though you want to represent them, you would actively go against their wishes then; is that fair?

A. No, that is not fair.

Q. Now, you've sent out quite a bit of correspondence to the community about the lawsuit, some of which is trying to garner support for your position; have you not?

A. The intent of messages to the homeowners is to inform them of the facts.

MR. GROTE: And I forgot. If I didn't move Exhibit 7 into evidence, I'd like to do so.

THE COURT: 7 or 6?

THE WITNESS: This is 7.

MR. GROTE: The photograph.

THE COURT: The photograph is 7? Okay. Thank you.

(WHEREUPON, Defendant Exhibit Number 7 was admitted into evidence.)

Q. I hand you Exhibit Number 8. I don't think I have another one of those. Can you explain what -- what is Exhibit Number 8?

A. This is a letter to members of Woodington Homeowners Association.

Q. All right. What's the date on it?

A. Defendant 15, 2017.

Q. Did you send this letter to the community?

A. Yes, I did.

MR. GROTE: I'd move it into evidence at this time.

(WHEREUPON, Defendant Exhibit Number 8 was admitted into evidence.)

Q. Does this explain your position on the lawsuit to the members of the community?

A. It, again, is intended to inform members that the judicial action could and should have been avoided, and with all the time and costs expended, as well, being avoided.

Q. And you self-declare as the good guy for the HOA; right? Bottom of paragraph one.

A. That is what's seen in this letter.

Q. And you asked volunteers about giving statements or affidavits in support of your case; right?

A. It says in the last paragraph, your help is needed.

Q. All right. And that was in relation to the motion to dismiss previously; right?

A. I think this is in relation to the subject, Board Matters - Judicial Action - Unnecessary Expenses - Your help is needed.

Q. Well, anyway, you asked for volunteers to give affidavits to support you because you knew we were contesting that the membership supported you; right?

A. Is that stated in this letter?

Q. I'm not asking whether it's stated in the letter. I'm just asking you the question.

A. I believe my recollection is that per direction from my

attorney that was an appropriate action to take.

Q. You solicited affidavits to support you; did you not?

A. I believe I just answered the question.

Q. Was that a yes then?

A. Per direction from my attorney that this was an appropriate action to take, I did.

Q. Okay. But no affidavits ever came for you; did they?

A. I have not received any to date.

Q. Yet, despite your plea for people to support you, no one coming forward, you persisted on in this lawsuit against this Board; have you not?

A. I have persisted, but not for the reasons you just stated.

Q. Well, isn't that evidence an indication to you that the community is not supporting what you're doing, even though you're bringing it on their behalf?

A. My Court Complaint was filed individually and derivatively on behalf of the members.

Q. Your Complaint does say that it is brought on behalf of all members; right?

A. My Complaint states it is brought individually and behalf of the members of the Association.

Q. All members; right?

A. I believe that's a matter of record, what it says. I'm not looking at it at the moment.

Q. You've also requested support for this action on social

media; have you not?

A. I have posted on social media at Next Door nothing more than the letters that have been sent to members and to the Board.

Q. Let me show you what's marked as Exhibit 9. Aren't these a series of Next Door posts involving you? It looks like your posting appears to be January 8, 2018.

A. That's correct.

Q. In response to some of your postings, you know, you never got any positive feedback from them; did you?

A. From who are you speaking of?

Q. I'm not talking about -- I'm just saying in general you posted stuff online, but did you ever get any replies saying, good job, Mr. Wedlake. Keep going. We support you.

A. There has been part of the smear campaign which was referred to earlier forcing me to post these only in a group WHOA at the site, whereas, part of the smear campaign members were directed or it was suggested to members that they ignore everything that was posted there. So there have been no replied.

Q. Okay. So you have not received a positive reply; is that fair?

A. Whether it's fair or not I think is academic. Nobody, apparently, seems to be interested in looking into this group.

Q. So, no, you have not received any supportive replies?

A. I have not received supportive replies.

Q. But you have received adverse feedback; have you not?

A. That's a matter of opinion.
Q. Well, in this list here, you've got a reply from Ms. Price that says, this whole debacle is wearing on the Woodington residents; right?
A. Every member is entitled to their opinion.
Q. Well, that's the feedback you got; right? And I'm looking specifically on the fourth page, top of it.
A. Every member is entitled to their opinion.
Q. Right. But that's the -- you know, that's the knowledge you had, that's what people were telling you; right? It goes to your state of mind, whether you knew people were supportive or not; right?
A. Due to the smear campaign, I think it's only natural that people have been biased against me and would naturally come back with statements of such opinion.
Q. She says, to put it nicely, Ray has been a nuisance; right?
A. That was her opinion.
Q. Right. And you've caused the Board members unnecessary stress and heartache; her opinion?
A. Her opinion.
Q. Right. And her opinion is, you know, she's conveying to you that you don't speak for the majority of the members like you think you do; right?
A. In her opinion.
Q. Right. But you've chosen to ignore that opinion and

soldier on, even though you're, at least in part, trying to represent these folks; right?

MR. GIBSON: Your Honor, I think that's been asked and answered.

THE COURT: We need to move on. You've been at this a little over an hour.

Q. You also got, I guess, negative feedback from Mr. O'Leary; right?

A. If you read that note carefully, I believe Mr. O'Leary was under the influence of some substance at the time that was written.

Q. He says, drop your insane ---

THE COURT: Let's move on. We don't need to get -- we need to come up to get in the weeds. So we need to move on.

MR. GROTE: All right. Yes, sir.

Q. Did a Ms. Breshon (phonics) also question whether you represented the interest of the community, as well, on this online posting?

A. That's correct.

Q. I'll show you Exhibit 11 briefly. Is this a series of Next Door posts beginning in, looks like, February 4th?

A. In group WHOA.

Q. Okay.

MR. GROTE: I'd move to admit Exhibit 11.

(WHEREUPON, Defendant Exhibit Number 11 was admitted into

evidence.)

Q. Again, Mr. Wedlake, questions were raised asking you give some indication of who supports you on this; correct?

A. That was Susan's question.

Q. Right. And you couldn't give her any percentage of clear answer; could you?

A. I suggested to Susan that she ask the Board to ballot this question to the members so a definitive answer could be obtained.

Q. Finally, I show you Exhibit 12, an additional post on the Next Door site, March 5, 2018. Is that what it is?

A. This is, again, a post in group WHOA at Next Door.

MR. GROTE: I'd move to admit Exhibit 12.

THE COURT: All right.

(WHEREUPON, Defendant Exhibit Number 12 was admitted into evidence.)

Q. Mr. Wedlake, you, again, sought statements or volunteers to come support you today; right?

A. I believe this is just, again, a posting of a letter that was sent to the members.

Q. Right. But the letter asks for their assistance and statements to present to Court today; right?

A. That's correct. In the last paragraph it says, your help is needed.

Q. And that help has not come; has it?

A. There have been no replies to date.

Q. Do you understand that one of the stipulated issues here today is that you essentially want to get some statement or affirmation that the Board has to follow the Bylaws; is that accurate?

A. That's correct. And as stated previously, I believe the Bylaws are a contract between an HOA, its Board and the members.

Q. And you stated, when your attorney was asking you questions, that the Board has just utterly refused to acknowledge that; right?

A. Generically, they respond to almost nothing for anything or any contact that has been brought to them.

Q. But it's your testimony the Board has refused to acknowledge that, to follow the Bylaws; right?

A. They have not made a statement saying they acknowledge that they are obliged to recognize the Bylaws as a contract and follow them.

Q. Let me show you what's been marked as Exhibit 14. Do you recognize that?

A. This is a letter from Ben Acord.

Q. Is it dated June 17, 2017?

A. Yes, it is.

MR. GROTE: Your Honor, I'd move to admit Exhibit 14 into evidence.

THE COURT: All right.

(WHEREUPON, Defendant Exhibit Number 14 was admitted into

evidence.)

Q. Doesn't Ben Acord try to respond to some of the numerous questions that you've asked of the Board?

A. This is one sample where a response was received.

Q. Okay. And question number 1 to the Board was, does the Board agree to abide by the Bylaws and all applicable nonprofit corporation law, plus the Board -- or and the Board has not appointed an eligible member to fill the vacancy on the Board. Do you see that?

A. That is what's stated here.

Q. And the Board's response, according to the Board president, is, the law must be followed. By election to the Board we did agree to abide by the Bylaws. Do you see that?

A. For this instance, yes.

Q. So they've already agreed to that to you. Why are you continuing to perpetuate a lawsuit against them over that?

A. This, I believe, and was taken as a specific answer to this specific item.

Q. I mean, the reality is, you just want them to do it in the form and content the way you want it done; right?

A. They had not appointed, at that time, an eligible member to fill the vacancy on the Board. They did not follow the law or the Bylaws in this regard.

Q. But you did receive a statement that they acknowledged they followed the law and the Bylaws apply; right?

A. Per this specific item about a vacancy on the Board.
Q. Where does it say that it's limited to that?
A. That was my understanding of this response.
Q. So really we have, I guess, an item that I'm not sure -- maybe explain to us why we have to be in Court over this. It's something that's already been given to you in writing.
A. I believe this was specific to this item of the vacancy on the Board.

MR. GROTE: I do have a copy of this. It has highlighting. I don't know if you would be offended by it, but ---

THE COURT: I've been a judge long enough to where my offended level is pretty low.

Q. You're aware that Stacey Krause resigned from the Board; right?
A. That's correct.
Q. You've been conveyed information that she resigned because of the level and type of communication she was receiving from you; right?
A. That was her contention.
Q. Right. But that's what she relayed to you; right?
A. That was her contention.
Q. Let me show you what's been marked as Exhibit Number 15.

MR. GROTE: If I forgot, I'd like to move Exhibit Number 14 into evidence.

THE COURT: All right.

(WHEREUPON, Defendant Exhibit Number 14 was admitted into evidence on page 82.)

MR. GIBSON: Your Honor, I'm not sure -- if I may, I'm not sure what this has to do with the case at hand and the six stipulations.

MR. GROTE: Your Honor, it goes to our defenses of just disability of the claims and the standing for these claims, our contention is that this Board member left the Board because of basically what she describes as obsessive and harassing communications.

THE COURT: All right. Let's move on quickly, please, sir.

Q. All right. Mr. Wedlake, did you receive an email from Ms. Krause on May 9, 2017?

A. Is that included in this Exhibit 15 that you're referring to?

Q. Yes. It's on the second page.

A. Yes, I see it.

MR. GROTE: I guess I'd move Exhibit 15 into evidence.

THE COURT: All right.

(WHEREUPON, Defendant Exhibit Number 15 was admitted into evidence.)

Q. Mr. Wedlake, didn't Ms. Krause inform you that due to your obsession with the WHOA Board and your excessive communications,

she's resigned from the Board. Therefore, you have no reason to contact her. And if it continues, she'll be forced to file a complaint with the police department against you?

A. This was her statement in her email.

Q. All right. So at least according to the statement you received, the vacancy was caused by your actions; right?

A. No, it was not.

Q. Well, she's saying it was; right?

A. She contended that it was.

Q. Okay. You're now suing the current Board over, I guess, basically how they handled the situation that Ms. Krause says you caused; right?

A. I am not suing the Board and there is no reference to suing the Board in anything that I believe we have brought to date.

Q. These folks aren't a party to a lawsuit you brought?

A. The lawsuit brought was for declaratory action on six stipulated issues, none of which relate to most any of these exhibits that you have entered.

Q. I'm going to show you what's been marked as Exhibit -- Defendant's Exhibit 16. Is that an October 18, 2017 letter that you sent to the prior Board?

A. This is an October 18, 2007 (verbatim) letter that was sent to the people who purported to be the prior Board, without an election.

Q. All right. And you threatened a lawsuit against them;

correct?
A. I believe this letter says, I am contemplating filing a judicial action.
Q. All right.
MR. GROTE: I'd move Exhibit 16 into evidence.
THE COURT: All right.
(WHEREUPON, Defendant Exhibit Number 16 was admitted into evidence.)
Q. One of these things that you demand is that they make amends with you; right?
A. As part of their smear campaign, these items 1 through 6 are exactly what they did to smear me, defame my character and impugn my integrity openly in front of other members of the Association.
Q. One of these things is the term limits that you want them to admit that they violated the law on the term limits; right?
A. Item 1 says, term limit violation of South Carolina law.
Q. Even though their terms have been ratified by the membership previously; right?
A. The members have no right to assume they may override the law that says a five-year term maximum applies.
Q. Mr. Wedlake, have you taken any threatening behavior towards any of these Board members?
A. No, I have not.
Q. Do you display your middle finger in the air when you go by

them?
A. No, I do not in that regard.
Q. What do you mean in that regard?
A. I have repetitive strain injury in my arms and in my shoulders, which at times causes me massive amounts of pain, oftentimes like a knife is stuck through your arm or your shoulder ---
MR. GIBSON: Your Honor, I'm going to object to this whole line of question ---
THE COURT: Sustain the objection. Let's move on.
Q. Mr. Wedlake, the relief that you're asking for today, you're asking for an interpretation of the Bylaws; right?
A. That's correct. In the most part for the stipulated issues.
Q. Why is it that you've insisted that you've -- you have to name these Board members as parties rather than actually the corporation?
A. I believe that was the appropriate course of action.
Q. We understand there's an election coming up in, what, six days?
A. I have received notice of the 2018 annual meeting.
Q. Okay. And so part of what you're suing this current Board over is things that happened on prior Boards; right?
A. Not in my opinion.
Q. And you want some, I guess, determination that these things

will, I guess, affect future Boards; right?
A. The intent, again, is to clarify what the Bylaws say and mean for this Board, for the members and for future Boards.
Q. I mean, isn't that more appropriate for the corporation itself to be named rather than having to sue what amounts to four out of five current Board members?
A. I believe the standing Board is responsible for the actions of the Association in their duties as a Board.
Q. Have you tried to, basically, dictate how this Board does its job, tell them how -- what they can say, what they can't do, how they have to say it?
A. No.
Q. Haven't you suggested that this upcoming annual meeting that the Board not preside; that there should be, I guess, a neutral, things like that?
A. I have suggested that in the best interest of the Association, such that in the event that this Court rules in my favor, that they be spared the embarrassment of having to chair that meeting.
Q. Didn't you try to dictate who presided at the last annual meeting, too?
A. I did not.
Q. With regard to this alternative dispute resolution amendment that, I guess, you're proposing or suggesting that the Board has to send out on your behalf, you seem to be familiar

with the Bylaws, I guess; right?

A. The intent of sending out this ballot is not on my behalf for my benefit. It is for the best interest of the Association and for the benefit of the members.

Q. Well, you've got this provision in the Bylaws that allows you to call a special meeting. You can force a special meeting; right?

A. The current Bylaws require one-quarter of member approval if the president does not call a special meeting.

Q. Right. And that takes seventy-five percent of the membership to amend the Bylaws; right?

A. That's correct.

Q. And so all you have to do is basically get a third of the required persons to vote for a special meeting or just get a signature for them, and you can force a special meeting on your ballot; right? Or force a special meeting to vote on your amendment; right?

A. The whole purpose of the ballot is to send out a question to all members of the Association such that a select members who may attend a meeting are not the ones who control what should be an opinion from all the members of the Association.

Q. But you have a right to force the issue if you can get the support for it; right? Force a vote on it?

A. I'm not sure I relate to that question in terms of I have a right. I certainly have a duty as a member of the Association.

Q. Have you tried to get membership support for your amendment and just force a special meeting rather than suing this Board to send it out, because you want it that way?

A. I think it's clear, due to the smear campaign and the fact that members are not interested in being involved in such proceedings, that that would be fruitless. The appropriate action is to send this out in a ballot to all members of the Association such that all members' feelings are represented.

Q. So you acknowledge that you don't feel that you could even get a third of the membership to support you for an annual -- or for a special meeting on this ballot or on this amendment; right?

A. I have not attempted so to do.

Q. And so how in the world, I guess, are you going to get seventy-five percent of the membership to approve your amendment if you haven't either attempted or unable to even garner one-third of the community to support it?

A. I'm sorry that you are ignorant of the provision in the Bylaws. They state that the Board shall vote the non-returned ballots and require the Board to so state how they will vote ballots that are not returned by members, such that all sixty-six votes are accounted for as part of a balloted vote.

Q. Well, the reality is you're trying to force the Board to send it out to use their goodwill to get an amendment that you want because you know you don't have the goodwill in the community to pass it yourself; right?

A. No. That is incorrect.

MR. GROTE: Your Honor, I think that's the questions I have for this witness.

THE COURT: All right. Any other brief redirect?

MR. GIBSON: Brief, yes. Very brief, Your Honor. Thank you very much.

THE COURT: I've learned over the years how a lawyer defines brief and how the Court defines brief may be two different things. So we'll move ahead.

MR. GIBSON: I understand, Your Honor.

THE WITNESS: May I just stand momentarily, please, Your Honor.

THE COURT: Yes, sir.

THE WITNESS: Thank you. Just for a few minutes.

REDIRECT EXAMINATION

BY MR. GIBSON:

Q. Mr. Wedlake, you spoke very briefly -- or not so briefly -- about AMG, American Management Group?

A. Association Management Group.

Q. Thank you. And Ms. Krause, the secretary, did you ask her for copies of the minutes in her function as Board secretary?

A. Yes, I did.

Q. Okay. And she's supposed to keep the minutes?

A. That is as stated in the Bylaws, that the secretary shall keep the minutes.

Q. And did she provide them?
A. No, she did not.
Q. And did she tell you why not or where to go to get them?
A. She claimed that she was not responsible as a member of the Board, that that was AMG's job and that AMG would be the ones to provide the minutes, act upon my request to provide the minutes.
Q. And did you ask AMG?
A. I did.
Q. And what did they do?
A. AMG has a habit of continuously forgetting requests they receive from members. They did send me one minutes from May -- a May meeting in 2017, and then none other. And I have received no other minutes from any Board meetings at all.
Q. Okay. Did you go back to Ms. Krause then and ask her to assist since you hadn't received anything; or not?
A. I believe that I asked her to indicate to AMG that they should send me the minutes. And I'm not sure I recall the details.
Q. Is it your impression that she delegated that responsibility to AMG?
A. I believe that was her position.
Q. Did she say that she supervised that delegation?
A. That was the problem. She did not. And AMG did not provide such minutes.
Q. And is that part of the basis for your concern about AMG

and getting rid of AMG, aside from the fact that they were a high cost provider?

A. AMG continuously proved that they had disregard for our Bylaws and for the better interests of our Association, taking positions against the nonprofit corporation and Bylaws in support of a Board who was violating those things.

Q. Did you provide Ms. Krause with Board governance materials from time to time, along with perhaps others?

A. I believe in email requests sent to her, I stated to her what the Bylaws required of the Board secretary.

Q. Okay. What was her response?

A. I'm not sure I recall there was any of any significance, other than her reply to, hey, don't contact me again, after she resigned.

Q. Appreciate that. Just a couple more quick points. So with regard to the Ben Acord email saying that they would follow -- they followed the Bylaws, are you asking Ben Acord, are you looking for a resolution or some sort of codification, in the sense of Court here, to provide clarification for the future?

A. That is the intent of stipulated item, again, as was said earlier, put this matter to bed that the Bylaws must be followed on all issues, not only the vacancy issue.

Q. And going back quickly to your garage door. Is it your position that structural matters could not be governed or just -- by architectural committees or that we're talking more about

aesthetics and the color of your garage or maybe the shape of shrubs, if you're scissor hand?

A. Yes. And that's my understanding that it's specifically precluded under the law that a Board or Architectural Committee may not impose their personal preferences on the private property of their owners.

MR. GIBSON: That's all I have, Your Honor. Thank you.

THE COURT: All right. Thank you, sir.

Anything in response to the redirect?

MR. GROTE: I don't have any further questions for the witness, Your Honor.

THE COURT: All right. Thank you, sir. You can step down.

Any other witnesses from plaintiff?

MR. GIBSON: No, sir.

THE COURT: All right. Be glad to entertain any motions?

MR. GROTE: Yes, Your Honor. At this time I would move for a directed verdict on several issues. One, and I don't mean to be facetious in this sense, but this is a case about interpretation of the Bylaws. I don't even know that the Bylaws have been admitted into evidence.

THE COURT: They have not.

MR. GROTE: There's really nothing before the Court to

make a decision on. I'm not saying that in a facetious nature. It seems to me that if they want an interpretation of the Bylaws, the Bylaws have to be part of the evidentiary record and be before the Court. Without that, I mean, I don't know that the Court has enough information that it can even make a determination on these without -- you know, looking outside of the trial record.

As far as the specific issues, ---

THE COURT: Let me hear briefly from plaintiff's counsel, then I'm going to address and rule on the motion.

MR. GIBSON: Yes, sir. Several factors, Your Honor. Certainly the key provisions of the Bylaws were discussed in the pretrial brief. But more importantly they are Exhibit 3 to the Complaint and they are filed officially, e-filed officially, and they were cross-referenced as a result in all the written material. That would be my response, Your Honor, that it's part of the record.

THE COURT: Okay. Here's what I'm going to do, gentlemen. I'm going to take this as a motion for an involuntary non-suit, which I'm going to grant.

First, I find there's just a lack of evidence to support that Mr. Wedlake is acting derivatively on behalf of the community association. The record is just devoid of any evidence that he's in any representative capacity. He clearly has rights individually as a member of the Woodington Homeowners

Association.

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. From what I understand, they're already stipulated to that. And 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. I think in here is the Board -- there may or may not be some delegable duties. But as a general rule the Board has the role and the authority to act in accordance with the Bylaws. 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.

On the larger issue, you know, it's just clear to the Court that -- Mr. Wedlake, you're obviously an intelligent, articulate fellow, and I appreciate the fact that you have spent the better part of the day with us. But at the same time, a neighborhood, in many senses, is set up to be a democratic process, set to operate within the confines of the Bylaws. And it just appears that your view and the majority of the neighbors' views are drastically different. 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.

So gentlemen, if y'all will go through the exhibits with my court reporter, make sure they're part of the record.

And then on the proposed Order, Mr. Grote, if you'll start working on that and send a courtesy copy, of course, to Mr. Gibson. And then if there's any issues over the language to be used, we'll certainly do a conference call with that.

MR. GIBSON: May I ask one question, Your Honor?

THE COURT: Yes, sir.

MR. GIBSON: Thank you. Obviously beyond my element here. We brought the suit derivatively, which I did get your clear guidance on a moment ago. But also, individually, with regard to the fact that the Board refused to appoint him and allow his platform to be presented and he did suffer individually as a consequence and he is asking for one dollar in nominal damages.

THE COURT: I'm going to decline to award that.

MR. GIBSON: Thank you, Your Honor.

THE COURT: All right. Go through the exhibits and thank you very much.

END OF REQUESTED TRANSCRIPT OF RECORD

The undersigned, Danette P. Hanks, Court Reporter, Office of Master in Equity for Greenville County, South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, before The Honorable Charles B. Simmons, Jr., as Mater in Equity for Greenville County, South Carolina on the 20th day of April, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any parties hereto.

May 11, 2018

S/ Danette P. Hanks

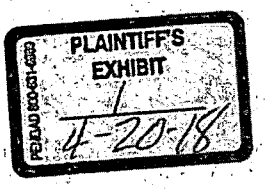
Danette P. Hanks, CCR

ELECTRONICALLY FILED - 2018 Jan 03 10:18 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

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)** **vs.** 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., **Defendants**	**IN THE COURT OF COMMON PLEAS** **THIRTEENTH JUDICIAL CIRCUIT** **Civil Action No.** **2017-CP-23-06301** **MEMORANDUM IN RESPONSE TO DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND ALTERNATIVELY FOR A MORE DEFINITE STATEMENT MADE BY BENJAMIN ACORD, WILLIAM CRAIGO, DENIS ESTEVE, AND BRIAN JAMES**

Plaintiff, by and through his undersigned legal counsel, Grant H. Gibson, Esq., hereby submits the following memorandum in response to Defendants' Memorandum in Support of Motion to Dismiss and is in response to the e-filing made by Ely Grote, Esq. which was noticed as accepted on Tuesday morning, January 2, 2018 at approximately 8:30 AM. Mr. Grote, counsel for Defendant, did send to Plaintiff's counsel his Memorandum in Support, and exhibits at Plaintiff Counsel's request, which was received by email Sunday afternoon of our long weekend. This brief Memorandum incorporates the Complaint, and Exhibits thereto, along with Plaintiff's Petition in Opposition to the Motion to Dismiss.

Recognizing the Court's desire for clarity and brevity, and our own severe time constraints, we would like to highlight the following for the Court:



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A. References to Association Management Group, SC, Inc. (AMG) are Moot – Much of Mr. Grote's Memorandum is devoted to the Defendant with which the parties have settled, AMG; thus, all such matters are moot (assuming the Court approves such Settlement);

B. Redundancy - Much of Defense Counsel's Memorandum in Support is repetitious with his prior Motion to Dismiss, other than his inclusion of a purported Written Consent (Consent) and Affidavits from the Board Defendants.

C. Objection to Written Consent- Court Should Exclude - The purported Consent is not effective technically since it was not sent out as required to those that did not vote (20%), as required by statute (S.C. Code 33-31-704(d) requires written notice to all members who did not sign and member approval is effective ten days from such notice). In addition, it reflects a door to door solicitation by the party to the action, the party in authority, the Board Defendants themselves (Affidavit), without apparent clarification as to what was stated during the solicitation, what was asked by Members, and why the other 20% did not sign as well. In addition, there is no showing that the language is designed to solicit signatures, and, of course, the reason for the action (interpretation and enforcement of the by-laws) or the nature of the action, being declaratory, was explained. It is not authenticated, not in verified form, by oath or otherwise (S.C. Rules of Evidence, Rule 901). Finally, it must be excluded since it constitutes Hearsay, not subject to an exception, an out of court statement, in this case statements, being proffered to prove the truth of the matter asserted, i.e., that since they have 80% Plaintiff cannot properly represent the Association (SC Rules of Evidence, Rule 802). While we object to its entry into evidence and move to have it excluded, there is a more fundamental point.

D. The Heart of the Matter – Rule 23(b)(i): The law is clear, and Defendant's counsel is in error, when he states that the representative must fairly and adequately represent all members of

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the Association. If that were the case then a minority shareholder/member would never have standing. In the 2008 case of *Cattano v. Bragg*, the Virginia Supreme Court recognized the right of an individual shareholder to file a derivative suit (along with an individual suit), finding the shareholder could fairly and adequately represent the interest of the corporation; despite apparent animosity in that case since such animosity is typical in derivative actions (727 S.E. 2d 625, 283 V. 638 (Sup. Ct. Va. 2012)). In so finding, after citing numerous cases in support of a single shareholder having standing to sue derivatively in support, the Court adopted the factors used *in Jennings v. Kay Jennings Family Limited Partnership,* 275 Va. 594 (2008), taking aim in particular at the reason for the derivative suit (return of funds), which, as here was for protection of Members, which the court found was very appropriate. (Id). It focused its attention "on whether the totality of the circumstances suggest that the plaintiff will vigorously pursue the suit and that the remedy sought is in the interests of the corporation." (Cattano at 627).

Defense counsel is, of course. correct that the statute was designed to assure filing a derivative action was not taken lightly, thus requiring the five elements of (i) that the Plaintiff be a member at the time the issue(s) arose (Complaint); (ii) specific demand(s) must be made (or explanation why it would be futile) enumeration of the steps taken to have such demands met (Complaint - numerous specific examples); (iii) Complaint must be Verified, and. (iv) it 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." (emphasis added). As noted, although a minority, Plaintiff does adequately and jealously represent his constituents, and has meet all the requirements for filing derivatively (Complaint).

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E. Rule 23, S.C.R.C.P. is modeled after Rule 23, Fed.R.Civ.P., and therefore the Federal Standard that cases arising under such should be given "liberal rather than a restrictive interpretation" has been applied (See, Eisen v. Carlisle & Jacquelin, 391, F.2d 555, 563 (2d Cir. 1968). Rule 23 supersedes and supplants prior case law. Thus, reliance by counsel for Defendant on cases decided in 1888 and 1881 are misguided. The cases that have denied Plaintiff derivative status appear, in most cases, to be based on a failure to make a demand initially (*Carolina First Corporation, et. al., v. Whittle, Jr.*, et. al., 343 S.C. 176, 539 S.E. 402 (SC Ct. App., Oct. 30, 2000); *Allen Patterson, et. al, v. Herb Witter, et. al.*, 418 S.C. 66, 791 S.E. 2d 294 (S.C. Ct. App., Oct. 27, 2016). In our case, demands were explicitly and repeatedly made, without response in most cases (See, Affidavit) or by refusing to follow-up on demands. For example, when Plaintiff advised Mr. Acord, the President of the Board, that the By-Laws require a vacancy to be filled, he took no action, such as seeking candidates from the members or offering the position to Plaintiff who was eligible and willing to serve at the time (Affidavit); and, in a similar instance, when Plaintiff noted that the By-Laws do not permit a member of the Board to fill two officer positions, and that the By-Laws prevailed over the Nonprofit Corporation Act (NPCA), explicitly as stated per the statute, Mr. Acord simply said the NPCA did not require more than three Directors, without addressing the issue (Affidavit). When asked to confirm that the five-year term per the By-Laws and NPCA controlled and that the Board would not seek to extend beyond five years as the prior Board had done, there was no response (See, Complaint).

F. Adequately Represent - In terms of "adequately represent", counsel for Plaintiff has 45 years of active legal practice, starting on Wall Street, as in-house General Counsel, and more recently including multiple years serving as co-counsel in a class action suit. He is a former Comments

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Editor of the Law Review, has passed five Bar Exams, is a former Certified Mediator (SC) and has advised several homeowner associations and served on several Homeowner Association Boards as well. Currently he is a solo practitioner, assisting small companies and individuals. Plaintiff, Mr. Wedlake has shown he has the determination, and the personal interest necessary to carry and maintain such action for the benefit of the Woodington Homeowners' Association (WHOA). In addition, Plaintiff's interests, which are to promote the best interests of the WHOA, are aligned with those of all the Members. While there have been disputes that have arisen between Defendants and Plaintiff over Board Governance and By-Laws issues, he holds no animus toward them (Affidavit). In addition, Plaintiff is intimately familiar with the litigation, and with the issues, is a real party in interest, and is fully committed to pursuing the case in the best interests of the WHOA (Affidavit).

G. Fairly Represent: Regarding "fairly represent," prior to the past two boards, Plaintiff, Mr. Wedlake was an active, elected member of two Board of the WHOA, and also was an active member of such Boards' By-Laws Committee. (Affidavit). The Members of such Boards were dedicated to transparency, to open, noticed meetings, to published and posted minutes and, to abidance with the provisions of the By-Laws (and to proposing By-Law changes to Members where appropriate) (Affidavit). Thus, there is a group, like Plaintiff, that believes that the By-laws are governing documents which the Board must follow (Affidavit), absent preemption by statute.

Thus, the issue is not whether all or even a majority of the members may not wish to pursue interpretation and enforcement of the By-Laws (assuming they are aware), but whether Plaintiff can fairly represent those that do. He received several votes at the last Annual Meeting election of Directors, on his platform of reform (Affidavit).

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Failure of the Court to permit this action to proceed would mean that the contract between members and their Association cannot be enforced by like-minded members.

H. Defense Counsel's Reliance on Application of the Business Judgment Rule is Misguided We recognize that the protections afforded under 23(b) arise in large measure to protect Board Members' ability to apply their business judgement in cases where they have discretion. However, where, as here it is not a matter of discretion, and not a matter of exercise of "business judgement," the Business Judgement Rule has no bearing. **This is not a matter of discretion; it is not whether or not to make an acquisition or buy-back stock. The Board does not have discretion as to whether or not to abide by the By-Laws, the contract entered into by the Members with the Association.** Thus, per Exhibit 1 to the Complaint, the By-laws provide that the Board shall "[f]ill 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." (Duties - Article VIII, Section 2f). This is not a matter of business judgment, nor are the other examples provided. The Board has been made aware specifically, and unfortunately repeatedly due to inaction, of the clear requirements of such provisions and **has elected, knowingly, to ignore their duties** (Complaint, Affidavit). Similarly, in cases of ambiguity, resulting in a need for interpretation, it is not a "business judgement" issue but one of analysis, perhaps legal advice and ultimately for the Court.

I. Basis and Reason for Bringing Declaratory Judgment Action - After all the efforts at dialogue, at mediation, and even petitioning the office of the AG for an advisory opinion, this is our last resort (as we understand it should be) – and it is being done for the benefit of the members of the WHOA, to get clarity for current and more importantly at this point, for future Boards; to enforce the By-Laws which protect the homeowners, rather than have them enforced,

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if at all, in an ad hoc manner; and it is brought for protection of all, including those that elected not to sign the Written Consent.

J. Good Faith - Our efforts, and clear evidence of our good faith include:

(i) We offered Mediation three times – proposing to use Upstate Mediation Center, per Complaint Exhibits O, P, and Q, and were refused or no response resulted in all three cases (Affidavit)

(ii) Our demands were basically requests for agreement on points, such as confirmation that all agreed that the By-Laws was a controlling document unless superseded by statute and the need for By-Laws Amendments, and that due to disputes judicial interpretation of the By-Laws was required, such as the need to appoint a Director if a vacancy is open;

(iii) Such requests only took the tone of demands when there was either no response or refusal to act in conformity with the By-Laws, as with the former Secretary of the Board (Affidavit),

(iv) Plaintiff provided a copy of the draft Complaint and notice of pending filing and asked again for mediation (response was that they would just forward it to their insurance carrier when received and we advised them that they may not be covered since our case is a Declaratory Judgment Action (Affidavit and Exhibit CS3, where CS denotes Court Summary);

(v) Provided Board Governance materials on open meetings, the need for transparency, minutes; written by such esteemed Board Governance experts as Jim Slaughter, Esq.

(vi) No "Impasse" – we in fact, offered to keep mediation going and advised that we would pay costs for both sides (Affidavit);

(vii) As noted, we asked the Board in writing to join in this action on more than one occasion, as it is not adversarial but simply declaratory and for benefit of the WHOA (Affidavit);

(viii) We did not ask for legal fees unless covered by insurance (Complaint); and,

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(ix) Also as noted, we ultimately sought guidance from the SC Office of the Attorney General, hoping to resolve the matter ultimately, short of this action.

K. Issue of Service – In the event that the original Summons and Complaint did not have the electronic blue notation, we ask the Court's indulgence and note that Plaintiff, in the Verified Complaint, confirmed it was identical to what we filed with the Court. In addition, at this stage, with Defense Counsel seeking the AMG dismissal, and preparing the documents therefore, and after a continuance and mediation we would suggest that such issue has been waived.

L. Plaintiff's Actions Individually – Defense Counsel's statement that the only basis for Plaintiff to seek redress individually is the failure of the Association to provide financial information is incorrect. Plaintiff sought to enforce the requirement in the By-Laws that the Board fill vacancies and offered himself, as an eligible member willing to serve, yet was denied the opportunity, and thus could not address the issues of transparency, open meetings, minutes, and proper governance that he and others similarly situated seek (Affidavit, Complaint). The law is clear, Shareholders that seek to pursue an action for loss to the corporation must do so through a derivative suit. *Brown v. Steward*, 557 N.E.2d 676, 684 (S.C. Ct. App. 2001). However, if a shareholder suffers an injury that is "separate and distinct from that of the corporation," he or she may bring an individual action. (Id.)

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CONCLUSION

Accordingly, for all these reasons and as set forth in Plaintiff's Complaint, the Petition in Opposition, and related Exhibits and Affidavits, we respectfully request that the Court DENY Defendants' Motion to Dismiss or in the Alternative for a More Definite Statement.

Respectfully Submitted this 3rd day of January 2018

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ELECTRONICALLY FILED - 2018 Apr 16 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

STATE OF SOUTH CAROLINA	**IN EQUITY COURT**
COUNTY OF GREENVILLE	**THIRTEENTH JUDICIAL CIRCUIT**
Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc.	Civil Action No. **2017-CP-23-06301**
Plaintiff(s)	
vs.	**AFFIDAVIT OF PLAINTIFF, RAYMOND A. WEDLAKE**
Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of the Woodington Homeowners' Association, Inc.	
Defendants	

AFFIDAVIT OF RAYMOND A. WEDLAKE

Raymond A. Wedlake, personally appearing before me, being duly sworn, deposes and says, under penalty of perjury, that:

1. I am over 18 years of age and am competent to make this Affidavit;
2. The information set forth below is based upon my personal knowledge, unless otherwise specified as being based upon knowledge and belief;
3. I am a member ("Member") in good standing of the Woodington Homeowners' Association, Inc. ("WHOA");
4. The WHOA consists of 66 voting units;
5. Due to an agreed Settlement with "Association Management Group of SC, Inc." (AMG), and as so ordered by Judge Robin B. Stilwell per a Hearing held January 3, 2018, all prior claims against AMG have been released, this Affidavit does not show AMG on its first page, and no



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further mention of AMG appears herein;

6. This Affidavit is being brought before this Court as a supplement, to an original Affidavit filed on October 5, 2017, to specify continued non-adherence by the Board to the By-Laws;

7. On September 13, 2017, a courtesy copy of a final draft of a pending complaint was sent to Defendants requesting we seek a resolution which they did not accept to do; thus, leaving me no other alternative but to proceed and to file my Case with the Court (Exhibit 7);

8. I was a co-author along with four other Board members of "By-Laws Rev 2" which added "ballot" provisions which say (CAPS emphasis added): "... Board Secretary SHALL deliver a ballot ...", so I know exactly and full well that the "legislative intent" of this statement was to preclude a Board from blocking a ballot proposed by a Member (Exhibit 13);

9. Defendants to date did not disclose they voted as a Board to exceed a 2017 budget of $1000 for "legal expenses", nor did they seek approval via Member vote to exceed $1500 to pay their attorney – both of which are, yet again, other samples of By-Laws violations;

10. On October 12, 2017, after receiving a request from Mr. Esteve that I no longer contact him since he had been served with my Summons & Complaint, I responded to Mr. Acord thusly: "... Mr. Esteve's request is both **unfortunate and wrongful** and whomever suggested it **gave improper advice** ...", adding that: "... if a Board member **refuses to communicate** with an HOA member regarding HOA business (emphasis added), then they are **not fulfilling their duties** ..." (Exhibit 1);

11. On December 12, 2017, a letter to Defendants requested: "Please consider my suggestion to save both the WHOA, and me, from additional expenses of paying attorneys to attend mediation ...", but Defendants failed to respond to this request as well (Exhibit 3);

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12. Prior to a mediation session of December 14, 2017, Defendants were asked about their goals and desired outcomes from mediation, but made no response; their attorney advised the Mediator that his services were no longer required, which led to a declaration of "impasse" (Exhibit 4);

13. After a July 8, 2017 meeting with me where Defendants agreed to take specific actions, they have **done nothing** (Exhibit 5);

14. In their Answer, Defendants say: "As to Paragraph 8 [send ADR ballot] ... denied as stated.", whereas they reneged on their July-8-meeting promise to "act as a By-Laws Review Committee", and having done nothing since (Exhibit 5);

15. Defendants have acted contrary to "Objections" (Exhibit I to Complaint) by seeking to continue to ignore all of my requests and suggestions for improvements to WHOA, without ever giving explanations as to why (as requested), and with no intent to act to fulfill their duty to provide for "... the betterment of homeowners ..." which is the stated purpose of WHOA per By-Laws Article 2;

16. In their Answer, Defendants say: "As to Paragraph 41 ... have worked with Plaintiff in good faith to try to resolve differences; ... denied.", but factually Defendants met with me only once for one hour, and reneged on their promises made in the July 8 meeting, where they agreed to do more in further attempts to try to resolve differences (Exhibit 5);

17. In their Answer, Defendants say: "As to Paragraph 45 [can't combine offices] ... filled the secretary position, but deny any wrongdoing in doing so; ... denied.", where they did not fill the Secretary vacancy in May 2017 as required, and did not fill the vacancy until early in January 2018; thus, their action to have the Treasurer also serve as Secretary between the

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dates of May 2017 until January 2018 was a direct violation of the By-Laws;

18. WHOA "Articles of Incorporation" show no provisions allowing delegation of Board responsibility and authority, which is specifically required by the "Nonprofit Corporation Act of 1994" ("NPCA", Exhibits F & R to Complaint);

19. In their Answer, Defendants say: "Paragraphs 81.... and 82 [send out ADR ballot] are denied.", but they have not delivered any ballot for Member approval to date;

20. In their Answer, Defendants say: "As to Paragraph 83 ... no longer exists any vacancy ... moot ...", whereas Defendants have refused to agree or acknowledge, as requested, that they had a duty to do so under the By-Laws;

21. In their Answer, Defendants say: "Paragraph 84 [assure accuracy of Annual Meeting Minutes] is denied.", with full knowledge they reneged on their promise made in the July 8 meeting to schedule another meeting for further review of 2017 Annual Meeting Minutes, and have done nothing more;

22. Several of Defendants' Answer items were already covered in the Hearing of January 3, 2018, and were **DENIED** by Judge Robin B. Stilwell, including items numbered: 69, 70, 71, 73, 74, 75, 80, and 82, regardless of continued claims to the contrary;

23. In their Answer, Defendants say: "To the extent Plaintiff's Complaint seeks damages or an award of money ...", which is inconsistent and contrary to a Complaint statement which says: 'No damages beyond "nominal damages" are sought, unless covered by insurance.';

24. A letter of January 23, 2018, sent to appointed Board Secretary Mr. Scott Price, asking for his contact information since he was now a member of the Board, was ignored with no reply being received, contrary to his duty as Secretary of WHOA;

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25. On January 6, 2018, in a letter to Defendants titled: "**Next Steps – Court Denial of All Three Motions**", they were asked:

"… may I suggest we stop paying lawyers and move forward for the benefit of all WHOA Members by letting a Master rule?"

and requested

(i) … to join me in asking the Court to decide!

(ii) Your immediate reply is requested.

being advised

(iii) No more of your time, nor effort, is involved in simply letting the Court rule - a direct benefit to the Board, and, most importantly, to the Members of the Association.

(iv) The Judge suggested the parties work this out or refer it to a Master in Equity, which is a fast and inexpensive way for a judge to listen and decide promptly the merits of each side; but Defendants made no response to any items listed here, and continue to stand in defiance of these requests and advice (Exhibit 15); thereafter, they finally agreed to come before a Master In Equity;

26. Defendants did not accept my challenge to cite, nor to date have they cited, any Complaint item, transferred to "Stipulation of Issues for Trial", as **not** being in the best interest of WHOA (Exhibit 15);

27. Appointed Board Secretary Mr. Scott Price ignored my request of February 5, 2018, for information from a Special Meeting, including minutes from this meeting; no information as requested has been provided (Exhibit 16);

[SIGNATURE ON NEXT PAGE]

SWORN to and subscribed before me this 10 day of April 2018.

Martha Rogers

Official Signature of Notary

South Carolina Notary Public

My Commission expires: May 30, 2024

Raymond A. Wedlake

Raymond A. Wedlake, Plaintiff

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ELECTRONICALLY FILED - 2018 Jan 03 10:18 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**THIRTEENTH JUDICIAL CIRCUIT**
Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc.	Civil Action No. **2017-CP-23-06301**
Plaintiff(s)	
vs.	**AFFIDAVIT OF PLAINTIFF, RAYMOND A. WEDLAKE**
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.,	
Defendants	

AFFIDAVIT OF RAYMOND A. WEDLAKE IN SUPPORT OF BRIEF MEMORANDUM IN RESPONSE TO DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STRIKE

Raymond A. Wedlake, personally appearing before me, being duly sworn, deposes and says, under penalty of perjury, that:

1. I am over 18 years of age and am competent to make this Affidavit;
2. The information set forth below is based upon my personal knowledge, unless otherwise specified as being based upon knowledge and belief;
3. This Affidavit is being brought before this Court in opposition to the Memorandum in Support of the Motion to Dismiss by Defendants, and, in addition opposing Defendants' alternative to strike for a more definite statement;



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4. I am a Member in good standing of the Woodington Homeowners' Association, Inc. ("WHOA");

5. I never received notice about the "Action by Written Consent (Consent)" proposed by Defendants resulting from a recent-opinion solicitation from members of WHOA (Members);

6. As a nominee for the 2017 Board, I received other votes in addition to my own, based upon my platform of reform, from the voting group at the last Annual Meeting;

7. Approximately 1/3 of the Members did not vote at the last Annual Meeting;

8. Of the total emails sent as of September 13, 2017, requesting a response from the Board, only approximately 35% received a response;

9. I elected not to file an action personally against the Board since I do not wish an adversarial proceeding if it can be avoided, and hold no animus against the members of the Board, as this is an action on behalf of Members;

10. I have in fact urged the Board in writing to join in this action, on more than one occasion, to pursue clarification of the By-Laws which is in the best interests of all Members; my case is not adversarial, but simply declaratory and for the benefit of Members;

11. If Defendants will participate with an attitude toward resolving disputes, I am in favor of continuing to try to Mediate this matter, and have offered to pay Mediator costs for all parties;

12. In the alternative, in order to expedite this matter and save costs for homeowners, I am in favor of seeking a Master in Equity to address the disputed interpretations of the By-Laws;

13. The WHOA consists of 66 voting units, with only a bit more than half of the Members voting on "ratification", which votes were not directed to disputes over the By-Laws, which remain unresolved;

14. For nearly the full 2017 year, ongoing disputes between Defendants and me have occurred regarding interpretation of a contract: the By-Laws of the WHOA; such disputes have not been resolved; Defendants rejected my repeated prior suggestions to schedule a few meetings to meet

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informally to work out such issues and thereafter my three proposals for private mediation, additionally making little, if any, attempt to resolve such disputes (See Complaint Exhibit Q);

15. I offered Mediation three times – proposing to use Upstate Mediation Center as shown per Complaint Exhibits O, P, and Q, but offers were refused, or no response was forthcoming in all three cases;

16. My action is not against Defendants individually, and does not seek monetary damages;

17. Proper interpretation of the By-Laws, as requested from this Court, has implications for the prior Board, the current Board, and for all future Boards, and is needed to restore integrity within WHOA;

18. The content of Summons and Complaint served to Defendants is exactly what was filed with the Court, with the exception of filling in the case number on title pages;

19. Every exhibit for the Complaint supports a claim found in the Complaint;

20. In early 2000's, I was an active, twice-elected member of two Boards of the WHOA, and also was a co-author of By-Laws (Rev 2);

21. Boards on which I served took great effort to maintain Board transparency, to hold open, noticed Board meetings, to publish and post minutes of Board meetings, to abide with By-Laws provisions, and to propose By-Laws changes to Members where appropriate;

22. Based on knowledge and belief, there are other Members in addition to myself who agree that By-Laws are governing documents which the Board must follow, absent preemption by statute;

23. The Office of the Attorney General suggested that my issues were a matter for the judiciary;

24. Requests and e-mails to the Board only took the tone of demands when there was either no response, or refusal to act in conformity with the By-Laws;

25. All correspondence sent to Defendants, and to the Board Secretary who resigned, contained items of interest that were related to the business of WHOA; no such correspondence contained any

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matter which could even remotely be interpreted as "harassment"; all correspondence was reviewed by my attorney, before being sent;

26. The former Secretary of the Board failed to do her duty as a member of the Board by her resignation, which had nothing to do with any "WHOA business" correspondence which she received, all of which was also received by all Defendants;

27. In many instances, neither Defendants nor the Secretary provided responses for requested feedback, nor was clarification or other explanation which were also requested ever received;

28. On September 13, 2017, I provided to Defendants a copy of the draft Complaint and notice of pending filing (response was that they would just forward it to their insurance carrier when received, and I advised them that they may not be covered, since our case is a Declaratory Judgment Action);

29. After May 9, 2017, when a Board vacancy was required to be filled, Defendants took no action, such as seeking candidates from Members or offering the position to me, since I informed Defendants that I was eligible to serve to fill the vacancy, and willing to serve;

30. I brought to Defendants' attention that the By-Laws do not permit a member of the Board to fill two officer positions when an eligible Member is willing to serve, and that the By-Laws prevailed over the Nonprofit Corporation Act (NPCA), explicitly as stated per the statute, but Defendants simply said the NPCA did not require more than three Directors, and did not address the issue;

31. While there have been disputes that have arisen between Defendants and me over Board Governance and By-Laws issues, I hold no animus toward individual Defendants; all contact has been via written or electronic correspondence, and all such contacts were first reviewed by my attorney;

32. I am intimately familiar with all issues brought, and I am fully committed to pursuing the case in the best interests of the WHOA and its Members;

33. Failure of the Court to permit my case to proceed would mean that the contract between Members and their Association cannot be enforced by like-minded Members;

34. Prior to December 2017, all information related to 2017-CP-23-06301 was kept secret from Members by Defendants, who ignored my notice of October 16, 2017, to them that it is a Board duty to inform Members about pending litigation.

[SIGNATURE ON NEXT PAGE]

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Dated this 2nd day of January, 2018

Sworn to Before Me, this 2 day of January, 2018

Martha Rogers

Notary Public of South Carolina

Raymond A. Wedlake

Raymond A. Wedlake, Plaintiff

My Commission Expires: May 30, 2024

ELECTRONICALLY FILED - 2018 Jan 03 10:18 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

Raymond A. Wedlake
703 Creekview Drive
Greenville, SC 29607
March 26, 2018

Subject: Woodington Homeowners' Association, Inc. (WHOA) -
Master In Equity Issue List; More Legal Cost Liability; Sample Proposed Ballot
Cc: Woodington Board

Dear Members of WHOA:

Together with my attorney, we have been urgently seeking to avoid if possible, and to streamline in any event, going before the Master in Equity (MIE) and have been talking with the Board's legal counsel, Ely Grote, Esq., in hopes of making this happen. **We need you to tell the Board that settlement is the best course and that further delay, in-fighting, and refusing to resolve the issues will only add legal fees and disrupt matters further.**

In that vein, we provided a very short list of items for us to resolve, or if we cannot, then for the MIE to resolve. These are **simple matters** such as the Board agreeing it is **subject to the By-Laws**, something every HOA Board is subject to (yet the Board has refused to sign off on even this simple matter so far). The complete short list is set forth in Appendix 1. Please feel free to call me for any needed clarifications. In this short list, you will not find anything contrary to the best interest of all Members of WHOA.

While a process to resolve list items should be simple and straightforward, it has become unnecessarily complex. Either agree or let the MIE decide is our motto! Otherwise, unnecessary additional liability is being taken on by the Board to **incur more legal costs that they subsequently will place on your shoulders to pay**! Thank you for becoming informed about **my rightful judicial action** which is being taken with every intent to improve WHOA and to bring benefits to **all** Members! So, I trust you are beginning to see that I am a **"GOOD GUY"** for WHOA!

All Members please be informed that the **Board's attorney** is putting up conditions and roadblocks to mutual agreement, or to agree to let the Master rule, to be sure we don't dispute "his getting paid". As you may recall from the Special Meeting of Members, the Board overspent the budget (in **violation** of the By-Laws), and **did not get approval from Members** to spend more than $1500 (another **requirement** in the By-Laws) to support their ill-advised, and **costly, legal wrangling**. As a result, they plan to **impose a Special Assessment upon all Members** and **to force Members** to **"pay their bill"**! Here's what the By-Laws say:

"ARTICLE X - EXPENDITURE OF FUNDS



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 XII - DUES AND ASSESSMENTS

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. ..."

Who pays legal fees is <u>not up to me</u>. It is up to <u>you, the Members</u>. It is our position that such an important issue should be brought before <u>all</u> Members by <u>Ballot</u>; I have taken the liberty of preparing a sample Ballot - see Appendix 2. As you will note, any ballot provided by the Board will presumably be substantially different but the result is the same – an approval vote on an assessment. The Board was previously informed via their attorney, that if they ballot this "who pays fees" question, that no Court injunction stopping an assessment will be sought.

As noted, an **<u>all-Member ballot</u>** is being suggested to the Board. We have also asked to be involved in the drafting of such ballot, to assure fairness. The question of **<u>imposing legal fees upon all Members</u>** is far too important to have a **<u>minority of Members</u>** approve such an unwarranted imposition of additional cost upon all Members! **<u>All Members should be given a chance to vote!</u>** Will you vote to approve more than $1500? Will you vote to approve a "specific project" such that the Board may authorize a "Special Assessment"? If you receive a ballot from the Board, I sincerely hope that **<u>all Members</u>** will return ballots with a **<u>resounding "NO" vote!</u>** If your ballot is **<u>not returned</u>** with a NO vote, that simply **<u>guarantees the Board will make you pay!</u>** In this regard, all Board actions to date have been done in **<u>violation of the By-Laws!</u>**

Finally, immediately please tell the Board that you do not support (per the By-Laws) their improper, continued overspending of WHOA funds, especially since this matter could have been avoided entirely had the Board properly participated in mediation, as I repeatedly proposed (a process I agreed to pay for)! Thank you once again!

Sincerely,

Raymond A. Wedlake

Raymond A. Wedlake
wedlakera@mail.com
864-254-9262

Appendix 1

Informal List of Requests to Submit to the Master In Equity

Note that alongside these points is found a reference to the Complaint (C-) by line number, or to a related line-item in the Prayer for Relief (PR) (where we/our denotes my attorney and me).

1. Since, unfortunately, the Board has been reluctant to do so, we will be asking the MIE to confirm that the Board of the WHOA is subject to the provisions of the WHOA By-Laws, which they are required to enforce in accordance with their terms; (of course as may be superseded by Statute) (C-4, 5, 19, 49, 75, and 76);

2. Thus, our position is that the provision that states it shall be the duty of the WHOA Board, in the absence of a Director, to appoint an eligible Member willing to serve in such capacity, means that the Board must do so (of course, by making reasonable efforts, such as advising Members of the opening and inviting such Members to so serve) (C-73);

3. That the MIE confirm Plaintiff's right to any information requested and not provided, (C-81), (further insurance details still needed) (PR-D);

4. That the MIE confirm that the By-Laws require a Majority of all Members to both enter into, and to renew, a Management Contract (PR-F);

5. That the MIE confirm Plaintiff's understanding that the By-Laws Term Provision for Directors does 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 (C-73) (PR-E);

6. That the MIE confirm Plaintiff's understanding that the By-Laws do not permit delegation of the role or authority of the Board (C-78);

7. That the MIE confirm that the provision in the By-Laws requiring the "Board Secretary shall deliver a ballot to every Member" means that it is incumbent on the Secretary to send out to the Membership for balloting a proposed amendment to the By-Laws submitted by an eligible Member (C-82);

and,

8. That the Court award Plaintiff Nominal Damages, as well as court and legal fees if such fees are subject to a claim for insurance (if paid for by WHOA insurance) (PR-K).

Appendix 2 (Sample - as prepared as an example by Ray Wedlake)

Sample Proposed Ballot for "Special Assessment" -
Vote by circling one of three choices to answer to the ballot **question**

Do you agree with the Board's imposition of a "Special Assessment" in the amount of $____ on each voting unit for the purpose of paying legal fees, for a previously non-existing "specific project" that was **NOT** approved at any previous-duly-held meeting, which assessment is desired since prior approval from Members was not obtained, and the project amount exceeds that permitted in the By-Laws?

NO yes abstain

The By-Laws show:

" ARTICLE XII - DUES AND ASSESSMENTS

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. ... "

DISCLAIMER

It is unlikely the Board will propose a ballot worded as above. This wording is used to maintain an intent, as this letter, that what the Board has done to date is completely and totally in **violation** of the By-Laws. Had the Board adhered to the By-Laws, this situation would not have been created. The fact that the Board was **misguided by their attorney**, and took on this liability for legal expenses should rest squarely on the Boards' shoulders. None the less, should a ballot be received from the Board, please compare and contrast wording they use, to wording as above. Most certainly, the Board will try to play upon your "sensitivities" to influence your judgment with claims like: "... support your Board ...", "... thought they were doing a right thing ...", "... it was not their fault ...", etc. Only a misinformed Member will "fall for" such fallacious claims!

ADVISEMENT

Clearly, any Member voting "Yes" is imposing an unwanted financial liability upon all other Members who vote **"No"** ! Further, did you know the By-Laws specify a "meeting quorum" of one-quarter of voting units (17)? This means that the Board may use **ONLY NINE (9) VOTES** in a meeting where only 17 attend to force upon **ALL MEMBERS** an action such as approval of a "specific project" to approve collecting a "Special Assessment"! If you do not like the sound of something like this happening, please tell the Board that a **ballot, voted upon by all Members, is a requirement** if they intend to impose a "Special Assessment"!

It is not "my way or the Highway"!

One Last Opportunity to Resolve Open Issues
ben.acord@gmail.com
craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com
Bcc: atty@garibsonassociates.com, cjulies1mile@gmail.com

Sent by e-mail and by Priority Mail June 25, 2017

To: Mr. Benjamin Acord
20 Southfield Drive
Greenville, SC 29607
ben.acord@gmail.com

cc: Mr. Denis Esteve
205 Woodington Drive
Greenville, SC 29607
cndesteve@gmail.com

cc: Mr. William Craigo
18 Southfield Drive
Greenville, SC 29607
craigow@bellsouth.net

cc: Mr. Brian James
4 Southfield Drive
Greenville, SC 29607
remaj616@aol.com

Dear Mr. Accord:

Thank you for recent replies. However, they did **not address the issues** raised in, nor reflect the **seriousness** of, my recent messages. This suggests that either they were not read carefully or that the **Board is not seeking a resolution** of such issues, short of my taking judicial action on behalf of the WHOA membership.

Please be informed, since my attorney is having to fly out west to assist with family matters, we have a **short window** to agree on private meetings **before such judicial action** is taken. This window can be used profitably to address our several open issues.

So, here is a last-ditch proposal: four short meetings (more if necessary) to work together to listen and respond to open issues. Indeed, you may have some points to raise as well! Please consider the following schedule for hour-long private meetings:

+	Wednesday	28 June	7 - 8 PM
+	Saturday	08 July	8 - 9 AM
+	Wednesday	12 July	7 - 8 PM
+	Saturday	15 July	8 - 9 AM
+	(... other W / S as needed ...)		

Note no times are proposed around the 04 July Holiday. One last time, I respectfully request that the Board **get serious** about **committing** to time required for **negotiation** with intent to **resolve** open issues.



In order to be productive, such private meetings cannot be a forum where the Board merely listens to issues previously raised (such as governance matters) without **addressing** such concerns **while at these meetings**. This could be done in a variety of ways:

by **agreeing to adopt** recommendations;

or

by indicating a need and **willingness to have them negotiated** by the whole Board at Special Board meetings (with a set, **near-time** schedule);

or

if not acceptable, by **giving explanation(s)** why such recommendations are unacceptable.

It may be that you believe the issue is proper to address but needs to be resolved with a different solution, which could conceivably lead to resolution. It is **not** "my way or the Highway"! After all, we are all in this for the **benefit of WHOA** membership, right?

In other words, these meetings should be **"full up" negotiations**, where both sides **strive to understand** each other's positions. Once positions are understood, **my hope** is the Board **will realize** there are areas that **need correcting / improvement** resulting in **changes benefiting all members** of **WHOA**, thus helping to fulfill the proper duty of the Board!

Of course, if the proposed schedule needs "tweaking" please send alternative dates. However, other suggested dates should be **targeted to resolve issues before mid July**. And, although I provided a set of key open issues, they can happily be provided (if necessary) again prior to the first meeting.

Please take advantage of this proposed **"last chance"** for us to **resolve our disputes** short of **judicial action** on behalf of the WHOA membership. Your **response** is requested **by June 28, 2017**.

Thank you.

Cheers ..... wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

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.



Ben Acord e-mail Log
trash222ba-noblrc

Re: Thank You for 24 Feb Letter
Sent: 3/1/17 at 8:34 AM
From: Ben Acord
To: Raymond Wedlake, craigow@bellsouth.net, denisesteve@bellsouth.net, remaj616@aol.com, staceybkrause@gmail.com

Hello Mr. Wedlake,

Thank you for reaching out to the board. The annual meeting minutes were sent out this week.

Additionally the board has decided to not institute any committees at this time. We will keep you in mind should that change or other opportunities arise in which you can serve the neighborhood.

Please note that AMG is the management company for the neighborhood and does send letters, signed or not, on behalf of the board.

Have a great day.

Ben Acord

trash269ba-xxamgxx

Re: AMG is a _High_Cost_ Provider
Sent: 5/8/17 at 6:06 AM
From: Ben Acord
To: Raymond Wedlake, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com, staceybkrause@gmail.com

Dear Mr. Wedlake,

As has previously been mentioned the topic regarding the management company was already brought forward and a voting decision reached by the members and will not be altered at this time. As has also been mentioned before no subcommittee or non-board members have been appointed on the board's or HOAs behalf.

Sincerely,
The Woodington HOA Board



trash290ba-secrets

RE: Board Meeting Schedule / Post Minutes
Sent: 5/30/17 at 5:49 PM
From: Ben Acord
To: Raymond Wedlake craigow@bellsouth.net cndesteve@gmail.com remaj616@aol.com

Hi Ray,

We are currently scheduling our next meeting at which time you will have ten minutes on the agenda to bring any issues before the board. We will keep you posted as to the date and location.

Have a good evening.

Ben Acord

trash301ba-medlitnoreply

Re: Mediation / Meeting with Board in Lieu of Litigation - No Response from Board
Sent: 6/9/17 at 3:25 PM
From: Ben Acord ben.acord@gmail.com
To: Raymond Wedlake craigow@bellsouth.net cndesteve@gmail.com Brian James Rea Tinsley wedlakera@mail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com, rtinsley@amgworld.com

Hello,

Well, I personally think there is no need for litigation. The Board is providing a platform for you to speak and present your issues which you feel are at the point of litigation. You were provided notice of this meeting prior to June 7th as you confirmed in an email on June 2nd. The meeting will have a private time blocked off for you to present to the board. No other members will be present during your time slot and likewise during the slot of others.

I sat down the other day to work through your communications from the start. Since Feb 9th you've raised 51 varying issues over 20 messages. The frequency and range of topics comes across like noise and anger. It's difficult for me to know what is most important to you. I had previously asked you for agenda topics to be placed on the Q2 Board Meeting agenda but you simply sent new email and raised new issues.

So, while you have posed options for mitigation our counter option is the face-to-face meeting at the end of the month, which, as I previously mentioned will be a private session. I want to hear what are the most critical concerns for you. For now, I have reserved you the first ten minutes of the meeting to

present. Please send an itemized list of your key issues so that we can follow along during your presentation. We will listen, confirm with you what we heard, and after a period of deliberation send you a response.

Looking forward to working all this out with you.

Ben Acord

trash306ba-medlitresponse

Re: Mediation / Meeting ... in Lieu of Litigation
Sent: 6/17/17 at 3:36 PM
From: Ben Acord <ben.acord@gmail.com>
To: Raymond Wedlake <wedlakera@mail.com>
Cc: craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com, rtinsley@amgworld.com

Hello,

It seems the email I replied to inviting your topics for the Q2 board agenda was in response to an email you sent from someone else's gmail address (Jospehine Blough joblo9753 at gmail com). I didn't catch that you weren't in the reply until recently. The body of the message was from you but apparently you sent from someone else's account.

Here are responses to the six items in your email. I encourage you to join us at the meeting for the ten minutes as a start to resolve any issues. If you'd like twenty let us know. We need to start somewhere. The other items you have raised to-date will be discussed at the Q3 board meeting with responses sent thereafter.

The final question you raise is addressed in the response for item one.

1. Does the Board agree to abide by the By-Laws and all applicable Non-Profit Corporation Law?
+ the Board has not appointed an eligible WHOA member to fill a vacancy on the Board!

Board's Response: The law must be followed. By election to the Board we did agree to abide by the By-Laws. 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. Therefore the next appointment for the role of Secretary will be by the voting members at the January 2018 meeting.

2. Does the Board agree that current By-Laws require a majority vote of all members to renew a management company's contract?

Board's Response: As specified in the by-laws Article VIII - Powers and Duties of the Board of Directors section 1(d) a simple majority of the members is needed to enter into a contract with a management company. Base on our review the By-Laws are silent on renewals.

3. Does the Board agree that our By-Laws need amending?

Board's Response: No, not at this time. We recognize the suggestion was raised during the annual meeting but will be investigating potential revisions at a later time. Just not right now.

4. Does the Board agree the current revision of Annual Meeting Minutes need correction, since they still contain "non-truths" and libelous content?

Board's Response: We are open to review the minutes for revision. Please detail the "non-truths" and libelous content as no one wants either. We are happy to talk through those with you at the up-coming meeting.

5. Does the Board agree that it is good practice to send out a "Request for Bids" for professional services?

Board's Response: Yes, when and if the Board decides to engage in new professional services.

6. Does the Board agree WHOA should not be paying more than a contractual monthly payment of $250 for management company services?

Board's Response: Woodington HOA will abide by its contractual agreements.

Sincerely,

Ben Acord

trash310ba-medmeet

Re: Mediation / Meeting ... in Lieu of Litigation
Sent: 6/23/17 at 10:15 AM
From: Ben Acord ben.acord@gmail.com
To: Ray Wedlake
Cc: craigow@bellsouth.net cndesteve@gmail.com, remaj616@aol.com, rtinsley@amgworld.com

Hello,

I am willing to read and listen to your follow-up responses to these items at your private session but reserve a response until after our meeting. All of us have many options other than pursue legal recourse. You have, and are, receiving positive steps toward reconciliation of items and you have a private session with the board scheduled later this month.

Thank you,

Ben Acord

trash312ba-lastoppy

Re: One Last Opportunity to Resolve Open Issues
Sent: 6/26/17 at 6:02 AM
From: Ben Acord <ben.acord@gmail.com>
To: Ray Wedlake <wedlakera@mail.com>
Cc: craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com, rtinsley@amgworld.com

Mr. Wedlake,

The board is seeking resolution to the issues raised.

Please clarify why your attorney needs to be involved or a schedule consideration if this is pre-litigation. Are you saying the board will meet with your attorney for mediation on those dates?

One or more of us can potentially meet with you on the 28th. Please note a location was missing from your proposal. At least two of us are attempting to change plans on the 28th but I cannot commit to the others dates simply because the rest of the board is scattered at this time. The 28th is at best tentative for the board members.

Due to work, travel, vacation, and family needs the board chose the 29th 7pm as its first opportunity to start discussions with you. A quorum may not be present, either on the dates you listed or the 29th, which is why I can only commit to listening and engaging in probing questions to better understand your positions - the foundation of any good negotiation. Making decisions based on the information gathered is reserved for board or the members depending upon the scope of issue.

Sincerely,

Ben Acord

trash354ba-pendinglit

Re: Notice of Pending Judicial Action
Sent: 8/18/17 at 8:42 AM
From: Ben Acord ben.acord@gmail.com
To: Ray Wedlake
Cc: craigow@bellsouth.net cndesteve@gmail.com remaj616@aol.com

Ray,
Your email has been received. However I am somewhat taken aback by your course of action. The board committed during our face-to-face meeting to cover the remaining items at the Q3 board meeting in September. Do you recall that discussion?

Ben

trash385ba-summons

Re: Courtesy Copy of Court Summons
Sent: 9/24/17 at 12:22 PM
From: Ben Acord <ben.acord@gmail.com>
To: Ray Wedlake <wedlakera@mail.com>, craigow@bellsouth.net, cndesteve@gmail.com, Brian James <remaj616@aol.com>, Rea Tinsley <rtinsley@amgworld.com>
Cc: atty@ggibsonassociates.com

Hello Ray

If the Board of Directors is summoned the Woodington HOA insurance provider will select a lawyer to represent the Board. The Board met this week and decided we will not be responding to your communications since these are pending legal action. Instead the lawyers will facilitate future interaction between the parties involved.

Sincerely,

Ben Acord

trash514ba-nofwds

From: Ben Acord <ben.acord@gmail.com>
Date: Wed, 10 Jan 2018 19:53:52
Subject: Re: Fw: Your January 2018 HOA Member Services Newsletter
To: Ray Wedlake <wedlakera@mail.com>
Cc: craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com

Ray,
Thank you for passing this along however I do not wish to receive forwarded messages.

Thank you,
Ben

Stacey Krause Communication Log
sent665sk-minutes

Please Provide WHOA Minutes 032117
staceybkrause@gmail.com
ben.acord@gmail.com, craigow@bellsouth.net, denisesteve@bellsouth.net, remaj616@aol.com
Bcc: atty@ggibsonassociates.com, cjuliesmile@gmail.com

703 Creekview Drive
Greenville, SC 29607
March 21, 2017

Mrs. Stacey Krause
203 Woodington Drive
Greenville, SC 29607

Dear Mrs. Krause:

Please recall my request that all minutes from meetings of the 2017 WHOA Board be supplied to me. To date, none have been received. At your earliest convenience, would you be so kind, please, to provide all minutes?

As you may be aware, in the past minutes were posted at: www.neighborhoodlink.com . I would like very much that the Board begin anew to post minutes. Today's "social site" woodington.nextdoor.com also allows this via: Documents / Woodington. Please tell me you will post all minutes. If not, I might pose the question: "What are you trying to hide?"

If minutes will not be posted, please explain to me why this is the Board's position.

Thanks in advance!

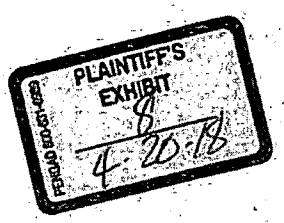
Sincerely,

Raymond A. Wedlake

Cheers ..... wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
Stop organized crime. Re-elect no one !

sent793sk-minsreq

RE: Please Provide WHOA Minutes 050417
staceybkrause@gmail.com
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com
Bcc: atty@ggibsonassociates.com, cjuliesmile@gmail.com



Dear Mrs. Krause:

Thank you for your reply to my previous request of 21 March 2017 for Board Minutes, advising me that Minutes would be forwarded to me by AMG. Unfortunately to date, _no_ Minutes have been provided.

It is the ultimate duty of the Board to assure proper governance, and that cannot be delegated away, including to a management company. It is the function and duty of the Secretary of the Board to keep Minutes of both Member and Board meetings. While that function may be delegated, you remain ultimately responsible, and need to provide proper oversight and supervision for any delegation of duty. Please see excerpts from WHOA By-Laws as appended.

As you should know, the South Carolina Nonprofit Corporation Act of 1994 (NPCA), provides that members are entitled to "inspect and copy" specified documents of the company. These documents include Minutes, as well as copies of all written communications to members within the past three years, along with copies of any resolutions adopted by the Board that relate to, or impact, Member rights or obligations of Members. (Please see for yourself per NPCA, Article 16, Records & Reports).

As a Member in good standing I wish to help assure proper governance, and to monitor costs which impact our dues. In good faith, I request again that you either make available to me all 2017 Minutes for copying, or for my inspection. I would also request copies of any Resolutions for 2017 that have any impact on the membership, including any delegation of authority.

Once again, I strongly recommend posting of Minutes. Posting will show good faith on the part of the Board and can easily be recognized as a "best practice". Posting would be consistent with history as done by previous Boards (excepting the most recent previous "pretend Board" who improperly began a practice to meet and to act in secret).

Board-meeting Minutes are _not_ the sole, private property of the Board, nor of AMG, nor of McCabe, Trotter, and Beverly(MTB) attorneys. Minutes belong to all WHOA Members, and cannot by law be secreted from Members. If either of AMG or MTB are advising the Board to keep Minutes secret, you need to discard their _ILLEGAL_ advice, and to act properly in the best interest of all WHOA Members.

Please accept your duty as Secretary and post, or provide to me, Minutes and any resolutions as soon as possible. Kindly explain to me why any further delay may be required. Please consider my request for Minutes a continuing request, to include all future Minutes and also any Resolutions declared by the Board.

Thanks in advance!

Cheers ..... wedlakera@mail.com

Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
Stop organized crime. Re-elect no one !

-------- Appendix --------

ARTICLE IX - OFFICERS AND THEIR DUTIES

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

c. SECRETARY: The Secretary shall record the votes and keep the Minutes of all meetings and proceedings of the Board and of the Members; . . . These responsibilities may be delegated to an association management company. . . .

sent796sk-minsreq

RE: Please Provide WHOA Minutes 050517
staceybkrause@gmail.com
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com
BCC: atty@ggibsonassociates.com cjuliesmile@gmail.com

Dear Mrs. Krause:

Thank you.

Your comments were forwarded to AMG, along with my request for minutes. I regret having to follow up with you about a matter that AMG should have taken care of, per your prior request. But, I had no knowledge that you delegated _your_ duty, nor that you made such a request to them.

I hope you will follow up with AMG to verify, and to supervise, that your delegation directions are acted upon. You _need_to_know_ that AMG has a proven track record of "conveniently forgetting" to respond to dues-paying Members of WHOA until they may "feel like it" (if ever at all)!

Cheers ..... wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
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Stop organized crime. Re-elect no one !

sent813sk-minsreq

XRE: Please Provide ... - Board Must Step Up / Explanation Required 050817
staceybkrause@gmail.com
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com
Bcc: atty@ggibsonassociates.com, cjuliesmile@gmail.com

Dear Mrs. Krause:

Thank you for your response as Board Secretary to speak for the entire Board. I am surprised with your reaction, and disappointed that the Board appears to not want to comply with requirements of good governance and the law.

It is time for the 2017 Board to "step up" and discontinue your ignorance about _facts_ of wrongdoing which recently occurred in WHOA. It is time for the Board to step up and recognize all "lessons learned" from recent wrongdoing, and to _act_ to be sure future wrongdoing does _not_ occur again! The only means to assure proper governance of WHOA is to amend our By-Laws to make them _absolutely__clear_, per recent lessons learned, to preclude any and all future wrongdoing!

Is it the Board's contention that no revisions to By-Laws are needed? If so, please provide _explanation_ which substantiates your contention. A simplistic statement: "You've already been told by the board that we were not interested in using you to form a new bylaws committee at this time", is insufficient to explain why.

The Board has a duty to respond:
- to inquiries from Members in good standing, including queries about Board actions or decisions (or failure to act/decide)
- to questions about Board governance matters
- to information requests

As correspondence spokesperson for the Board, what is your position? As Secretary of the Board, you cannot simply decide you do not want to hear from a Member because a Member has different ideas or raises question as to Board practices, or decisions. Please be informed a reply is expected from the Board Secretary for _every_ note that I need to send. Please also be advised I will continue to insist on speaking up whenever it appears necessary.

Your note also asked two questions:
1) Why don't you state what it is exactly you want?
and
2) What else do you want?

For 1, as was said at the Annual Meeting, I want governance in WHOA to abide by the "law" and also to abide by our By-Laws. I want the Board to recognize prior objections to wrongdoing in WHOA which were documented as part of Annual Meeting Minutes; please see a rehash as appended.

For 2, I want the Board to _meet_ to address real issues which have been brought, rather than to simply ignore them. These issues include:

- agreement by the Board that they will follow the By-Laws and "SC Nonprofit Corporation Act" law
- acknowledgement that the Board represents _all_ members of WHOA

- agreement that the Board's duties include:
  + being prudent with WHOA funds (to include annual review of any professional services)
  + timely responses to questions/issues raised to Board members and serious consideration of member recommendations
  + taking their governance duties seriously
- libelous, untrue statements that still remain in revised Annual Meeting minutes (must be deleted or stated in a _truthful_ manner).
- no other interpretation is possible; as quoted at Annual Meeting per our By-Laws, Article 5, Section 2: "... EACH BOARD MEMBER MUST BE ELECTED EVERY YEAR ...". If the Board may have some other interpretation of this By-Laws _requirement_, please bring it to my attention.

The Board needs to meet and act in good faith for improvement and betterment of governance within WHOA, which is the Board's fiduciary duty. By simply forming a By-Laws Review Committee (as was also suggested by both the "2016 Pretend President" and McCabe, Trotter, and Beverly attorneys in the Annual Meeting), one point of our disagreement, and future conflict will be removed. The Board's cooperation to avoid future conflict will be much appreciated!

Cheers ..... wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
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-------- Appendix --------

Objections documented as part of Annual Meeting Minutes

1. We believe that the Board has not consistently followed the By-Laws ...

8. Finally, we believe that the By-Laws need revision and that a Committee ...

trash236sk-minutes

Re: Please Provide WHOA Minutes
Sent: 3/21/17 at 4:34 PM
From: Stacey Krause
To: Raymond Wedlake

It is not my duty to send you board minutes. That is to be done by AMG. I feel certain they will send you board minutes when they get them.

trash264sk-minsreq

Re: Please Provide WHOA Minutes
Sent: 5/4/17 at 9:06 PM More Information
From: Stacey Krause
To: Raymond Wedlake
Cc: ben.acord@gmail.com craigow@bellsouth.net cndesteve@gmail.com remaj616@aol.com

Ray,
I have no hidden agenda here. No one is out to get you. Frankly I am exhausted from your nonsense communication and will not be a part of the board if this continues. Apparently, unlike you, I have a full time job along with full time parent duties, and replying to your "quotes" from some manual you have unearthed are not on the top of my priority list. As secretary, I take the notes and pass them along to the other board members and AMG. I was told that they (AMG) will disseminate these minutes to you at your request. So contact them and find out why you haven't gotten them.
Stacey Krause

trash267sk-minsreq

Re: Please Provide WHOA Minutes
Sent: 5/5/17 at 5:25 PM
From: Stacey Krause
To: Raymond Wedlake
Cc: rtinsley@amgworld.com

The transition meeting was just that. A transition meeting. Nothing was discussed. It was not a board meeting. Papers were passed on to new members. That is it. The straightforward definition of transition- the process of changing from one state to another. Once again, no hidden agenda. Not out to get anyone. Everyone just wants to live in a nice, peaceful neighborhood where we don't have to deal with nonsensical garbage. Enough already. Why don't you state what it is exactly you want? Besides minutes. You've already been told by the board that we were not interested in using you to form a new bylaws committee at this time. What else do you want? If it's financials- contact Denis. I am the measly secretary. I take the notes and pass them on. They

have been sent to you. You have been told to contact Rea if you want anything else. As far as I can see, you don't need to be contacting me PERIOD.

trash270sk-nocontact

No contact
Sent: 5/9/17 at 6:32 AM
From: Stacey Krause staceybkrause@gmail.com
To: Raymond Wedlake, Ben Acord, Rea Tinsley

Mr. Wedlake,

Due to your obsession with the WHOA board and your excessive communication, I have resigned from the WHOA board. Therefore, you have NO REASON to contact me via email, US Postal, phone, etc. If it continues, I will be forced to file a complaint with the police department.
Sincerely,

Stacey Krause

Gary Krause Communication Log
sent414wb-postnosigns

PRE: Post No Signs (Krause) 100917
ben.acord@gmail.com
clemson60@aol.com, craigow@bellsouth.net, cndesteve@gmail.com,
gary.krause.yukon@gmail.com, remaj616@aol.com
Bcc: atty@ggibsonassociates.com

Sep 09, 2017

Dear Mr. Acord:

Even though Mr. Krause was previously informed and should understand, having recently corrected a "Post No Signs" violation at his house, this learning seems forgotten. Mr. Krause, once again, willfully is violating "Post No Signs" by prominently displaying an objectionable sign in his front yard.

With hopes that Mr. Krause will remove his sign on his own initiative, none the less the Board needs to remind everyone that our Covenants and By-Laws require "Post No Signs".

Cheers ..... wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime.. Re-elect no one !

----- Excerpted Message -----

Open Board Meetings with Posted Schedule / Agenda / Minutes
ben.acord@gmail.com
craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com

June 30, 2017

Dear Mr. Acord:

Thanks to the Board for affirming "Post No Signs" will be rectified.

Please note my objections on the record in minutes from another "private" Board meeting of 29 June 2017. . . .

rw1012gk-postnosigns.rtf



703 Creekview Drive
Greenville, SC 29607
October 12, 2017

Mr. Gary Krause
203 Woodington Drive
Greenville, SC 29607

RE: Post No Signs

(sent by Priority Mail, only)

Bcc: atty@ggibsonassociates.com

Dear Mr. Krause:

Your distortion of facts deeply disturbs me! From my perspective, your recent claims and statements made to the Board are not truthful! Since I believe the Board should not tolerate persons **lacking in integrity** as Members of the Architectural Committee(AC), soon I may advise the Board with an **official request that you be dismissed** from the AC. Please resign from the AC to save everyone this trouble.

Reality is covered below by showing your "S:" statement, followed by "F:" **truthful fact**. To be clear, some of your claims and statements are not true.

S: "... never previously notified of a sign violation. ..."
F: A "Wave Runners" sign was displayed in your front yard earlier this year. Our Board makes no attempt to publish minutes from meetings, nor makes any attempt to inform members about decisions made, nor actions taken. However, on 29 June I received these comments from Rea Tinsley, as appended:

"Please note I will address this issue with hone [the home] that has the sign."

So, it would appear that after contact from Ms. Tinsley, your sign was removed, and your "... never notified ..." claim seems suspect.

S: "How is a pallet considered a sign? ... Not a sign."
F: Most certainly any observer would characterize your display of "a pallet" as a sign. It's conspicuous nature and size (a large pallet) is a testament to your inappropriate grasp of reality. It shows a "vulgar" display, with content painted on a pallet.

S: "... If this decoration is not allowed then why are sports flags allowed thought [throughout] the neighborhood? What about the Halloween decorations. ..."
F: Good observations, but we have a "do nothing" Board who "turn a blind eye" to allow their friends to violate the simple "Covenants" requirement: "Post No Signs".

S: "... The issue is not the sign. The issue is the manner in which you approached a homeowner about a sign. That is not your duty as a member of the neighborhood. ..."
F: Untrue, the issue is the illegal display of your "pallet sign". True facts are I was very careful in the manner in which I approached you. I very politely asked **questions** upon seeing you in your driveway:

- Mr. Krause, is that you? Are you Gary?

After I identified myself, I asked further:

- Are you aware we are a "Post No Signs" neighborhood?

I thought you answered affirmatively to these questions. Then I **asked**:

- Will you remove your sign?
However, you would not answer, and turned your back to me and began to walk away, into your garage. Honest, decent people do not act in such a **rude** manner! Plus, yes, it is everyone's duty in this neighborhood to respect other neighbors - not to walk away rudely when a simple question is asked! Furthermore, every WHOA member is well **within their rights, and duty,** to **ask** any other member to address, and to correct, a violation of our "Covenants" or "By-Laws". Further, reasonable people do not initially have to run to "Daddy Board", nor to "Mommy management company", to request and to act for (as Article 2 of our By-Laws): "... the betterment of homeowners ..."! In addition, I'll bet you would agree that our "discussion" time lasted less than one minute? If so, your claim to the Sheriff about "a nuisance" was completely unfounded, and without merit! My suspicion is you used your "Police Officer" status to improperly influence everyone's better judgment?

S: "... Your vulgar language and manner in which you acted yesterday is an embarrassment to the whole neighborhood. ..."
F: As just explained, the manner in which I acted was very respectful, and polite, until I needed to "stoop to your low level", and to use "language" that you seemed to understand, since you seemed not to understand polite language. Please be informed that every person standing in a public roadway is free to exercise their US Constitutional right to "Freedom of Speech". It is **you**, with your **rude disrespect,** who is the one **that should feel embarrassed**. To be clear, **no others** were involved in our discussion, and if anyone inside your house may have **overheard** what was said, then you have nobody to blame except **yourself**. As this is the way **you wanted it**, this is the **way you got it**!

S: "... If you step foot on our property again for any reason, ..."
F: At no time was I ever on your property. I was in the public roadway, never stepping foot anywhere near your property. As a member of the AC, you should know there is a 5 foot right of way, that though technically is part of your lot, it is not really "your property". With this ignorance, you are not qualified to call yourself a member of the AC. Please resign!

S: "... charges will be pressed next time. ..."
F: Please feel welcome to "press charges" right now. My attorney (Mr. Grant Gibson, Esq., atty@ggibsonassociates.com) will welcome your contact, or your attorney's contact. I suspect you will find, however, once you move beyond your **angry tirade** and **bullying threats**, that you have **no charges** that can be pressed. I am open, and my attorney is open, to your further contact if you feel that you have a legitimate need to pursue legal action.

A word of caution to you. Be very careful what you put in writing, with specific intent to be honest, truthful, and fair. Should you decide to forward this note to the Board, or to any others with your additional comments, if you state or claim **"more untruths"**, you **shall be sorry**. If I recognize any further distortions of truth which may be construed to be "defamation of my character" and/or "libel", I will be directing my attorney to bring judicial action against **all** those who are offenders!

Please be informed that should you request any of your law enforcement **"buddies"** to ring my doorbell again for any reason, written documentation is needed for them to present to me which explains the reason for an intrusion on my privacy. Anyone at my door must also be prepared to provide me with a written statement of the complaint which elicited the visit. I will also require written documentation of any Sheriff, or police reports. Let me make it perfectly clear that without written documentation, no law enforcement officer will be welcomed at my door; they will be directed to leave, and my door will be closed.

Please also be informed that your **childlike action** to request the Sheriff to send someone to my door and attempt to **"bully"** me is, and will remain **ineffective**, and a waste of everyone's time. Any future visits that you request from any of your buddies, or by any other law enforcement officers, shall after this time become **recognized as harassment**. If such **harassment visits** at my door **recur**, you will be called to court to answer a harassment charge! If you think this is a joke, have the Board show you the Summons from the Court that they recently received.

You are probably unaware of my wife's health status. She is an asthmatic, and the anxiety caused to her by a Deputy at my door was such that she almost had a heart attack! Knowing that your request for a Deputy to come to my door may result in considerable medical expenses for my wife, I would ask you to be very, very sure that you think you are doing the right thing, before "distorting facts" to ask for a Deputy at my door to cover up for your inadequacy, and lack of adult judgment.

Finally, the Board has not seen fit to inform me about anything related to your sign. If you are still in violation of our neighborhood's "Post No Signs" policy, it is my sincere hope that you may "come to your senses" and remove your sign!

Sincerely,

Raymond A. Wedlake
wedlakera@mail.com

-------- Appendix - Excerpted Message --------

Agenda
Sent: 6/29/17 at 6:09 PM
From: Rea Tinsley rtinsley@amgworld.com
To: wedlakera@mail.com, ben.acord@gmail.com, remaj616@aol.com, cndesteve@gmail.com, craigow@bellsouth.net

File: < agenda6-29-17.doc >

Please note I will address this issue with hone [the home] that has the sign.

Thank You,

Rea Tinsley

sent436qbac-cuse27

'Cuse 27, Clemson 24 101417
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com
clemson60@aol.com, gary.krause.yukon@gmail.com
Bcc: atty@ggibsonassociates.com

Woodington Board and Architectural Committee:

Please be informed a "football decoration" (not a sign) is displayed on a pallet in my front yard, which shows:

'CUSE 27
Clemson 24

(Clemson f'ball sucks!) :o)

Cheers ..... wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

rw1016gk-postnosigns.rtf

RE: Set the Record Straight
ben.acord@gmail.com
Bcc: atty@ggibsonassociates.com

October 16, 2017

Dear Mr. Acord:

Please be sure Mr. Krause becomes aware of my reply letter, as appended. Even though Mr. Krause is a member of the "Architectural Committee (AC)", and my reply is AC business (since the AC is tasked to approve posted signs), due to Mr. Krause's request: "... to leave my family and me alone. ...", this note is sent solely to you - it is not sent to him. (I became informed of Mr. Krause's request per his October 11, 2017, reply.) However, like with Mr. Esteve and his dereliction of Secretary duties, Mr. Krause needs to resign from the AC if he has no desire to address AC issues.

Please make it incumbent upon yourself to be sure Mr. Krause is made aware of, and advised properly about all issues contained in my reply, below. In particular, if he sends the Sheriff, or any of his law enforcement "buddies" to my door again, based upon fraudulent and non-truthful claims, that judicial action against him for a restraining order will be commenced. Please also inform Mr. Krause to "press charges" right now, if he feels that a legitimate need to pursue legal action is justified!

As President of WHOA, thanks in advance for informing Mr. Krause.

Cheers ..... wedlakera@mail.com
Support "wilderness" - conserve nature !
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GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

APPENDIX

703 Creekview Drive
Greenville, SC 29607
October 16, 2017

Mr. Gary Krause
203 Woodington Drive
Greenville, SC 29607

RE: Set the Record Straight

Dear Mr. Krause:

Your distortion of facts deeply disturbs me! From my perspective, your recent claims and statements made to the Board are not truthful! . . .

sent453wb-fballdecs

Football Decoration Removed From My Yard 102117
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com atty@ggibsonassociates.com

Woodington Board:

A "football decoration" was surreptitiously removed from display in my front yard by some unknown party. Please take action to investigate and rectify, with intent for return of my personal property.

Kindly post a brief, "General" note at

woodington.nextdoor.com

explaining the Board is (apparently) allowing things like "football decorations" in our "Post No Signs" neighborhood. Any details should be entered into our public "Group WHOA" which contains previously posted WHOA "sensitive" items. Please direct me to file a "stolen property" report with the Sheriff if that is viewed as appropriate at this time.

If my attorney approves, I will be posting such content, should the Board take no action. If by 5 PM today no action has been taken by the Board, I will be considering posting.

Thanks in advance for your comments!

Cheers ..... wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

trash400gk-postnosigns

> Sent: Tuesday, October 10, 2017 at 7:27 AM
> From: "Gary Krause" <gary.krause.yukon@gmail.com>
> To: "Ray Wedlake" <wedlakera@mail.com>
> Cc: ben.acord@gmail.com, clemson60@aol.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com
> Subject: Re: Post No Signs (Krause)
>
> To whom it may concealment,
> I have not received any such notice that Mr. Wedlock is talking about. I do not have a sign in my yard. I have a yard decoration for football season. I have taken a picture and looked into the HOA rules on signs and my item is not a sign. I would appreciate a follow up from the board. As I would also appreciate Mr. Wedlock staying off my property and not using profanity as my son does not need to be exposed to his instability with his temper or things not going his way.
> Thank you
> Gary Krause

trash401gk-postnosigns

Re: Post No Signs (Krause)
10/10/17 at 9:38 AM
From: Gary Krause
To: Ray Wedlake
Cc: ben.acord@gmail.com clemson60@aol.com craigow@bellsouth.net

cndesteve@gmail.com remaj616@aol.com

Mr. Wedlake,
We were never previously notified of a sign violation. How is a pallet considered a sign? This is a decoration to celebrate football season. Not a sign. If this decoration is not allowed then why are sports flags allowed thought the neighborhood? What about the Halloween decorations. The issue is not the sign. The issue is the manner in which you approached a homeowner about a sign. That is not your duty as a member of the neighborhood. Your vulgar language and manner in which you acted yesterday is an embarrassment to the whole neighborhood. If you step foot on our property again for any reason, charges will be pressed next time.

trash404gk-postnosigns

Re: Set the Record Straight
Sent: 10/11/17 at 4:45 PM
From: Gary Krause
To: Ray Wedlake
Cc: ben.acord@gmail.com clemson60@aol.com craigow@bellsouth.net cndesteve@gmail.com remaj616@aol.com

Mr. Wedlock,

I will start by saying that when I asked you to get off my property you were two steps on my concrete driveway with a bat in your hand and not standing on the paved roadway of Woodington Drive. The next thing is that my pallet is a decoration and not a sign. Also I don't owe you any explanation on things in my yard. I have not been able to find a question from you to me, through all the other garbage that you seem to feel the need to bother people with. I will remind you that you have been informed by my wife to not send us anything via email or postal mail or bother us for any reason. I will again inform you that you are to leave my family and me alone. I will not have you yelling and cussing and acting the way you did because you can't handle people not jumping on your demands. Your outburst was loud enough that my wife heard you from inside the house, not once but twice. You, sir, need to act like a professional and act your age and not throw a temper tantrum in the middle of the street. This was a great learning experience for our 14 year old son on how NOT to handle a situation, so I do thank you for that. This will be my last and final response to your foolishness.

Gary Krause

========== Letter from McCabe Firm ========== (**bold emphasis** added)

September 20, 2016

To: Members of Woodington Homeowners' Association, Inc.
From: J. Ryan Oates, Attorney for Woodington Homeowners' Association. Inc.
RE: NOTICE OF INVALID VOTE PROPOSAL BY ASSOCIATION MEMBER
MTB File No.: 17402.7

Dear Member:

My firm represents the Woodington Homeowners' Association, Inc. (the "Association") in connection with the above-captioned matter. It has been brought to the attention of the Association's Board of Directors (the "Board") that Association Members may have received communication regarding a proposed vote by confidential electronic ballot to dissolve the Association from an individual Association member. The Board has requested that I write you in order to clarify questions and concerns you, as an Association Member may have about the validity of this vote. Not only is the information contained in the individual's correspondence incorrect and defamatory, but moreover, the member does not possess the authority to initiate such an action. Please be aware that any outcome of this alleged vote would be rendered invalid under South Carolina law.

The individual does not possess the requisite authority to propose such an action without a meeting. As a Nonprofit Corporation organized under the laws of the State of South Carolina, the Association is subject to the provisions of the South Carolina Nonprofit Corporation Act, which is codified in Chapter 31 of Title 33 of the Code of laws for South Carolina, as amended 1976. The member in question does not serve as a Director and the member is not an agent authorized to act on behalf of the Association. The Association, through the Board may deliver a written or electronic ballot without a meeting. S.C. Code Ann. § 33-31-708(a). Before an individual member who is not a Director may initiate action without a meeting, that individual member must first obtain the written consent eighty percent (80%) of members holding at least eighty percent (80%) of voting power. S.C. Code Ann. 33-31-704(a). The individual member has failed to meet this prerequisite to take action without a meeting.

Furthermore, a "confidential electronic vote" method is invalid under the Association's Bylaws. Article XVIII of the Association's Bylaws clearly limits any vote pertaining to the dissolution to "written assent signed by not less than 75% of the Members." In order to initiate the dissolution of the Association, a written instrument must be produced. A confidential electronic ballot does not meet this standard.



Therefore, in the case where an individual member seeks to initiate action without meeting, the individual must produce two (2) separate written instruments. The individual member must first produce an instrument containing the written consent of eighty percent (80%) of Members holding at least eighty percent (80%) of voting power to initiate such an action without meeting. Only then is that individual member authorized to take action without meeting, and must subsequently produce a written instrument with the "written assent signed by not less than 75% of the Members."

In conclusion, please do not be alarmed in the event that you have received such a communication from an individual member concerning a vote by confidential electronic ballot; any outcome of this purported vote is invalid under South Carolina law. The Association, by and through counsel, has attempted to contact this **member to cease and desist** this unwarranted action. It is the Association's hope that no further action is required. However, should the **member fail to cease and desist** this conduct, the Association, will have **no choice but to seek all remedies at law and equity available** to it. Should you have any questions or would like to discuss this matter further, please do not hesitate to contact me.

With kind regards, I am,

Sincerely,

J. Ryan Oates

cc: Woodington Homeowners' Association, Inc. Board of Directors
Rea Tinsley, Community Manager, Association Management Group

EXHIBIT X - "make amends" and "set the record straight" (as excerpted in relevant part)

Raymond A. Wedlake
703 Creekview Drive
Greenville, SC 29607
October 18, 2017



Mr. Richard LaCroix
705 Creekview Drive
Greenville, SC 29607

Mrs. Dawn Vonderbecke
15 Southfield Drive
Greenville, SC 29607

Mrs. Kristine Lynch
5 Claire Lane
Greenville, SC 29607

(via Priority Mail)

Subject: Notice of Pending Judicial Action

Dear Mr. LaCroix, Mrs. Lynch, and Mrs. Vonderbecke:

Please be informed I am contemplating filing a judicial action against each of you for your conduct as the alleged 2016 Board of Directors ("Board") of the Woodington Homeowners' Association, Inc. ("WHOA"), and, more specifically, for defamation - both slander and libel.

Please recall you maligned my character openly in front of many other WHOA members, and "poisoned the well" for me, directly and through your legal counsel: McCabe, Trotter, et. al., prior to, as well as at, the Annual Meeting on January 10, 2017.

At this time, please accept this request which asks you to "make amends" for your past misconduct where you pretended, without election, to be the 2016 Board of WHOA. Several things are requested, as discussed below. To make amends is as simple as transmitting a letter signed by all of you, addressed to all WHOA members, which properly addresses the substance of each item below. What I am asking is that you "set the record straight".

Kindly be informed if you do not comply with all requested items in a timely manner, I will be requesting my attorney to begin work to bring judicial action against you for "defamation of my character".

Item 1 - "Term Limits" violation of South Carolina law

You are requested to admit to all Members of WHOA that your claim to be the 2016 Board was improper and violated South Carolina law per the "Nonprofit Corporation Act ("NPCA") which shows (CAPS emphasis mine):

"SECTION 33-31-805. Terms of directors generally.
(a) The articles or bylaws may specify the terms of directors. Except for designated or appointed directors, the TERMS OF DIRECTORS MAY NOT EXCEED FIVE YEARS. ..."

Please also be advised that NPCA allows By-Laws to contain any provision that is not inconsistent with law. Hence, the "waiver" provision in our By-Laws to allow extension of terms beyond five years is

null and void, since it is "inconsistent with law"; see Appendix 1. With violation of the five year term limit, your claim to be the 2016 Board was therefore improper, and against the law! You were not legally the 2016 Board, and yet continued with your pretense of so being, in violation of NPCA! Please be informed of a recent court filing against the current Board, where I have every expectation that the court will confirm Board members cannot serve for consecutive terms which total longer than five years, which is specific in NPCA, as above.

Item 2 - Rescind your letter of September 12, 2016 (Appendix 2)

You are requested to inform all WHOA Members that you rescind all the "non-truths" which you stated in such letter. This letter was sent to all WHOA Members to give them an erroneous impression that I was in violation of law, which was never true. It was you, improperly acting as a 2016 Board, who desired to "cover up the truth" to further your own, personal agendas of maintaining your improper presence as the 2016 Board, who violated law. This was merely "Step 1" of a "smear campaign" which you began with specific intent to defame my character.

Item 3 - Improper disbursement of WHOA funds for legal services

You are requested to agree to repay to WHOA all funds which you improperly disbursed, as you were not a legal, nor elected 2016 Board, that were paid for "legal services" to either of AMG or the law firm of McCabe, Trotter, and Beverly, PC ("MTB"). Both AMG and MTB should be ashamed of advising you to act outside of the law, as well as ashamed of supporting you in your improper claim of being the 2016 Board, and are accomplices to your transgressions. Indeed, payments made to MTB for legal fees were for advice, their objectionable letter (as Item 4), and for their time and presence at the Annual Meeting. Acting to confirm your pretense of "being the 2016 Board", by both AMG and MTB made me a victim of defamatory claims, was a contributory "Step 2" of your smear campaign, whose intent was to defame my character.

Item 4 - Rescind your action directing MTB to further your smear campaign

You are requested to inform all WHOA Members of your regret for improperly directing MTB to send their letter:

"

September 20, 2016

To: Members of Woodington Homeowners' Association, Inc.
From: J. Ryan Oates, Attorney for Woodington Homeowners' Association. Inc.
RE: NOTICE OF INVALID VOTE PROPOSAL BY ASSOCIATION MEMBER

"

There is **NOTHING** within NPCA to give any credence, whatsoever, to any "Invalid Vote" claim! See Appendix 3. I hope you recall this letter shows a date which comes after notice was given to you, AMG, and MTB, that only seven votes were received, and thus WHOA would not be dissolved. This was a contributory "Step 3" of your smear campaign whose intent was to defame my character.

Item 5 - Apologize for your misconduct at January 10, 2017 Annual Meeting

You are requested to inform all WHOA Members that you now realize your continued actions to "smear me" at the Annual Meeting were unwise. My understanding at that time was you did "not want litigation" (which my attorney graciously deferred), and that the Annual Meeting would be a legitimate WHOA business meeting. Instead, with your pre-planned "set up" of particular Members to

do your bidding, you continued your smear campaign against me to be sure no Member would vote for me, per my status as a 2017 Board nominee, to be elected to a 2017 Board. We all know your "low down" tactics were, unfortunately, effective; I was not elected to a 2017 Board. For example, the statement by Board Pretender Mr. LaCroix that legal expenses had been incurred, since I had threatened litigation against the WHOA, was totally untrue. The only legal action I ever considered was on behalf of members of the WHOA, directed against you - the Board Pretenders, and never against the WHOA. This misconduct amounted to a "Step 4" of your smear campaign whose intent was to defame my character.

Item 6 - Tell the current Board to fix Annual Meeting Minutes

You are requested to instruct the 2017 Board to fix Annual Meeting minutes from the way you were responsible for writing them. They were informed about desired changes still needed, even after initial, minor changes that produced a "Rev 1" minutes which were disseminated to all members; so, they know already exactly what is required. Please be informed if you will not so instruct the 2017 Board, and they will not help to produce an acceptable "Rev 2" minutes, they will also be **called to court** with a defamation charge! The non-truths which your Board was responsible for writing into the minutes must be corrected. What was written into the minutes was an additional "Step 5" of your smear campaign whose intent was to defame my character.

Please do me the courtesy of acknowledging receipt of these requests. Would you also be so kind, please, to reply with your positions on all six items **before October 27, 2017**?

I fervently hope you may come to realize, and to understand, that your prior misconduct represented improper actions which were done outside of the law! I also hope that you may modify your behavior to act honestly and decently, with intent to save yourselves from judicial action! Please realize if you will not "set the record straight", and comply with all requested items, I will be **seeing you in court**!

Very Sincerely,

Raymond A. Wedlake
wedlakera@mail.com (864) 254-9262

APPENDIX 1 - Term Limits

APPENDIX 2 - Letter of September 12, 2016

APPENDIX 3 - Claim of "Invalid Vote" was done to further "smear campaign"

703 Creekview Drive
Greenville, SC 29607
November 26, 2016

Please Make Your Platform Known

Woodington Homeowners Association Members:

May we all be thankful, and also give thanks, for six Members who are nominees for a 2017 Board, or other positions to serve our WHOA ! After what happened in 2016, this status is welcome!

Would every nominee, as well as all other Members who may yet become nominees, please make your platform known, and if your desire is to serve on the Board or other position? At lower left "woodington.nextdoor.com / Your Groups / WHOA" please join this group and post your platform so all Members may be aware of your merits to serve. My platform has been plainly advertised:

$100 dues; get rid of AMG; propose By-Laws amendments

All these things are needed to help "fix" our "broken" Association!

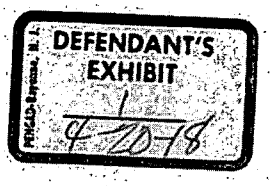
For all nominees, please be sure to educate yourselves per previous posts to Group WHOA. All nominees should also become familiar with **all** of our By-Laws as well as our "Covenants". Please see:

neighborhoodlink.com/Woodington/pages

Thanks in advance!

Raymond A. Wedlake

Cheers ..... wedlakera@inbox.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
Stop organized crime. Re-elect no one !



Please Give Me Your Proxy

Woodington Homeowners Association Members:

Please return your signed proxy form to me. If enough forms empower me to vote for you at the 2017 Annual Meeting, the malevolence which calls themselves AMG can be purged from our neighborhood straight away at the meeting. This will allow our dues to be cut back to $100, **saving every member more than one hundred dollars every year** ! Please return your proxy, even if you may attend the meeting. If you do attend the meeting, any proxy is null and void.

May all Members realize the importance of returning a signed proxy. Under no circumstances should any proxy be given to AMG - their only interest in our WHOA is to accept their fees, without regard to the damage they have caused, and continue to cause to our neighborhood! Since it's not clear at this time whether others who support my platform stand in nomination for a 2017 Board, no action on your part means that AMG will stay around to send nasty "cut your lawn" notices, and other notices that are generally unwarranted! Is this what you want for our neighborhood?

Please return your signed proxy form to me to help move along a path to **"fix"** our **"broken"** WHOA ! Thanks in advance!

Cheers ..... wedlakera@inbox.com

-------- Detach Here and return to Ray Wedlake --------

Woodington Homeowners Association, Inc. ("WHOA")

WHOA Member Proxy

I, _____ the undersigned Homeowner (the "Homeowner") of WHOA, is entitled to vote at any special or annual meeting of WHOA.

The undersigned designates and appoints **Raymond A. Wedlake** of 703 Creekview Drive, Greenville, SC, 29607, as the **Proxy** for the Homeowner.

By this designation of proxy, the **Proxy** may attend and represent the Homeowner with the full power to vote and act for the Homeowner in the same manner, to the extent and with the same effect as if the Homewoner were personally present.

This designation **revokes** any prior designation of proxy that the Homeowner may have given previously with respect to the Homeowner's interest in WHOA.

This designation of proxy shall be effective for the 2017 Annual Meeting of WHOA on any day at any place at which the meeting is convened, and at all adjournments of such meeting.

The **Proxy** shall have the full power, as the Homeowner's substitute, to represent the Homeowner and vote on all issues and motions that are presented at any meeting for which this designation of proxy is effective. The **Proxy** shall have the authority to vote entirely at the discretion of the **Proxy** on all issues and motions.

This proxy shall also remain in effect for any subsequent special meetings of WHOA held in 2017, unless revoked prior to any meeting by the Homeowner.

Homeowner Signature: _____ Date of Signing: _____
Printed Name: _____ E-mail: _____
Street, City, State, Zip: _____

Please be Informed "Group WHOA" 121016
Craigo, Esteve, James, Krause at woodington.nextdoor.com
Private Message

Woodington Nominees:

Thank you for being a Woodington nominee. Since your phone numbers are private, I was unable to call. Plus, none responded to my letter asking you to post "your platform" such that all WHOA Members may be informed.

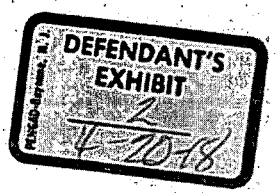
Please be aware of all content posted in "Your Groups / WHOA". Please take the time to become familiar, join the group and post your views.

Please know if you are elected to the Board, a management company may not be contracted by the Board without a "majority vote of Members". This means **34 approving votes are required** before WHOA funds may be disbursed for/to a management company.

May you also be informed that litigation against "2016 Board Pretenders" is in process. Please realize from this point forward that willful, intentional violation of our "By-Laws" will be countered with swift legal action! Should you elect to ignore our "By-Laws" and use WHOA funds to pay a management company without a proper approving vote from 34 Members, you will be held liable to pay back from your own pocket all WHOA-fraudulently-disbursed funds!

Cheers ..... wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
Stop organized crime. Re-elect no one !

Raymond A. Wedlake



703 Creekview Drive
Greenville, SC 29607
January 5, 2017

RE: Annual Meeting – **Vote for Wedlake**

Dear Woodington Homeowners' Association Members:

Greetings and Happy New Year!

With hopes that all are looking forward to the upcoming 2017 WHOA Annual Meeting which takes place on Tuesday, January 10, 2017 at Horizon Church at 6:30 PM, let's expect a good meeting. We will be electing a whole new slate to serve as members of the Board of Directors. As a caring, long-time member of the Woodington Community, and as one of the nominees on the ballot, I would greatly appreciate receiving your vote.

Please know my platform now calls for:

(i) a review of costs, in hopes of reducing dues, ideally to $100;

(ii) taking a hard look at the need for a Management Company, now that we are a mature HOA, or at least bidding out the services to maximize quality while minimizing costs;

(iii) assuring that a Homeowner receives notice, and a hearing with the Board, in the event of any alleged infraction of the Covenants, or By-Laws ;

(iv) making sure that, relative to any dispute or desire for information, there is good communication between all the parties. For example: that Minutes are transmitted or posted after each meeting, whether an Annual or Special Meeting;

and, finally,

(v) propose amendments to our By-Laws (all By-Laws amendments will need balloted approval from Members). I propose a Committee for review of the By-Laws be formed to make recommendations to the Board, and thru the Board to you the Members. Whether I am elected, or not, such "By-Laws Review Committee" needs appointment in order to update and clarify the By-Laws to provide "fixes" to assure "good governance" in the future, and also "due process" for all Homeowners in the event of disputes.

If you agree that these initiatives make sense, and, for any reason you cannot attend this meeting, please return to me your **PROXY** (another copy is enclosed) so I may vote as your representative at the meeting. (Use the slot under my mailbox should time be too short to mail.)

Please be assured I intend to be an advocate for all of **YOU** upon election to the Board.

Kindly remember your neighborly candidate at our upcoming Annual Meeting, and be sure your vote for **Wedlake** is made! Many, many thanks to all for supporting me with your vote!

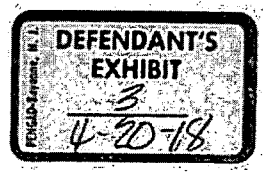
VOTE FOR WEDLAKE !!

Cordial Regards,

Ray

Ray Wedlake, 2017 Board Nominee
wedlakera@mail.com

Enc. - Proxy



-------- Return to Ray Wedlake, 703 Creekview Drive before 10 Jan 2017 --------

Woodington Homeowners' Association, Inc. ("WHOA")

WHOA Member Proxy

I, _____ the undersigned Homeowner (the "Homeowner") of WHOA, is entitled to vote at any special or annual meeting of WHOA.

The undersigned designates and appoints **Raymond A. Wedlake** of 703 Creekview Drive, Greenville, SC, 29607, as the **Proxy** for the Homeowner.

By this designation of proxy, the **Proxy** may attend and represent the Homeowner with the full power to vote and act for the Homeowner in the same manner, to the extent and with the same effect as if the Homewoner were personally present.

This designation **revokes** any prior designation of proxy that the Homeowner may have given previously with respect to the Homeowner's interest in WHOA.

This designation of proxy shall be effective for the 2017 Annual Meeting of WHOA on January 10, 2017 at Horizon Church, and at all adjournments of such meeting.

The **Proxy** shall have the full power, as the Homeowner's substitute, to represent the Homeowner and vote on all issues and motions that are presented at any meeting for which this designation of proxy is effective. The **Proxy** shall have the authority to vote entirely at the discretion of the **Proxy** on all issues and motions.

This proxy shall also remain in effect for any subsequent special meetings of WHOA held in 2017, unless revoked prior to any meeting by the Homeowner.

Homeowner Signature: _____ Date of Signing: _____

Printed Name: _____ E-mail: _____

Street, City, State, Zip: _____

E

703 Creekview Drive
Greenville, SC 29607
August 29, 2016

WOODINGTON HOMEOWNERS ASSOCIATION, INC.

Dear Members of WHOA:

Please vote on the question:
"DISSOLVE WOODINGTON HOMEOWNERS ASSOCIATION, INC." ?
and plan to return your ballot before 20 September 2016. Individual confidentiality in this vote will be assured via mailing **signed** ballots to: Election Trust
PO Box 1902
Bellevue, WA 98009
Since our "By-Laws" specify 75% must concur, this means WHOA shall **not** be dissolved without at least 50 (of 66) "Yes to Dissolve" ballots being cast! Please be informed no WHOA funds are being used for this ballot.

More than one member said to me: "Can't we get rid of WHOA?", and I promised this question would be posed. Particularly for members who pay dues in multiple HOA's, this is a meaningful question for WHOA. Please be sure to return your signed ballot to Election Trust before 20 Sep 2016.

On or around that date, another ballot will be sent to elect members to our "Woodington Board of Directors" for 2016. My name will appear on this ballot, but names of those **ineligible** to serve on our Board per our "By-Laws" will **not** appear. All members may recall that **no** Board officers were elected to serve in 2016! This action to elect a legitimate Board is **long overdue** for WHOA in 2016! So, for all those who vote "No to Dissolve", please plan to join me as a Board nominee to be included on the "Elect Board Officers 2016" ballot.

My platform is simple. A recent dispute over paint on my garage door showed that WHOA is **"broken"** per the misconduct of members who **presume** to act as, and speak for, the Woodington Board of Directors. Misconduct by AMG, our "Management Company", was also **reprehensible** ! When elected I intend to
- drop yearly **dues** back to **$100** per year
- get rid of AMG (another management company may be selected?)

and I will propose **By-Laws** amendments:
- force dissolution of WHOA if no members will come come forward to serve on the Board before 20 days over into a new year
- add a section titled "Dispute Resolution Process"
- preclude previous Board Officers from presuming they may continue as "The Board" without being elected **every year** as is **required** by our current **"By-Laws** (Rev 3)"
- require yearly election of up to five members for the "Architectural Committee (AC)"
- specify "limits of power" for the AC
- require yearly election of a management company
- restrict service period to **three years** for Board Officers and for Architectural Committee members (like it was for Board in "By-Laws (Rev 2)")
- Allegations of violation cannot be used without "Due Process" to suspend a dues paying member's rights
- etc. . . .

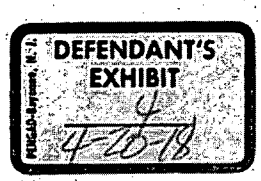
Please join me for nomination to the WHOA Board of Directors to be sure that our Association gets "fixed" !

Very sincerely,

Raymond A. Wedlake

Raymond A. Wedlake
wedlakera@mail.com
(Please note a changed e-mail address.)

Enc: "Dissolve Ballot"



WOODINGTON HOMEOWNERS ASSOCIATION, INC.

All Member Ballot 29 Aug 2016

Please circle your choice, add your signature, and mail a signed copy to "Election Trust" before 20 September 2016.

Being a dues paying member in good standing, do you vote to

DISSOLVE "WOODINGTON HOMEOWNERS ASSOCIATION, INC."

YES NO

Signature _____
Name (printed) _____
Street Address _____
City, State, Zip _____

Mail your **signed** ballot to: Election Trust
PO Box 1902
Bellevue, WA 98009

Since no members were elected to WHOA "Board of Directors" in 2016, a "Board's vote for non-returned ballots" is improper, and any members who may presume to act as "The Board" abstain from voting non-returned ballots.

This means WHOA shall **not** be dissolved without at least 50 (of 66) "Yes to Dissolve" ballots being cast!

Below is for reference only, per excerpts taken from

"BY-LAWS OF WOODINGTON HOMEOWNERS ASSOCIATION, INC.", Rev 3

ARTICLE XVII - AMENDMENTS AND VOTING

Section 1: These By-Laws may be amended . . .

Section 2: In the case of . . .

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) day 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.

WOODINGTON HOMEOWNERS ASSOCIATION

Election of Five Directors

Vote "For" up to FIVE candidates only by marking the box next to the name. The ballot will be invalid if more than five candidates are marked or if there are any other marks on the face of the ballot.

Ben Acord	☐ For	☒ Against
William Craigo	☐ For	☒ Against
Denis Esteve	☐ For	☒ Against
Brian James	☐ For	☒ Against
Stacey Krause	☐ For	☒ Against
Ray Wedlake	☒ For	☐ Against
Write in	☐ For	☐ Against

Raymond A. Wedlake Peggy Duplass RAY WEDLAKE
Homeowner Signature Print Name

WOODINGTON HOMEOWNERS ASSOCIATION

Election of Five Directors

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Stacey Krause	☐ For	☑ Against
Ray Wedlake	☐ For	☑ Against
Write in	☐ For	☑ Against

Homeowner Signature Print Name

DEFENDANT'S EXHIBIT 5 4-20-18

WOODINGTON HOMEOWNERS ASSOCIATION

Election of Five Directors

Vote "For" up to FIVE candidates only by marking the box next to the name. The ballot will be invalid if more than five candidates are marked or if there are any other marks on the face of the ballot.

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Brian James	☑ For	☐ Against
Stacey Krause	☐ For	☒ Against
Ray Wedlake	☑ For	☐ Against
Write in	☐ For	☒ Against

Hayden Vern
Homeowner Signature

HAYDEN VERNON
Print Name

1-10-2017

WOODINGTON HOMEOWNERS ASSOCIATION

Election of Five Directors

Vote "For" up to FIVE candidates only by marking the box next to the name. The ballot will be invalid if more than five candidates are marked or if there are any other marks on the face of the ballot.

Ben Acord	☐ For	☒ Against
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Denis Esteve	☐ For	☒ Against
Brian James	☐ For	☒ Against
Stacey Krause	☐ For	☒ Against
Ray Wedlake	☒ For	☐ Against
Write in	☐ For	☐ Against

Raymond A Wedlake
Homeowner Signature

RAY WEDLAKE
Print Name

WOODINGTON HOMEOWNERS ASSOCIATION

Election of Five Directors

Vote "For" up to FIVE candidates only by marking the box next to the name. The ballot will be invalid if more than five candidates are marked or if there are any other marks on the face of the ballot.

Ben Acord	☐ For	☒ Against
William Craigo	☐ For	☒ Against
Denis Esteve	☐ For	☒ Against
Brian James	☐ For	☒ Against
Stacey Krause	☐ For	☒ Against
Ray Wedlake	☒ For	☐ Against
Write in	☐ For	☐ Against

Homeowner Signature

RAY WEDLAKE
Print Name

Ray Wedlake to clemson60, gary.krause.yukon, atty. me, craigow, cndesteve, remaj616 12/16/17

Architectural Committee:

Please be informed of a **Supreme Court** decision (excerpts as appended) which shows an HOA may not infringe on a homeowner's private property rights as to "maintenance" such as paint color on one's house! Please tell me when you may care to receive lots of other **South Carolina** references which basically **say the same** (most being opinions from the South Carolina Attorney General). WHOA "Architectural Guidelines" as regards "color" violate a homeowner's private property rights, and are unenforceable! I would welcome your confirmation of understanding of this fact. Please tell me if you may care to receive this entire-Supreme-Court-decision article (which comes from HOA Member Services).

Please also be informed as soon as the weather turns warm enough in the Spring, next year, that **paint** on my garage door will be **changed** to what **I desire**. If you may have other thoughts, now is the time for discussion. Your comments will be welcomed, as long as it is understood the AC may not "disapprove" of paint on my garage door.

With hopes to hear from you, thanks in advance!

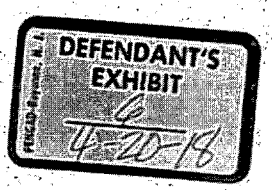
Cheers ..... wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

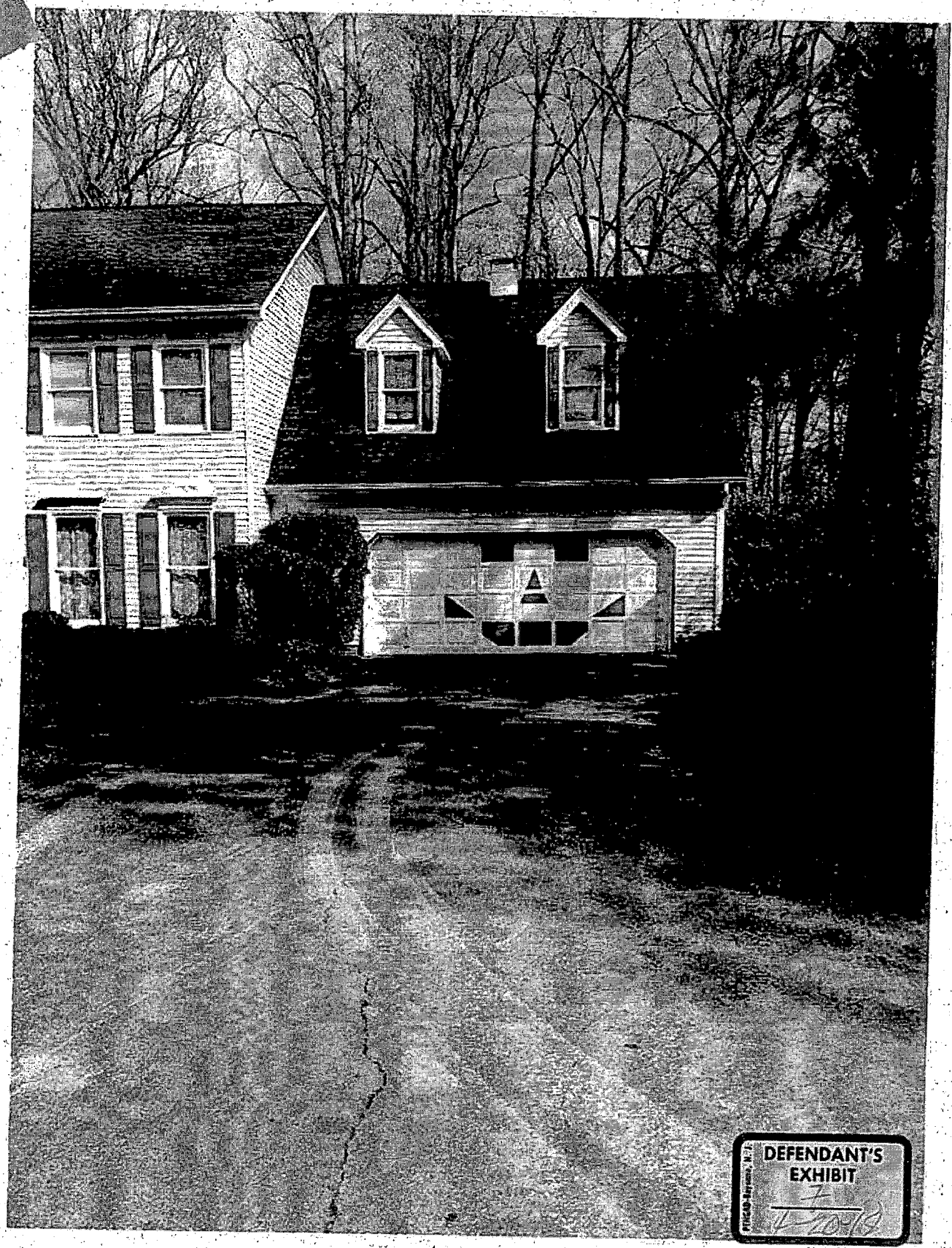
-------- Appendix (excerpts) --------

CC&Rs Do Not Allow HOA to Control Color of Homeowners' House

Supreme Court of Nebraska decision (December 1, 2017).

This case involved a dispute between husband and wife homeowners ("Owners") and their homeowners association ("Association") over the color of the exterior paint on Owners' house. After Owners painted their house a blue color without having first obtained approval from Association, Association filed suit against Owners seeking to enforce restrictive covenants contained in Association's governing documents.




DEFENDANT'S
EXHIBIT

Woodington Homeowners' Association, Inc.

Raymond A. Wedlake
703 Creekview Drive
Greenville, SC 29607
December 15, 2017

Subject: Board Matters – Judicial Action – Unnecessary Expenses - Your Help is Needed

To: Members of Woodington Homeowners' Association ("WHOA")

Since early this year, ongoing work has occurred toward establishing Board policies which would benefit all of us, such as having open Board meetings, so we can all be aware of issues and give input if appropriate. Also highlighted to the Board were several provisions in the By-Laws that need amending, and others that have not been followed, such as their mandated duty to fill a vacant Board position (one is vacant currently). **For a protracted period, the Board was not receptive, and then I suggested we have meetings together to find common ground; when that didn't work out I suggested mediation on three separate occasions, starting as early as March, to minimize expenses and time.** That was also not accepted, so I reluctantly ended up on October 6 filing a judicial action, requesting the Court in Greenville to simply give their interpretation of the By-Laws. Please be aware that this judicial action does **not** seek "damages" from WHOA, and was brought on **behalf of the Members** of WHOA, and in the **best interests of WHOA**. This case requests the Court to interpret the By-Laws, and to require the Board to follow them, for the benefit of all Members. I did act, and am acting, as a "good guy" for WHOA! (You may be aware of this action since it is the duty of the Board to keep its Members current on such matters; see "Forwarded Message", below from an **HOA Expert**.)

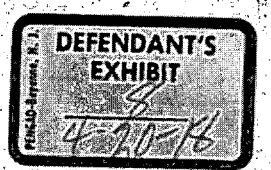
Late in this process, after my judicial filing seeking clarification, the Board finally agreed to mediate the open matters. I am hopeful this process will resolve issues, and lead to proper interpretation and amendment of the By-Laws. It should be noted that private mediation without attorneys was proposed by me, to avoid legal costs, but the Board declined my offer. Thus, much **more of your money** is being spent unnecessarily by the Board (and also costing me considerably more).

Clearly this judicial action could, and should, have been avoided, along with all the time and costs expended.

If mediation is unsuccessful, I will be asking for volunteers to assist me in improving Board policies and practices. Volunteers will be asked to give statements to the Court (as a signed "Affidavit"), in support of fixing the WHOA. If you feel improvements are needed, and are willing to assist, please let me know.

Your Help is Needed ! Please think seriously about helping to support **your rights** as a Member of WHOA, and acting in the **best interest of WHOA** for the **benefit** of all **Members.** Thank you!

Sincerely,



Raymond A. Wedlake wedlake@mail.com

Forwarded Message

Disclosing Information about Litigation to Association Members
Sent: 16 Oct 2017
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com

Woodington Board:

Please accept further education for the Board.

As the appended article by Lawrence Szabo, Esq. as quoted in the title of this message, I hope the Board will properly disclose information to WHOA Members.

Here's some excerpts (CAPS emphasis mine):

"... the DUTY of ... BOARD ... TO DISCLOSE information about existing and threatened lawsuits that involve the association TO MEMBERS ...

Disclosures ... Sale of Property

... laws typically REQUIRE written DISCLOSURES TO potential BUYERS of information about the association that includes pending litigation ...

... ACCOUNTING STANDARDS THAT MUST BE FOLLOWED ... REQUIRE THE DISCLOSURE of the nature of pending lawsuits along with the cost and a statement of the FINANCIAL IMPACT of the case on the association.

Homeowners Don't Like Surprises

... DIRECTORS take positions concerning pending or threatened litigation ... and CREATE ADDITIONAL PROBLEMS for the association that COULD HAVE BEEN AVOIDED. ... it is a GOOD PRACTICE ... to KEEP MEMBERS APPRISED of what is going on ... and the IMPACT that the matter may have ON the association and ITS MEMBERS. ... "

Cheers ..... wedlakera@mail.com

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About (/about_us/) · Jobs (/jobs/) · Press (/press/) · Blog (https://blog.nextdoor.com)

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Post in General

(/profile/3544058/), Woodington LEAD 49

Lot owners

(/news_feed/?post=75882845)

Ray, please inform me the % of the 66 lot owners who have personally notified you that they support your efforts and want you to continue. Thank-you. (I have read all your letters and posts, I'm not stating any position of mine)

4 Feb · WHOA (/groups/14922358/) in General (/general/)

Thank Reply 6 Replies (/news_feed/?post=75882845)

(/profile/3544058/), Woodington · 5 Feb

Ray, the answer you sent me in a private message instead of replying here did not answer my question. " Some Members support my quest to "fix" WHOA." Some could be 2 and including yourself that would be 3. That would be 4%. I'm not making comment on whether you are right or wrong. I just don't get the sense that the majority of the neighborhood supports your efforts.

Thank

(/profile/8286929/), Woodington · 6 Feb

DEFENDANT'S EXHIBIT 11 4-10-18

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RE: WHOA Member Support 020418

(/inbox/)

Susan,

Thank you for posting in "Group WHOA" (a first) and for reading previous posts found there.

Please be informed I am not alone - some Members support my quest to "fix" WHOA. Bottom line: no Board may decide that they can violate our By-Laws!

Unfortunately, nobody much seems interested in taking the time to actively pursue changes to our By-Laws to make them "crystal clear", such that future wrongdoing by Boards (and by Members) is precluded. Please also recall this very important statement from my letter of February 1:

"... Whether or not EVERY MEMBER votes to deny me my INDIVIDUAL RIGHTS AS A MEMBER, SUCH RIGHTS CAN NOT LEGALLY BE SO ABRIDGED! ..."

Thank you once again, and I hope you may realize it is well past time for Members to stand up and be counted against abuse and wrongdoing perpetrated by the Board upon ALL Members!

Cheers ..... wedlakera@mail.com (mailto:wedlakera@mail.com)
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

☺ Thank

(/profile/8286929/), Woodington · 6 Feb

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RE: WHOA Member Support - Ballot Needed 020618

66

(/inbox/)

Susan:

Thank you for pointing out what you asked for.

Simply, there are at least 300 million people, in the USA alone, who support my methodology. All educated persons know and recognize that when the law is violated, that any interested person has the RIGHT to bring legal action to "right the wrong" ! Here in America with our personal rights and freedoms (such as freedom of speech and freedom of expression), I have such right to seek "redress of grievances" via our Courts. To do this, no support of "my" (actually: USA wide) methodology by others is necessary, nor required. Please be informed the Board's approach has been to intentionally ignore me, and to hope I "would go away". This is outright MISCONDUCT by a Board per their duty to all Members of our Association.

As I conveyed, I am not alone among WHOA Members in terms of support for methodology. Further, since you missed it, whether or not a majority supports my quest to "fix" WHOA, I have RIGHTS as a Member which can NOT LEGALLY BE ABRIDGED. To be able to quote a number, a ballot needs to be sent to all Members. So, to answer your question: "Let's Make a Deal". Please agree:

- that you will approach the Board, and have them promise they will send such ballot;

- that I will prepare the ballot's question, which the Board must agree will not, and cannot, be

changed from my proposed text (not even one word!)

If you will help to do this, an answer can be given.
If you will not help to answer your question, it will
be impossible to know a "simple number".

Thank you once again!

Cheers . . . . . wedlakera@mail.com (mailto:wedlakera@mail.com)
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

☺ Thank

(/profile/3544058/), Woodington · 6 Feb
that I will prepare the ballot's question, which
the Board must agree will not, and cannot, be
changed from my proposed text (not even one word!)
Since you are constantly stating your rights according to the by laws you realize that every single owner has those exact same rights. Therefore it reasons that all 66 owners could also present a ballot to be submitted to the homeowners.

☺ Thank

(/profile/8286929/), Woodington · 11 Feb
RE: Send Ballot to Answer Your Question 021118

Susan:

Yes, yes, and yes!! Every Member has the right to ask the Board to send a ballot for vote by ALL Members! Our By-Laws say (CAPS emphasis added):

" ARTICLE XVII - AMENDMENTS AND VOTING



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, . . ."

Note this does not say, nor indicate in any way, that Members are prohibited from asking that the "... BOARD SECRETARY SHALL DELIVER A BALLOT ..."

More particularly, ballots are targeted towards an intent and desire for RESOLUTION : "... Any and all issues may be RESOLVED ..."

Since I was one of five authors of Rev 2, when this ballot provision was added to By-Laws, I can tell you FOR SURE that the "legislative intent" was to expedite RESOLUTION OF ISSUES within WHOA by bringing them to a balloted vote. No intent to LIMIT BALLOTS to be a right of the BOARD, ONLY, was EVER INTENDED !

So, go ahead, YOU TRY to get the Board to listen, and to respond with a ballot to try to get an answer to YOUR QUESTION . I suspect you will find you will be IGNORED ! This is just one sample showing that WHOA is "BROKEN", and NEEDS TO BE "FIXED" !

Cheers . . . . . wedlakera@mail.com (mailto:wedlakera@mail.com)
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

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Thank



(/profile/3544058/profile/3544058/), Woodington · 12 Feb

Honey works better than vinegar. Give it a try, you might have more success.

Thank

Add a reply...

66

(/inbox/)

401

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Post in General

(/profile/8286929/), Woodington

Master In Equity Approved; Questions for the Board; Your Help is Needed; 05 Mar 2018

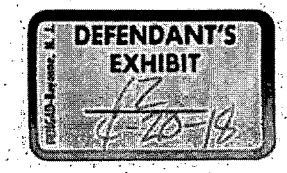
(/news_feed/?post=77780869)

Dear Members of WHOA:

With my "Thanks to the Board" for their recent agreement and cooperation, please be informed my "Declaratory Judgment" Court action, which simply seeks an interpretation and enforcement of the By-Laws, was approved for transfer to a "Master In Equity". In concept, this is a relatively quick path to RESOLVE DISPUTES within a MINIMUM TIME at LEAST EXPENSE. It would be a benefit to all if the Master rules before our next Annual Meeting.

This is the issue. The Board's attorney sought to block interpretation of the By-Laws previously, and delayed the process with expensive Motions, which the Court ultimately rejected. Your help is needed to encourage the Board NOT TO PERMIT such tactics, and to let the Master in Equity rule promptly! This will keep COSTS for LEGAL FEES to all of us MEMBERS, lower, and deliver clarity to all of us, sooner!

Delay and additional costs are not in anyone's interest! Please CONTACT THE BOARD and tell them to stay on top of their legal counsel; that you have



402



"HAD ENOUGH", and that the Board needs to TAKE THE INITIATIVE AND WORK WITH THE BEST INTEREST of ALL Members of WHOA in mind! Are further delays and more costs benefits to WHOA, and to its Members? I don't think so!

At the recent Special Meeting (from which both my attorney and I were excluded; I am still a dues-paying-in-good-standing Member), Mr. Gibson gave a presentation. With time becoming short, questions contained in his presentation were skipped. Before the next Annual Meeting, please familiarize yourself with these VERY IMPORTANT QUESTIONS (see Appendix 1).

Please be informed of two-late-February posts in "Group WHOA" at NextDoor.com (http://NextDoor.com):

02/28/2018 Educational Material - Responsibilities of Board Members
02/28/2018 Educational Material - What is Fiduciary Duty?

as per an HOA expert: Sabrina Robinson, at "Neighborhood Link" (WHOA has a site there – did you know? - the Board sure won't tell you; nor make use of this site). Please see excerpts as shown in Appendix 2. Please continue to realize that as a "GOOD GUY" for WHOA, everything I have done, and will do, is for YOUR BENEFIT as a Member!

As part of Special-Meeting-follow up, a previous letter presented challenges to all Members. Since no Member has said they disagree with challenges posed, at this time may I assume everyone agrees? If you do not agree, please post your comments in "Group WHOA" at NextDoor.com (http://NextDoor.com). No Member should plan to come to the next Annual Meeting STILL BEING IGNORANT of posts found in Group WHOA.

YOUR HELP IS NEEDED ! Will you assist me with your statement(s) that I may present to the Master? Please think seriously about helping to support YOUR RIGHTS as a Member of WHOA, and acting in the BEST INTEREST OF WHOA for the BENEFIT of all MEMBERS. Thank you!

Very Sincerely,

Raymond A. Wedlake
wedlakera@mail.com (mailto:wedlakera@mail.com)



Appendix 1

From Mr. Gibson's Presentation given before the Special Meeting

Questions to the Board for Members

Why didn't the Board let us know about the costs once they exceeded the budget?

Is it true that this is not an action against the Board Members but a request for the Court to clarify the By-Laws?

Why didn't the Board engage in Mediation early last year?

Why don't we wait to take any action until after the Court decides?

Why weren't we kept up to date about the Judicial Action by the Board?

What does the Board hope to accomplish by paying for more "legal advice"?

Appendix 2

Excerpts from Robinson, Sabrina, "What is Fiduciary Duty?" (CAPS emphasis added)

www.neighborhoodlink.com/article/Association/What-Is-Fiduciary-Duty (http://www.neighborhoodlink.com/article/Association/What-Is-Fiduciary-Duty)

'FIDUCIARY DUTY is defined as "a LEGAL DUTY to ACT SOLELY in ANOTHER PARTY'S INTERESTS" ...

DUTY OF CARE ... the FIDUCIARY [that is: the Board] SHOULD BE ...

RESOLVING ANY ISSUES in an orderly and timely matter. ...

DUTY OF LOYALTY ... Under this duty, you should be PUTTING THE INTERESTS OF YOUR BENEFICIARY [that is: homeowners] FIRST ... FAILURE TO DO SO IS A VIOLATION OF YOUR FIDUCIARY DUTY ... end in LEGAL CONSEQUENCES. ...'

(/inbox/)

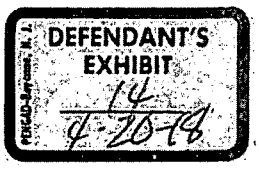
What is Fiduciary Duty?

Though the term is typically used in the legal and governmental system, it can also be applied to

NEIGHBORHOODLINK.COM

6 Mar · WHOA (/groups/14922358/) in General (/general/)

Thank Reply



From: **Ben Acord** ben.acord@gmail.com
Subject: **Re: Mediation / Meeting ... in Lieu of Litigation**
Date: **Jun 17, 2017, 4:37:06 PM**
To: **Raymond Wedlake** wedlakera@mail.com
Cc: **craigow@bellsouth.net, cndesteve@gmail.com, Brian James** remaj616@aol.com, **Rea Tinsley** rtinsley@amgworld.com

---

Hello,

It seems the email I replied to inviting your topics for the Q2 board agenda was in response to an email you sent from someone else's gmail address (Jospehine Blough joblo9753 at gmail com). I didn't catch that you weren't in the reply until recently. The body of the message was from you but apparently you sent from someone else's account.

Here are responses to the six items in your email. I encourage you to join us at the meeting for the ten minutes as a start to resolve any issues. If you'd like twenty let us know. We need to start somewhere. The other items you have raised to-date will be discussed at the Q3 board meeting with responses sent thereafter.

The final question you raise is addressed in the response for item one.

1. Does the Board agree to abide by the By-Laws and all applicable Non-Profit Corporation Law?
+ the Board has not appointed an eligible WHOA member to fill a vacancy on the Board!

Board's Response: The law must be followed. By election to the Board we did agree to abide by the By-Laws. 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. Therefore the next

appointment for the role of Secretary will be by the voting members at the January 2018 meeting.

2. Does the Board agree that current By-Laws require a majority vote of all members to renew a management company's contract?

Board's Response: As specified in the by-laws Article VIII - Powers and Duties of the Board of Directors section 1(d) a simple majority of the members is needed to enter into a contract with a management company. Base on our review the By-Laws are silent on renewals.

3. Does the Board agree that our By-Laws need amending?

Board's Response: No, not at this time. We recognize the suggestion was raised during the annual meeting but will be investigating potential revisions at a later time. Just not right now.

4. Does the Board agree the current revision of Annual Meeting Minutes need correction, since they still contain
"non-truths" and libelous content?

Board's Response: We are open to review the minutes for revision. Please detail the "non-truths" and libelous content as no one wants either. We are happy to talk through those with you at the up-coming meeting.

5. Does the Board agree that it is good practice to send out a "Request for Bids" for professional services?

Board's Response: Yes, when and if the Board decides to engage in new professional services.

6. Does the Board agree WHOA should not be paying more than a contractual monthly payment of $250 for management company services?

Board's Response: Woodington HOA will abide by its contractual agreements.

Sincerely,

Ben Acord

On Mon, Jun 12, 2017 at 11:52 AM Raymond Wedlake <wedlakera@mail.com> wrote:

June 12, 2017

To: Mr. Benjamin Acord
cc: Mr. Denis Esteve
cc: Mr. William Craigo
cc: Mr. Brian James

Dear Mr. Acord:

Thank you for your 09 June response to my recent e-mail, where I explained the necessity of either a meeting with you or the Board, or in the alternative for voluntary mediation in both cases as a means to avoid litigation.

As I wrote on June 1: "Please be informed, however, that our issues are frankly too numerous, much too involved **and relate primarily to actions that need to be taken by the Board** rather than the membership, to be simply raised at a public meeting" of the Homeowners (emphasis changed). Please realize I am **not informed** about a date nor a time, nor place, of any upcoming meeting. I was also **never informed** about the Board meeting of 17 May 2017.

In my prior e-mail I suggested a private meeting with a Board member or the entire Board. This would be an informal meeting to discuss the key open issues, and to begin to seek resolution. In two prior e-mails I offered to list the "key issues" and had no response until 09 June. True, I sent a number of e-mails to the Board - in fact: many were simply follow-ups for responses to **never-answered-prior requests** to the Board! To date, the Board did **not respond to most messages sent**, nor respond to issues raised, nor think about resolving issues! When I asked for **explanations** of Board positions, **none were provided.** Please feel welcome to send 51 numbered issues. They would be helpful for everyone to begin to "get on a same page".

Key issues would include, at least, the following:

1. Does the Board agree to abide by the By-Laws and all applicable Non-Profit Corporation Law?
   + the Board **has not appointed** an eligible WHOA member to **fill a vacancy** on the Board!
2. Does the Board agree that current By-Laws require a majority vote of all members to **renew** a management
   company's contract?
3. Does the Board agree that our By-Laws **need amending**?
4. Does the Board agree the current revision of Annual Meeting **Minutes need correction**, since they still contain
   "non-truths" and libelous content?
5. Does the Board agree that it is **good practice** to send out a "**Request for Bids**" for professional services?
6. Does the Board agree WHOA should **not** be paying **more** than a **contractual** monthly payment of **$250** for
   management company services?

Very likely, more key issues will need to be added after start of meaningful negotiations (and/or mediation). Clearly the Board would not want me to address these to the Board for discussion and for resolution at a "Mid-year" meeting of WHOA, nor would such a forum be conducive to such resolution.

Please be informed that a first mediation session as facilitated by "Upstate Mediation Center" is scheduled for "up to 3 hours"; this is **18** times longer than a ten minute period of your counter proposal. Further given today's date, **all private meetings** must be targeted to be **completed before the end of June.**

Please also be informed your suggested format:
"... We will listen, confirm with you what we heard, and after a period of deliberation send you a response."
is an inappropriate and untenable method of negotiation.

With hopes that **one, simple, example** of a disputed issue may help to bring about a proper focus, on 09 May 2017 a message (as excerpted in Exhibit 1) was sent. The Board has **directly**

violated our By-Laws by **ignoring a contractual duty to fill a vacancy** on the Board!

If the Board **will not respond "Yes"** to this **example** question before 15 June 2017 :

* Will the Board **acknowledge the By-Laws must be followed,** and **appoint** an eligible WHOA member to **fill a vacancy** which exists on the Board ?

it **seems very likely** that I will be "**seeing you in court!**" !

Cheers . . . . . wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

----- Original Message -----

Re: Mediation / Meeting with Board in Lieu of Litigation – No Response from Board
Sent: 6/9/17 at 3:25 PM
From: Ben Acord ben.acord@gmail.com
To: wedlakera@mail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com, rtinsley@amgworld.com

Hello,

Well, I personally think there is no need for litigation. The Board is providing a platform for you to speak and present your issues which you feel are at the point of litigation. You were provided notice of this meeting prior to June 7th as you confirmed in an email on June 2nd. The meeting will have a private time blocked off for you to present to the board. No other members will be present during your time slot and likewise during the slot of others.

I sat down the other day to work through your communications from the start. Since Feb 9th you've raised 51 varying issues over 20 messages. The frequency and range of topics comes across like noise and anger. It's difficult for me to know what is most important to you. I had previously asked you for agenda topics to be placed on the Q2 Board Meeting agenda but you simply sent new email and raised new issues.

So, while you have posed options for mitigation our counter option is the face-to-face meeting at the end of the month, which, as I previously mentioned will be a private session. I want to hear what are the most critical concerns for you. For now, I have reserved you the first ten minutes of the meeting to present. Please send an itemized list of your key issues so that we can follow along during your presentation. We will listen, confirm with you what we heard, and after a period of deliberation send you a response.

Looking forward to working all this out with you.

Ben Acord

-------- Exhibit 1 --------
(Excerpted)
Please Appoint Me to the Board
Sent: 09 May 2017
ben.acord@gmail.com, craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com
Bcc: atty@ggibsonassociates.com, cjuliesmile@gmail.com

Woodington Board:

... please select me to fill her position on the Board. ...

... Excerpts from our By-Laws, as appended, make it clear the remaining Board Members should act to fill this vacancy.

.

.

Thanks in advance for appointing me to fill this vacancy on the Board. Please let me know as soon as possible that the Board has acted per our By-Laws.

Cheers . . . . . wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

-------- Appendix --------

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

.

.

Section 3 - REMOVAL: Any director ... 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.

.

.

ARTICLE VIII - POWERS AND DUTIES OF BOARD OF DIRECTORS

.

.

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

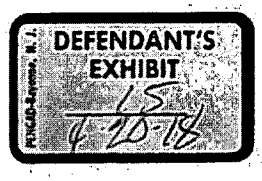
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f. Fill any vacancy in the membership of the Board of Directors to serve until the next annual meeting of active Members at which time a permanent director will be elected by a simple majority vote of the membership.

.

. "



> On May 9, 2017, at 12:31 PM, Raymond Wedlake <wedlakera@mail.com> wrote:
>
> Woodington Board:
>
> As a result of the resignation of Mrs. Krause, which
> I learned about today, please select me to fill her
> position on the Board. In past years, I served terms
> as Secretary of the Board, so I am well qualified and
> familiar with proper fulfillment of duties of the Secretary.
>
> As the only other nominee for election to the Board
> at our recent Annual Meeting, I am a logical (and only

> Board Secretary. I was distraught to see Mrs. Krause's
> rationale for resignation, which does not reflect my
> intentions which are to be of service to WHOA. Excerpts
> from our By-Laws, as appended, make it clear the
> remaining Board Members should act to fill this vacancy.
>
> Thanks in advance for appointing me to fill this
> vacancy on the Board. Please let me know as soon as
> possible that the Board has acted per our By-Laws.
>
> Cheers ..... wedlakera@mail.com
> Support "wilderness" - conserve nature !
> Be American - buy "Made in USA" !!
> GO ORANGE - Syracuse University ORANGE !!
> Stop organized crime. Re-elect no one !
>
> ----- Original Message -----
>
> (This message is included only because
> it was not sent to all Board Members)
>
> No contact
> Sent: 5/9/17 at 6:32 AM
> From: Stacey Krause staceybkrause@gmail.com
> To: Raymond Wedlake, Ben Acord, Rea Tinsley
>
> Mr. Wedlake,
>
> Due to your obsession with the WHOA board and your excessive communication, I have resigned from the WHOA board. Therefore, you have NO REASON to contact me via email, US Postal, phone, etc. If it continues, I will be forced to file a complaint with the police department.
> Sincerely,
>
> Stacey Krause
>
> ------- Appendix -------
>
> " ARTICLE V - BOARD OF DIRECTORS, SELECTION, AND TERM OF OFFICE
>
>
> Section 3 - REMOVAL: Any director ... 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.
>
>
> ARTICLE VIII - POWERS AND DUTIES OF BOARD OF DIRECTORS
>
>
> Section 2 - DUTIES: It shall be the duty of the Board
> of Directors to:
>
>
> 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.
>
>
> ARTICLE IX - OFFICERS AND THEIR DUTIES
>
>
> Section 4 - RESIGNATION ... ... Any officer may resign

> written notice to the Board, the President, or the
> Secretary. Such resignation shall take effect on the date
> of receipt of such notice ... the acceptance of such
> resignation shall not be necessary to make it effective."

Raymond A. Wedlake
703 Creekview Drive
Greenville, SC 29607
October 18, 2017

Mr. Richard LaCroix
705 Creekview Drive
Greenville, SC 29607

Mrs. Dawn Vonderbecke
15 Southfield Drive
Greenville, SC 29607

Mrs. Kristine Lynch
5 Claire Lane
Greenville, SC 29607

(via Priority Mail)

Subject: Notice of Pending Judicial Action

Dear Mr. LaCroix, Mrs. Lynch, and Mrs. Vonderbecke:

Please be informed I am contemplating filing a judicial action against each of you for your conduct as the alleged 2016 Board of Directors ("Board") of the Woodington Homeowners' Association, Inc. ("WHOA"), and, more specifically, for defamation - both slander and libel.

Please recall you maligned my character openly in front of many other WHOA members, and "poisoned the well" for me, directly and through your legal counsel: McCabe, Trotter, et. al., prior to, as well as at, the Annual Meeting on January 10, 2017.

At this time, please accept this request which asks you to "make amends" for your past misconduct where you pretended, without election, to be the 2016 Board of WHOA. Several things are requested, as discussed below. To make amends is as simple as transmitting a letter signed by all of you, addressed to all WHOA members, which properly addresses the substance of each item below. What I am asking is that you "set the record straight".

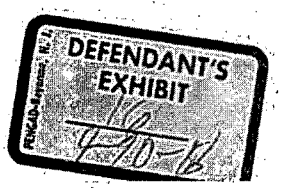
Kindly be informed if you do not comply with all requested items in a timely manner, I will be requesting my attorney to begin work to bring judicial action against you for "defamation of my character".

Item 1 - "Term Limits" violation of South Carolina law

You are requested to admit to all Members of WHOA that your claim to be the 2016 Board was improper and violated South Carolina law per the "Nonprofit Corporation Act ("NPCA") which shows (CAPS emphasis mine):

"SECTION 33-31-805. Terms of directors generally.
(a) The articles or bylaws may specify the terms of directors. Except for designated or appointed directors, the TERMS OF DIRECTORS MAY NOT EXCEED FIVE YEARS. ..."

Please also be advised that NPCA allows By-Laws to contain any provision that is not inconsistent with law. Hence, the "waiver" provision in our By-Laws to allow extension of terms



beyond five years is null and void, since it is "inconsistent with law"; see Appendix 1. With violation of the five year term limit, your claim to be the 2016 Board was therefore improper, and against the law! You were not legally the 2016 Board, and yet continued with your pretense of so being, in violation of NPCA! Please be informed of a recent court filing against the current Board, where I have every expectation that the court will confirm Board members cannot serve for consecutive terms which total longer than five years, which is specific in NPCA, as above.

Item 2 - Rescind your letter of September 12, 2016 (Appendix 2)

You are requested to inform all WHOA Members that you rescind all the "non-truths" which you stated in such letter. This letter was sent to all WHOA Members to give them an erroneous impression that I was in violation of law, which was never true. It was you, improperly acting as a 2016 Board, who desired to "cover up the truth" to further your own, personal agendas of maintaining your improper presence as the 2016 Board, who violated law. This was merely "Step 1" of a "smear campaign" which you began with specific intent to defame my character.

Item 3 - Improper disbursement of WHOA funds for legal services

You are requested to agree to repay to WHOA all funds which you improperly disbursed, as you were not a legal, nor elected 2016 Board, that were paid for "legal services" to either of AMG or the law firm of McCabe, Trotter, and Beverly, PC ("MTB"). Both AMG and MTB should be ashamed of advising you to act outside of the law, as well as ashamed of supporting you in your improper claim of being the 2016 Board, and are accomplices to your transgressions. Indeed, payments made to MTB for legal fees were for advice, their objectionable letter (as Item 4), and for their time and presence at the Annual Meeting. Acting to confirm your pretense of "being the 2016 Board", by both AMG and MTB made me a victim of defamatory claims, was a contributory "Step 2" of your smear campaign, whose intent was to defame my character.

Item 4 - Rescind your action directing MTB to further your smear campaign

You are requested to inform all WHOA Members of your regret for improperly directing MTB to send their letter:

"

September 20, 2016

To: Members of Woodington Homeowners' Association, Inc.
From: J. Ryan Oates, Attorney for Woodington Homeowners' Association. Inc.
RE: NOTICE OF INVALID VOTE PROPOSAL BY ASSOCIATION MEMBER

"

There is **NOTHING** within NPCA to give any credence, whatsoever, to any "Invalid Vote" claim! See Appendix 3. I hope you recall this letter shows a date which comes after notice was given to you, AMG, and MTB, that only seven votes were received, and thus WHOA would not be dissolved. This was a contributory "Step 3" of your smear campaign whose intent was to defame my character.

Item 5 - Apologize for your misconduct at January 10, 2017 Annual Meeting

You are requested to inform all WHOA Members that you now realize your continued actions to "smear me" at the Annual Meeting were unwise. My understanding at that time was you did "not want litigation" (which my attorney graciously deferred), and that the Annual Meeting would be a legitimate WHOA business meeting. Instead, with your pre-planned "set up" of particular Members to do your bidding, you continued your smear campaign against me to be sure no Member would vote for me, per my status as a 2017 Board nominee, to be elected to a 2017 Board. We all know your "low down" tactics were, unfortunately, effective; I was not elected to a 2017 Board. For example, the statement by Board Pretender Mr. LaCroix that legal expenses had been incurred, since I had threatened litigation against the WHOA, was totally untrue. The only legal action I ever considered was on behalf of members of the WHOA, directed against you - the Board Pretenders, and never against the WHOA. This misconduct amounted to a "Step 4" of your smear campaign whose intent was to defame my character.

Item 6 - Tell the current Board to fix Annual Meeting Minutes

You are requested to instruct the 2017 Board to fix Annual Meeting minutes from the way you were responsible for writing them. They were informed about desired changes still needed, even after initial, minor changes that produced a "Rev 1" minutes which were disseminated to all members; so, they know already exactly what is required. Please be informed if you will not so instruct the 2017 Board, and they will not help to produce an acceptable "Rev 2" minutes, they will also be **called to court** with a defamation charge! The non-truths which your Board was responsible for writing into the minutes must be corrected. What was written into the minutes was an additional "Step 5" of your smear campaign whose intent was to defame my character.

Please do me the courtesy of acknowledging receipt of these requests. Would you also be so kind, please, to reply with your positions on all six items **before October 27, 2017**?

I fervently hope you may come to realize, and to understand, that your prior misconduct represented improper actions which were done outside of the law! I also hope that you may modify your behavior to act honestly and decently, with intent to save yourselves from judicial action! Please realize if you will not "set the record straight", and comply with all requested items, I will be **seeing you in court**!

Very Sincerely,

Raymond A. Wedlake

Raymond A. Wedlake
wedlakera@mail.com (864) 254-9262

APPENDIX 1 - Term Limits

Points of Law:

NPCA - Excerpts (CAPS emphasis added)

"SECTION 3331206. Bylaws.
(a) The ... board ... shall adopt bylaws ...
(b) The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

SECTION 3331804. Election, designation, and appointment of directors.

(a) If the corporation HAS MEMBERS ENTITLED TO VOTE for directors, all the directors, except the iitial directors, MUST BE ELECTED at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or BYLAWS PROVIDE SOME OTHER TIME OR METHOD OF ELECTION, or provide that some of the directors are appointed by some other person or designated.

SECTION 3331805. Terms of directors generally.

(a) The articles or BYLAWS MAY SPECIFY THE TERMS of directors. Except for designated or appointed directors, the terms of directors MAY NOT EXCEED FIVE YEARS.

(d) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated or appointed, and qualifies, or until there is a decrease in the number of directors. "

BY-LAWS OF WOODINGTON HOMEOWNERS' ASSOCIATION, INC.

" ARTICLE IV - MEETINGS OF MEMBERS

Section 2 - SPECIAL MEETINGS: Special meetings of the Members may be called at any time by the President of the Board of Directors ...

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. ...

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. "

This was done to heighten member interest to participate in WHOA affairs, with intent to discern how many members may be in favor of commencing a subsequent action to dissolve WHOA. Nothing more and nothing less was done. This ballot question elicited votes from seven members, only (that is: from 66 voting units nobody really cared to vote!). It also began a specific and intentional "smear campaign" directed against me by a non-elected 2016 Board, who further then fraudulently disbursed WHOA funds to MTB law firm to give credence and further substance to their smear campaign!

The letter from MTB law firm was titled: "NOTICE OF INVALID VOTE PROPOSAL BY ASSOCIATION MEMBER"
and stated: "Please be aware that any outcome of this alleged vote would be rendered invalid under South Carolina law."

Per By-Laws Article 17, Section 3 absolutely nothing was invalid about this balloted vote proposal! Furthermore, NPCA 33311708(e) also contradicts any claim of "invalid":
"(e) ... a written or electronic ballot may not be revoked."

MTB letter went on to say: "The individual does not possess the requisite authority to propose such an action without a meeting." NPCA says: "any action ... may be taken without a meeting if the corporation delivers a written or electronic ballot to every member ...". Since a ballot was delivered to every member, no meeting could be claimed to be required. It is clear legislative intent is to provide for action without a meeting. Also note particularly NPCA statement does not say:
"... without a meeting if the corporation's Board of Directors delivers ...".
This makes it plain that an individual member of the corporation does "possess the requisite authority"!

MTB firm lied about the paper ballot, containing a signature line, which was delivered to all members. Their letter said: 'Furthermore, a "confidential electronic vote" method is invalid under the Association's Bylaws. ... a written instrument must be produced. A confidential electronic ballot does not meet this standard.' Since a paper ballot was mailed, these claims were a complete fabrication, specifically intended to add credence to their smear campaign!

MTB letter then went on with their claims of: "... member to cease and desist ... member fail to cease and desist ... no choice but to seek all remedies at law and equity available ..." for the purpose of, and with specific intent, to continue to fuel their smear campaign! Let it be clear that all these threats were also nothing but fabrications, as MTB knew and realized that, since no wrongdoing per NPCA or By-Laws was done on my part, that nothing was actionable in any court of law! Indeed, other than adding to the smear campaign, nothing further was heard from MTB related to their perjurious claims and statements about this "invalid vote proposal"!

To AMG's legal "muscle", please be informed nothing has been done by me, a legitimate active, dues-paying-in-good-standing member of WHOA that is inconsistent with, or contrary to, our By-Laws. . . . May you be informed very few "Dissolve" ballots have been returned; WHOA will not be dissolved at this time.

Cheers ..... wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
Stop organized crime. Re-elect no one ! "

MTB thereafter sent to all WHOA Members this objectionable letter:

═══ Letter from MTB Firm ═══ (bold emphasis added)

September 20, 2016

To: Members of Woodington Homeowners' Association, Inc.
From: J. Ryan Oates, Attorney for Woodington Homeowners' Association. Inc.
RE: NOTICE OF INVALID VOTE PROPOSAL BY ASSOCIATION MEMBER

Points of Law

NPCA (bold emphasis added)

"SECTION 33311708. Action by written or electronic ballot.
(a) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written or electronic ballot to every member entitled to vote on the matter.

(e) Except as otherwise provided in the articles or bylaws, a written or electronic ballot may not be revoked."

BY-LAWS OF WOODINGTON HOMEOWNERS' ASSOCIATION, INC.

" ARTICLE XVII - AMENDMENTS AND VOTING

Section 3: Any and all issues may be resolved per the simple majority result of vote by ballot by all Association 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."

Comments

Due to member disinterest in supporting a 2016 election of a legitimate Board, a written, paper ballot was mailed to all members per By-Laws Article 18 asking the question :

"Do you vote to dissolve Woodington Homeowners' Association, Inc." ?

this still does not justify a Board position that an election may **only occur** at an annual meeting. Since WHOA By-Laws provide **two** other means for election of a Board, simplistic and lack-of-due-diligence actions by a Board to remain without election are inconsistent with both NPCA legislative intent, and the By-Laws!

APPENDIX 2 - Letter of September 12, 2016

September 12, 2016

Dear Woodington Homeowners:

A letter was recently mailed to you from a homeowner. In this letter it was suggested that you vote to dissolve Woodington Homeowners Association, Inc. and to vote for a new Board of Directors. The letter alleges that the current Board was not properly elected. That allegation is incorrect. The Woodington Homeowner Association is a Nonprofit Corporation organized and operating under the laws of the State of South Carolina. The outcomes of ballots submitted in response to this letter are invalid under South Carolina law.

The Board had our law firm, MTB, Trotter & Beverly, PC review the contents of this letter. We have authorized them to deal with the legalities of the homeowner's letter.

Sincerely,

Kristin Lynch
Dawn Vonderbeck
Richard LaCroix

APPENDIX 3 - Claim of "Invalid Vote" was done to further "smear campaign"

Points of Law

As stated in an AG opinion to Sottile of January 3, 2017, the Attorney General himself says (**bold emphasis** added):

" ...

We hasten to add that we are mindful of the real and **legitimate concerns that constituents may have regarding the conduct of their HOAs**, and the cost of pursuing judicial remedies. But because **homeowners have both the incentive and the ability to hold their associations accountable**, we have not prioritized investigations of these organizations over **other organizations which do not have built-in watchdogs. Homeowners' associations are uniquely self-policing** among nonprofit corporations, and are capable of robust self-government. ... a homeowner has a strong **vested interest in monitoring** the actions of their association closely, and **to actively push back against any improper action**. Where homeowners are **elected to the boards** of associations through a vote by the **members**, the homeowners are democratically represented, ... if the **association abuses their power** so as to overstep the governing covenants and bylaws, then all **members** generally have the incentive and the ability to **discover those abuses**, and may resort to the courts for a remedy if the matter cannot be resolved internally. ...."

Comments

Particularly in the absence of legislation, HOA members have a right and even a duty to raise issues of Board impropriety., But yet, even after being notified on September 18, 2016 that "no action" would result from "vote proposal" :

"RE: Woodington Letter 091816
rtinsley@amgworld.com
drogers@amgworld.com, joel.deason@MTBtrotter.com

Dear Ms. Tinsley:

Thank you . . .

ARTICLE XVII - AMENDMENTS AND VOTING

Section 3: Any and all issues may be resolved per the simple majority result of vote by ballot by all Association Members..."

Comments (CAPS emphasis added)

Legislative intent of law per 3331804(a) clearly indicates Board members:
"MUST BE ELECTED ... at each annual meeting".
When a lack of quorum at an annual meeting precludes an **election** from taking place, 3331804(a) also indicates:
" ... unless ... BYLAWS PROVIDE SOME OTHER TIME OR METHOD OF ELECTION ...".

WHOA By-Laws provide two other methods for **election** of a Board:
- Special Meeting (Article 4, Section 2)
and
- Vote by ballot of all Members (Art.17, S.3)

By-Laws also require yearly election:
" ... **Each Board Member must be elected every year** ..." (Art.5, S.2)
and also show:
" ... When a Board Member has served for five (5) consecutive terms, that person will not be permitted to seek a sixth consecutive term ..."

Legislative intent of law per 3331805(a) clearly indicates:
"(a) ... the terms of directors MAY NOT EXCEED FIVE YEARS."

WHOA By-Laws, which suggest a "waiver" to extend term limits beyond 5 years, is against the law per 3331805 (a), and is thus **null** and **void** per 3331206(b) which shows:

"(b) The bylaws may contain any provision ... that is NOT INCONSISTENT WITH LAW ..."

Legislative intent of law per 3331805(d) clearly indicates:
"(d) Despite the expiration of a director's term, the director continues to serve ..."
to **provide continuity** of a Board, but is further qualified by:
"... until the director's successor is elected ..."
which makes it plain that a Board may **not preclude an election** from taking place, such that they may self-appoint themselves to **remain as the Board, in perpetuity, without election**.

There is **no mention** in NPCA that an existing Board may **"self appoint", to remain as the Board, in perpetuity, without election**. In WHOA, an existing Board circumvented any election from taking place in both 2015 and 2016, and had an improperly appointed management company proclaim in annual meeting minutes that:
" ... the Board would continue ...".
These "Board pretenders" also contracted a law firm to assert that a non-elected Board could continue and this was "correct" under the law. These actions were a direct **violation** of By-Laws and also inconsistent with NPCA legislative intent which requires **election of Board members** per 3331804(a).

Even if **"election required"** may not be an interpretation of **legislative intent** in NPCA, By-Laws do not provide for appointment, in perpetuity without election, for previous Board members who have exceeded term limits! Any Board member who presumes to remain without election violates:
" ... **Each Board Member must be elected every year** ..." (Art.5, S.2)
No other interpretation of this By-Laws **requirement** is possible!

In WHOA, members' interest to actively participate has waned in the past several years. With recognition of legislative intent in NPCA to provide for "continuity of a Board":
" ... the director continues to serve until the director's successor is elected ..."

RE: Mediation / Meeting ... in Lieu of Litigation
ben.acord@gmail.com
craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com
Bcc: atty@ggibsonassociates.com, cjuliesmile@gmail.com

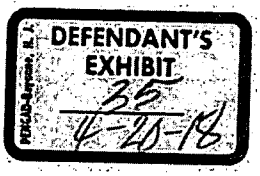
Sent by e-mail and by Certified Mail June 22, 2017

To: Mr. Benjamin Acord
20 Southfield Drive
Greenville, SC 29607
ben.acord@gmail.com

cc: Mr. Denis Esteve
205 Woodington Drive
Greenville, SC 29607
cndesteve@gmail.com

cc: Mr. William Craigo
18 Southfield Drive
Greenville, SC 29607
craigow@bellsouth.net

cc: Mr. Brian James
4 Southfield Drive
Greenville, SC 29607
remaj616@aol.com



Dear Mr. Acord:

Thank you for your 17 June response to my e-mail of 12 June. To receive a **first attempt** from the Board to address issues is **very much appreciated**. To finally receive some **explanations** is very welcomed, indeed! **Thank you very much**, once again!

Please accept my sincere apologies for continuing to raise several issues that remain unresolved. Frankly, had the Board participated in voluntary mediation, as was requested on 29 March, 2017, and again on 30 May, most likely all issues would be resolved at this time. With several issues still open and your decision not to permit me a private meeting, or to enter into voluntary mediation, you are giving me no option but to proceed judicially, a course I have repeatedly sought to avoid.

As explained previously, in Greenville County once filing in the Circuit Court takes place regarding a HOA matter, the court will require both parties to participate in mediation. This participation will require **much more** than the 10 minutes offered at a public meeting of the WHOA membership, and perhaps another 10 minutes at a third-quarter-year-Board meeting, as the Board suggested, and will take place in a proper forum – private with only the Board and I (and possibly counsel) present! In addition, issues to be discussed are **Board matters**, such as payments to AMG, and a **By-Laws requirement** of appointment to **fill a vacancy** – these are totally inappropriate for a meeting with the full membership.

Please be assured I received all your past e-mails. However, despite my request, the Board did not invite me to attend the Board meeting of 17 May, 2017. As I also requested, the Board did not post notice of scheduled Board meetings, but rather kept details **secret**. Further, several educational messages I sent which explained to the Board why meetings should be **OPEN** to all members **were ignored**; just as several additional educational messages sent to the Board have **also been ignored** !

Per my understanding that a pending 29 June 2017 all-member meeting was intended as an "Informational Gathering Meeting", I informed the Board this was an improper, and inappropriate, forum for "mediation-like" negotiation. The only proper forum at this time is mediation, since a **start** towards **amending our By-Laws** to preclude a repeat of recent and past wrongdoing is needed **NOW**, **not at some undetermined later time** when the Board may "feel like it" !

Further comments on numbered questions as itemized in your reply are below. Question 1, just as other reasons voiced in the past, is yet another reason why a "**By-Laws Review Committee (BLRC)**" needs to be appointed by the Board, **right NOW** !

Question 1: Abide by the Law; Vacancies on the Board

Thank you for agreeing: "The law must be followed."

However, please be informed that By-Laws Article IX Section 1 does **not** provide an option for the Board to ignore its duty to fill a **vacancy** which occurred due to resignation of a Board member. This section refers to the situation when a partial Board of less than a full 5 members was elected. So, with less than 5 on the Board, at least one elected to the Board must wear "two hats". The By-Laws in Article IX do **not** say the Board may **optionally ignore** duties as specified in both Article 5, Section 3, and in Article 8, Section 2(f).

To reiterate, the Board's duty to fill a **vacancy** is clear in Article 5, Section 3:
"... event of ... resignation ... director, his successor **shall** be selected ..."
Note this does not say "**optionally may** be selected"!

To reiterate, the Board's duty to fill a **vacancy** is clear in Article 8, Section 2(f):
"... **shall** be the duty of the Board ...
f. Fill any vacancy in the membership of the Board ..."
Note again the term "**shall**" appears. The phase "**optionally may** be the **duty**" does **not** appear!

Further, per Article IX Section 6, the Board has apparently **not** "combined offices"! Rather, the Board appointed the AMG Property Manager (a non-Board member, and also a non-member of WHOA), to "act as Secretary". If an existing Board member now holds two offices, and has taken on the role of Secretary, then AMG cannot also act as a "temporary Secretary". Additionally, the Board cannot claim: "... may combine one of more offices when necessary **due to a lack of eligible Association Members** who are willing to serve on the Board. ..." since I am an eligible member, and **previously requested** that the **Board appoint me** to be the Secretary!

Diverse opinion of a **full--5--member** Board is a **benefit**, and in the best interest of WHOA. From recent **lessons learned** as manifested by a **3--member, partial** Board where **wrongdoing was rampant**, it is clear a **full Board** is a **necessity** to help facilitate proper "checks and balances" on a Board. Where there are Members of the WHOA that are eligible and willing to serve on the Board, our By-Laws require a full-5-member Board!

Question 2: Renewal of Management Contract

Thank you for your statement: "Based on our review the By-Laws are silent on renewals." This **did not answer** the question; **please answer** the question. This is yet another reason why a **BLRC** needs to be appointed by the Board.

Just like contract formation requires approval from a majority (34 votes) of members, to claim that a **renewal** does **not require similar approval** would be to completely void the requirement for a majority of all members. Is not a renewal an amendment and is not an amendment a contract? That is the reason that there was a vote at the last Annual Meeting on the issue of ratifying the renewal and why a majority of all WHOA members was required to pass it!

On a more general note in term of good governance and what would benefit the WHOA membership the most, when there is no yearly approval coupled with cognizant recognition and action to approve a contract for a next year, changes advantageous to WHOA cannot be assessed, and will not happen. I think it is right, fitting, and proper and in the best interest of WHOA that **all** contracts for professional services, as well as for **insurance contracts**, should be recognized as needing **yearly approval** (educational message sent to the Board expounding upon this theme were **ignored**) ! What do you think?

Question 3: Amendments to By-Laws; By-Laws Review Committee

Thank you for recognizing that our By-Laws need amending. Thus, the Board needs to appoint a **BLRC, NOW**!

Please realize the Board's position: "No, not at this time" will **cause damage** to WHOA. What purpose can be served to delay action which is **needed now**? A "**delay**" position is **not** in the best interest of WHOA, due to time required for the balloted, voting process. Practically, a two-month period of time is required for each ballot cycle to create, mail out, receive return ballots, and disseminate results. So, even if a first ballot was going out now, it would be the end of August before another ballot could be executed. There will be **way too many** issues to try to cover **all with one ballot**. So, I think **immediate action** is required to get a first ballot out to all members to vote on By-Laws amendments **proposed by a BLRC**; what do you think?

At this time, the Board still **needs to explain** why you are **blocking a BLRC** from being formed. I will bet a sentiment of: "If it ain't broke, don't fix it" has been voiced by at least one member of the Board? However, the By-Laws **are broken**, and **need to be FIXED**! Why would the Board stand in the way of **necessary** improvement for all members of WHOA, which is in the **best interest** for all, and **preclude** (a) vote(s) to amend our By-Laws from **coming before the membership**? The Board rightly should **appoint a BLRC**, and let proposed amendments be voted upon by all members of WHOA! A working draft document was prepared itemizing other required changes to By-Laws. Please inform me when the Board is ready to receive this draft.

Question 4: Annual Meeting Minutes

Thank you for **changing** the Board's **previous position** by saying: "We are open to review the [Annual Meeting] minutes for revision".

A "Revision 2" draft for proposed Annual Meeting Minutes is nearing completion, and will be sent to you shortly, certainly prior to the meeting planned for 29 June.

I would also suggest that the Board read an attachment of an Article by "Jim Slaughter, Esq.", which details what should properly be included in minutes, and what should not appear in minutes; refer to "Exhibit B" which is appended. Exhibit B shows:

> "**THEME**: Minutes are a record of **what was done** at the meeting **NOT** **what was said** by members or guests."

I would also like the Board to recognize, and to adopt for all upcoming meetings, all content per Slaughter's title:

> "Running a Darn Good Meeting: What Community Association Attorneys Need to Know About Parliamentary Procedure"

I think significant work will be required to arrive at a set of mutually-agreeable-Annual-Meeting minutes. What do you think?

Question 5: Request for Bids

Thank you for agreeing: 'that it is **good practice** to send out a "**Request for Bids**" for professional services'.

However, given that the Board was made aware that AMG is a "**high-cost provider**", and that a **better management company** can be had at **lower cost**, I think it is a "**no-brainer**" that AMG's contract should be terminated at this time, and bids procured with intent to **change to a "lower-cost provider"**. What do you think? Why is the Board continuing to block implementing a cost-saving action which is in the best interest of, and will provide a benefit to, all WHOA members? The Board decided to stay with "AMG's automatically renewing contract" to date. But now, it is **clearly time for a change**. Please do not say again, as I explained in previous correspondence (which was **ignored** by the Board), that members of WHOA voted that we **must** maintain the services of **AMG, only**, which is clearly **nonsense**!

Question 6 : Contractual Payments to AMG

Thank you for verifying that the Board "will abide by its contractual agreements".

However, if a contract shows $250/month payment required, why is $285/mo being paid to "our AMG **buddies**" ? If this is true, **both AMG and the Board** are in **breach of contract** ! My request for a copy of a current, signed contract showing $285/mo has been **ignored** to date. Please provide such contract **ASAP** ! If status proves breach of contract, I think the Board needs to recover excess amounts which have been paid to AMG **over several years** ! What do you think? Further review and additional comments for Question 6 are contained in Attachment 1. Please plan to **respond to Attachment 1 before 27 June 2017**.

In summary, with regrets that the Board has not been serious prior to 17 June 2017 towards making any attempt to **resolve** issues, and since several key issues have not been addressed (such as the AMG contract), the Board is compelling me to take judicial action!

Files: < attachment1jun22.rtf >
< cai-college-ofca-lawyers-2015best-manuscript.pdf >

Kindly recognize the file from "CAI" "Community Associations Institute".

Raymond R Wedlake

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Cheers . . . . . wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !
```

----- Original Message -----

Re: Mediation / Meeting ... in Lieu of Litigation
Sent: 6/17/17 at 3:36 PM
From: Ben Acord <ben.acord@gmail.com>
To: Raymond Wedlake <wedlakera@mail.com>
Cc: craigow@bellsouth.net, cndesteve@gmail.com, remaj616@aol.com, rtinsley@aimgworld.com

Hello,

It seems the email I replied to inviting your topics for the Q2 board agenda was in response to an email you sent from someone else's gmail address (Jospehine Blough joblo9753 at gmail com). I didn't catch that you weren't in the reply until recently. The body of the message was from you but apparently you sent from someone else's account.

Here are responses to the six items in your email. I encourage you to join us at the meeting for the ten minutes as a start to resolve any issues. If you'd like twenty let us know. We need to start somewhere. The other items you have raised to-date will be discussed at the Q3 board meeting with responses sent thereafter.

The final question you raise is addressed in the response for item one.

1. Does the Board agree to abide by the By-Laws and all applicable Non-Profit Corporation Law?
+ the Board has not appointed an eligible WHOA member to fill a vacancy on the Board!

Board's Response: The law must be followed. By election to the Board we did agree to abide by the By-Laws. 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. Therefore the next appointment for the role of Secretary will be by the voting members at the January 2018 meeting.

2. Does the Board agree that current By-Laws require a majority vote of all members to renew a management company's contract?

Board's Response: As specified in the by-laws Article VIII - Powers and Duties of the Board of Directors section 1(d) a simple majority of the members is needed to enter into a contract with a management company. Base on our review the By-Laws are silent on renewals.

3. Does the Board agree that our By-Laws need amending?

Board's Response: No, not at this time. We recognize the suggestion was raised during the annual meeting but will be investigating potential revisions at a later time. Just not right now.

4. Does the Board agree the current revision of Annual Meeting Minutes need correction, since they still contain "non-truths" and libelous content?

Board's Response: We are open to review the minutes for revision. Please detail the "non-truths" and libelous content as no one wants either. We are happy to talk through those with you at the up-coming meeting.

5. Does the Board agree that it is good practice to send out a "Request for Bids" for professional services?

Board's Response: Yes, when and if the Board decides to engage in new professional services.

6. Does the Board agree WHOA should not be paying more than a contractual monthly payment of $250 for management company services?

Board's Response: Woodington HOA will abide by its contractual agreements.

Sincerely,

Ben Acord

Appendix

cai-college-ofca-lawyers-2015best-manuscript.pdf

Excerpts from:
2015 CAI Law Seminar
Best Manuscript Award
"Running a Darn Good Meeting: What You Need to Know About Parliamentary Procedure"

"Running a Darn Good Meeting: What Community Association Attorneys Need to Know About Parliamentary Procedure"

James H. Slaughter, Esq., Rossabi Black Slaughter, PA
ISBN: 978-1-59618-078-9

Exhibit B (page 70)

Minutes

Based on Robert's Rules of Order Newly Revised (11th Edition)

THEME: Minutes are a record of what was done at the meeting
NOT what was said by members or guests.

INCLUDE:

- v First Paragraph:
  - o Kind of meeting (regular, special, adjourned)
  - o Name of board
  - o Date and time of meeting
  - o Place of meeting, if varies
  - o Fact that Chairman and Clerk were present or name of substitute
  - o Whether minutes of previous meeting were read and approved
- v Separate paragraph for each subject matter with name of mover:
  - o All main motions or motions to bring a main question again before the assembly (except any withdrawn, see below) stating
    - + The wording in which adopted or disposed of
    - + The disposition of motion (including amendments or motions)
  - o Secondary motions that were not lost or withdrawn
  - o All notices of motion
  - o All points of order and appeals, whether sustained or lost
- v Last Paragraph:
  - o Hour of adjournment
- v Number of votes if count ordered or ballot vote
- v Names and votes if roll call vote
- v Signature of Clerk ("Respectfully submitted" unnecessary)

DO _NOT_ INCLUDE:

- x Seconder's name
- x Remarks of guest speakers
- x Motions that were withdrawn (see RONR § 48, page 469 for exceptions)
- x Personal opinion on anything said or done

Attachment 1 (for June 22, 2017)

Dear Mr. Acord:

On **26 May** and again on **01 June**, you were asked to provide a signed copy of a **current contract with AMG** which showed a contractual monthly **fee of $285**, which is my understanding of the amount which WHOA pays to AMG for "services". Since no such contract copy has been given to me, would you please complete this request before **27 June 2017** ? In the event a copy of such contract will not be provided before this time, please **explain** to me **why my request will not be fulfilled, also on or before 27 June**.

Various excerpts from previously sent messages are below. There were three items in each of two requests giving a total of six items suggested for Board action in notes from 24 Apr and 09 May. These are spelled out below. If the Board has **no action plans** on any of these items, please **explain** to me **why**. All of these items highlight "process improvements" needed, based upon recognition that an "automatically renewing contract" is **not** in the best interest of WHOA.

If no such contract exists which specifies a contractual monthly fee greater that $250/month, then AMG has been unjustly enriched. The Board would also be guilty of making improper monthly payments to AMG greater than an agreed upon contractual amount. In such cases the Board, of course, should request "**our money back**" for any excess amounts paid to AMG over the **course of many years**, if more was given to AMG than a contractually mandated amount. What do you think?

Please understand very clearly that if no contract showing $285/month will be given to me, and the Board will not act in the best interest of WHOA to arrange recovery of excess money paid to AMG, then I will feel justified to pursue legal action on behalf of the WHOA membership to be sure that we "**get our money back**", which would provide benefit to all members of WHOA !

Action on AMG needs to be completed **before 27 June 2017**. After that date if no clarifications are made known to me, I will be instructing my attorney to commence a "Breach of Contract" legal action against AMG on behalf of WHOA membership! So, be sure to **explain**, or to **tell** me about the Board's **plans, before 27 June 2017** !

Prior, Relevant Content which is Included per Excerpted Messages

AMG is a _High_Cost_ Provider
Sent: 24 Apr 2017

Woodington Board:

Please be informed that AMG has ripped-off WHOA for **many years** . . .

Please do three things to save cost:
1) Tell AMG their "high cost" contract will be terminated;
2) Tell AMG ASAP that "automatic renewal" of their contract is null and void at this time
3) Ascertain acceptability and make a change to a "low cost" provider of Association Management Services

Excerpted Message

RE: AMG is a _High_Cost_ Provider
Sent: 09 May 2017

Dear Mr. Acord:

Thank you for your comments.

Let's be clear. A change to a low-cost provider for management company services is needed in WHOA. Per our By-Laws:

" ARTICLE VIII - POWERS AND DUTIES OF BOARD OF DIRECTORS

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 ..."

does **NOT** mean that one, and only one, management company (AMG) is appropriate, and in the best interest of WHOA, in perpetuity.

The Board needs to be **open** to **suggestions** :

1) Good financial management requires that in each year bids for management company services be sought from several management companies, **before** a decision is made to choose a provider;
2) that a **better deal** for WHOA is available from another **credentialed** management company, with **qualified** staff, that is a participating member of CAI (www.caionline.org);
3) that the Board should act to **annul** any, and all, "**automatically renewing**" provisions for its management company contract such that a **proper** process of bids/selection can be used.

These three items are just examples showing why our By-Laws **require** updates. If the Board disagrees with any of these self-obvious improvements, which would provide benefits to all members of WHOA, please provide **explanation(s)** for why "AMG only" must apply.

Thanks in advance for your further comments! Please be sure to provide explanation(s) where appropriate.

Cheers ..... wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

Excerpted Message

Current Management Agreement
Sent: 26 May 2017

Woodington Board:

Please provide a most recent, signed, copy of WHOA's "Management Agreement" contract with AMG.

In my possession is a contract from 15 Jan 2008 which was signed by Starr Hammond and Brian James. This contract shows a "Management Fee" of $250/month. Kindly provide a current contract which shows $285/mo. which is my understanding of an agreed to, current-contractual fee. Kindly recall a quote for $200/mo. from a much **better** management company:

Cedar Management Group

was brought to your attention previously.

Thanks in advance!

Cheers ..... wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

Excerpted Message

RE: Current Management Agreement - No Reply Received
Sent: 01 June 2017

Dear Mr. Acord:

Thanks in advance for providing a most-recent-signed copy of a contract showing $285 per month contractual fee!

Cheers ..... wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**THIRTEENTH JUDICIAL CIRCUIT**
Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc.	Civil Action No.
Plaintiff(s)	**-CP - -**
vs.	**AFFIDAVIT OF PLAINTIFF,**
Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of the Woodington Homeowners' Association, Inc.	**RAYMOND A. WEDLAKE**
and,	
Association Management Group SC, Inc.,	
Defendants	

AFFIDAVIT OF RAYMOND A. WEDLAKE

Raymond A. Wedlake, personally appearing before me, being duly sworn, deposes and says, under penalty of perjury, that:

1. I am over 18 years of age and am competent to make this Affidavit;
2. The information set forth below is based upon my personal knowledge, unless otherwise specified as being based upon knowledge and belief;
3. This Affidavit is being brought before this Court in support of my request, as Plaintiff, for Declaratory and Injunctive relief, derivatively, on behalf of myself and all the members of the Woodington Homeowners' Association, Inc. ("Members"), to resolve disputes regarding interpretation of the By-Laws and to make clear that the members of the Board of Directors

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("Board"), of the WHOA are required to abide by the By-Laws (Exhibit A);

4. I am a Member in good standing of the Woodington Homeowners' Association, Inc. ("WHOA");

5. Woodington Homeowners' Association, Inc. is a South Carolina Non-Profit corporation, initially formed in 1993 (Exhibit F);

6. The WHOA consists of 66 voting units;

7. I am a long-time resident of Greenville, having lived in the Woodington Community, and been a Member of the WHOA, since 1999;

8. Currently, there are four members of a 2017 Board: Benjamin Acord, William Craigo, Denis Esteve, and Brian James;

9. These four Board members remain from five who were elected at a January 10, 2017 Annual Meeting of the Members, and are in their first elected term;

10. Association Management Group SC, Inc. ("AMG") acts as the management company for the WHOA;

11. Board Defendants have not provided to me various documents which were requested ("Requested Information"), including a request for the insurance policy, or policies, and other Requested Information despite my having submitted requests in writing, and stating a proper purpose (Exhibit B).

12. There has been no explanation from Board Defendants as to the basis for refusing me such Requested Information (Exhibit B).

13. Board Defendants have not commented upon, nor sent to Members, a ballot which I proposed to amend the By-Laws to add an "Alternative Dispute Resolution (ADR)" process to the By-

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Laws (Exhibit C).

14. In late 2016 and early 2017, due to disputes between myself and the 2016 Board about proper interpretation of the By-Laws, and after several efforts by me to have the Board address and seek to resolve such disputed matters, I requested my Attorney, Grant H. Gibson, Esq. to proceed with an action seeking Declaratory Judgment and Injunctive relief;
15. I requested Mr. Gibson to advise counsel for the WHOA, Ely Grote, Esq., of McCabe, Trotter, et al, ("McCabe"), that he was preparing such an action to seek a resolution of disputed interpretations of the By-Laws and seeking an injunction to forestall the Annual Meeting of Members, which Mr. Gibson did;
16. The purpose of forestalling the Annual Meeting was because the 2016 Board, in my interpretation had violated the By-Laws in several respects, including by remaining beyond the five-year term provided by law, as set forth in various e-mails I sent to the Board (Exhibit G);
17. I agreed to not file such action on the basis that my appearance at the Annual Meeting would not constitute a "waiver" of my objections to holding such meeting and to the authority of the Board, and that a written statement of objections would be attached to the minutes of such Meeting (Exhibit I);
18. McCabe agreed in writing to my proposal to attach my objections, and to appear at the meeting without waiving any objections. (Exhibit J);
19. Mr. Gibson also submitted a similar letter of understanding (Exhibit K);
20. Such statement included objections to the authority of the Board to act, and all actions taken by such Board, as well as objections to the retention of AMG as not being in accordance with

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the By-Laws, and to any alleged renewals of the contract between the Board and AMG (Exhibit I);

21. I gave a copy of such objections prior to the meeting to McCabe attorney Mr. Grote; it is my understanding that Mr. Gibson gave a copy of his letter to Mr. Grote prior to the meeting (Exhibits I & K);

22. At such Annual Meeting, the Board permitted the McCabe firm to take over the meeting to solicit votes seeking blanket ratification of "all actions" taken by the Board, as well as "all actions" taken by the Management Company, AMG, and ratification of the contract with AMG and any and all renewals (Exhibits G, H & L);

23. Such "ratification" was voted upon without explanation or discussion;

24. Minutes from the 2017 Annual Meeting were disseminated to all Members at the end of January 2017, by the acting 2016 Board Secretary; such minutes per my interpretation are a violation of the Secretary's duty as specified in the By-Laws ".. to keep the minutes ..", since non-truthful and inaccurate content was entered; such minutes did include the agreed upon "Objections .." attachment;

25. On February 24, 2017, I asked Board Defendants to withhold dissemination of a first revision "Rev 1" to minutes until no later than March 6, 2017, to allow me the time necessary to further review them;

26. On February 28, 2017, a "Rev 1" minutes created by Board Defendants was disseminated with disregard for my request to allow more time for review, without notice to me, and before completion of my requested further review; such "Rev 1" minutes still show non-truthful and inaccurate content, and were sent without attaching the agreed upon

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"Objections .." ;

27. On June 28, 2017, I informed Board Defendants about content remaining in Annual Meeting Minutes Rev 1 thusly:

    'It is improper for a meeting guest to elicit a motion for meeting business. Comments of meeting guests should never be included in minutes. Statements of opinion should never appear in minutes. Further, wrongdoing which occurred over previous history of many years cannot be changed in any way, nor "undone", with a vote by a current member body.' (Exhibits Y & Z);

28. On June 28, 2017, I proposed my draft of "Annual Meeting Minutes Rev 2" to Board Defendants;

29. On July 8, 2017, in a one-hour meeting between me and Board Defendants, my draft of "Annual Meeting Minutes Rev 2" was, once again, called to their attention;

30. In the July 8, 2017 meeting, Board Defendants stated they would take an action item to review a draft of "Annual Meeting Minutes Rev 2" and would schedule another meeting;

31. Board Defendants have not scheduled another meeting to work on "Annual Meeting Minutes Rev 2", nor, to my knowledge, have they reviewed the proposed changes in "Annual Meeting Minutes, Rev 2" ;

32. On March 12, 2017, I sent a list of ten basic questions to Board Defendants, of which one specifically highlighted a By-Laws issue:

    ' 5. Specifically, do you agree with the prior President and purported Board member that the "Term" provision in the By-Laws needs revision? '

33. On March 12, 2017, I sent a list of ten basic questions to Board Defendants, another of which

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specifically highlighted a By-Laws issue:

' 6. Do you agree that the existing "Term" provision would prohibit Board members from appointing themselves for longer than one year total in the event there is no quorum to elect Board members at an Annual Meeting? ';

34. On March 29, 2017, relative to ten-basic questions asked of Board Defendants on March 12, 2017, Benjamin Acord refused to respond to any of the questions posed, saying they were a "distraction" from their Board duties and Board Defendants would not be responding to them (Exhibits M & N);

35. Board Defendants met as a Board to "discharge their duties" one time, only, before March 29, 2017, so no pressing Board duties from which they were being distracted were known to exist, and no notice of pressing Board duties was given;

36. On March 29, 2017, Board Defendants were advised: "If the Board will not invite me to a meeting, may I welcome the entire Board to participate in non-binding mediation?" (Exhibit O);

37. At no time since March 29, 2017, have Board Defendants responded, commented, or explained why mediation was being declined;

38. On May 30, 2017, I suggested to Board Defendants that we meet to resolve our multiple disputes, including those relating to disputes regarding interpretation of the By-Laws, and, failing that, suggested we go to non-binding, voluntary mediation (Exhibit P);

39. On June 25, 2017, after Board Defendants failed to respond to participate in mediation, I suggested "four short meetings" on Wednesdays and Saturdays, to work on resolution of disputes over the By-Laws, stating:

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"So, here is a last-ditch proposal: four short meetings (more if necessary) to work together to listen and respond . . ."

". . . One last time, I respectfully request that the Board **get serious** about **committing** to time required for **negotiation** with intent to **resolve** open issues." (Exhibit Q);

40. After one meeting of one hour on July 8, 2017, Board Defendants put off further meetings with me for the purpose of resolving disputes;

41. On May 9, 2017, the Board Secretary resigned as a member of the Board, creating a vacancy on the Board;

42. The By-Laws state that a vacancy on the Board must be filled if an eligible Member is available, as specified in Article VIII, Section 2(f) (Exhibit A);

43. On May 9, 2017, I informed Board Defendants of my eligibility and desire to serve on the Board to fill the vacancy created by resignation of a member of the Board (Exhibit E);

44. Board Defendants informed me in the July 8, 2017 meeting that one of the remaining Board members was appointed to fill the position of Board Secretary, claiming that the "Nonprofit Corporation Act of 1994" which shows:

"SECTION 33-31-811. Vacancy on board.

(a) Unless the articles or bylaws provide otherwise, .. "

does not constrain them to act in accordance with the By-Laws;

45. On July 8, 2017, Board Defendants were informed they had misinterpreted the By-Laws, and violated the By-Laws by not appointing an eligible Member to serve on the Board to fill such vacancy, and that the By-Laws do not permit combining of offices when an eligible Member is available and willing to serve; one of Board Defendants cannot be appointed to fill such

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vacancy per By-Laws Article IX, Sections 1 and 6; (Exhibits A & E);

46. To my knowledge and belief prior to 2017, AMG management services agreement renewals were not approved by a majority vote by the Members;

47. It is my position, as disputed by Board Defendants, that such renewals are required to be approved by the Members pursuant to the By-Laws, Article VIII, Section 1(d) (Exhibit A);

48. There currently exists disagreement between me and Board Defendants regarding: (i) the failure of Board Defendants to abide by the By-Laws; (ii) the delegation of fundamental Board duties to AMG by Board Defendants; and (iii) whether a renewal of a contract is the same under the law as a formation of a contract;

49. My positions are Board Defendants: (i) have not abided by the By-Laws; (ii) have acted improperly and in violation of "Nonprofit Corporation Act of 1994" Section 33-31-801(c) for their own self interest to the detriment of WHOA; and (iii) that formation or renewal of a contract are both the same under the law (Exhibit R);

50. Such disputes and positions are known to Board Defendants;

51. On May 26, 2017, Board Defendants were asked: 'Please provide a most recent, signed, copy of WHOA's "Management Agreement" contract with AMG.', and were also informed: 'In my possession is a contract from 15 Jan 2008 which was signed by Starr Hammond and Brian James. This contract shows a "Management Fee" of $250/month .. ' (Exhibits B & D);

52. In the meeting of July 8, 2017, Board Defendants stated that no other contract showing more than $250/month fee to be paid to AMG is known to exist;

53. In a document presented at the 2017 Annual Meeting, management company fees paid by WHOA to AMG were shown: "Fees: Initial fee $275.00/month. $250.00/month 2008-2012.

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$285.00/month 2013-2016." (Exhibit S);

54. Based on my knowledge and belief, a fee increase to $285/month was never disclosed to Members, nor was any approval for such increase voted upon by Members;

55. On July 8, 2017, regarding more than $250/month having been and still being paid to AMG, I advised Board Defendants: ' ... Acting to "get our money back" is a proper action in the best interest of WHOA, and should be pursued. This action should focus on all years in which AMG was in breach of contract. As agreed, the Board must keep Ray Wedlake informed of status as changes unfold. ... ' ;

56. To my knowledge, since July 8, 2017, no action to ask AMG to disgorge excess fees received from WHOA has been taken by Board Defendants, and no information of status changes has been provided to me;

57. On August 15, 2017, after a request made to the South Carolina Secretary of State's (SCSOS) Office for "Articles of Incorporation" of WHOA, the document returned was titled "Declaration and Petition for Incorporation". A phone call to SCSOS verified no other documents, except a "change of address" exist in SCSOS records.

58. SCSOS also verified that what today is called "Articles of Incorporation" was termed "Declaration .." in 1993 when WHOA became a non-profit corporation.

59. The "Declaration and Petition for Incorporation" of WHOA contains no provisions stating it is allowable for Board Defendants to claim they may delegate, nor to delegate, Board powers to a management company, nor to any other person or persons (Exhibit F);

60. The "Nonprofit Corporation Act of 1994" provides a Board may delegate "some or all of the powers which would otherwise be exercised by a board" in subsection "(c)", where the Act

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reads: "articles [of incorporation]" (the Act does **not** say By-Laws) (Exhibit R);

61. By-Laws state in pertinent part: "Each Board member must be elected every year" in Article V, Section 2 (Exhibit A);

62. In both years of 2015 and 2016 no elections to elect Board members were held;

63. Based upon information and belief, I believe this precedent of wrongdoing has influenced Board Defendants to continue to ignore, and to violate, the By-Laws;

64. Board Defendants have repeatedly ignored educational materials from HOA industry experts sent to them, and from my perspective intentionally did not educate themselves, nor modify lack of good faith behaviors per educational materials (Exhibit T);

65. I have acted in good faith on behalf of Members in my dealings with Board Defendants;

66. The Board Defendants have repeatedly shown a lack of good faith through their actions or inaction:

(i) ignoring without explanation my inquiries, suggestions, and Requested Information (including those specifically authorized under the NPCA, without response advising as to why such have been denied), such as:

(a) ignoring examples of "lessons learned" showing why our By-Laws require updates.

(b) explaining why only closed Board meetings are held, without invitation to Members to attend (Exhibits U & V);

(c) failing to act to annul "automatically renewing" provisions for its management company contract such that a proper process of bids/selection can be used;

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(d) failing to recognize that a better deal for WHOA is available from another credentialed management company, with qualified staff, that is a participating member of Community Associations Institute;

(e) failing to recognize that good financial management requires that in each year bids for management company services be sought from several management companies before a decision is made to choose a provider;

(ii) failing to respond by requested dates;

(iii) failing to publish a newsletter, a Board-meeting schedule, to provide a Board meeting agenda, or to communicate properly with all Members;

(iv) failing to inform Members of committees which they appointed, withholding this notice to me until July 8, 2017, that they, themselves, would act as a "By-Laws Review Committee";

(v) failing to comment upon, or to send a July 9, 2017, all-Member ballot which proposed an "ADR" process to be included as an addition to By-Laws (Exhibit C);

(vi) returning of Certified Mail, sent by me to Board Defendants (Exhibit W);

(vii) failing to act in the best interest of WHOA, and for the betterment of homeowners by saving cost, via a switch to a lower cost management company and a review of insurance;

and,

(viii) With intent to deceive and to improperly influence opinions of other Board Defendants, per my interpretation, misstating facts by Defendant Ben Acord concerning the number, and content, of e-mails sent by me (Exhibit X);

67. Based upon my knowledge and belief, because of the refusal of Board Defendants to respond to my requests for information and to provide answers to questions and to give explanations about their rationale for their positions involving the WHOA, I have been disenfranchised and my dignity, integrity, and reputation within WHOA have been severely damaged.

Raymond A. Wedlake

Raymond A. Wedlake

RAYMOND A. WEDLAKE

SWORN to and subscribed before me this 5th **day of October 2017.**

Martha Rogers

Official Signature of Notary

South Carolina, **Notary Public**

My Commission expires: May 30, 2024

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ELECTRONICALLY FILED - 2017 Dec 01 2:43 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	**THIRTEENTH JUDICIAL CIRCUIT**
Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc.	Civil Action No.
Plaintiff(s)	**2017-CP-23-06301**
vs.	
Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of the Woodington Homeowners' Association, Inc.	**AFFIDAVIT OF PLAINTIFF, RAYMOND A. WEDLAKE**
and,	
Association Management Group SC, Inc.,	
Defendants	

AFFIDAVIT IN OPPOSITION TO MOTION TO DISMISS AND, ALTERNATIVELY TO STRIKE FOR A MORE DEFINITE STATEMENT BY DEFENDANT ASSOCIATION MANAGEMENT GROUP, SC, INC.,

AFFIDAVIT OF RAYMOND A. WEDLAKE

Raymond A. Wedlake, personally appearing before me, being duly sworn, deposes and says, under penalty of perjury, that:

1. I am over 18 years of age and am competent to make this Affidavit;
2. The information set forth below is based upon my personal knowledge, unless otherwise specified as being based upon knowledge and belief;
3. This Affidavit is being brought before this Court in opposition to Motion to Dismiss by Defendants, and, in addition opposing Defendants' alternative to strike for a more definite

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statement;

4. I am a Member in good standing of the Woodington Homeowners' Association, Inc. ("WHOA");

5. The WHOA consists of 66 voting units; of which approximately half voted in favor of blanket ratification of the AMG contract and a blanket ratification of all Board actions at the last Annual Meeting, without discussion or explanation;

6. Such blanket ratification does not address the issue of disputes as to interpretation of the By-Laws;

7. An ongoing dispute between Defendants and me regarding interpretation of a contract: the By-Laws of the WHOA, has not been resolved; Defendants spurned prior suggestions to hold a few meetings to resolve the issues and thereafter to mediate privately, starting on March 29, 2016, were either rejected or ignored;

8. Since 2012, after advent of the third amendment to the WHOA By-Laws (Rev. 3) which required a majority vote of all members of the WHOA("Members") for approval of a management company contract, no contracts nor renewals of contract were approved by such mandated majority;

9. My action is not against Defendants individually, and does not seek monetary damages;

10. Proper interpretation of the By-Laws, as requested from this Court, has implications for AMG, for the prior Board, the current Board, and for all future Boards, and is needed to restore integrity within WHOA;

11. Adherence to By-Laws' provision mandating term limit of 5 years was abused by the prior Board, with all three staying on as a Board member for seven years;

12. I sought confirmation from the current Board that it agreed with my interpretation of the 5

year term limit, but there was no response from, or resolution with, the current Board of such issue;

13. The content of Summons and Complaint served to Defendants is exactly what was filed with the Court, with the exception of filling in the case number on title pages;

14. Every exhibit supports a claim found in the Complaint;

15. The Complaint's "Prayer for Relief" is very specific, enumerating via items A to L precisely what is requested from the Court;

16. All Complaint matters are being brought derivatively in the best interest of WHOA and for the betterment of homeowners;

17. The Court is requested to confirm that the Articles of Incorporation do not authorize delegation, and therefore that such delegation is improper, including the delegation of duties to AMG;

18. After seeking resolution directly, and offering private mediation, without success, I thereafter sought an opinion from the SC Attorney General's Office; who, after consideration, advised that this appeared to be a matter for judicial resolution

(Exhibit Q and Exhibit 1).

[SIGNATURE ON FOLLOWING PAGE]

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ELECTRONICALLY FILED - 2017 Dec 01 2:43 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

Dated this 1st day of December, 2017.

Sworn to Before Me, this 1 Day of December, 2017

Martha Rogers

Notary Public of South Carolina

My Commission Expires: May 30, 2024

Raymond A Wedlake

Raymond A. Wedlake, Plaintiff

4

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EXHIBIT 1 – South Carolina Attorney General Responds

David Jones <DJones@scag.gov> Oct 24 at 10:48 AM
To: Grant Gibson

Dear Mr. Gibson:

It was a pleasure to speak with you by phone this morning. While you and I have discussed our Office's response to Rep. Henderson's request on behalf of Mr. Wedlake before, I understand that this latest conversation helped clarify the additional issues raised in Mr. Wedlake's most recent letter, such as timing of our response. I understand that Mr. Wedlake is disappointed that our Office could not opine in this case, but I appreciate you recognizing our good faith. I also understand that you and Mr. Wedlake have petitioned the court for a declaratory judgement regarding this dispute, as contemplated in our response letter. I sincerely hope that this process results in a clear and definitive resolution of all underlying issues.

Warmest regards,

David S. Jones
Assistant Attorney General
Office of the Attorney General
State of South Carolina
PO Box 11549
Columbia, SC 29211
803-734-3188

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STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE	)	
	)	**THIRTEENTH JUDICIAL CIRCUIT**
Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc.	)	Civil Action No.
	)	**2017-CP-23-06301**
Plaintiff(s)	)	
	)	
vs.	)	
	)	**AFFIDAVIT OF PLAINTIFF,**
Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of the Woodington Homeowners' Association, Inc.	)	**RAYMOND A. WEDLAKE**
	)	
and,	)	
	)	
Association Management Group SC, Inc.,	)	
	)	
Defendants	)	

AFFIDAVIT IN SUPPORT OF MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS ALTERNATIVELY TO STRIKE FOR A MORE DEFINITE STATEMENT BY DEFENDANTS BENJAMIN ACORD, WILLIAM CRAIGO, DENIS ESTEVE, AND BRIAN JAMES

AFFIDAVIT OF RAYMOND A. WEDLAKE

Raymond A. Wedlake, personally appearing before me, being duly sworn, deposes and says, under penalty of perjury, that:

1. I am over 18 years of age and am competent to make this Affidavit;

2. The information set forth below is based upon my personal knowledge, unless otherwise specified as being based upon knowledge and belief;

3. This Affidavit is being brought before this Court in support of the Memorandum in

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Opposition to Motion to Dismiss by Defendants, and, in addition opposing Defendants' alternative to strike for a more definite statement;

4. I am a Member in good standing of the Woodington Homeowners' Association, Inc. ("WHOA");

5. The WHOA consists of 66 voting units, with only about half of the Members voting on the ratification, which votes were blanket, without discussion or explanation, directed only to "any and all actions" of the 2016 Board and to the AMG Contract, and not to issues of the By-Laws which remain unresolved;

6. For nearly a full year, an ongoing dispute between Defendants and me has occurred regarding interpretation of a contract: the By-Laws of the WHOA, and has not been resolved; Defendants spurned my repeated prior suggestions to schedule a few meetings to meet informally to work out such issues and thereafter my several proposals for private mediation, additionally making little, if any, attempt to resolve such dispute (See, Exhibit Q);

7. Blanket ratification does not address the issue of interpretation of the By-Laws, and the requirement that a Board is bound by contractual duty to abide by the By-Laws;

8. Since 2012, after advent of the third Amendment to the WHOA By-Laws (Rev. 3) which required a majority vote of all members of the WHOA("Members") for approval of a management company contract, no contracts nor renewals of contract were approved by such mandated majority;

9. My action is not against Defendants individually, and does not seek monetary damages;

10. Proper interpretation of the By-Laws, as requested from this Court, has implications for the prior Board, the current Board, and for all future Boards, and is needed to restore integrity within WHOA;

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11. By-Laws require adherence to a maximum term limit of 5 years; I sought confirmation from the current Board of such, but there was no response from, or resolution with, the current Board of such issue;

12. The content of Summons and Complaint served to Defendants is exactly what was filed with the Court, with the exception of filling in the case number on title pages;

13. Every Exhibit supports a claim found in the Complaint;

14. The Complaint's "Prayer for Relief" is very specific, enumerating via items A to L precisely what is requested from the Court;

15. All Complaint matters are being brought derivatively in the best interest of WHOA and for the betterment of homeowners;

16. The Court is requested to confirm that the Articles of Incorporation do not authorize delegation, and therefore that such delegation is improper;

17. Several violations of law, as well as violations of By-Laws, are noted in the Complaint;

18. Defendants as WHOA Board have a duty to all Members per Article 2 of By-Laws:

> "The purpose ... is to provide for an association
> for the betterment of the property and homeowners …";

By blocking dissemination of an all-Member ballot, which primarily seeks to add an "ADR" process to By-Laws, which is clearly a requirement for improvement of WHOA, and is also in the best interest of all Members, Defendants violate their duty, and violate the By-Laws;

19. It is essential that the Court provide rulings as requested to help "fix" wrongdoing within WHOA, which is truly "broken."

20. Having been unsuccessful in my attempts to resolve this matter directly with the Board, I was forced to bring this action on behalf of the WHOA members to respectfully ask the Court

to rule that Defendants must abide by the By-Laws, and must exercise their duty for, and in, the best interest of all Members.

[SIGNATURE ON NEXT PAGE]

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ELECTRONICALLY FILED - 2017 Dec 01 2:24 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP230301

Dated this 1st day of December, 2017.

Sworn to Before Me, this 1 Day of December, 2017

Martha Rogers

Notary Public of South Carolina

My Commission Expires: May 30, 2024

Raymond A Wedlake

Raymond A. Wedlake, Plaintiff

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ELECTRONICALLY FILED - 2017 Dec 01 2:24 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

ELECTRONICALLY FILED - 2018 Jan 03 1:32 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

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 **AFFIDAVIT OF BENJAMIN ACORD**

017402.00009

PERSONALLY APPEARED before me, Benjamin Acord, who after being sworn, deposes and says that:

1. The facts stated herein are true and are based on my own personal knowledge. Further, I am of the age of majority and am competent to testify as to the matters stated herein.
2. I am the President of the Woodington Homeowners' Association, Inc. (the ***"Association"***) and I am knowledgeable about the corporate records prepared and maintained by the Association.
3. The records attached as Exhibit B to the memorandum in support of the motion to dismiss of Benjamin Acord, William Craigo, Denis Esteve, and Brian James are a true and accurate copy of the corporate records of the Association relating to an action by

written consent. Those records constitute corporate records of the Association. Further, such records were prepared by the Association and were executed by the members of the Association on the dates stated on the records. The records of the action by written consent were prepared and kept in the regular course of business of the Association and it is the regular practice of the Association to make and keep such corporate records of actions taken. Fifty-three out of 66 lots have signed the action by written consent, which is at least 80% of the voting power of the Association. The board of directors of the Association intends to send notice of the action by written consent to those members who have not signed it.

FURTHER, AFFIANT SAYETH NOT.

Benjamin Acord

Sworn to and subscribed before me)
this 3rd day of January, 2017.)
)
)
Notary Public for South Carolina)
My Commission Expires: _____)

LOUIE D. MURRAY, JR. NOTARY PUBLIC My Commission Expires 07/29/2025 SOUTH CAROLINA

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ELECTRONICALLY FILED - 2018 Jan 03 10:18 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF GREENVILLE	)	**THIRTEENTH JUDICIAL CIRCUIT**
	)	
Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc.	)	Civil Action No.
	)	**2017-CP-23-06301**
Plaintiff(s)	)	
	)	
vs.	)	**AFFIDAVIT OF PLAINTIFF,**
	)	
Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of the Woodington Homeowners' Association, Inc.	)	**RAYMOND A. WEDLAKE**
	)	
and,	)	
	)	
Association Management Group SC, Inc.,	)	
	)	
Defendants	)	

AFFIDAVIT OF RAYMOND A. WEDLAKE IN SUPPORT OF BRIEF MEMORANDUM IN RESPONSE TO DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STRIKE

Raymond A. Wedlake, personally appearing before me, being duly sworn, deposes and says, under penalty of perjury, that:

1. I am over 18 years of age and am competent to make this Affidavit;
2. The information set forth below is based upon my personal knowledge, unless otherwise specified as being based upon knowledge and belief;
3. This Affidavit is being brought before this Court in opposition to the Memorandum in Support of the Motion to Dismiss by Defendants, and, in addition opposing Defendants' alternative to strike for a more definite statement;

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4. I am a Member in good standing of the Woodington Homeowners' Association, Inc. ("WHOA");

5. I never received notice about the "Action by Written Consent (Consent)" proposed by Defendants resulting from a recent opinion solicitation from members of WHOA (Members);

6. As a nominee for the 2017 Board, I received other votes in addition to my own, based upon my platform of reform, from the voting group at the last Annual Meeting;

7. Approximately 1/3 of the Members did not vote at the last Annual Meeting;

8. Of the total emails sent as of September 13, 2017, requesting a response from the Board, only approximately 35% received a response;

9. I elected not to file an action personally against the Board since I do not wish an adversarial proceeding if it can be avoided, and hold no animus against the members of the Board, as this is an action on behalf of Members;

10. I have in fact urged the Board in writing to join in this action, on more than one occasion, to pursue clarification of the By-Laws which is in the best interests of all Members; my case is not adversarial, but simply declaratory and for the benefit of Members;

11. If Defendants will participate with an attitude toward resolving disputes, I am in favor of continuing to try to Mediate this matter, and have offered to pay Mediator costs for all parties;

12. In the alternative, in order to expedite this matter and save costs for homeowners, I am in favor of seeking a Master in Equity to address the disputed interpretations of the By-Laws;

13. The WHOA consists of 66 voting units, with only a bit more than half of the Members voting on "ratification", which votes were not directed to disputes over the By-Laws, which remain unresolved;

14. For nearly the full 2017 year, ongoing disputes between Defendants and me have occurred regarding interpretation of a contract: the By-Laws of the WHOA; such disputes have not been resolved; Defendants rejected my repeated prior suggestions to schedule a few meetings to meet

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informally to work out such issues and thereafter my three proposals for private mediation, additionally making little, if any, attempt to resolve such disputes (See Complaint Exhibit Q);

15. I offered Mediation three times – proposing to use Upstate Mediation Center as shown per Complaint Exhibits O, P, and Q, but offers were refused, or no response was forthcoming in all three cases;
16. My action is not against Defendants individually, and does not seek monetary damages;
17. Proper interpretation of the By-Laws, as requested from this Court, has implications for the prior Board, the current Board, and for all future Boards, and is needed to restore integrity within WHOA;
18. The content of Summons and Complaint served to Defendants is exactly what was filed with the Court, with the exception of filling in the case number on title pages;
19. Every exhibit for the Complaint supports a claim found in the Complaint;
20. In early 2000's, I was an active, twice-elected member of two Boards of the WHOA, and also was a co-author of By-Laws (Rev 2);
21. Boards on which I served took great effort to maintain Board transparency, to hold open, noticed Board meetings, to publish and post minutes of Board meetings, to abide with By-Laws provisions, and to propose By-Laws changes to Members where appropriate;
22. Based on knowledge and belief, there are other Members in addition to myself who agree that By-Laws are governing documents which the Board must follow, absent preemption by statute;
23. The Office of the Attorney General suggested that my issues were a matter for the judiciary;
24. Requests and e-mails to the Board only took the tone of demands when there was either no response, or refusal to act in conformity with the By-Laws;
25. All correspondence sent to Defendants, and to the Board Secretary who resigned, contained items of interest that were related to the business of WHOA; no such correspondence contained any

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matter which could even remotely be interpreted as "harassment"; all correspondence was reviewed by my attorney, before being sent;

26. The former Secretary of the Board failed to do her duty as a member of the Board by her resignation, which had nothing to do with any "WHOA business" correspondence which she received, all of which was also received by all Defendants;

27. In many instances, neither Defendants nor the Secretary provided responses for requested feedback, nor was clarification or other explanation which were also requested ever received;

28. On September 13, 2017, I provided to Defendants a copy of the draft Complaint and notice of pending filing (response was that they would just forward it to their insurance carrier when received, and I advised them that they may not be covered, since our case is a Declaratory Judgment Action);

29. After May 9, 2017, when a Board vacancy was required to be filled, Defendants took no action, such as seeking candidates from Members or offering the position to me, since I informed Defendants that I was eligible to serve to fill the vacancy, and willing to serve;

30. I brought to Defendants' attention that the By-Laws do not permit a member of the Board to fill two officer positions when an eligible Member is willing to serve, and that the By-Laws prevailed over the Nonprofit Corporation Act (NPCA), explicitly as stated per the statute, but Defendants simply said the NPCA did not require more than three Directors, and did not address the issue;

31. While there have been disputes that have arisen between Defendants and me over Board Governance and By-Laws issues, I hold no animus toward individual Defendants; all contact has been via written or electronic correspondence, and all such contacts were first reviewed by my attorney;

32. I am intimately familiar with all issues brought, and I am fully committed to pursuing the case in the best interests of the WHOA and its Members;

33. Failure of the Court to permit my case to proceed would mean that the contract between Members and their Association cannot be enforced by like-minded Members;

34. Prior to December 2017, all information related to 2017-CP-23-06301 was kept secret from Members by Defendants, who ignored my notice of October 16, 2017, to them that it is a Board duty to inform Members about pending litigation.

[SIGNATURE ON NEXT PAGE]

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Dated this 2nd day of January, 2018

Sworn to Before Me, this 2 day of January, 2018

Martha Rogers

Notary Public of South Carolina

My Commission Expires: May 30, 2024

Raymond A. Wedlake

Raymond A. Wedlake, Plaintiff

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Exhibit 1

ELECTRONICALLY FILED - 2018 Jan 11 10:41 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

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). *017402.00009*	)	IN THE COURT OF COMMON PLEAS FOR THE 13TH JUDICIAL CIRCUIT C/A No.: 2017-CP-23-06301 **SETTLEMENT AGREEMENT BETWEEN PLAINTIFF AND ASSOCIATION MANAGEMENT GROUP SC, INC. AND RELEASE OF ASSOCIATION MANAGEMENT GROUP SC, INC.**

THIS SETTLEMENT AGREEMENT BETWEEN PLAINTIFF AND ASSOCIATION MANAGEMENT GROUP SC, INC. AND RELEASE OF ASSOCIATION MANAGEMENT GROUP SC, INC. (the ***"Agreement"***) is made and entered into as of the 13 day of December, 2017, between Raymond A. Wedlake, individually, and derivatively on behalf Woodington Homeowners' Association, Inc. and its Members (hereinafter referred to as ***"Plaintiff"***); and Association Management Group SC, Inc. (hereinafter referred to as ***"Defendant"***). Both the Plaintiff and Defendant shall be referred to jointly as the ***"Parties"***

WHEREAS, at all times relevant hereto, Defendant has provided association management services to Woodington Homeowners' Association, Inc. (the ***"Association"***);

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WHEREAS, at all times relevant hereto, Raymond Wedlake has been a member of the Association.

WHEREAS, Plaintiff instituted the above-styled lawsuit against Defendant (the ***"Lawsuit"***);

WHEREAS, Plaintiff, in the Lawsuit, alleges various claims and issues, including but not limited to, relating to the validity of Defendant's contract(s) or agreement(s) with the Association, the fees/amounts paid by the Association to Defendant for services provided, the scope of services provided by Defendant, the alleged delegation of duties to Defendant by the Association, the interpretation of the bylaws, the ratifications at the annual meeting of the Association on January 10, 2017, document requests to the Association, and other matters pertaining to the corporate governance of the Association and services provided by Defendant; reference being craved to the pleadings in the Lawsuit as to the full issues and allegations asserted therein; and

WHEREAS, the Parties now desire to fully and finally resolve and settle the Lawsuit as between the Parties and all other potential claims between the Parties related to or arising out of the events set forth above and set forth in the pleadings in the Lawsuit, including all claims that were brought or could have been brought in the Lawsuit;

WHEREAS, in entering this Agreement, the Parties do not admit any issue of fact or law in the Lawsuit or otherwise; and

NOW THEREFORE, in consideration of the mutual covenants, agreements, and conditions set forth herein and the exchange of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties to this Agreement, without admission of liability, do for themselves, their successors, successors in title, and assigns

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hereby agree as follows:

1. No later than 10 days after the execution of this Agreement by all parties hereto, Defendant shall give notice of termination of its management agreement/contract with the Association, and the management agreement/contract shall be terminated pursuant to its terms.

2. Upon Defendant giving its notice of termination of its management agreement/contract with the Association, Raymond A. Wedlake, individually, and derivatively on behalf of the Association and its Members, does for himself, the Association, and the Members of the Association, and their assigns, successors, affiliates or those claiming through them, hereby remise, release, acquit, void and forever discharge Defendant, its successors, assigns, partners, agents, insurers, sureties, affiliates, subsidiaries, parent companies, predecessor companies, attorneys, officers, directors, experts, consultants, servants and employees (past, future, and present) from any and all claims, demands, debts, rights, actions, damages (including direct, indirect, incidental and consequential damages, whether known or unknown, developed or undeveloped), costs, causes of actions, and any and all claims of any nature or kind whatsoever, whether known or unknown, in any way relating to or arising out of the events, conduct, transactions, occurrences, acts, omissions, or other matters alleged in the pleadings in the Lawsuit, including without limitation those which were asserted or could have been asserted in the Lawsuit.

3. Upon termination of Defendant's management agreement/contract with the Association, Defendant agrees that it will not act as nor seek to act as the agent or community manager for the Association for so long as Raymond Wedlake remains a member of the Association.

4. Plaintiff agrees to and consents to dismissal of Defendant from the Lawsuit with

ELECTRONICALLY FILED - 2018 Jan 11 10:41 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

prejudice. The Parties to this Agreement agree to execute, or cause their counsel to execute, a Stipulation, Order, or other document required to dismiss Defendant from the Lawsuit with Prejudice, upon any necessary court approval of this settlement and this Agreement.

5. Nothing herein shall be construed as an admission of liability on the part of Defendant, liability by Defendant being expressly denied. This Agreement is a compromise of disputed claims with all allegations denied and is made merely to avoid further litigation, including the costs and expenses associated therewith.

6. This Agreement contains the entire agreement between the Parties and supersedes all prior agreements, understandings and representations between the Parties, whether written or oral, concerning the subject matter hereof. The terms of this Agreement are contractual and not a mere recital. The Parties agree that proper consideration has been given in exchange for the mutual promises, agreements, and obligations set forth herein, and the Parties expressly waive any claim or defense for lack of consideration in any subsequent proceeding that may result herefrom.

7. The Parties hereby declare and represent that in making this Agreement, it is understood and agreed that they rely wholly upon their own judgment, and upon the advice of their counsel, and that they have not been influenced to any extent whatsoever by any representations or statements made by the persons being released or by anyone representing them or their employment, and they have entered into this Agreement of their own free will and accord without threat, duress, or other coercion of any kind whatsoever. Neither party shall be considered the drafter of this Agreement, and the Parties acknowledge and agree that this Agreement shall not be construed more favorably in favor of any party based contribution to

ELECTRONICALLY FILED - 2018 Jan 11 10:41 AM - GREENVILLE - COMMON PLEAS - CASE#2017CP2306301

drafting the Agreement, it being acknowledged that all Parties contributed substantially to the negotiations and preparation of this Agreement.

8. The Parties agree to bear their own litigation costs and attorneys' fees incurred in connection with the Lawsuit.

9. If any provision of this agreement is held or found to be void or unenforceable, the remainder of this Agreement shall not be affected, and shall remain in full force and effect.

10. This Agreement shall be binding upon the Parties and their respective predecessors, successors, assigns, parent companies, subsidiary companies, partners, affiliates and representatives, and shall inure to the benefit of the Parties and their respective predecessors, successors, assigns, parent companies, subsidiary companies, partners, affiliates and representatives.

11. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement, and all of which shall constitute one Agreement. A facsimile, photocopy or electronic copy of signatures is deemed an original. Photocopies, electronic copies, or facsimile copies of the executed Agreement may be treated as an original.

12. Each party to this Agreement represents and warrants that they have the complete authority to execute this Agreement and compromise the claims as described in this Agreement. Further, the Parties warrant that they have not assigned any claims described in this agreement to anyone.

13. This Agreement shall cover and does cover and include any and all known and future damages not now known to any of the Parties, but which may later develop or be discovered, including the effects and consequences thereof, and including all causes of action thereafter.

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14. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

The Parties further state that they have carefully read the foregoing Settlement Agreement and Release and know the contents thereof, and they sign the same as their own free acts.

WITNESS our hands and seals this 13 day of December 2017.

IN THE PRESENCE OF:

Patricia McCarthy
WITNESS 1

Debra J Kady
WITNESS 2

Raymond A Wedlake 13 Dec 2017
Raymond A. Wedlake, Date
individually, and derivatively on behalf of Woodington Homeowners' Association, Inc. and its Members

Acknowledged by:

Grant H. Gibson (SC Bar No.: 9269) Date
G. Gibson & Associates, LLC
1200 Woodruff Rd., Bldg. A-3
Greenville, SC 29607
Phone: (864) 630-7471
Email: atty@ggibsonassociates.com
Attorney for Plaintiff

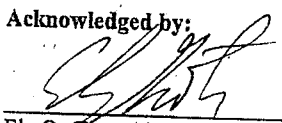
Robert E. B
WITNESS 1

Lawrence White
WITNESS 2

Association Management Group SC, Inc.

By: Paul K. Mengart
Print Name: Paul K. Mengart
Its: President
Date: 12/13/2017

Acknowledged by:



12/13/17

Ely O. Grote (SC Bar No.: 75379) Date
McCabe, Trotter & Beverly, PC
P.O. Box 212069, Columbia, SC 29221
Phone: (803) 724-5000 Fax: (803) 724-5001
Email: ely.grote@mccabetrotter.com
Attorney for Association Management Group SC, Inc.

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