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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Dorchester County
Court of Common Pleas

James E. Chellis, Master-in-Equity

Case No. 2016-CP-18-01812
Appellate Case No. 2020-001029

David Hannemann,
as President of the Live
Oak Village Homeowner's
Association, Inc.,

Respondent,

v.

William McFarland,

Appellant.

**RECORD ON APPEAL
VOLUME 1
(Pages 1-348)**

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)
 COUNTY OF DORCHESTER)
)
 DAVID K. HANNEMANN,)
 as President of the Live Oak Village)
 Homeowner's Association, Inc.,)
)
 Plaintiff,)
 v.)
)
 WILLIAM MCFARLAND,)
)
 Defendant.)
)

IN THE COURT OF COMMON PLEAS
 FIRST JUDICIAL CIRCUIT
 Case No. 2016-CP-18-1812

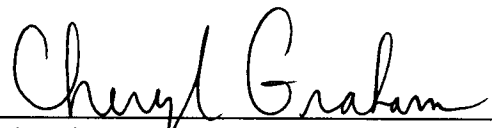
2017 AUG 18 AM 11:22
 CLERK OF COURT
 DORCHESTER COUNTY

CONSENT ORDER OF REFERENCE
TO THE MASTER-IN-EQUITY
FOR DORCHESTER COUNTY

IT APPEARING that all of the parties to this action consent (a) to Defendant's withdrawal of his demand for trial by jury and (b) to all of the causes of action in the case (i.e., this entire matter) being referred to the Master-in-Equity for Dorchester County (the "Master") pursuant to Rule 53, SCRPC; NOW, THEREFORE,

IT IS HEREBY ORDERED that Defendant's demand for trial by jury is withdrawn and, pursuant to Rule 53, this entire matter is referred to the Master, who shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter, with any appeal from any order or judgment issued by the Master to be taken to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

AND IT IS SO ORDERED.


 Cheryl L. Graham
 Dorchester County Clerk of Court

St. George, South Carolina

Dated: 8/18/17

WE SO MOVE AND CONSENT:

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Dated: August 15, 2017

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William McFarland*

Charleston, South Carolina

Dated: 8/16/17

- governance of the association, and the association have been rendered nonfunctional.
3. Each party represents in his pleadings that he holds the office of the President of Live Oak Village Homeowner's Association, Inc.
 4. Each party maintains he acts on behalf of by Live Oak Village Homeowner's Association, Inc.
 5. Live Oak Village Homeowner's Association, Inc., as a functioning homeowners association, is *sine qua non* to the pending lawsuit.
 6. Both parties have filed motions for summary judgment.
 7. The instant motion came to this Court's attention, via the electronic filing system, but specifically by email on May 16, 2019 from Plaintiff's counsel seeking an expedited hearing arising out the allegations contained in the motion.
 8. The Court upon review of the correspondence procured a conference call with all counsel of record in the case the afternoon of May 16, 2019. The conference call served as a status conference. The Court urged the parties to hold further association business in abeyance until the matters pending before the Court were addressed. Additionally, the parties were advised that the Court's calendar is typically set by the parties².The Court advised counsel of his then present calendar that offered a wide range of dates of the Court's availability.

² Cases in the equity division of the Court of Common Pleas are heard in the order in which parties seek to be heard. Once a case is referred the case remains with the Master until final adjudication. Unlike the law side of the Court, which typically functions on a calendar method, cases are heard in the order in which they are filed. Moreover, pre-trial matters on the law side of

9. The Court suggested a consent order be prepared that would require the parties to refrain from conducting any business of the association pending a hearing on the summary judgment motions. The Plaintiff agreed. Defendant's counsel deferred until he's spoken with his client.
10. Plaintiff circulated a proposed consent order. Defendant immediately replied that he could not consent to the proposed consent order. But, Defendant's counsel's email with all parties and this Court advised: "but I can advise that, consistent with what we discussed on today's call, my folks are going to stand down, and the meeting that was scheduled for tonight will not be going forward." (Hines email, Thursday, May 16, 2019 3:33 PM).
11. On May 20, 2018, this Court replied:

"All:

Sounds to me like the premise of the motion is moot; but that a working "order of business" of the HOA pending conclusion of the suit should be crafted.

I'd be happy to entertain a status conference at which time we could discuss the "thrusts" and "thwarts" of a *pendente lite* order. Since, we haven't cross paths before, perhaps in person would be best.

Meagan will be happy to arrange should each of you think my input would be helpful.

Judge James E. Chellis
 Master in Equity
 Dorchester County
 5200 East Jim Bilton Blvd.
 St. George, Sc 29477

the court are subject to the likelihood that different judges will hear different motions as they are filed. Parties can ask for an expedited motion hearing in a law case; and most often such motions are heard as soon as practicable.

C/A No. 2016-CP-18-01812: Order (Pendente Lite)
 Plaintiff: David Hannemann, as President of the Live Oak Village Homeowner's Association, Inc.
 Defendant: William McFarland

12. Thereafter, on May 28, 2019, Plaintiff's counsel requested a hearing or status conference. All parties agreed to a hearing on May 30, at 2:00 P.M.

13. At the hearing Plaintiff's counsel advised the Court a letter signed by Defendant's wife and another individual, purportedly pursuant to Section 3(B) of the Association's By-laws, had requested the Plaintiff and Defendant to schedule a special meeting of the Association. The purpose of the meeting was purportedly to elect a president of the homeowner's association and other business. The meeting was to be held May 30, 2019.

14. This Court finds that the letter is officious. NOW THEREFORE, IT IS

ORDERED, ADJUDGED AND DECREED

1. To conduct the business of this Court without meddlesome and bureaucratic adherence to form but rather to substantively address the issues joined in this litigation, neither the Plaintiff nor the Defendant are authorized to notice a special meeting during the pendency of this lawsuit.
2. Since Live Oak Village Homeowner's Association, Inc., is *sine qua non* to this suit, during the pendency of this lawsuit,
 - a. no officer of the Association shall be authorized to call a special meeting; and
 - b. Section 3(B) of the Association's By-laws shall be suspended. No special meeting pursuant to this Section of the By-Laws shall be requested without an Order from this Court.

C/A No. 2016-CP-18-01812: Order (Pendente Lite)

Plaintiff: David Hannemann, as President of the Live Oak Village Homeowner's Association, Inc.

Defendant: William McFarland

3. Any purported notice for a special meeting to take place on May 30, 2019 pursuant to Section 3(B) of the Association's By-laws pending resolution of this case shall be a nullity.

IT IS SO ORDERED!

ELECTRONIC SIGNATURE PAGE TO FOLLOW.



Dorchester Common Pleas

Case Caption: David Hannemann , plaintiff, et al VS William Mcfarland

Case Number: 2016CP1801812

Type: Order/Relief

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

Electronically signed on 2019-06-10 16:59:53 page 6 of 6

David Hannemann et al
PLAINTIFF(S)

William Mcfarland
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (*CHECK REASON*):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (*CHECK REASON*):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendant's Motion for Reconsideration is denied

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/16/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Dorchester Common Pleas

Case Caption: David Hannemann , plaintiff, et al VS William Mcfarland

Case Number: 2016CP1801812

Type: Order/Electronic Form 4

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

Electronically signed on 2020-06-16 15:17:43 page 3 of 3

development as the developer and lot owners were organizing the subdivision. Within an approximately 10 week period the Developer amended the DC&R. Since Defendants had acquired a lot, the amended DEC&R's required Defendant and his wife to join in the amended DC&R. (See Exs. 3 and 4 to McFarland's Motion for Summary Judgment.) The Articles describe these documents, the Articles, By-Laws and DC&R, as the "Association Documents."

Notably, the Articles of Incorporation, Paragraph 7, state the purpose of the Association is "to own, operate, manage, administer, lease and maintain, as a property owners association, the common affairs and common areas of the property generally known as Live Oak Village located in the County of Dorchester, State of South Carolina, in accordance with the terms and conditions of, and purposes set forth in the Association Documents and to carry out the covenants and enforce the provisions of the Association Documents." Equally notable, the DC&R and the Amended DC&R provide a statement of purpose. In both documents the stated purpose is identical:

Whereas, the Developer wishes to accomplish the following objectives for its benefit and the benefit of Owners of Property in the Subdivision by the imposition of the covenants and restrictions set forth herein:

- (a) To maintain the value and the residential character and integrity of the residential portions of the Subdivision and to maintain the quality and value of any recreational portions of the Subdivision;
- (b) To preserve the quality of the natural amenities of the Subdivision;
- (c) To minimize and eliminate the possibility of any disruptions of the peace and tranquility of the residential environment of the Subdivision;
- (d) To prevent the abuse or unwarranted alteration of the trees, vegetation, lakes, streams and other bodies of water and natural character of the land in the Subdivision;
- (e) To prevent any Owner or any other persons from building or carrying on any other activity in the Subdivision to the detriment of any Owner in the Subdivision; and
- (f) To keep property values in the Subdivision high, stable and in a state of reasonable appreciation (emphasis the Court).

In short, the Association operates and manages the common affairs and common areas of Live Oak Village and carries out the by-laws and enforces the DC&R, as amended, for the express purposes stated above. In order to accomplish the purposes of the Association, the Association Documents provide for the election of a three-member Board of Directors with rolling terms of three years, two years, and one year. Further, the Board of Directors annually elect the officers of the Association.

Plaintiff asserts he is President. He asks this Court to declare that he is the President of the Association. Further, Plaintiff asks the Court to direct Defendant, who claims he is the President of the Association, to turn over the books and records of the Association that the Defendant holds in his possession or has knowledge of being in possession of some other person.

The Defendant counters by asserting the Plaintiff is not the President. The gravamen of Defendant's position is Plaintiff and another member of the Association, who made up part of the quorum of the Director's meeting leading to Plaintiff's election as president, were not members good standing of the Association. Defendant bottoms his position on an assertion Plaintiff had not paid Association assessments including accrued interest on the assessments. According to Defendant's logic, since Plaintiff is not a duly elected President, the Defendant claims he remains president having been previously duly elected to that position².

After a hearing on cross motions for summary judgment, a complete review of the entire record, including a reading of the record of the hearing³, this Court finds no genuine issue of

² In the unreported case *Live Oak Vill. Homeowners Ass'n, Inc. v. Morris*, No. 2015-000599, 2016 WL 7495868, at 2 (S.C. Ct. App. Dec. 21, 2016) William McFarland is alluded to as president of the Association. Plaintiff Hannemann and Defendant McFarland do not dispute that the latter has served as President of the Association, and that he maintains he is the President of the Association as of the filing of this action. Cf., however, *infra* findings regarding waiver arising out of Mr. McFarland and his wife filing the Human Affairs Housing Complaint.

³ The Defendant filed a post hearing supplemental memorandum with additional evidentiary matters. For two reasons, I find these additional matters supplementing the record to lack a requisite basis. First, the records

material fact, giving every inference in favor of the Defendant, and the Plaintiff is entitled to judgment as a matter of law. Hence, the Plaintiff is entitled to summary judgment on his claims.

An explanation of the Court's decision follows.

2015

The Association held an annual meeting on May 17, 2015. A quorum was present for this meeting. At this meeting, the attendees voted unanimously in favor of electing a board of directors comprised of Plaintiff Hannemann and two other members. (See Compl. Ex. C., Affidavit of Capers G. Barr, IV, Esquire).

Defendant McFarland objected to the meeting in an email sent May 1, 2015. In the email, Defendant McFarland asserts that Plaintiff Hannemann and board member Tom Morris were not members in good standing (Ex. 16 to McFarland's Motion for Summary Judgment). But Defendant McFarland failed to attend the meeting on May 17, 2015. Hence, he failed to assert his objections in the corporate (group) setting⁴.

Thereafter, the board of directors met May 29, 2015. At this meeting Plaintiff Hannemann was elected president of the Association.

2016

The Association held an annual meeting on April 25, 2016. A quorum was present for this meeting. At this meeting, the Association again voted unanimously to elect a board of directors

Defendant files come too late. Secondly, were these records timely, they are not relevant to the issues before me. Plaintiff's opposition memorandum included a copy of the record of the hearing.

⁴ I take judicial notice that individuals in a group setting may make a different decision than when the same choice is given to them on an individual basis. See for instance, "Many important decisions in the society are made by groups of individuals such as committees, governing bodies, juries, business partners, teams, and families. Experiments in various contexts demonstrate systematic differences between choices made by groups of individuals and by individuals making decisions in isolation. There is a large literature in social psychology documenting and analyzing this phenomenon, referring to it as the "discontinuity effect" or "group shift", and a relatively recent literature in economics investigating it both experimentally and theoretically." See, <https://web.stanford.edu/~niederle/Ambrusetal.pdf>.

Plaintiff: David Hannemann, as President of the Live Oak Village Homeowner's Association, Inc.,

Defendant: William McFarland

C/A No. 2016-CP-18-01812

ORDER

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comprised of Plaintiff Hannemann and two other members. A letter discussing the April 25, 2016 meeting and its results was prepared by Capers G. Barr, IV, Esq. (Compl. Ex. D.)

The board of directors subsequently elected officers. At this election, Plaintiff Hannemann was again elected president of the Association.

Following his 2016 election as president of the Association, Plaintiff Hannemann requested that Defendant McFarland turn over the records of the Association. Defendant McFarland refused to provide the Associations' records to Plaintiff Hannemann.

On September 9, 2016, Plaintiff Hannemann initiated the present lawsuit. In his Complaint, Plaintiff Hannemann seeks a declaratory judgment pursuant to the South Carolina Declaratory Judgment Act that he is the rightfully elected president of the Association; that he is entitled to the records and checkbook of the Association; and that he is entitled to an order compelling Defendant McFarland to turn over these materials to him. Additionally, Plaintiff Hannemann seeks an award of attorney's fees and costs. He supports this request pursuant to Section 15(D) of the Association's By-Laws⁵. Additionally, he asserts the South Carolina Declaratory Judgment Act, S.C. Code § 15-53-100 is a statutory basis for an award of attorneys' fees. Finally, he asserts is his prayer for any other relief that the Court grant relief it deems proper and just.

2017 through 2020

Since 2016, both Plaintiff Hannemann and Defendant McFarland have continued to assert that they are the president of the Association.

⁵ The Defendant seeks attorneys' fees and costs from the Plaintiff on his counterclaims.

PROCEDURAL HISTORY

As noted above, on September 9, 2016 Plaintiff Hannemann initiated the present lawsuit by filing a Complaint for declaratory judgment seeking a declaration that he is the rightfully elected president of the Association. On February 16, 2017, in an Amended Answer and Counterclaim in this lawsuit, Defendant McFarland filed counterclaims for declaratory judgment including a request that he be declared the *de facto* and/or *de jure* president of the Association.

This matter was referred to the Master in Equity on August 18, 2017. Since then, both parties have submitted motions for summary judgment.

On March 13, 2020, William McFarland and his wife submitted a “Housing Discrimination Complaint” to the South Carolina Human Affairs Commission. (Hannemann Supp. Mot. Summ. J. Ex. A.) In this “Housing Discrimination Complaint”, the McFarlands identify the respondents as: “Thomas Morris, treasurer; and David Hannemann, president” and allege that David Hannemann is the president of the Association. The essence of the Housing Discrimination Complaint is that the respondents, including David Hannemann in his capacity as president, allegedly violated the McFarland’s civil rights. The McFarlands declared under penalty of perjury that their assertions in the Housing Discrimination Complaint are true and correct.

Plaintiff Hannemann supplemented his motion for summary judgment in light of the McFarland’s filing of the “Housing Discrimination Complaint”, arguing that Defendant McFarland’s positions taken in that complaint constituted a waiver of Defendant McFarland’s claim to the presidency of the Association or alternately estopped him from further arguing this position in the present action. On the eve of the June 16th hearing on the parties’ cross motions for summary judgment, Defendant McFarland submitted a certification stating that he intended no

waiver of the positions taken in the present lawsuit by filing the “Housing Discrimination Complaint”.

A hearing on both motions for summary judgment was held on June 16, 2020.

LEGAL STANDARD

A motion for summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. S.C. R. Civ. P. 56(c). On a summary judgment motion, a court must view the facts in the light most favorable to the non-moving party. *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994).

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Bankers Trust of South Carolina v. Benson*, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976). In that way, “[a] motion for summary judgment is akin to a motion for a directed verdict” because “in each instance, one party must lose as a matter of law.” *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984); *see also Baughman*, 306 S.C. at 115, 410 S.E.2d at 545 (standard for summary judgment “mirrors” standard for directed verdict).

Summary judgment should not be granted even when there is no dispute as to the evidentiary facts, if there is a dispute as to the conclusions to be drawn therefrom. *MacFarlane v. Manly*, 274 S.C. 392, 264 S.E.2d 838 (1980). In an action for declaratory relief, 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. *Vt. Mut. Ins. Co. v. Singleton*, 316 S.C. 5, 10, 446 S.E.2d 417, 421 (1994). Where, as here, the burden of proof is a preponderance of the evidence, the non-

moving party must only submit a mere scintilla of evidence to withstand a motion for summary judgment. *Bass v. Gopal, Inc.*, 395 S.C. 129, 134, 716 S.E.2d 910, 912 (2011).

DISCUSSION

A. The Court grants summary judgment to Plaintiff Hannemann on all claims

A. Plaintiff Hannemann is the duly elected president of the Association

Pursuant to S.C. Code § 15-53-20, this Court has the power to “declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Pursuant to its declaratory judgment power, the Court finds that there is no genuine issue as to any material facts and that Plaintiff Hannemann is the duly elected president of the Association as a matter of law.

1. Plaintiff Hannemann’s election as president of the Association was in compliance with the Association’s By-Laws

Section 2(B) of the Association’s By-Laws provide that a member of the Association is elected as an officer or director by members voting at a meeting in which there is a quorum of one-half of all members or their proxies present.

Both the May 17, 2015 and the April 25, 2016 meetings of the Association satisfied the requirements of Section 2(B) of the Association’s By-Laws. The 2015 affidavit and 2016 letter from Mr. Barr supports this conclusion, and Defendant McFarland has not identified a scintilla of evidence to the contrary. A quorum was present for both meetings. The votes taken at both meetings resulted in the election of Plaintiff Hannemann and two other members to the Board of Directors.

Plaintiff Hannemann’s subsequent election as president by the Association’s board of directors likewise satisfied Section 2(B) of the Association’s By-Laws. At the meetings of the board of directors following both the May 17, 2015 and the April 25, 2016 meetings of the

Association, a quorum was present, and the votes taken during these board meetings resulted in Plaintiff Hannemann being elected as the Association's president.

2. Plaintiff Hannemann was a member in good standing when he was elected to the board and as the Association's president

Defendant McFarland argues that Plaintiff Hannemann cannot have been validly elected as president of the Association. Defendant McFarland bases this assertion erroneously on his interpretation of the Association Documents. Because his premise is erroneous what follows from his assertion fails. The argument is this: Plaintiff Hannemann failed to timely pay his 2013 and 2014 assessments to the Association; interest accrued on those assessment, and Hannemann failed to pay the interest accruing on these assessments; hence, Hannemann, was not in good standing with the Association. McFarland thus maintains Hannemann is unable to vote on Association matters. Based on this, McFarland's position is that Hannemann is not eligible to hold a position on the Association's board or elected president of the Association pursuant to Section 15 of the By-Laws of the Association. The Court finds this argument to be without merit because its premise is flawed.

Section 15(B) of the Association's By-Laws provide an enumeration of powers that the Association's board may exercise. One of the enumerated powers of the board is (i) to impose monetary fines. Another enumerated power of the board is (ii) to suspend an owner's right to vote in the Association. These conditions are not self-activating.

In short, Section 15(B) does not provide that any of the enumerated powers are exercised automatically or that certain powers or actions "spring" into existence. These powers require affirmative action of the Board by which the Board votes to impose monetary fines, and votes to suspend an owner's right to vote. No evidence in the record before this Court establishes these conditions.

Section 6.3 of the DR&C provides, among other things, that interest shall accrue for any assessment not timely paid.

As an initial matter, Exhibits 12–14 to Defendant McFarland’s own motion illustrates that Plaintiff Hannemann paid all assessments as was practicable given the realities of the already-pending litigation. Plaintiff Hannemann placed checks associated with his 2013 and 2014 assessments in the hands of his then-attorney. These checks were re-issued in 2015 and provided to Defendant McFarland through counsel. Defendant McFarland conceded this during the hearing.

But Defendant McFarland argues that the assessments paid by Plaintiff Hannemann were incomplete since they did not include the payment of interest. McFarland purports the interest accrued automatically under Section 6.3 of the DC&R. Therefore, according to McFarland, Plaintiff Hannemann was not in good standing, could not have been validly elected to the board, and to the office of President of the Association. Again, the Defendant’s premise for his argument simply fails. Defendant McFarland has made no showing that any interest allegedly accrued was imposed by a directive of the Association’s board of directors. Even assuming Defendant McFarland’s position is correct for purposes of this motion, he makes no showing that the Board of Directors of the Association voted to impose interest on Plaintiff Hannemann assessments. The Court finds that interest was not owed by Plaintiff Hannemann or Morris.

Further, under Section 15 of the Association’s By-Laws a revocation of a member’s voting rights is an action which must be taken by the board, if it is taken at all. The power to hold a member not in good standing or to revoke a member’s voting rights is not vested in Defendant McFarland and is not a unilateral power which Defendant may wield, even if he were the Association’s president at the time such an action were attempted. Further, no provision in the By-Laws automatically holds a member not in good standing or revokes a member’s voting rights.

Specific action by the Association's board of directors is, however, required to accomplish these measures. Defendant McFarland has offered no evidence that Plaintiff Hannemann not in good standing with the Association. Moreover, Defendant McFarland offers no evidence that Plaintiff's voting rights suspended by the Association's board of directors.

With these undisputed facts, the Court finds Plaintiff Hannemann remained in good standing with the Association and that his voting rights were never suspended. Accordingly, the Court rejects Defendant McFarland's assertion that Plaintiff Hannemann was not in good standing or lost his voting rights, or that this is a basis on which to invalidate Plaintiff Hannemann's valid elections to the board of directors and the office of president of the Association.

3. Defendant McFarland waived his objections to the Association's meetings in 2015 and 2016

As an additional argument against the validity of Plaintiff's Hannemann's election as president of the Association, Defendant McFarland argues that he objected to the meetings and asserted that they were not validly called and, in light of this objection, the meetings at which Plaintiff Hannemann was elected were invalid.

A waiver is a voluntary and intentional abandonment or relinquishment of a known right by a party who possessed actual or constructive notice of his rights, or of all the material facts upon which they depended. *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 673 S.E.2d 448 (2009) (citing *Janasik v. Fairway Oaks Villas Horiz. Prop. Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 387–88 (1992)).

Defendant McFarland, like all other members of the Association, received notice of the Association's meetings when they were called by Plaintiff Hannemann. While there is evidence that Defendant McFarland made his position and objections to the meetings known prior to the date on which they occurred, it is also undisputed that Defendant McFarland failed to appear at

the meetings even for the limited purpose of making an objection to the same. Defendant McFarland conceded the same during the hearing on these motions.

Given these facts, the Court finds that Defendant McFarland waived his objections to the Association's meetings and that any actions taken by the Association at the meetings are not invalidated by virtue of Defendant McFarland's prior objection(s).

B. Plaintiff Hannemann has standing to pursue this action and is not estopped by positions taken in prior litigation

Defendant McFarland argues that Plaintiff Hannemann lacks standing to pursue these claims under the Association's Articles of Incorporation. He also asserts Hannemann is judicially estopped from pursuing his claims based on positions taken during prior litigation. The Court rejects both arguments. Plaintiff Hannemann possesses the requisite capacity and standing to bring the claims raised in his Complaint. Additionally, the doctrine of judicial estoppel is inapplicable.

1. Plaintiff Hannemann had the ability to bring this action

Defendant McFarland contends that Plaintiff Hannemann lacks standing to sue on behalf of the Association because under Section 8(C)(9) of the Association's Articles of Incorporation Hannemann did not procure Association approval to initiate this action. The Court rejects this argument. Plaintiff Hannemann possesses the requisite capacity and standing to bring the claims raised in his Complaint.

Section 8(C)(9) of the Association's Articles of Incorporation states:

Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of three-fourth (3/4) of all Members at a duly called meeting of the Members at which a quorum is present prior to the payment of legal or other fees to persons or entities engaged by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- (a) the collection of assessments;
- (b) the collection of other charges which owners are obligated to pay pursuant to the Association documents;

- (c) the enforcement of any applicable use or occupancy restrictions contained in the Association documents;
- (d) in an emergency where waiting to obtain the approval of the Members creates a substantial risk of irreparable injury to the Association property or to Members (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the request requisite vote of three-fourths (3/4) of the Members):

....

This lawsuit does not address subsections (a), (b), or (c) above. If Section 8C(9) applies, Plaintiff Hannemann submits subsection (d) applies and gives him the right to pursue this suit because the facts and circumstances of this suit present an emergency and his failure to bring the suit would result in irreparable injury to the Association or to Members of the Association.. This is misplaced as well.

8(C)(9) states exceptions to Association approval for payment of legal or other fees investigating a lawsuit or for commencing a lawsuit. Plaintiff Hannemann is seeking a recovery of attorneys' fees from the Defendant McFarland. Plaintiff is not asking for attorneys' fees from the association. Since, nothing in the allegation of the complaint suggests the Plaintiff is seeking to recover attorneys' fees from the Association, Section 8(C)(9) of the Association's Articles of Incorporation does not apply. And, even if Section 8(C)(9) applies, the Court Plaintiff action is sanctioned by it.

If paragraph 8(C)(d) applies, Plaintiff Hannemann meets the requisite qualification to fall squarely within exception (4). Plaintiff Hannemann brought this lawsuit in his capacity as the Association's president. Plaintiff Hannemann argued that he was presented with a situation in which Defendant McFarland was purporting to operate as a *de facto* Association president, issuing assessments to members and attempting to conduct the Association's business. These activities occurred despite Defendant McFarland receiving notice of the meetings of the Association and its board and the results of elections conducted as described above.

Nonetheless, monies paid in the form of assessments were being deposited into one of two competing accounts managed by different members, both of whom claimed to be the duly elected president of the Association. Moreover, Defendant McFarland will not turn over the records and the checkbook of the Association despite having received notice of Plaintiff Hannemann's election as president. Defendant McFarland does not dispute that he continues to operate the Association despite the activities of the 2015 and 2016 meetings. He continues to issue assessments on the Association's behalf and continues to withhold the records and the checkbook of the Association.

Under these circumstances an emergency existed and continues to exist. Thus, if the provisions of 8(C)(9) were to apply, Plaintiff Hannemann as president of the Association has the right to bring the present lawsuit and seek the relief in equity of an injunction. Since 2015, the Association has had two competing individuals claiming to be its president. Each challenge the legality of the other's position as president of the Association. This untenable "standoff" jeopardizes a primary purpose of the Association and the DR&C. Stated plainly, the Members are losing what they bargained for in purchasing property within the development. They are losing one of the primary purposes of the Association. They are losing the fundamental contractual right "[T]o minimize and eliminate the possibility of any disruptions of the peace and tranquility of the residential environment of the Subdivision." Defendant McFarland's utter disregard for this fundamental purpose places the community of Live Oak Villages subordinate to his intransience. This Court finds his obstreperous conduct a detriment to the community of persons who live under the protective umbrella of the Association Documents.

This Court finds the status of the leadership of the Association gives rise to an emergency. Moreover, the emergency places Association members, and their right to residential peace and

tranquility at a substantial risk of irreparable injury⁶ since the Association has no unified voice and every action the Association takes is subject to each member of the Association questioning whether the action is authorized. Further, whomever is the true president of the Association is exposed to ongoing potential liability associated with failing to execute his duties as an officer. These facts and circumstances establish the conclusion that a substantial likelihood of irreparable injury exists.

Additionally, it is also significant that during the pendency of this action it became necessary for the Court to enter a Pendente Lite Order prohibiting either party from attempting to conduct the business of the Association until the issues raised in this action were resolved. These facts reinforce the emergent nature of the circumstances presented to Plaintiff Hannemann.

Thus, if the approval of the Association were required before the initiation of claims like those raised by Plaintiff Hannemann, exception 8(C)(9)(d) would apply authorizing Plaintiff Hannemann to bring his request to this Court.

2. Judicial estoppel does not apply

Defendant McFarland argues that Plaintiff Hannemann should be judicially estopped from pursuing this declaratory judgment action based on positions taken in prior litigation involving the Association. In a 2012 lawsuit initiated by Defendant McFarland on behalf of the Association, Plaintiff Hannemann relied on the three-fourths majority approval requirement contained in

⁶ This term is not defined in the Association Documents. The parties, and the Court, discussed this point using the standard that is expressed in the concept irreparable harm as an element of the right of a party to enjoin another. On reflection I'm not sure this is the proper standard. Especially given the purposes of the Association Documents. Frankly, I surmise that the intransience of Defendant McFarland may easily affect the economic interest of every member of the association. After all, one may easily ask a reasonable buyer is she willing to pay for premium housing in the Town of Summerville subject to residential community restrictions far more restrictive than the zoning and planning ordinances of the town, which are jealously guarded by the Town, in which a feud between two of seven households rages in the Courts. I take judicial notice that the most recently sold home in the community of this subdivision shows a purchase price of \$695,000.00.

Section 8(C)(9) of the Association's Articles of Incorporation to argue that Defendant McFarland's pursuit of the 2012 lawsuit was improper.

Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. Auto-Owners Ins. Co. v. Rhodes, 405 S.C. 584, 597, 748 S.E.2d 781, 788 (2013). For the doctrine to apply, there must be (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. Id.

The Court finds that judicial estoppel does not apply as Defendant McFarland contends. First, the 2012 lawsuit was initiated by Defendant McFarland on behalf of the Association and is styled, "Live Oak Village Homeowners Association, Jennifer McFarland, Carlton Holcombe, and Ute Holcombe v. Thomas Morris, David Hannemann, Sofia Mazell, and Michael Mazell". (McFarland Mot. Summ. J. Ex. 10). The Association is not a party to the present lawsuit. Plaintiff Hannemann was named individually in the 2012 lawsuit, while here he brings his declaratory judgment claim in his capacity as president of the Association. Defendant McFarland is not individually named in the 2012 lawsuit. Thus, Defendant McFarland's judicial estoppel argument does not satisfy the first element required for the application of judicial estoppel.

Additionally, it appears that the prior position taken by Plaintiff Hannemann was not a basis upon which he prevailed in the 2012 lawsuit. The Court of Appeals' unpublished opinion regarding the 2012 lawsuit, which affirmed in part and reversed in part the summary judgment

order issued in that lawsuit, the Court did not address the three-fourths majority requirement embodied in Section 8(C)(9) of the Association's Articles of Incorporation or Plaintiff Hannemann's arguments raised in relation to this provision. (see Ex. 17 to McFarland's Mot. Summ. J.) Since this argument was not a position upon which the Court relied in issuing its ruling, Defendant McFarland has not demonstrated that Plaintiff Hannemann successfully maintained an inconsistent position in the prior 2012 lawsuit.

Finally, Defendant McFarland has identified no evidence that Plaintiff Hannemann assumed the purportedly inconsistent positions as part of an intentional effort to mislead the Court. His assertion of judicial estoppel also fails on the fourth element.

C. The Court grants summary judgment to Plaintiff Hannemann as to Defendant McFarland's remaining claims

1. Defendant McFarland and/or his wife are not "declarants" or "developers" within the meaning of the Declaration of Covenants and Restrictions and are not entitled to attorney's fees by virtue of the same

In his Amended Answer and Counterclaims, Defendant McFarland argues that he and his wife are "developers" or "declarants" under the Declaration of Covenants and Restrictions of the Association. With this status, pursuant to the Association's By-Laws, Defendant McFarland argues he and his wife are entitled to recover their attorney's fees for their pursuit of their claims in this matter from Plaintiff Hannemann. The Court rejects this assertion.

The Amended Declaration of Covenants and Restrictions for the Association identify Oak Village Development, LLC as the "Developer". William McFarland and his wife are included within the list of entities identified as "Owners".

Section 1 of the Association's By-Laws states, "[t]he developer of this Subdivision is the Declarant, Oak Village Development, LLC, referred to as 'Declarant'." Section 15(D) of the By-Laws provides, "[s]hould the Declarant or the Association employ legal counsel to enforce any of

the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner.”

The McFarland's status as "Owners" who signed the Amended Declaration of Covenants and Restrictions does not result in their being included in the description of "Declarant" within the Association's By-Laws. The By-Laws identify Oak Village Development, LLC as the Declarant. Thus, Defendant McFarland is not entitled to recover attorney's fees pursuant to Section 15(D) of the By-Laws because he is neither the Association nor the Declarant. Further and for the same reason, Mrs. McFarland, a non-party, is also not entitled to recover attorney's fees pursuant to Section 15(D), to the extent that Defendant McFarland's claims in this matter seek such a recovery.

Additionally, as discussed above, any enforcement action initiated by the Association requires the approval of three-fourths of the Association. Defendant McFarland has offered no evidence that the Association has authorized the use of its funds to pay for his attorney's fees incurred in the defense of this action. Therefore, the Court grants summary judgment on this claim in favor of Plaintiff Hannemann.

2. Defendant McFarland is not entitled to recover attorney's fees under the Declaratory Judgment Act

In his Amended Answer and Counterclaims, Defendant McFarland also requests the entry of attorney's fees pursuant to the Section 15-53-100 of the South Carolina Declaratory Judgment Act. This section provides that the Court "may" award costs "as may seem equitable and just." S.C. Code § 15-53-100.

The Court finds that an award of costs, including attorney's fees, to Defendant McFarland in this matter is neither equitable nor just. Therefore, this request is denied.

3. Defendant McFarland does not prevail on his breach of contract and/or conversion claim

In his Amended Answer and Counterclaims, Defendant McFarland appears to argue that Plaintiff Hannemann's establishment of a new bank account for the Association, following his election to the board and to the office of president, and his subsequent contribution of monies to this account constitute breaches of contract or alternately acts of conversion of assets rightfully belonging to the Association. In light of the Court's determination that Plaintiff Hannemann is the duly elected president of the Association, this claim fails as a matter of law. Therefore, the Court grants summary judgment to Plaintiff Hannemann with respect to Defendant McFarland's claim for breach of contract and/or conversion.

D. Plaintiff Hannemann is entitled to recover costs but not attorney's fees

In his Complaint, Plaintiff Hannemann requested the entry of attorney's fees and costs pursuant to South Carolina's Declaratory Judgment Act. Additionally, Plaintiff Hannemann requested the entry of attorney's fees and costs pursuant to Section 15(D) the Association's By-Laws, as well as any other relief which the Court deems necessary and proper.

During oral argument, Plaintiff Hannemann moved to amend his pleadings to add a request for attorney's fees pursuant to the Declaratory Judgment Act and Section 15(D) of the Association's By-Laws, to the extent that this request was not made sufficiently in the Complaint. Additionally, during oral argument Plaintiff Hannemann moved to conform his pleadings to the evidence and arguments presented in the summary judgment motions. The Court grants these oral motions; however, a review of the pleadings reflects that both bases for the award of attorney's fees were pled in the Complaint.

The gestalt of Plaintiff Hannemann's Complaint is a request for declaratory judgment regarding the validity of elections to positions within the Association. Defendant McFarland's

defense, as noted above, equally demands a declaratory judgment that the elections were not authorized and the actions pursuant to them invalid. Defendant too seeks attorneys' fees. His defense by way of counterclaims, however, make a sophist argument that he and his wife are the developers and thus the Declarants under the Association Documents. The position is no less short of a request for this Court to declare that the Defendant McFarland holds dictatorial powers over this subdivision of seven lots at issue in this case. Defendant McFarland's assertions in his defense and parry certainly demonstrate a refusal to respect the inherently democratic process for the management of the Association required under the Association Documents.

The Court recognizes Plaintiff Hannemann has expended time and money in the pursuit of the declaratory relief sought in this action. He has been left with no choice but to turn to the judicial system to ask for relief to enforce rights accruing to him through the democratic process of elections held by the Association. The election to a position, notably, that pays no compensation for services rendered yet imposes fiduciary duties upon him albeit as a volunteer for the benefit of himself and 6 neighbors. In a sense, this case exemplifies litigation based on principles not economics.

The Plaintiff's counsel zealously argues the Declaratory Judgment Act provides discretion to the Court in crafting an award precisely for circumstances such as this, where one party refuses to acknowledge or respect the valid actions of a governing body and causes another to incur substantial time and effort, including the retention of legal counsel, to enforce the same. Indeed, Plaintiff's counsel argues that if the Court did not award costs, including attorney's fees, to Plaintiff Hannemann in this matter, the absence of such an award would only encourage dissenters to resist or ignore the results of actions taken by a homeowner's association with which they did not agree. This position favorably appeals to this Court. But the Court is not authorized to blaze

a trail through the domain of the legislature. Were the Court to award Plaintiff his attorneys' fees this court would be abusing its discretion⁷. An award of the Plaintiff's cost, however, does not step over the line upon which the legislature stands its ground

Section 15-53-100 of the South Carolina Declaratory Judgment Act provides that the Court "may make such award of costs as may seem equitable and just"⁸. No appellate court has addressed this issue in our state; however, our sister state of North Carolina has an appellate decision that analyses this issue holding that its Uniform Declaratory Judgment Act does not permits a trial court to award attorneys' fees. See, *Swaps, LLC v. ASL Properties, Inc.*, 250 N.C. App. 264, 264, 791 S.E.2d 711, 712, 2016 WL 6440491 (2016).

The Court finds that Plaintiff Hannemann is entitled to an award of costs⁹. See, SCRPC 54.

⁷ In *Judy v. Judy*, 403 S.C. 203, 211, 742 S.E.2d 672, 676, 2013 WL 1138866 (Ct. App. 2013), a Dorchester County Special referee awarded attorneys' fees summarized as the "vexatious" multiplication of court proceedings. The Court of Appeals reversed the award citing an abuse of discretion since the conduct cited could have been addressed by the legislature in adopting the Statute of Elizabeth but that since it had not the special referee abused his discretion. In *Judy*, the Court of appeal summarizes the rule for awarding attorneys' fees in this state: "The practice of each party paying his own attorney fees is often referred to as the 'American Rule.' South Carolina follows the American Rule." 2 S.C. Jur. Attorney Fees § 2 (citations omitted). "As a general rule, attorney fees are not recoverable unless authorized by contract or statute." *Id.*; see also *Jackson v. Speed*, 326 S.C. 289, 307, 486 S.E.2d 750, 759 (1997) (stating a party cannot recover attorney's fees unless authorized by contract or statute); *Hegler v. Gulf Ins. Co.*, 270 S.C. 548, 549, 243 S.E.2d 443, 444 (1978) ("As a general rule, attorney's fees are not recoverable unless authorized by contract or statute.").

⁸ Cf. The Court is aware of only one equitable doctrine in which attorneys' fees and cost can be awarded. In *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301, Prod. Liab. Rep. (CCH) P 15611, 1999 WL 350509 (Ct. App. 1999) Judge Anderson explains, "South Carolina has long recognized the principle of equitable indemnification. See *Stuck v. Pioneer Logging Machinery, Inc.*, 279 S.C. 22, 301 S.E.2d 552 (1983); *Addy v. Bolton*, 257 S.C. 28, 183 S.E.2d 708 (1971). "Indemnity is that form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party. A right to indemnity may arise by contract (express or implied) or by operation of law as a matter of equity between the first and second party." *Town of Winnsboro v. Wiedeman-Singleton, Inc. (Winnsboro I)*, 303 S.C. 52, 56, 398 S.E.2d 500, 502 (Ct.App.1990), *aff'd*, 307 S.C. 128, 414 S.E.2d 118 (1992) (*Winnsboro II*) (citation omitted)." The present circumstances before the Court do not support a finding of equitable indemnity.

⁹ Cf., South Carolina Nonprofit Corporation Act, Subarticle Entitled, "Indemnification." This subchapter provides the right of officers of a nonprofit to recover "Expenses." Expenses specifically includes counsel fees. But under this statute the right to indemnification of an officer is from the corporation. Thus, under S.C. Code Ann. § 33-31-850 through § 33-31-358, limits Plaintiff to a claim from the Association for indemnification of his "expenses" as defined under the Act. Moreover, this legislative language demonstrates the proper domain for setting the parameters of what a term means in given circumstances. My responsibility is to interpret the law and not to

B. Dissolution of Pendente Lite Order

On June 11, 2019, this Court entered a Pendente Lite Order which prohibited Plaintiff Hannemann and Defendant McFarland from noticing special meetings of the Association during the pendency of this lawsuit and finding that since the Association is *sine qua non* to this lawsuit, no officer of the Association may call a special meeting and Section 3(b) of the Association's Bylaws is suspended.

After a hearing no motion to reconsider heard immediately prior to the Summary Judgment Hearing, which was denied, Defendant filed a Notice of Appeal of the Court's June 11, 2019 Pendente Lite Order. To the extent this Court has jurisdiction over that order and, in light of the Court's decision to grant summary judgment in favor of Plaintiff Hannemann on all claims, the June 11, 2019 Pendente Lite Order is hereby dissolved.

Each of the foregoing findings of fact are conclusions of law.

Each of the foregoing conclusions of law are finding of fact.

NOW, THEREFORE, THIS COURT ORDERS, ADJUDGES AND DECREES:

- A. Plaintiff Hannemann had the right to bring this action.
- B. Plaintiff Hannemann's Motion for Summary Judgment is granted.
- C. Mr. Hannemann is the President of the Live Oak Village Homeowner's Association, Inc.
- D. Defendant McFarland waived his right to assert objections before the full body of the Association or its board of directors.
- E. Section 8(C)(9) of the Articles of Incorporation is not applicable because the Plaintiff is not seeking a recovery of attorneys' fees from the Association.

legislate from the bench. In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other. S.C. Const. art. I, § 8.

- F. Even if Section 8(C)(9) of the Articles of Incorporation were applicable, the Plaintiff had the right to pursue the present action under 8(C)(9)(4) as set forth herein above because an emergency existed that created a substantial risk of irreparable injury to the Association.
- G. Defendant McFarland shall turn over all the Association's books and records that are in his possession, custody or control to Plaintiff Hannemann within ten (10) days of this order.
- H. If Defendant McFarland is aware of any other books and records that may be in the possession of others, the Defendant McFarland is ordered to specify such books and records and inform Plaintiff Hannemann of the person or entity holding such books and records, and to endeavor to have such books and records returned to himself so that he may turn such books and records over to the Plaintiff Hannemann.
- I. Defendant McFarland is directed to provide Plaintiff Hannemann the bank statements of the Association for the preceding 72 months from the date of this order.
- J. After procuring the Bank statements, defendant McFarland is directed to close the bank account currently used by him as the Association's bank account.
- K. Plaintiff is not entitled to an award of attorneys' fees.
- L. Plaintiff Hannemann is entitled to an award taxing costs under SCRCP 54 and,
- M. To the extent this Court has jurisdiction over its Pendente Lite Order, dated June 11, 2019, the same is dissolved.

IT IS SO ORDERED!

ELECTRONIC SIGNATURE PAGE TO FOLLOW.



Dorchester Common Pleas

Case Caption: David Hannemann , plaintiff, et al VS William Mcfarland

Case Number: 2016CP1801812

Type: Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

Electronically signed on 2020-08-13 14:17:49 page 24 of 24

LEGAL STANDARD

“Upon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly” Rule 52(b), SCRCP. However, “Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).” Rule 52(a), SCRCP.

Motions to alter or amend a judgment must be served not later than 10 days after receipt of written notice of the entry of the order. Rule 59(e), SCRCP. The purpose of a Rule 59(e) motion is to request the trial judge reconsider matters properly encompassed in a decision on the merits. Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). “[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). A party may not raise an issue for the first time on a motion for reconsideration. MailSource, LLC v. M.A. Bailey & Assocs., Inc., 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003).

DISCUSSION

Defendant McFarland appears to raise a total of fourteen (14) arguments in his Motion for Reconsideration. Many of these arguments simply ask the Court to reconsider its earlier ruling on the bases identified by Defendant McFarland in his briefings or arguments. The Court has

considered all of Defendant McFarland's prior submissions and declines to reconsider any portion of its prior ruling.

Defendant McFarland identifies two arguments upon which he believes the Court did not rule. First, Defendant McFarland asks the Court to specifically rule on his argument that Plaintiff Hannemann was judicially estopped from bringing this action under the Association's By-Laws. Mot. Reconsideration ¶ 2, pp. 4, Aug. 24, 2020. In its Order, the Court determined that judicial estoppel does not apply. *See* Order at 15–17, Aug. 13, 2020. After fully considering the argument raised by Defendant McFarland regarding judicial estoppel relating to the Association's By-Laws, the Court rejects this argument and declines to reconsider its August 13th ruling on judicial estoppel.

Second, Defendant McFarland asks the Court to specifically rule on “the entirety of Defendant's argument” regarding Defendant McFarland's position that he and his wife are “declarants” or “developers”. Mot. Reconsideration ¶ 12, pp. 18. This request references additional argument contained in Defendant McFarland's July 14, 2020 supplemental submission. As discussed in the Court's August 13, 2020 Order, the Court has determined that this submission was untimely and, even if it were timely, not relevant. The Court declines Defendant McFarland's invitation to reconsider this determination. Even assuming *arguendo* that such post-hearing argument were timely and relevant, the Court finds Defendant McFarland's additional arguments regarding his purported status as a “declarant” or “developer” to be unpersuasive and declines to reconsider its August 13, 2020 Order.

The Court has fully considered the arguments contained in Defendant's Motion for Reconsideration, as well as the arguments raised in the parties' original briefing and during the June 16, 2020 summary judgment hearing. Upon consideration of all the materials and arguments

before the Court, the Court denies Defendant's Motion for Reconsideration. Further, to the extent that Defendant raises new arguments in his Motion for Reconsideration, such arguments are improper under Rule 59(e) and the Court declines to consider the same.

CONCLUSION

Upon consideration of all the materials and arguments before the Court, the Court denies Defendant's Motion for Reconsideration.

IT IS SO ORDERED!

ELECTRONIC SIGNATURE PAGE TO FOLLOW.



Dorchester Common Pleas

Case Caption: David Hannemann , plaintiff, et al VS William Mcfarland

Case Number: 2016CP1801812

Type: Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

Electronically signed on 2020-08-28 10:07:50 page 5 of 5

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF DORCHESTER)

David Hannemann, as President of the Live) C/A No. 2016-CP-18-01812
Oak Village Homeowner’s Association, Inc.,)
)

Plaintiff,) **ORDER GRANTING PLAINTIFF’S**
) **MOTION FOR RULE TO SHOW CAUSE**

Versus)

William McFarland,)
)
)
Defendant.)

This matter comes before the Court on the Plaintiff’s Motion for Rule to Show Cause which was filed on October 14, 2020. On December 2, 2020, a hearing on the motion was held and counsel for Plaintiff and Defendant attended and participated in the same.

On August 13, 2020, this Court entered an Order Granting Summary Judgment to the Plaintiff in the above-referenced lawsuit. On September 15, 2020, the Defendant filed a Notice of Appeal appealing the Court’s Order to the South Carolina Court of Appeals.

The Plaintiff files this motion requesting the Court to issue a Rule to Show Cause requiring the Defendant McFarland to appear before the Court to explain why he has failed to comply with the Court’s Order of August 13, 2020. Specifically, the Plaintiff contends that the Court’s Paragraphs (G), (H), (I) and (J) of the Court’s Order are subject to exceptions to the general rule automatically staying matters set forth in Rule 241 of the Appellate Court Rules. The Plaintiff maintains that the relief granted in those paragraphs are subject to specific enumerated exceptions contained in Rule 241(b)(2) and (3).

The Defendant contends that the relief afforded in Paragraphs (G), (H), (I) and (J) are not covered by the specific exceptions referenced in 241(b)(1) and/or (2). The Defendant further contends that the relief afforded is contingent upon the Court’s determination that Mr. Hannemann

is the President of Live Oak Village Homeowners Association, Inc. which has been appealed thereby staying the entirety of the Court's Order. Defendant further contends that, alternatively, if the provisions in Paragraphs (G), (H), (I) and (J) are not secondary to the appeal of the finding of Mr. Hannemann as the President of the Live Oak Village Homeowners Association, Inc. that they do not meet the specifically enumerated exceptions. In the further alternative, the Plaintiff contends that any such relief is now moot based upon the certifications of four witnesses that there was a special meeting whereby the Plaintiff was removed as President of the Live Oak Village Homeowners Association, Inc.

Having reviewed the submissions of counsel and heard the arguments of counsel, the Court hereby GRANTS the Plaintiff's Motion for Rule to Show Cause and hereby ORDERS the Defendant William McFarland to appear before the Court at 11:30 a.m. on December 16, 2020 in Courtroom C of the Dorchester County Courthouse located at 5200 East Jim Belton Blvd., St. George, South Carolina to explain why he has failed to comply with the Court's Order set forth in subparts (G), (H), (I) and (J) contained on Page 23 of this Court's Order. The hearing on the Rule to Show Cause is to determine whether the Defendant McFarland should be held in contempt of court and if so, what the appropriate sanction shall be.

IT IS SO ORDERED!



Dorchester Common Pleas

Case Caption: David Hannemann , plaintiff, et al VS William Mcfarland

Case Number: 2016CP1801812

Type: Order/Rule To Show Cause

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

Electronically signed on 2020-12-07 10:52:33 page 3 of 3

The South Carolina Court of Appeals

David Hannemann, as President of the Live Oak Village
Homeowner's Association, Inc., Respondent,

v.

William McFarland, Appellant.

Appellate Case No. 2020-001029

ORDER

Appellant has appealed the master-in-equity's August 13, 2020 order granting summary judgment in favor of Respondent, finding Respondent was the president of the Live Oak Village Homeowner's Association (the HOA) and denying Appellant's motion for summary judgment. The order also required Appellant to close a bank account "currently used by him as the [HOA's] bank account" and transfer certain documents and information to Respondent within ten days of the order, including: all of the HOA's books and records in Appellant's possession, information on any person or entity holding other books or records belonging to the HOA as Appellant was aware, and bank statements for the preceding seventy-two months.

Appellant has not delivered the documents, and the master scheduled a hearing on the rule to show cause for December 16, 2020. Appellant has served and filed a motion requesting this court stay the rule to show cause hearing. Respondent filed a return, indicating the master decided not to hold the December 16, 2020 rule to show cause hearing pending further consideration or direction from this court, and Appellant filed a reply.

After careful consideration of the parties' filings, the rule to show cause hearing shall be stayed upon the deliverance of the documents in question to the master by the end of the day on December 22, 2020. *See* S.C. Code Ann. § 18-9-150 (2014). This court directs the parties that the master shall be the authority for the identification of the items Appellant was ordered to transfer in the August 13, 2020

order for the purpose of compliance with this order. Upon deliverance of the documents to the master, the August 13, 2020 order shall be stayed pending the resolution of this appeal. The master shall make such arrangements in this matter as he deems necessary as to the bank account and the documents.



FOR THE COURT

Columbia, South Carolina

cc:

James Bernard Hood, Esquire
Virginia Rogers Floyd, Esquire
Russell Grainger Hines, Esquire
The Honorable James E. Chellis
The Honorable Cheryl L. Graham

FILED
Dec 21 2020

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF DORCHESTER)

David Hannemann, as President of the Live Oak Village Homeowner's Association, Inc.,)
)
)

2016 SEP 9 PM 4:50
 CLERK OF COURT
 DORCHESTER COUNTY
 Plaintiff,)

SUMMONS
 (Non-Jury)

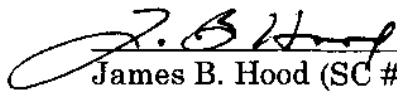
Versus)

William McFarland,)
)
)
 Defendant.)

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the subscribers at their office located at 172 Meeting Street, Charleston, South Carolina, 29401 within thirty (30) days after the service hereof, exclusive of the day of such service; and 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.

HOOD LAW FIRM, LLC
 172 Meeting Street/Post Office Box 1508
 Charleston, SC 29402
 Phone: (843) 577-4435/Fax: (843) 722-1630
 Email: Info@hoodlaw.com


 James B. Hood (SC #70212)
 Virginia A. Rogers (SC #101849)

Attorneys for the Plaintiff
 David Hannemann, as President of the Live Oak Village Homeowner's Association, Inc.

9/8, 2016
 Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF DORCHESTER)
 David Hannemann, as President of the) C/A No. 2016-CP-18- 1812
 Live Oak Village Homeowner's)
 Association, Inc.,)
)
 Plaintiff,) **COMPLAINT FOR DECLARATORY**
) **JUDGMENT**
 Versus) (Non-Jury)
)
 William McFarland,)
)
 Defendant.)

2016 SEP -9 PM 4:50
 DORCHESTER COUNTY

Plaintiff David Hannemann, as President of the Live Oak Village Homeowner's Association, Inc., brings this action against Defendant William McFarland based on the allegations set forth below.

Parties

1. Plaintiff is a citizen and resident of Dorchester County, South Carolina.
2. Defendant William McFarland is a citizen and resident of Dorchester County, South Carolina.

Jurisdiction and Venue

3. The Court has subject-matter jurisdiction over the claims of this lawsuit under Article V, § 11 of the South Carolina Constitution and South Carolina Code § 14-5-350 (2016).
4. The Court has personal jurisdiction over the Defendant because he resides in Dorchester County, South Carolina.
5. Venue is proper in this circuit court under South Carolina Code § 15-7-30 (2016) because the Defendant resides in Dorchester County, South Carolina.

Facts

6. The neighborhood of Live Oak Village is located in Summerville, South Carolina. The neighborhood association for this development, the Live Oak Village Homeowner's Association, Inc. was incorporated in 2002 (hereinafter, the "Association").

7. Sections 11 through 15 of the Association's Articles of Incorporation ("Articles") provide for an elected Board of Directors and officers to govern the organization's activities. Pursuant to Section 11 of the Articles, the Board of Directors of the Association shall elect its officers. The Articles are attached to this Complaint as Exhibit A and incorporated herein by reference.

8. The By-Laws of the Association ("By-Laws") provide additional structure for the functions and governance of the Board of Directors and officers of the corporation. Section 4 of the By-Laws provides that the Board of Directors shall govern the affairs of the Association, and that one of the three members of the Board of Directors shall be elected annually for a three-year term. The election of members of the Board of Directors must occur at the Association's annual meeting or at a meeting called for that purpose. By-Laws § 4(B). Section 5 of the By-Laws describes the requirements for Board meetings and quorum. The By-Laws are attached to this Complaint as Exhibit B and incorporated herein by reference.

9. Section 6 of the By-Laws identifies the powers and duties of the Board of Directors, including the duty to manage the fiscal affairs of the Association. Particularly, the Board of Directors shall prepare a budget, levy assessments and apply the proceeds of assessments in furtherance of the Board's duties. By-Laws § 6(A)(1). Additionally, the Board of Directors has a duty to cause to be kept a complete

record of all its acts and corporate affairs. By-Laws § 6(B)(1). Finally, the Board of Directors has the duty to establish annual assessments, to notify lot owners of the assessments, and to collect the assessment at monthly or other reasonable intervals. By-Laws §§ 6(B)(4) through 6(B)(7).

10. The By-Laws also provide that the President of the Association shall be a member of the Board of Directors and shall be elected annually. By-Laws § 7(A). The President shall have all the powers and duties which are usually vested in the office of the president of an association. By-Laws § 7(B).

11. Section 8 of the By-Laws describes with greater specificity the duties of the Board of Directors with respect to fiscal management. Such duties include the maintenance of an assessment roll for each lot within the Association as well as the creation and adoption of a budget for each fiscal year. By-Laws §§ 8(A) and 8(B). The Board of Directors shall determine the method of payment and due date for assessments, and must notify the members of the Association of the same. By-Laws § 8(C). Finally, the By-Laws require the Board to maintain a bank account for the monies collected from assessments:

“The depository of the Association shall be such bank or banks as shall be designed from time to time by the directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the directors.”

By-Laws § 8(C).

12. Section 14 of the By-Laws sets forth rules associated with annual and special assessments of the Association. Particularly, Section 14(C) states “It shall be the duty of the Board . . . to prepare and adopt a budget covering the estimated Common Expenses during the coming year”

13. On or about March 2009 the Defendant was elected to the Board of Directors for a three-year term. The Defendant was subsequently elected President of the Association. On or about October 4, 2012, the Board of Directors held a special meeting and voted to remove the Defendant as President of the Association and elect the Plaintiff to this position. The special meeting was properly noticed and a quorum was present. Thus, the Defendant's term as a member of the Board of Directors expired on or about October 4, 2012.

14. On or about November 16, 2012, the Plaintiff and the Secretary of the Board of Directors were sued by several members of the Association regarding actions taken by the then-elected Board.

15. In 2013, the Plaintiff and the Secretary of the Board filed a countersuit to the lawsuit.

16. The parties in both actions submitted motions for summary judgment. The court granted summary judgment in favor of the Plaintiff and the Secretary of the Board in or around March 2015.

17. The opposing parties appealed the order granting summary judgment in the original action against the Plaintiff.

18. The opposing parties also filed an additional suit against the Plaintiff for libel and slander in or around July 2015.

19. To date, the appeal of the 2012 action remains pending on appeal, and the Defendant has incorrectly maintained that any subsequent elections for positions on the Board of Directors or for officers of the Association must be stayed. This position is contrary to the Articles and By-Laws of the Association.

20. On or about May 17, 2015, the Association held its annual meeting. The meeting was properly noticed, and a quorum was present. Pursuant to the By-Laws, the Association held elections for a new Board of Directors, and the Plaintiff was elected one of the new members of the Board of Directors. An affidavit attesting to the validity of the meeting and the election of the Board of Directors, signed by the Association's attorney Capers G. Barr, IV, Esquire, is attached as Exhibit C and incorporated herein by reference.

21. On or about May 29, 2015, the Board of Directors met to elect officers for the 2015-2016 year. The meeting was duly noticed and a quorum was present. In accordance to the By-Laws, the Plaintiff was elected President of the Association.

22. In spite of these valid actions, the Defendant has willfully refused to acknowledge the authority properly vested in the Board of Directors elected on May 17, 2015 or the officers elected May 29, 2015.

23. On or about April 25, 2016, the Association held its annual meeting. The meeting was properly noticed, and a quorum was present. Pursuant to the By-Laws, the Donna Knight was duly elected to serve a three year term on the Board of Directors. A letter summarizing the actions taken to notice the meeting, along with a summary of the actions taken at the meeting, was sent to all members of the Association by the Association's attorney, Capers G. Barr, IV, Esquire, on May 5, 2016. This letter is attached as Exhibit D and incorporated herein by reference.

24. On or about May 20, 2016, in accordance with the By-Laws and the Articles of the Association, the Board of Directors met for the purpose of electing its officers for the 2016-2017 year. During this meeting, the Plaintiff was again elected President of the Association.

25. On or about May 31, 2016 the Plaintiff requested that the Defendant turn over the records of the Association, including the Association's bank information and checkbook, as he no longer was an elected officer of the Association.

26. In spite of this demand, the Defendant has refused to turn over the Association's records, bank information, and checkbook.

27. Despite the Plaintiff's rightful election as President of the Association, the Defendant has refused to recognize the Plaintiff's authority and has continued to act as if he were President of the Association. By way of example:

- a. On or about April 25, 2016, the Defendant, acting without authority, submitted invoices for the Association's annual assessment to all of its members;
- b. On or about June 20, 2016, the Defendant, acting without authority, submitted an accounting of expenses from the 2015-2016 year, including an Assessment Roll evidencing that the Defendant had improperly collected assessments from Association members for the 2016-2017 year.

28. The Defendant has, under the guise of continuing as President of the Association, notified members of assessments and collected the same. The Plaintiff believes that the proceeds from these assessments were deposited into the bank account of the Association over which the Defendant has improperly retained control.

29. The Defendant's refusal to turn over the corporate records, bank information, and checkbook of the Association is without reason and designed for the sole purpose of interfering with Plaintiff's ability to perform his duties as President.

30. The Plaintiff fears that, without the corporate records, bank information, and checkbook of the Association he will be unable to fully perform his official duties, unnecessarily exposing him to increased risk of future lawsuits in relation to the performance of his duties.

FOR A FIRST CAUSE OF ACTION
Declaratory Judgment

31. The Plaintiff incorporates all of the above allegations into this cause of action as if repeated herein verbatim.

32. Under South Carolina law, the Court has the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. S.C. Code § 15-53-20 (2016).

33. Under the Articles of Incorporation and By-Laws of the Live Oak Village Homeowner's Association, Plaintiff has a duty to manage the fiscal affairs of the Association and is entitled to the documents necessary to achieve this purpose.

34. The Plaintiff prays that the Court issue a declaration that he is the rightfully elected President of the Association, and in this capacity is entitled to the corporate records, bank information, and checkbook of the Live Oak Village Homeowner's Association, Inc.

35. The Plaintiff is further entitled, pursuant to S.C. Code § 15-53-120, to an order compelling Defendant McFarland to turn over the entirety of the corporate records, bank information, and checkbook of the Association to Plaintiff, immediately and without further delay.

FOR A SECOND CAUSE OF ACTION
Attorney's Fees and Costs

36. Section 15(D) of the By-Laws provides that each owner shall strictly comply with the By-Laws, rules, and regulations of the Association, and any owner's failure to comply with the same shall be grounds for imposing fines, suspending voting rights, or for instituting legal action. Further, Section 15(D) of the By-Laws states, "Should the Declarant or the Association employ legal counsel to enforce any of the

foregoing, all costs incurred with such enforcement, including court costs and reasonable attorneys fees, shall be paid by the violating Owner.”

37. The Defendant has failed to comply with the By-Laws of the Association by willfully refusing to recognize the rightful election of the Plaintiff as President of the Association; by fraudulently continuing to act as if he retained the same authority of President of the Association; by falsely representing to other members of the Association that he possessed such authority; and by refusing to turn over the corporate records, bank information, and checkbook of the Association to the Plaintiff.

38. The Plaintiff has been forced to initiate the present legal action to correct these wrongs and properly perform his duties as President of the Association.

39. In light of these instances of non-compliance, as well as others which may be discovered during the course of this litigation, the Plaintiff is entitled to compensation from the Defendant for all reasonable attorney's fees and costs incurred by the Plaintiff in relation to this action.

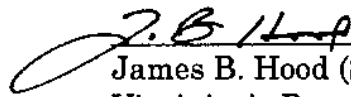
WHEREFORE, the Plaintiff prays that this Honorable Court inquire into these matters and issue an Order declaring that:

- a. The Plaintiff is the rightfully-elected President of the Live Oak Village Homeowner's Association, Inc.;
- b. In his capacity as President, the Plaintiff is entitled to possession of the corporate records, bank information, and checkbook of the Live Oak Village Homeowner's Association, Inc.; and
- c. The Defendant has a duty to turn over the corporate records, bank information, and checkbook of the Live Oak Village Homeowner's Association, Inc., to Plaintiff immediately;
- d. The Defendant must turn over the corporate records, bank information, and checkbook of the Live Oak Village Homeowner's Association, Inc., to Plaintiff immediately,

- e. Any failure to immediately turn over the corporate records, bank information, and checkbook to Plaintiff is a breach of Defendant; duty as a former officer of the Live Oak Village Homeowner's Association, Inc.;
- f. The Plaintiff is entitled to attorney's fees from Defendant for the costs of bringing this action pursuant to S.C. Code § 15-53-100 (2016); and
- g. The Plaintiff is entitled to any further relief, declaratory or otherwise, as the Court deems necessary and proper.

Respectfully Submitted,

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com


James B. Hood (SC #70212)
Virginia A. Rogers (SC #101849)

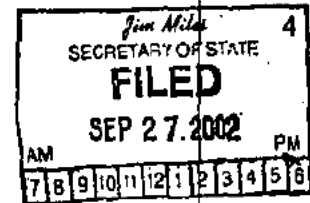
Attorneys for the Plaintiff
David Hannemann, as President of the Live
Oak Village Homeowner's Association, Inc.

9/8, 2016
Charleston, South Carolina

Feb 25 2016

REFERENCE ID: 1602251039551

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA



2016 SEP -9 PM 4:50
STATE OF SOUTH CAROLINA
SECRETARY OF STATE

JIM MILES
LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION, INC.
(A South Carolina Nonprofit Corporation)
ARTICLES OF INCORPORATION

Pursuant to Section 33-31-202 of the South Carolina Code of Laws, as amended, the undersigned corporation submits the following information.

- 1 The name of the nonprofit corporation is LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION, INC
- 2 The following words and phrases when used in the Articles of Incorporation (unless the context clearly reflects another meaning) shall have the following meanings:
 - a "Articles" mean these Articles of Incorporation and any amendments hereto.
 - b "Association" means LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION, INC., a South Carolina non-profit corporation.
 - c "Association Documents" mean, in the aggregate, the Protective Covenants, these Articles, the Bylaws and all of the instruments and documents referred to or incorporated therein including, but not limited to, amendments to any of the foregoing, as applicable.
 - d "Association Property" means the property more particularly described in Article II of the Protective Covenants.
 - e "Board" means the Board of Directors of the Association.
 - f "Project" means the planned residential community planned for development upon the Property committed to land use under the Protective Covenants and which is intended to be composed of, including, but not limited to, residential Lots and the Association Property located within the Property
 - g "Bylaws" mean the Bylaws of the Association and any amendments thereto.
 - h "County" means Dorchester County, South Carolina.
 - i "Declarant" means Oak Village Development, LLC and any successor or assign thereof, which acquires any Lot from Declarant for the purpose of development.
 - j "Director" means a member of the Board.
 - k "Home" means a residential dwelling unit in the Project intended as an abode for one family constructed on a Lot.
 - l "Lot" means a portion of the Property upon which a Home is permitted to be erected as shown on a Final Plat (as defined in the Protective Covenants). "Future Lot" means a plot of land within a Tract, as reflected by the current Sketch Plan for the Property, which is intended to become a Lot when that portion of the Tract becomes subject to a Final Plat.
 - m "Member" means a member of the Association.

02-049329CC



Feb 25 2016

REFERENCE ID: 1602251039551


SECRETARY OF STATE OF SOUTH CAROLINA

- n "Operating Expenses" mean the expenses for which Owners are liable to the Association as described in the Association Documents and includes, but is not limited to, the costs and expenses incurred by the Association in administering, operating, reconstructing, maintaining, repairing and replacing the Association Property as is more particularly described in the Protective Covenants.
- o "Owner" means the owner(s) of fee simple title to a Lot or a Tract and includes Declarant for so long as Declarant is the owner of the fee simple title to a Lot or a Tract.
- p "Property" means the real property which is made subject to the Protective Covenants from time to time in accordance with the terms thereof.
- q "Protective Covenants" means the Declaration of Covenants, Restrictions and Easements for LIVE OAK VILLAGE
- r "Tract" means any portion of the Property that is not subject to a Final Plat.

The terms defined in the Bylaws and the Protective Covenants are incorporated herein by reference and shall appear in initial capital letters each time such terms appear in the Articles.

3 The initial registered office of the nonprofit corporation is 1413 Eagle Landing Blvd, Berkeley County, Hanahan, South Carolina 29406.

The name of the registered agent of the nonprofit corporation at that office is John R. Payne.

I hereby consent to the appointment as registered agent of the corporation.


John R. Payne

- 4 The nonprofit corporation is a mutual benefit corporation and, desires to be incorporated in perpetuity.
- 5 The corporation will have members
- 6 The address of the principal office of the Corporation is 1413 Eagle Landing Blvd, Berkeley County, Hanahan, South Carolina 29406
- 7 The purpose of the proposed corporation is to own, operate, manage, administer, lease and maintain, as a property owners association, the common affairs and common areas of the property known generally as LIVE OAK VILLAGE, located in the County of Dorchester, State of South Carolina, in accordance with the terms and conditions of, and purposes set forth in the Association Documents and to carry out the covenants and enforce the provisions of the Association Documents.
- 8 The Corporation shall have the following powers and shall be governed by the following provisions:
 - A The Corporation shall have and exercise any and all powers, rights and privileges which corporations organized under the provisions of the South Carolina Code related to non-profit corporations by law may now or hereinafter have or exercise.
 - B The Corporation shall have all of the powers to be granted to the Association in the Association Documents. All of the provisions of the Protective Covenants and Bylaws which grant powers to the Association are incorporated into the Articles.

FEB 25 2016

REFERENCE ID: 1602251039551


SECRETARY OF STATE OF SOUTH CAROLINA

- C The Corporation shall have all of the powers reasonably necessary to implement the purposes of the Association, including, but not limited to, the following:
1. To perform any act required or contemplated by it under the Association Documents
 2. To make, establish, amend and enforce reasonable rules and regulations governing the use of the Association Property and the Property.
 3. To make, levy and collect assessments for the purpose of obtaining funds from its Members to pay Operating Expenses and costs of collection, including the operational expenses of the Association and to use and expend the proceeds of assessments in the exercise of the powers and duties of the Corporation.
 4. To own, maintain, repair, replace and operate the Association Property in accordance with the Association Documents. The common areas for the property of Live Oak Village cannot be mortgaged or conveyed without the consent of at least two-thirds (2/3) of the lot owners (excluding the Declarant).
 5. To enforce by legal means the obligations of the members and the provisions of the Association Documents.
 6. To employ personnel, retain independent contractors and professional personnel and enter into service contracts to provide for the maintenance, operation, administration and management of the Association Property and to enter into any other agreements consistent with the purposes of the Association, including, but not limited to, granting and modifying easements for public, utility, drainage and cable television purposes, agreements with respect to professional management of the Association Property and to delegate to such professional management certain powers and duties of the Association.
 7. To enter into the Protective Covenants and any amendments thereto and instruments referred to therein.
 8. To provide, to the extent deemed necessary by the Board, any and all services and do any and all things which are incidental to or in furtherance of things listed above or to carry out the Association mandate to keep and maintain the Project in a proper and aesthetically pleasing condition and to provide the Owners with services, amenities, controls and enforcement which will enhance the quality of life in the Project.
 9. Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of three-fourths (3/4) of all Members (at a duly called meeting of the Members at which a quorum is present) prior to the payment of legal or other fees to persons or entities engaged by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:
 - (a) the collection of assessments;
 - (b) the collection of other charges which Owners are obligated to pay pursuant to the Association Documents;
 - (c) the enforcement of any applicable use and occupancy restrictions contained in the Association Documents;
 - (d) in an emergency where waiting to obtain the approval of the Members

Feb 25 2016

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creates a substantial risk of irreparable injury to the Association Property or to Member(s) (the Imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths (3/4) of the Members); or

9 The qualification of Members of the Association, the manner of their admission to membership, the manner of the termination of such membership and the manner of voting by Members shall be as follows:

- A. Membership in the Association shall be composed of and limited to Owners of property located in LIVE OAK VILLAGE, as provided in the Protective Covenants. Where Title to a Lot is acquired by conveyance from a party other than Declarant or a Builder (as those terms are defined in the Protective Covenants), by means of sale, gift, inheritance, devise, judicial decree or otherwise, the person, persons or entity thereby acquiring such Lot shall not be a Member unless or until such Owner shall deliver a true copy of a deed or other instrument of acquisition of title to the Association
- B. No Member may assign, hypothecate or transfer in any manner his membership in the Association except as an appurtenance to such Owner's Lot.
- C. Any Member who conveys or loses title to a Lot by sale, gift, devise, bequest, judicial decree or otherwise shall, immediately upon such conveyance or loss of title, no longer be a Member with respect to such Lot and shall lose all rights and privileges of a Member resulting from ownership of such lot.
- D. There shall be only one (1) vote for each Lot. If there is more than one (1) Member with respect to a Lot as a result of the fee interest in such Lot being held by more than one person, such Members collectively shall be entitled to only one (1) vote. The vote of the Owners of a Lot owned by more than two (2) natural persons or by a corporation or other legal entity shall be cast by the person named in a certificate signed by all of the Owners of the Lot, or, if appropriate, by properly designated officers, partners or principals of the respective legal entity, and filed with the Secretary of the Association, and such certificate shall be valid until revoked by a subsequent certificate. If such a certificate is not filed with the Secretary of the Association, the vote of such Lot shall not be considered for a quorum or for any other purpose.

Notwithstanding the foregoing provisions, whenever any Lot is owned by two (2) natural persons ("Co-owners"), they may, but shall not be required to, designate a voting member. In the event a certificate designating a voting member is not filed by the Co-owners, the following provisions shall govern their right to vote:

- 1 Where both are present at a meeting, each shall be regarded as the agent and proxy of the other for purposes of casting the vote for each Lot owned by them. In the event they are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting.
- 2 Where only one (1) Co-owner is present at a meeting, the person present may cast the Lot vote without establishing the concurrence of the other Co-owner, absent any prior written notice to the contrary by the other Co-owner. In the event of prior written notice to the contrary to the Association by the other Co-owner, the vote of said Lot shall not be considered.
- 3 Where neither Co-owner is present, the person designated in a "Proxy" as

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Mark Drummond
Secretary of Board of South Carolina

defined in the Bylaws) signed by either Co-owner may cast the Lot vote, absent any prior written notice to the contrary to the Association by the other Co-owner or the designation of a different Proxy by the other Co-owner. In the event of prior written notice to the contrary to the Association or the designation of a different Proxy by the other Co-owner, the vote of said Lot shall not be considered.

E Unless a different percentage is specifically required by any other provisions of the Association Documents, a quorum shall consist of persons entitled to cast at least one-third (1/3) of the total number of votes of the Members. Such quorum requirement is subject to reduction in certain circumstances as is more particularly described in the Bylaws.

10 Upon dissolution of the Corporation (unless the same is reinstated), other than incident to a merger or consolidation all of the remaining assets shall be transferred only to another non-for-profit corporation or dedicated or conveyed to an appropriate governmental agency agreeing to accept such dedication or conveyance

11 The affairs of the Association shall be managed by the President of the Association, assisted by the Vice President(s) Secretary and Treasurer, and, if any, by the Assistant Secretary(ies) and Assistant Treasurer(s), subject to the directions of the Board.

The Board shall elect the President, Secretary and Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall, from time to time, determine. The President shall be elected from amongst the membership of the Board, but no other officer need be a Director. The same person may hold two offices, the duties of which are not incompatible; provided, however, the office of President and Vice President shall not be held by the same person, nor shall the office of President and Secretary or Assistant Secretary be held by the same person.

12 The names of the officers who are to serve until the first election of officers by the Board are as follows:

President	John R. Payne
Vice President	none
Secretary & Treasurer	Scott S. Drummond

13 A The number of Directors on the first Board of Directors of the Association ("First Board") and the "Initial Elected Board" (as hereinafter defined) shall be two (2). The number of Directors elected by the Members subsequent to the "Declarant's Resignation Event" (as hereinafter defined) shall be three (3). Except for Declarant-appointed Directors, Directors must be Members or the parents, children or spouse of Members. There shall be one (1) vote for each Director.

2 The names and addresses of the persons who are to serve as Directors on the First Board are as follows:

NAMES	ADDRESSES
John R. Payne	1413 Eagle Landing Blvd. Hanahan, South Carolina 29406.
Scott S. Drummond	121 Boone Street, Summerville, S. C. 29483.

Declarant reserves the right to replace and/or designate and elect successor Directors to serve on the First Board for so long as the First Board is to serve, as hereinafter provided.

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- 14 Each and every Director and officer of the Association shall be indemnified by the Association against all costs, expenses and liabilities, including attorney and paralegal fees at all trial appellate levels and post judgment proceedings, reasonably incurred by or imposed upon him in connection with any negotiations, proceeding, arbitration, litigation or settlement in which he becomes involved by reason of his being or having been a Director or officer of the Association, and the foregoing provision for indemnification shall apply whether or not such person is a Director or officer at the time such cost, expense or liability is incurred. Notwithstanding the above, in the event of any such settlement, the indemnification provisions provided in this Article shall not be automatic and shall apply only when the Board approves such settlement and reimbursement for the costs and expenses of such settlement as in the best interest of the Association, and in the event a Director or officer admits or is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties, the indemnification provisions of this Article shall not apply. The foregoing right of indemnifications provided in this Article shall be in addition to and not exclusive of any and all right of indemnification to which a Director or officer of the Association may be entitled under statute or common law.
- 15 The Bylaws shall be adopted by the First Board, and thereafter may be altered, amended or rescinded in the manner provided for in the Bylaws. In the event of any conflict between the provisions of these Articles and the provisions of the Bylaws, the provisions of these Articles shall control.
- 16 A All amendments or modifications to these Articles and adoption or repeal of Bylaws shall only be made by action of the First Board as described herein, which First Board shall have the power to amend or modify these Articles and to amend, modify, adopt and repeal any Bylaws without the requirement of any consent, approval or vote of the Members.
- B After the Turnover Date, these Articles may be amended in the following manner:
1. (a) The Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the Members, which may be at either the Annual Member's Meeting or a special meeting. Any number of proposed amendments may be submitted to the Members and voted upon by them at one meeting.
 - (b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each Member within the time and in the manner provided in the Bylaws for the giving of notice of meetings ("Required Notice").
 - (c) At such meeting, a vote of the Members shall be taken on the proposed amendment(s). The proposed amendment(s) shall be adopted upon receiving the affirmative vote of the Members entitled to cast two-thirds (2/3) of the votes of the Members.
2. An amendment may be adopted by a written statement (in lieu of a meeting) signed by all Members and all members of the Board setting forth their intention that an amendment to the Articles be adopted.
- C These Articles may not be amended without the written consent of a majority of the members of the Board.
- D Notwithstanding any provisions of this Article to the contrary, these Articles shall not be amended in any manner which shall prejudice the rights of: (i) Declarant, without the prior written consent thereto by Declarant, for so long as Declarant holds at least one (1) Lot for sale in the ordinary course of business; and (ii) any Institutional Mortgagee without the prior written consent of such Institutional Mortgagee.

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MARK HAMMOND
SECRETARY OF STATE OF SOUTH CAROLINA

- E Notwithstanding the foregoing provisions of this Article, no amendment to these Articles shall be adopted which shall abridge, amend or alter the rights of the Declarant hereunder including, but not limited to, Declarant's right to designate and select members of the First Board or otherwise designate and select Directors as provided herein, nor shall any amendment be adopted or become effective without the prior written consent of Declarant.
- F Any instrument amending these Articles shall identify the particular article or articles being amended and shall provide a reasonable method to identify the amendment being made. A certified copy of each of such amendment shall be attached to any certified copy of these Articles and a copy of each amendment certified by the Secretary of State shall be recorded amongst the Public Records of the County.

17 The name and address of the incorporator is as follows:

John R. Payne 1413 Eagle Landing Blvd, Hanahan, South Carolina 29406.

18 The incorporators have duly executed these ARTICLES OF INCORPORATION this 26 day of September 2007


John R. Payne

stanley/ccrp/OakVillage

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Mark Hammond

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

NOTICE OF CHANGE OF REGISTERED OFFICE
OR REGISTERED AGENT OR BOTH
OF A NONPROFIT CORPORATION

TYPE OR PRINT CLEARLY WITH BLACK INK

Pursuant to Sections 33-31-502 and 33-31-1508 of the 1976 South Carolina Code of Laws as amended,
the undersigned corporation submits the following information

1 The name of the corporation is LIVE OAK VILLAGE HOMEOWNERS ASSOC

2 The corporation is (complete either "a" or "b", whichever is applicable)

a A domestic nonprofit corporation incorporated in South Carolina on 9/27/2002 or

b A foreign nonprofit corporation incorporated in _____ on

_____ and authorized to do business in South Carolina on _____

3 The street address of the current registered office in South Carolina is
1413 Eagle Landing Blvd Monahan SC 29406
Street Address City State Zip Code

4 If the current registered office is to be changed the street address to which its registered office is
to be changed is
106 Oak Village Lane Summerville SC 29483
Street Address City State Zip Code

5 The name of the current registered agent is John R. Payne

6 If the current registered agent is to be changed, the name of the successor registered agent is
Jennifer McFarland

*I hereby consent to the appointment as registered agent of the corporation

Jennifer McFarland
Signature of New Registered Agent

7 The street addresses of the registered office and of the office of the registered agent, as
changed will be identical

*Pursuant to Sections 33-31-502(5) and 33-31-1508(5) of the 1976 South Carolina Code of Laws as amended,
the written consent of the registered agent may be attached in its form

090506-0278 FILED 06/06/2008
LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION INC
Filing Fee \$10.00 ORIG
Mark Hammond South Carolina Secretary of State

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Feb 25 2016
REFERENCE ID: 1602251039551

Mark Hammond
Secretary of State of South Carolina

Live Oak Village Homeowners
Name of Corporation *Assoc*

Date 4/30/2008

J.P. Metcalf
Signature
Secretary / Treasurer
Type or Print Name and Title

FILING INSTRUCTIONS

- 1 Two copies of this form the original and either a duplicate original or a conformed copy must be filed
- 2 Filing Fee (payable to the Secretary of State at the time of filing this document) \$10.00

Return to Secretary of State
P O Box 11350
Columbia SC 29211

EXHIBIT "C"

LIVE OAK VILLAGE HOMEOWNERS ASSOCIATION, INC.

2016-SEP-9 PM 4:50
FACILITIES SECURITY1. INTRODUCTION

These are the By-laws of Live Oak Village Homeowners Association, Inc., a nonprofit corporation organized under the laws of the State of South Carolina (herein-after called "the Association"), which is organized for the purpose of managing the business of the homeowners association for the community known as Live Oak Village Subdivision in Dorchester County, South Carolina. The Subdivision (the "Subdivision") is identified more particularly in the stated Declaration of Covenants and Restrictions for the Subdivision for which these By-laws are attached as Exhibit "C" to the Declaration. The developer of this Subdivision is the Declarant, Oak Village Development, LLC, referred to as "Declarant".

- (A) The provisions of these By-laws are applicable to any and all land subject to the Declaration, and the terms and provisions of these By-laws are expressly subject to the effect of the terms, provisions, conditions, and authorizations contained in the Declaration. The terms and provisions of the Declaration shall be controlling wherever and whenever, if ever, they are or may be in conflict with these By-laws.
- (B) All present or future co-owners, tenants, future tenants, or their employees, invitees, licensees, or any other person that might use the lands of the Subdivision, or any of the facilities thereof in any manner, are subject to the regulations set forth in these By-laws and in the Declaration, as either, or both, may be amended or supplemented from time to time.
- (C) The office of the Association shall be: OAK VILLAGE DEVELOPMENT, LLC., 1413 Eagle Landing Blvd. Hanahan, SC 29408 or at any other place at the Board of Directors of the Association may designate from time to time.
- (D) The fiscal year of the Association shall begin on January 1 and end on December 31 of each year, unless changed by the Board of Directors of the Association as herein provided .
- (E) The seal of the Association shall bear the name of the Association and the words "South Carolina" .
- (F) There shall be no dividends or profits paid to any members nor shall any part of the income of the Association be distributed to its Board of Directors or officers. In the event there are any excess receipts over disbursements as a result of performing services, such excess shall be applied against future expenses, etc. The Association shall not pay compensation to its members, directors or officers for services rendered. At anyone time, the Board may retain a management firm, and may contract with said firm to provide management for the Association and its subordinate regimes, or operator owned/controlled property, to include, but not be limited to, the following services:
- (1) financial services;
 - (2) administrative and clerical services; and
 - (3) maintenance, to include providing of goods, materials, labor and equipment, personnel supervision, contract labor, landscaping, and security.

Upon final dissolution and liquidation, the Association may make distribution to its members as is permitted by law or any Court having jurisdiction thereof, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income.

This Association shall issue no shares of stock of any kind or nature whatsoever. Membership in the Association and the transfer of that membership as well as the number of members/votes shall be in accordance with the terms and



conditions of the Declaration and the By-laws of the Association, and the voting rights of the Owners shall be as set forth in the Declaration and/or these By-laws of the Association.

2. MEMBERSHIP, VOTING, QUORUM, PROXIES

- (A) All persons who are Owners as defined in the Declaration shall be members of this Association, provided, however, that no non-owner, tenant, sub-lessee, or assign shall be a member, nor have voting rights in this Association. The rights and privileges of membership, including the right to vote and to hold an office in the Association, may be exercised by a member or a member's spouse, but in no event shall more than one (1) vote be cast or more than one (1) office held for each Lot. The foregoing is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. Notwithstanding any of the foregoing to the contrary, no Owner, whether one or more persons, shall have more than one membership/vote per Lot. Any membership shall automatically terminate when an Owner, as defined herein, is no longer seized and vested with title to any real property within the Subdivision, and membership and/or voting rights in the Association shall be limited to such Owners.
- (B) The quorum at members meetings shall consist of persons entitled to cast or proxy entitled to cast one-half (1/2) of the votes of the membership. The joinder of a member in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such person for the purpose of determining a quorum.
- (C) The vote of the Owners of a Lot owned by more than one person or by a corporation or other entity shall be cast by the person named in a certificate or appropriate resolution signed by all of the Owners of the Lot and filed with the Secretary of the Association, and such certificate or resolution shall be valid until revoked by subsequent certificate or resolution. If such a certificate is not on file, the vote of such Owners shall not be considered in determining the requirement for a quorum, nor for any other purpose.
- (D) Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time of the meeting for which their use is sought.
- (E) Approval or disapproval of an Owner upon any matters, whether or not the subject of an Association meeting, shall be by the same person who casts the vote of such Owner in an Association meeting.
- (F) Except where otherwise required under the provisions of the Certificate of Incorporation of the Association, these By-laws, the Declaration, or where the same may otherwise be required by law, the affirmative vote of the Owners holding at least a majority of the total votes cast at a meeting at which a quorum is present, shall be binding upon the members/Owners.

3. ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP

- (A) The annual members meeting shall be held at the office of the Association or such other place as may be designated by the Board of Directors, on the first Wednesday in March of each year or at such other time as shall be designated by the Board of Directors, for the purpose of transacting any business authorized to be transacted by the members. The first annual meeting shall be held in 2002.
- (B) Special members meetings shall be held whenever called by the President or Vice President, by a majority of the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all votes of the membership, and must be called by such officers upon receipt of a written request from the members of the Association owning a majority of the outstanding votes.

- (C) Notice of all members meetings, regular or special, shall be given by the President, Vice President or Secretary of the Association, or other officers of the Association in the absence of said officers, to each member, unless waived in writing, such notice to be written or printed and to state the time and place and object for which the meeting is called. Such notice shall be given to each member not less than ten (10) days nor more than sixty (60) days prior to the date set for such meeting, which notice shall be mailed or presented personally to each member within said time. If presented personally, receipt of such notice shall be signed by the member, indicating the date on which such notice was received by him or her. If mailed, such notice shall be deemed properly given when deposited in the United States mail addressed to the member at his or her post office address as it appears on the records of the Association, the postage thereon prepaid. Proof of such mailing shall be given by the affidavit of the person giving the notice. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such member. The presence at the meeting of members entitled to cast or proxy entitled to cast one-half (1/2) of the votes in each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation or the Declaration of these By-laws. If any members meeting cannot be organized because a quorum has not been attained, or because the greater percentage of the membership required to constitute a quorum for particular purposes has not attended, whenever the latter percentage of attendance may be required as set forth in the Certificate of Incorporation, these By-laws or the Declaration, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum, or the required percentage of attendance if greater than a quorum, is present.
- (D) At meetings of membership, the President shall preside or, in the absence of the President, the membership may select a chairman in the event that the Board does not designate an acting President or presiding officer for any such meeting.
- (E) The order of business at annual members meetings, and, as far as practical, at any other members meeting, shall be:
- (1) Calling of the roll and certifying proxies
 - (2) Proof of notice of meeting or waiver of notice
 - (3) Reading of minutes
 - (4) Reports of officers
 - (5) Reports of committees
 - (6) Unfinished business
 - (7) New business
 - (8) Adjournment

4. BOARD OF DIRECTORS

(A) **Governing Body; Composition**

The affairs of the Association shall be governed by a Board of Directors. Until the first annual meeting of the members, the affairs of the Association shall be managed by a Board of two (2) directors selected by the Declarants. Thereafter, the affairs of the Association shall be managed by a Board of three (3) directors elected as provided herein.

(B) **Term of Office**

At the annual meeting to be held in the calendar year 2002, the members shall elect one (1) director for a term of one (1) year, one (1) director for a term of two (2) years and one (1) director for a term of three (3) years, and at each annual meeting thereafter, Owners and members shall elect one (1) director for a

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term of three (3) years. The directors shall be elected by a majority of the votes cast by members at the meeting called for said purpose. In voting for directors, the membership shall have the number of votes set out in Section 3.4 of the Declaration.

(C) Removal

Any director may be removed from the Board, with or without cause, by a vote of the members holding at least a majority of the votes in 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.

(D) Compensation

No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

(E) Action Taken Without a Meeting

The directors shall have the right to take any action in the absence of a meeting of the directors 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.

5. MEETING OF DIRECTORS

(A) Regular Meetings

Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

(B) 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 mailed or presented personally to such director within such time.

(C) 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.

If any director's meeting cannot be organized because a quorum has not attended, or because the greater percentage of the directors required to constitute a quorum for particular purposes has not attended, wherever the latter percentage of attendance may be required as set forth in the Articles of Incorporation, these By-laws or the Declaration, the directors who are present may adjourn the meeting from time to time until a quorum, or the required percentage of attendance is greater than a quorum, is present. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such director for the purpose of determining a quorum.

6. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

(A) Powers

The Board of Directors shall manage and direct the affairs of the Association and may exercise all of the powers of the Association subject only to approval by the Owners, as designated and defined in the Declaration, when such is specifically required by these By-laws. The Board of Directors shall exercise such duties and responsibilities as shall be incumbent upon it by law, the Declaration or these By-laws, or as it may deem necessary or appropriate in the exercise of its powers and shall include, without limiting the generality of the foregoing, the following:

- (1) To prepare and adopt a budget, make, levy and collect assessments against members and members Lots to defray the cost of the Common Areas and facilities of the Subdivision, and to use the proceeds of said assessments in the exercise of the powers and duties granted unto the Association;
- (2) To carry out the maintenance, care, upkeep, repair, replacement, operation, surveillance and the management of the Common Areas, Recreational Amenities, services and facilities of the Subdivision wherever the same is required to be done and accomplished by the Association for the benefit of its members;
- (3) To carry out the reconstruction of improvements after casualty and the further improvement of the property, real and personal;
- (4) To make and amend regulations governing the use of the Property, real and personal, in the Subdivision so long as such regulations or amendments thereto do not conflict with the restrictions and limitations which may be placed upon the use of such Property under the terms of the Declaration;
- (5) To acquire, operate, lease, manage and otherwise trade and deal with Property, real and personal, including Lots in the Subdivision, as may be necessary or convenient in the operation and management of the Association, except those which may be required by the Declaration to have approval of the membership of the Association;
- (6) To enforce by legal means the provisions of the Certificate of Incorporation and By-laws of the Association, the Declaration and the regulations hereinafter promulgated governing use of the property in the Subdivision;
- (7) To pay all taxes and assessments which are liens against any part of the Subdivision other than Lots and the appurtenances thereto, and to assess the same against the members and their respective Lots subject to such liens;
- (8) To carry insurance for the protection of the Subdivision the members of the Association, and the Association against casualty, liability and other risks;
- (9) To pay all costs of power, water, sewer and other utility services rendered to the Association and not billed to the Owners of the separate Lots;
- (10) To employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association as well as to dismiss said personnel;
- (11) To adopt and publish rules and regulations governing the use of the Common Areas and facilities of the Association, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;
- (12) To suspend the voting rights and right to use of the Common Areas and facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;
- (13) To exercise for the Association all powers, duties and authority vested in or delegated to this Association by the Declaration and not reserved to the membership by other provisions of these By-laws, or the Certificate of Incorporation;

- (14) To 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;
- (15) To employ a manager, a managing agent, an independent contractor, or such other employees or agents as they deem necessary, and to prescribe their duties; and
- (16) To make special assessments to the extent provided in the Declaration and these By-laws.

(B) Duties

It shall be the duty of the Board of Directors to:

- (1) 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 Class A Members who are entitled to vote;
- (2) Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;
- (3) Establish a fiscal year;
- (4) Establish the annual assessment period and fix the amount of the annual assessment against each member for each Lot owned, at least thirty (30) days in advance of each annual assessment;
- (5) Establish the initial deposit to be made by each member in order to bring his total assessment deposit to the level required to meet his proportional share of the Common Expense;
- (6) Send written notice of each assessment to every Lot Owner, at least thirty (30) days in advance to each annual assessment period, and levy all such assessments as liens;
- (7) Collect all such assessments at monthly or other regular intervals as may be determined at its discretion;
- (8) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same;
- (9) Issue, or to cause an appropriate officer to issue, upon demand by any person, a Certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (10) Procure and maintain liability and fire and other hazard insurance on property owned by the Association;
- (11) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (12) Cause all of the facilities to be maintained;
- (13) Have a management agent for any of the above; and
- (14) Procure and maintain officers and directors liability insurance as it may deem appropriate.

(C) Meeting Location

Notwithstanding anything contained in these By-laws to the contrary, any meeting of members of directors may be held at any place within or without the State of South Carolina.

(D) Actions without Meetings

To the extent now or from time to time hereafter permitted by the law of South Carolina, the directors may take any action which they might take at a meeting of directors without a record of any such action so taken, signed by each director, to be retained in the Association's minute book and given equal dignity by all persons with the minutes of meetings led and held.

(E) Indemnity

The Association shall indemnify every director and every officer, their heirs, executors and administrators, against all loss, damages, costs or expenses of any type reasonably incurred by him in connection with any action, suit, or proceeding to which he is made a party by reason of his being or having been a director or officer of the Association, except as to such matters wherein shall be finally adjudged liable of gross negligence or willful misconduct. The Board may obtain for the Association directors and officers liability insurance coverage in such amounts as the Board deems necessary and appropriate.

7. OFFICERS

- (A) The executive officers of the Association shall be the President and Secretary, who shall be directors; a Vice President; and a Treasurer, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed by vote of the directors at any meeting. The Board of Directors shall from time to time elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.
- (B) The President shall be the chief executive officer of the Association. The President shall have all the powers and duties which are usually vested in the office of the President of an association, including, but not limited to, the power to appoint committees from among the members from time to time, as the President may in the President's discretion determine appropriate, to assist in the conduct of the affairs of the Association.
- (C) Any Vice President, unless the majority may select a presiding officer, shall, in the absence or disability of the President, exercise the powers and perform the duties of President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the directors.
- (D) The Secretary shall keep the minutes of all proceedings of the directors and the members. He shall attend to the giving and serving of all notices to the members and directors, and such other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of an association and as may be required by the directors or President. The Assistant Secretary shall perform the duties of Secretary when the Secretary is absent.
- (E) The Treasurer shall have custody of all of the property of the Association, including funds, securities and evidences of indebtedness. He shall keep the assessment rolls and accounts of members; he shall keep the books of the Association in accordance with good accounting practices; and he shall perform all other duties incident to the office of Treasurer.
- (F) The compensation of all officers and employees of the Association shall be fixed by the directors. This provision shall not preclude the Board of Directors from employing a director as an employee of the Association, nor preclude the contracting with a director for management of the Association.

8. FISCAL MANAGEMENT

The provisions for fiscal management of the Association set forth both in these By-laws and in the Declaration shall be supplemented and complimented by the following provisions:

- (A) The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Lot; for each subordinate regime; and for those developer-owned entities. Such an account shall designate the name and address of the Owner(s) or ownership/control entity, the amount of each

assessment against each category set forth immediately hereinabove, the dates and amount in which assessments come due, the amounts paid upon the account and the balance due upon assessments.

- (B) The Board of Directors shall adopt a budget for each fiscal year which shall contain estimates of the cost of performing the functions of the Association, including, but not limited to, the following items:
- (1) Common Expense budget, which shall include without limiting the generality of the foregoing, the estimated amounts necessary for maintenance, repair and/or replacement of: (a) all buildings and other improvements located within the Association's Common Areas; (b) all roads (not dedicated to the public), walks, lagoons, ponds, landscaped areas/natural areas and other improvements situated within the Common Areas or within easements encumbering Lots; (c) such security systems, utility lines, pipes, plumbing, wires, conduits and related systems which are a part of the service district, public or private utility or other person; (d) all lawns, trees, shrubs, hedges, grass and other landscaping situated within the Subdivision (but not on Lots) as it may be constituted from time to time; and (e) all maintenance of landscape and/or buffer easements; and
 - (2) Proposed Assessments against each member. Copies of the proposed budget and proposed Assessments shall be transmitted to each member at least thirty (30) days prior to the first day of the fiscal year for which the budget is made. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished each member concerned. Delivery of a copy of any budget or amended budget to each member shall not affect the liability of any member for any such assessment, nor shall delivery of a copy of such budget or amended budget be considered as a condition precedent to the effectiveness of said budget and assessments levied pursuant thereto, and nothing herein contained shall be construed as restricting the right of the Board of Directors to at any time in their sole discretion levy an additional Assessment in the event that the budget originally adopted shall appear to be insufficient to pay costs and expenses of operation and management, or in the event of emergencies.
- (C) The Board of Directors shall determine the method of payment of such Assessments and the due dates thereof and shall notify the members thereof. The Assessments will initially be on an annual basis unless changed by a vote of the majority of the Board of Directors.
- (D) The depository of the Association shall be such bank or banks as shall be designed from time to time by the directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the directors.
- (E) An audit of the accounts of the Association may be made annually and a copy of the report shall be furnished to each member not later than ninety (90) days after the last day of the fiscal year for which the report is made.
- (F) Fidelity bonds may be required by the Board of Directors from all officers and employees of the Association and from any contractor handling or responsible for Association funds. The amount of such bonds shall be determined by the directors, but shall be at least one-half (1/2) the amount of the total annual assessments against members for common expenses. The premiums on such bonds shall be paid by the Association.

9. PHYSICAL MANAGEMENT

Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair and have jurisdiction over the standards of exterior maintenance over all portions of the Common Areas and all Lots, which

responsibility shall include the maintenance, repair and/or replacement of: (i) all buildings and improvements located within the Association's Common Areas; (ii) all roads, walks, lagoons, ponds, landscaped areas, natural areas and other improvements situated within the Common Areas or within easements encumbering Lots; (iii) such security systems and utility lines, pipes, plumbing, wires, conduits and related systems which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility or other person; and (iv) all lawns, trees, shrubs, hedges, grass and other landscaping situated within the Subdivision (but not on Lots) as it may be constituted from time to time. The Association shall not be liable for injury or damage to any person or property (a) caused by the elements or by any Owner or any other person, (b) resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas, or (c) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system or utility line or facility, the responsibility for the maintenance of which is not that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored or left in or upon any portion of the Common Areas or any other portion of the Property. No diminution or abatement of Assessments or charges shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under the Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments and charges being a separate and independent covenant on the part of each Owner.

In the event that the Declarants or the Board of Directors determines that: (i) any owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder; or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests or invitees, and is not covered or paid for by insurance in whole or in part, then in either event, the Declarants or the Association, except in the event of an emergency situation, may give such Owner written notice of Declarants's or the Association's intent to provide such necessary maintenance, cleaning, repairs or replacement, at the sole cost and expense of such Owner, and cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in good and workmanlike manner, or if replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, the Declarants or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost shall be added to and become a part of the Assessment to which such Owner and his Lot are subject and shall become a lien against such Lot and shall become a lien against such Owner's Lot. In the event that Declarants undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse Declarants for Declarants's costs and expenses.

10. PARLIAMENTARY RULES

Roberts Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Articles of Incorporation and these By-laws or with the statutes of the State of South Carolina.

11. AMENDMENTS TO BY-LAWS

Amendments to these By-laws shall be proposed and adopted in the following manner:

- (A) Amendments to these By-laws may be proposed by the Board of Directors of the Association acting upon vote of the majority of the directors or by members of the Association holding one-fourth (1/4) of the members in the Association, whether meeting as members or by instrument in writing signed by them.
- (B) Upon any amendment or amendments to these By-laws being proposed by said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of the

Association, or other officer of the Association in absence of the President, who shall thereupon call a special joint meeting of the members of the Board of Directors of the Association and the membership for a date not sooner than twenty (20) days or later than sixty (60) days from receipt by such officer of the proposed amendment or amendments, and it shall be the duty of the Secretary to give to each member written or printed notice of such meeting in the same form and in the same manner as notice of the call of a special meeting of the members if required as herein set forth.

- (C) In order for such amendment or amendments to become effective, the same must be approved by a vote of the members holding at least a majority of the total votes at a meeting at which a quorum is present. Thereupon, such amendment or amendments to these By-laws shall be transcribed, certified by the President or Secretary of the Association, and a copy thereof shall be recorded in the Register of Mesne Conveyances of Dorchester County, South Carolina, within ten (10) days from the date on which any amendment or amendments have been affirmatively approved by the directors and members.
- (D) At any meeting held to consider such amendment or amendments to the By-laws, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting.
- (E) No amendment may be adopted or become effective without the prior written consent of the Declarant.

12. INSURANCE AND CASUALTY LOSSES

A) Insurance

- 1) The Board of Directors or its duly authorized agents shall have the authority to, and shall obtain and continue in effect, adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association and insuring all insurable improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism and malicious mischief. Such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation, to include anticipated costs of demolition and clearing prior to building, but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.
- 2) The Board or its duly authorized agents shall have the authority and may obtain and continue in effect a public liability policy covering all the Common Areas and all damage or injury caused by the negligence of the Association, its members, its directors and officers, or any of its agents. Such public liability policy shall provide such coverages as are determined to be necessary by the Board of Directors.
- 3) The Board or its duly authorized agents shall have the authority and may obtain: (i) worker's compensation insurance to the extent necessary to comply with any applicable law; and (ii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.
- 4) All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for each of the Owners and costs of all such coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Subdivision shall be vested in the Board of Directors; provided, however, that no Mortgagee or other security holder of the Common Areas having any interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. Insofar as permitted by law and reasonably obtainable, the Association shall be required to make every effort to secure insurance policies with the provisions hereinafter set forth:

- (a) All policies shall be written with a company holding rating of A + 10 or better in such financial categories as established by Best's Insurance Reports, if such a company is available or, if not available, its equivalent rating or the best rating possible,
 - (b) All property insurance policies shall be for the benefit of the Association, and/or its subordinate property regimes, Owners and Owner's Mortgagees, if applicable, as their interests may appear.
 - (c) All policies shall contain a waiver of the insurer's right to cancel without first giving thirty (30) days prior written notice of such cancellation to the Association and to any Mortgagee to which a mortgagee endorsement has been issued.
 - (d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees, and all policies shall contain a provision that the "other insurance" clauses in such policies exclude from consideration policies obtained by individual Owners or their Mortgagees.
 - (e) All policies shall contain a waiver of subrogation by the insurer as to any claims against the Association, the Association's directors and officers, the Owners and their respective families, servants, agents, tenants, guests and invitees, including without limitation the Association's manager.
 - (f) All policies shall contain a provision that no policy may be canceled, invalidated or suspended on account of the conduct of one or more of the individual Owners, or their respective families, servants, agents, employees, tenants, guests and invitees, or on account of the acts of any director, officer, employee or agent of the Association or of its manager, without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.
- 5) It shall be the individual responsibility of each Owner at his own expense to provide, as he sees fit, public liability, property damage, title and other insurance with respect to his own Lot. The Board of Directors may require all Owners, to include the Declarant, to carry public liability and property damage insurance on their respective Properties and Lots, and to furnish copies of certificates thereof to the Association.

(B) Damage to or Destruction of Common Areas

Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction, as used in this Article means repairing or restoring the damages to Property to substantially the same condition in which it existed prior to the fire or other casualty. Within sixty (60) days following any damage or destruction of all or part of the Common Areas, the Association shall use such insurance proceeds as may be available to restore or replace such damaged improvements, to include trees, shrubbery, lawns, landscaping, and natural vegetation. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special assessment against all Owners, in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction, provided that said special assessment is first approved by two-thirds (2/3) of the members of each class of membership present and voting at a meeting duly called to consider said special assessment. Such a special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied. Any and all sums paid to the Association under and by virtue of such assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or

reconstruction pursuant to and in accordance with such method of distribution as is established by the Board of Directors. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association.

C) **Damage to or Destruction of Lots**

In the event of damage or destruction by fire or other casualty to any Lots, such Owner shall, at its/their own expense, promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such Lot in a clean, orderly, safe and sightly condition. Such other Owner shall repair or rebuild such Lot other improvements to substantially the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions and provisions of this Declaration (including without limitation Article 10 hereof) and all applicable zoning, Subdivision, building and other governmental regulations. All such work of repair or construction shall be commenced promptly following such damage or destruction and shall be carried through, without interruption, diligently to conclusion.

13. **CONDEMNATION OF COMMON AREAS**

A) Whenever all or any part of the Common Areas of the Subdivision shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board acting with the approval by a vote of two-thirds (2/3) of the total votes of the Association who are voting in person or by proxy, at a meeting duly called for such purpose, for as long as Declarants owns any Lot primarily for the purpose of sale, the award of proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association and shall be disbursed or held as follows:

- 1) If the taking or sale in lieu thereof involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking, Declarants, for so long as Declarant owns any Lot primarily for the purpose of sale, together with at least seventy-five (75%) percent of the total votes of the Association, shall otherwise agree, the Association shall restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the Common Areas which are available therefor, in accordance with the plans approved by the Board of Directors, the Architectural Control Committee, and by the Declarant, for so long as the Declarant owns any Lot primarily for the purpose of sale. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special assessment against all Owners, provided that said special assessment is first approved by two-thirds (2/3) of the members of each class of membership present and voting at a meeting duly called to consider said special assessment. Such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied, and additional special assessments may be made at any time during or following the completion of any repair or reconstruction. If such improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Association.
- 2) If the taking or sale in lieu thereof does not involve any improvements to the Common Areas, or if there are not funds remaining after any such restoration or replacement of such improvements is completed, then such award, proceeds or net funds shall be retained by and for the benefit of the Association.
- 3) If the taking or sale in lieu thereof includes all or any part of a Lot and includes any part of the Common Areas, then a court of competent jurisdiction shall apportion such award or proceeds

and such award or proceeds shall be disbursed to the Association and the Owners so affected so as to give just compensation to the Owners of any Lot; provided, however, such apportionment may instead be resolved by the agreement of: (i) the Board of Directors; (ii) the Owners of all Lots wholly or partially taken or sold, together with the Mortgagees for such Lot; and (iii) the Declarant, for so long as the Declarant owns any Lot primarily for the purpose of sale.

14. Assessments

A) Purpose of Assessments

The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of the Subdivision, and maintaining the Subdivision and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors.

B) Creation of Lien and Personal Obligation of Assessments

Each Owner of a Lot by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (i) annual Assessments, such Assessments to be established and collected as provided in the Declaration and in Paragraph 14.C hereof; (ii) special Assessments, such assessments to be established and collected as provided in the Declaration and in Paragraph 14.D hereof; and (iii) individual or specific Assessments, against any particular Lot which are established pursuant to the terms of this Declaration, including but not limited to fines as may be imposed against such Lot in accordance with the provisions of these By-laws and of the Declaration. Any such Assessments, together with late charges as provided in the Declaration, together with court costs and reasonable attorneys fees incurred to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon the Lot, the Owner of which is responsible for payment. Each Owner shall be personally liable for Assessments coming due while he is the Owner of a Lot, and his grantee shall take title to such Lot subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefor; provided, however, the lien for unpaid Assessments shall not apply to the holder of any first priority institutional Mortgage or to the holder of any Mortgage securing a loan made by the Declarant, its affiliates, successors or assigns, and who take title to a Lot through foreclosure, or to any purchaser of such Lot at such foreclosure sale until title vests at which time charges for Assessments apply as to any other Owner. In the event of co-ownership of any Lot, all of such co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner that unless otherwise provided by the Board, the annual Assessment shall be paid in equal quarterly installments.

C) Computation of Annual Assessments

It shall be the duty of the Board at least thirty (30) days prior to the commencement of the Association's fiscal year to prepare and adopt a budget covering the estimated Common Expenses during the coming year, such budget to include a capital contribution of reserve account if necessary for the capital needs of the Association. The total annual Assessments shall be divided among the Lots equally, except as provided in the Declaration, so that each Lot, shall be subject to equal annual Assessments. The Association's budget shall be revisable by the Board without the necessity of approval by the Owners. In the event the Board fails for any

reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget and annual assessment in effect for the then current year shall be increased by five (5%) percent, and such increased budget shall be implemented for the succeeding year, until a new budget shall have been approved as provided above. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the approval of a special assessment as provided in Paragraph 14.D hereof. The Common Expenses to be funded by the annual assessments may include, but shall not necessarily be limited to, the following:

- 1) Management fees and expenses of administration including legal and accountant fees;
- 2) Utility charges for utilities serving the Common Areas and charges for other common services for the Subdivision, including trash collection and security services, if any such services or charges are provided or paid by the Association;
- 3) The cost of any policies of insurance purchased for the benefit of all Owners and the Association as required or permitted by the Declaration, including fire, flood and other hazard coverage, public liability coverage and such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Owners;
- 4) The expenses of maintenance, operation, repair and replacement of those portions of the Common Areas which are the responsibility of the Association under the provisions of the Declaration;
- 5) The expenses of maintenance, operation, repair and replacement of other amenities and facilities serving the Subdivision. The maintenance, operation, repair and replacement of which the Board from time to time determines to be in the best interest of the Association;
- 6) The expenses of the Architectural Control Committee which are not defrayed by plan review charges;
- 7) Ad valorem real and personal property taxes assessed and levied against the Common Areas;
- 8) Such other expenses as may be determined from time to time by the Board of Directors of the Association to be Common Expenses, including without limitation taxes and governmental charges not separately assessed against Lots; and
- 9) The establishment and maintenance of a reasonable reserve fund or funds (a) for maintenance, repair and replacement of those portions of the Common Areas which are the responsibility of the Association and which must be maintained, repaired or replaced on a periodic basis, (b) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (c) to cover unforeseen operating contingencies or deficiencies arising from unpaid assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors.

D) Special Assessments

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for any other purpose set forth in the By-laws of the Association. So long as the total amount of the special assessments allocable to all of the Lots in the Subdivision does not exceed Seven Thousand and no/100 (\$7,000.00) Dollars for the

entire Subdivision in anyone fiscal year, the Board of the Association may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to the entire Subdivision to exceed this limitation shall be effective only if such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose special assessments shall be paid as determined by the Board of Directors, and the Board may permit special assessments to be paid in instalments extending beyond the fiscal years in which the special assessment is imposed.

E) Individual Assessments

Any expenses of the Association occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests or invitees of any Owner shall be specially assessed against such Owners and their respective Lots. The individual assessments provided for in this Paragraph shall be levied by the Board of Directors and the amount and due date of such assessment so levied by the Board shall be as specified by the Board.

F) Initial Assessment

The Association shall collect the Initial Assessment as set out in Section 3.5 of the Declaration according to the terms and conditions thereof.

- G) All sums assessed against any Lot pursuant to the Declaration, together with court costs, reasonable attorneys fees, and late charges as provided herein, shall be secured by an equitable charge and continuing lien on such Lot in favor of the Association. Such liens shall be superior to all other liens and encumbrances on such Lot except only for: (a) liens of ad valorem taxes; and (b) liens for all sums unpaid on a first priority institutional Mortgage or on any Mortgage to the Declarants, or its affiliates, successors or assigns, and all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument. Notwithstanding the foregoing to the contrary, the subordination of assessments to the lien of such mortgages shall only apply to such assessments, which have become due and payable prior to a foreclosure. All other person(s) acquiring liens or encumbrances on any Lot after the Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for assessments as provided herein, whether or not such prior consent shall be specifically set forth in the Instruments creating such liens and encumbrances.

H) Effect of Nonpayment: Remedies of the Association

Any assessments of an Owner or any portions thereof which are not paid when due shall be delinquent. A lien and equitable charge as herein provided for each assessment shall be attached simultaneously as the same shall become due and payable, and if an assessment has not been paid within thirty (30) days, the entire unpaid balance of the annual assessment may be accelerated at the option of the Board and declared due and payable in full. The continuing lien and equitable charge of such assessment shall include all costs of collection (including reasonable attorneys fees and court costs) and any other amounts provided or permitted hereunder or by law. In the event that the assessment remains unpaid after sixty (60) days from the original due date, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Article shall be in favor of the Association, and each Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association and its agents the right and power to bring all actions against him personally for the collection of such assessments as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the

same. No Owner may waive or otherwise escape liability for the assessments provided herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Lot, and an Owner shall remain personally liable for assessments and late charges which accrue prior to a sale, transfer or other conveyance of his Lot .

In the event that any Lot is to be sold at the time when payment of any Assessment against the Owner of such Lot to the Association shall be in default (whether or not a claim of lien has been recorded by the Association) then the proceeds of such purchase shall, after payment of those sums given priority by S.C. Code Ann. Section 27-31-200 (1976) be applied by the purchaser first to payment of any then delinquent assessment or installment thereof due to the Association before the payment of any proceeds of purchase to the owner who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of any Lot (other than deed in lieu of foreclosure as set forth above), the Grantee shall be jointly and severally liable with the Grantor for all unpaid assessments against Grantor made prior to the time of such voluntary conveyance, without prejudice to the rights of the Grantee to recover from the Grantor the amounts paid by the Grantee therefor.

Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by Association which shall prevent its thereafter seeking enforcement of the collection of any sums remaining owing to it by foreclosure, nor shall proceeding by foreclosure to attempt to effect such collection be deemed to be an election precluding the institution of suit at law to attempt to effect collection of any sums then remaining owing to it.

I) **Certificates**

The Treasurer, any Assistant Treasurer or the manager of the Association shall, within ten (10) days of a written request, and upon payment of such fee as is from time to time determined by the Board of Directors, furnish to any Owner or such Owner's Mortgagee which requests the same, a certificate in writing signed by the said Treasurer, Assistant Treasurer or manager of the Association setting forth whether the assessments for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, late charges and other penalty charges. Such certificate shall be conclusive evidence against all but such Owner of payment of any assessments stated therein to have been paid.

J) **Date of Common Assessments.**

The annual assessments provided for herein shall commence as to each Lot as set forth the Declaration.

15. **RULE MAKING**

A) **Rules and Regulations**

Subject to the provisions hereof, the Board of Directors may establish reasonable rules and regulations concerning the use of Lots and the Common Areas and facilities located thereon, including without limitation the Recreational Amenities. In particular but without limitation, the Board of Directors may promulgate from time to time rules and regulations which shall govern activities which may, in the judgment of the Board of Directors, be environmentally hazardous, such as application of fertilizers, pesticides and other chemicals. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants and agents, until and unless any such rule or regulation be specifically overruled, canceled or modified by the Board of Directors or in a regular or special meeting of the

Association by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association, provided that in the event of such vote, such action must also be approved by the Declarants, for so long as the Declarants owns any Lot or Lot primarily for the purpose of sale.

B) Enforcement

Subject to the provisions hereof, upon the violation of the Declaration, the By-laws or any rules and regulations duly adopted hereunder, including without limitation the failure to timely pay any assessments, the Board shall have the power: (i) to impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot, the Owners, occupants or guests of which are guilty of such violation; (ii) to suspend an Owner's right to vote in the Association; or (iii) to suspend an Owner's right (and the right of such Owner's family, guests and tenants and of the co-Owners of such Owner and their respective families, guests and tenants) to use any of the Common Areas, and the Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests or tenants or by his Co-Owners or the family, guests or tenants of his Co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days.

C) Procedure

Except with respect to the failure to pay assessments, the Board shall not impose a fine, suspend voting rights or infringe upon or suspend any other rights of an Owner or other occupant of the Subdivision for violations of the Declaration, By-laws or any rules and regulations for the Association, unless and until the following procedure is followed:

- 1) Written demand to cease and desist from an alleged violation shall be served upon: the Owner responsible for such violation specifying:
 - (a) The alleged violation;
 - (b) The action required to abate the violation; and
 - (c) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Bylaws or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.
- 2) Within two (2) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice of a hearing to be held by the Board in executive session. The notice shall contain:
 - (a) The nature of the alleged violation;
 - (b) The time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice;
 - (c) An invitation to attend the hearing and produce any statement, evidence and witnesses on his behalf; and
 - (d) The proposed sanction to be imposed.
- 3) The hearing shall be held in executive session of the board of Directors pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard prior to the

effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director or other individual who delivered such notice. The notice requirement shall be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

D) Enforcement

Each Owner shall comply strictly with the By-laws and the published rules and regulations of the Association adopted pursuant to the declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in the Declaration and in the deed or other instrument of conveyance to his Lot, if any. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or rights of use in and to the Recreational Amenities, or for instituting an action to recover sums due, for damages and/or for injunctive relief, such actions to be maintainable by the Declarant, the Board of Directors on behalf of the Association or, in a proper case, by an aggrieved Owner. Should the Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of the Declaration, the By-laws and the rules and regulation of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure or omission on the part of the Declarant, the Association or any aggrieved Owner in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto as to the same violation or breach, or as to the enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whomsoever against the Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person under the provisions of the Declaration, the By-laws or any rules and regulations of the Association, however long continued.

16. DEFINITIONS.


All terms defined in the Declaration shall have the same meaning in these By-laws as in the Declaration.

17. CONFLICTS.

In the event of any conflict between the provisions of the Articles of Incorporation and these By-laws, the Articles shall control; and in the case of any conflict between the Declaration and the provisions of these By-laws, the provisions of the Declaration shall control.

in the amount of \$600.00 and deliver the assessment to the Association's **new post office box, Post Office Box 1622, Summerville, SC, 29484**. This is the proper post office box where assessments should be mailed. Any other invoices or notices of assessments which you receive, other than the notice of assessment for \$600 directing that payment be sent to Post Office Box 1622, Summerville, SC, 29484, are not valid invoices or notices and should be ignored.

Sincerely yours,



Capers G. Barr, IV

CGBiv:seg

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 DAVID K. HANNEMANN,)
 as President of the Live Oak Village)
 Homeowner's Association, Inc.,)
)
 Plaintiff,)
)
 v.)
)
 WILLIAM MCFARLAND,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIRST JUDICIAL CIRCUIT
 CASE NO. 2016-CP-18-1812

ANSWER

(Jury Trial Requested)

COMES NOW Defendant William McFarland ("Mr. McFarland"), by and through his undersigned counsel, answering the Complaint for Declaratory Judgment (the "Complaint") of Plaintiff David K. Hannemann ("Mr. Hannemann"), as President of the Live Oak Village Homeowner's Association, Inc. (the "Association"),¹ and would show unto this Honorable Court as follows.

GENERAL DENIAL

Mr. McFarland hereby denies all allegations of the Complaint except as expressly admitted or qualified in his specific responses below.

SPECIFIC RESPONSES²

Re: *Parties*

1. Admitted.
2. Admitted.

FILED-RECORDED
 2017 JAN 18 AM 11:42
 CHERYL GRAHAM
 CLERK OF COURT
 DORCHESTER COUNTY

¹ Mr. McFarland denies that Mr. Hannemann is the rightfully elected president of the Association.

² Each specific response is numbered to match the corresponding paragraph of the Complaint.

Re: *Jurisdiction and Venue*

3. No response is required because this paragraph states a conclusion(s) of law.
4. No response is required because this paragraph states a conclusion(s) of law.
5. No response is required because this paragraph states a conclusion(s) of law.

Re: *Facts*

6. Admitted.
7. The Articles speak for themselves; Mr. McFarland craves reference to them.
8. The By-Laws speak for themselves; Mr. McFarland craves reference to them.
9. The By-Laws speak for themselves; Mr. McFarland craves reference to them.
10. The By-Laws speak for themselves; Mr. McFarland craves reference to them.
11. The By-Laws speak for themselves; Mr. McFarland craves reference to them.
12. The By-Laws speak for themselves; Mr. McFarland craves reference to them.
13. Mr. McFarland admits only that he was elected to the Association's Board of Directors in or about March 2009 and subsequently elected the Association's President.
14. Mr. McFarland admits only that the record in the referenced litigation speaks for itself; Mr. McFarland craves reference to that record.
15. Mr. McFarland admits only that the record in the referenced litigation speaks for itself; Mr. McFarland craves reference to that record.
16. Mr. McFarland admits only that the record in the referenced litigation speaks for itself; Mr. McFarland craves reference to that record.
17. Mr. McFarland admits only that the record in the referenced litigation speaks for itself; Mr. McFarland craves reference to that record.

18. Mr. McFarland admits only that the record in the referenced litigation speaks for itself; Mr. McFarland craves reference to that record.

19. Mr. McFarland admits only that, at present, the referenced appeal remains pending.

20. Denied.

21. Denied.

22. Denied.

23. Mr. McFarland admits only that attorney Barr sent the referenced letter, which speaks for itself; Mr. McFarland craves reference to that letter—though, to be clear, Mr. McFarland does not admit the correctness of the letter’s substance, nor does Mr. McFarland admit that Mr. Barr was “the Association’s attorney,” as stated in the Complaint.

24. Denied.

25. Mr. Hannemann’s letter of May 31, 2016, speaks for itself; Mr. McFarland craves reference to that letter.

26. Admitted except for any wrongdoing that this paragraph might imply, which is expressly denied.

27. Mr. McFarland admits only that he does not recognize Mr. Hannemann’s supposed authority (as Mr. McFarland denies that Mr. Hannemann is the rightfully elected president of the Association) and that his (Mr. McFarland’s) continued service as president of the Association—which, Mr. McFarland maintains, is and has been proper—includes his efforts to collect and account for assessments from members of the Association.

28. Mr. McFarland admits only that his continued service as president of the Association—which he maintains is and has been proper—includes his efforts to collect and account for assessments from members of the Association.

29. Denied.

30. Denied; Mr. McFarland denies that Mr. Hannemann is the rightfully elected president of the Association.

**Re: *First Cause of Action*
(Declaratory Judgment)**

31. Mr. McFarland incorporates by reference his prior responses as though they were set forth here in full.

32. No response is required because this paragraph states a conclusion(s) of law.

33. The By-Laws speak for themselves, and Mr. McFarland craves reference to them; however, Mr. McFarland denies that Mr. Hannemann is the rightfully elected president of the Association.

34. Denied.

35. Denied.

**Re: *Second Cause of Action*
(Attorney's Fees and Costs)**

36. The By-Laws speak for themselves; Mr. McFarland craves reference to them.

37. Denied.

38. Denied.

39. Denied.

Re: *Prayer for Relief*

Mr. McFarland denies Mr. Hannemann's prayer for relief, i.e., the unnumbered ("Wherefore") paragraph concluding the Complaint, including all subparagraphs.

AFFIRMATIVE DEFENSES

Rule 12(b)(6), SCRCP

1. The Complaint should be dismissed, in whole or in part, under Rule 12(b)(6) to the extent that it fails to state facts sufficient to constitute a cause of action.

Rule 12(b)(7), SCRCP

2. The Complaint should be dismissed, in whole or in part, under Rule 12(b)(7) to the extent that it fails to join a party under Rule 19, SCRCP.

Rule 12(b)(8), SCRCP

3. The Complaint should be dismissed, in whole or in part, under Rule 12(b)(8) to the extent that another action is pending between the same parties for the same claim.

Res Judicata and/or Collateral Estoppel

4. To the extent applicable, the Complaint is barred, in whole or in part, by res judicata and/or collateral estoppel.

Statute of Limitations

5. To the extent applicable, the Complaint is barred, in whole or in part, by the statute of limitations.

First-Breach and/or Waiver

6. To the extent that any claim Mr. Hannemann has asserted against Mr. McFarland sounds in contract, any such claim is barred, in whole or in part, by the first-breach rule and/or waiver.

Estoppel, Laches, and/or Unclean Hands

7. To the extent that any claim Mr. Hannemann has asserted against Mr. McFarland is in equity, any such claim is barred, in whole or in part, by the doctrines of estoppel, laches, and/or unclean hands.

WHEREFORE, having fully answered the Complaint, Mr. McFarland prays for its dismissal with prejudice or entry of judgment thereon in his favor as to all claims Mr. Hannemann has asserted against him; for an award to him (against Mr. Hannemann) of all attorney fees, costs, and other expenses of litigation; and for any such other relief that the Court deems to be just and proper.

*****A JURY TRIAL IS DEMANDED ON ALL ISSUES SO TRIABLE*****

Respectfully submitted,
YOUNG CLEMENT RIVERS, LLP

By: 

Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
843-720-5488
rhines@ycrlaw.com

Attorneys for Defendant William McFarland

Charleston, South Carolina

Dated: 1/17/12

FILED - RECORD

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF DORCHESTER) 2017 FEB 21) PM 1:28 FIRST JUDICIAL CIRCUIT
 Case No. 2016-CP-18-1812

DAVID K. HANNEMANN,)
 as President of the Live Oak Village)
 Homeowner's Association, Inc.,)
)

Plaintiff,)

v.)

√ WILLIAM MCFARLAND,)
)
 Defendant.)

AMENDED ANSWER
AND COUNTERCLAIM
(Jury Trial Requested)

COMES NOW the Defendant, William McFarland ("Mr. McFarland"), by and through his undersigned counsel, answering the Complaint for Declaratory Judgment (the "Complaint") of the Plaintiff, David K. Hannemann ("Mr. Hannemann"), as President of the Live Oak Village Homeowner's Association, Inc. (the "HOA"),¹ and counterclaiming against Mr. Hannemann, and would show unto this Honorable Court as follows.

GENERAL DENIAL

Mr. McFarland hereby denies all allegations of the Complaint except as expressly admitted or qualified in his specific responses below.

SPECIFIC RESPONSES²

Re: **Parties**

1. Admitted.
2. Admitted.

¹ Mr. McFarland denies that Mr. Hannemann is the rightfully elected HOA President.
² Each specific response is numbered to match the corresponding paragraph of the Complaint.

Re: **Jurisdiction and Venue**

3. No response is required because this paragraph states a conclusion(s) of law.
4. No response is required because this paragraph states a conclusion(s) of law.
5. No response is required because this paragraph states a conclusion(s) of law.

Re: **Facts**

6. Admitted.
7. The Articles speak for themselves; Mr. McFarland craves reference to them.
8. The By-Laws speak for themselves; Mr. McFarland craves reference to them.
9. The By-Laws speak for themselves; Mr. McFarland craves reference to them.
10. The By-Laws speak for themselves; Mr. McFarland craves reference to them.
11. The By-Laws speak for themselves; Mr. McFarland craves reference to them.
12. The By-Laws speak for themselves; Mr. McFarland craves reference to them.
13. Mr. McFarland admits only that he was elected to the HOA's Board of Directors (the "HOA Board") in or about March 2009 and subsequently elected HOA President.
14. Mr. McFarland admits only that the record in the referenced litigation speaks for itself; Mr. McFarland craves reference to that record.
15. Mr. McFarland admits only that the record in the referenced litigation speaks for itself; Mr. McFarland craves reference to that record.
16. Mr. McFarland admits only that the record in the referenced litigation speaks for itself; Mr. McFarland craves reference to that record. Mr. McFarland would, however, clarify that the referenced summary judgment in favor of Mr. Hannemann (as well as in favor of his referenced co-defendant, the supposed Secretary of the HOA Board) was a partial summary judgment, and it did not dispose of all of the claims against Mr. Hannemann (nor did it dispose

of all of the claims against his referenced co-defendant) in the referenced litigation, and at that, though the referenced litigation remains pending on appeal, the partial summary judgment in favor of Mr. Hannemann (and his referenced co-defendant) has itself been partially reversed by the South Carolina Court of Appeals.

17. Mr. McFarland admits only that the record in the referenced litigation speaks for itself; Mr. McFarland craves reference to that record.

18. Mr. McFarland admits only that the record in the referenced litigation speaks for itself; Mr. McFarland craves reference to that record.

19. Mr. McFarland admits only that, at present, the referenced appeal remains pending.

20. Denied.

21. Denied.

22. Denied.

23. Mr. McFarland admits only that attorney Barr sent the referenced letter, which speaks for itself; Mr. McFarland craves reference to that letter—though, to be clear, Mr. McFarland does not admit the correctness of the letter’s substance nor does Mr. McFarland admit that Mr. Barr was “the Association’s attorney,” as stated in the Complaint.

24. Denied.

25. Mr. Hannemann’s letter of May 31, 2016, speaks for itself; Mr. McFarland craves reference to that letter.

26. Admitted except for any wrongdoing that this paragraph might imply, which is expressly denied.

27. Mr. McFarland admits only that he does not recognize Mr. Hannemann's supposed authority (as Mr. McFarland denies that Mr. Hannemann is the rightfully elected HOA President) and that his (Mr. McFarland's) continued service as HOA President—which, Mr. McFarland maintains, is and has been proper—includes his efforts to collect and account for assessments from members of the HOA.

28. Mr. McFarland admits only that his continued service as HOA President—which he maintains is and has been proper—includes his efforts to collect and account for assessments from members of the HOA.

29. Denied.

30. Denied; Mr. McFarland denies that Mr. Hannemann is the rightfully elected HOA President.

Re: **First Cause of Action**
(Declaratory Judgment)

31. Mr. McFarland incorporates by reference his prior responses as though they were set forth here in full.

32. No response is required because this paragraph states a conclusion(s) of law.

33. The By-Laws speak for themselves, and Mr. McFarland craves reference to them; however, Mr. McFarland denies that Mr. Hannemann is the rightfully elected HOA President.

34. Denied.

35. Denied.

Re: **Second Cause of Action**
(Attorney's Fees and Costs)

36. The By-Laws speak for themselves; Mr. McFarland craves reference to them.

37. Denied.

38. Denied.

39. Denied.

Re: **Mr. Hannemann's Prayer for Relief**

Mr. McFarland denies Mr. Hannemann's prayer for relief, i.e., the unnumbered ("Wherefore") paragraph concluding the Complaint, including all subparagraphs.

AFFIRMATIVE DEFENSES

(Rule 12(b)(6), SCRCPP)

1. The Complaint should be dismissed, in whole or in part, under Rule 12(b)(6) to the extent that it fails to state facts sufficient to constitute a cause of action.

(Rule 12(b)(7), SCRCPP)

2. The Complaint should be dismissed, in whole or in part, under Rule 12(b)(7) to the extent that it fails to join a party under Rule 19, SCRCPP.

(Rule 12(b)(8), SCRCPP)

3. The Complaint should be dismissed, in whole or in part, under Rule 12(b)(8) to the extent that another action is pending between the same parties for the same claim.

(Res Judicata and/or Collateral Estoppel)

4. To the extent applicable, the Complaint is barred, in whole or in part, by res judicata and/or collateral estoppel.

(Statute of Limitations)

5. To the extent applicable, the Complaint is barred, in whole or in part, by the statute of limitations.

(First-Breach Rule and/or Waiver)

6. To the extent that any claim Mr. Hannemann has asserted against Mr. McFarland sounds in contract, any such claim is barred, in whole or in part, by the first-breach rule and/or waiver.

(Estoppel; Laches; and/or Unclean Hands)

7. To the extent that any claim Mr. Hannemann has asserted against Mr. McFarland is in equity, any such claim is barred, in whole or in part, by the doctrines of estoppel, laches, and/or unclean hands.

COUNTERCLAIM

Parties

1. Mr. Hannemann is a citizen and resident of Dorchester County, South Carolina.
2. Mr. McFarland is a citizen and resident of Dorchester County, South Carolina.

Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter of this counterclaim because it is a general trial court of the State of South Carolina with original jurisdiction in civil cases and the power to hear and determine cases of the general class to which this counterclaim belongs, as evidenced by the allegations set forth herein and the relief sought hereby.

4. This Court has jurisdiction over the parties to this counterclaim, all of whom are citizens and residents of the State of South Carolina; also, the acts and/or omissions attributable to Mr. Hannemann (set forth herein) giving rise to this counterclaim occurred in South Carolina.

5. Venue for this counterclaim is proper in Dorchester County because Mr. Hannemann is a resident of Dorchester County, and the most substantial part of the acts and/or

omissions attributable to Mr. Hannemann (set forth herein) giving rise to this counterclaim occurred in Dorchester County.

Facts

6. Mr. McFarland and his wife own their home located at 105 Oak Village Lane, Summerville, SC 29483, which is in Dorchester County and is further identified by Dorchester County TMS No. 137-05-05-016 (the "Lot").

7. The Lot is in the Dorchester County subdivision known as Live Oak Village, and as owners of the Lot, the McFarlands are members of the HOA; indeed, the McFarlands were the first residents of the subdivision, and they played an essential role in the creation and/or development of the subdivision and the HOA.

8. Formed for the purpose of managing the business of the homeowners association for the then proposed community to be known as the Live Oak Village subdivision, the HOA was incorporated on September 27, 2002, by incorporator John R. Payne ("Mr. Payne"), who, along with Scott S. Drummond ("Mr. Drummond"), was one of two initial (unelected) HOA officers and HOA Board members.

9. The McFarlands have owned the Lot since October 4, 2002, when they bought it from LowCountry Signature Homes, Inc.; the McFarlands' deed was recorded in the Office of the Register of Deeds for Dorchester County on October 10, 2002, in Book 3272 at Page 017.

10. On October 8, 2002, a certain Declaration of Covenants and Restrictions for Live Oak Village, Summerville, South Carolina (the "Initial Declaration"), was recorded in the Office of the Register of Deeds for Dorchester County in Book 3268 at Page 227.

11. The Initial Declaration was made by and among Mr. Payne; Mr. Drummond; LowCountry Signature Homes, Inc.; Payne Homes, LLC; and The Village Development

Corporation, LLC, and its signatories were Mr. Payne; Mr. Drummond; Oak Village Development, LLC, by Mr. Payne, its Managing Member; LowCountry Signature Homes, Inc., by Mr. Payne, its President; Payne Homes, LLC, by Mr. Payne, its Managing Member; and The Village Development Corporation, LLC, by The Village Construction Company, its Managing Member, through David Willis, Managing Member of The Village Construction Company.

12. According to the Initial Declaration, “Oak Village Development, LLC . . . ha[d] been designated as the ‘Developer’” and “Developer [wa]s the owner of certain real property” which “Developer” declared submitted to the covenants and restrictions set forth in the Initial Declaration and on which “Developer propose[d] to create a subdivision known as Live Oak Village . . . containing detached home site lots and common areas”

13. On November 26, 2002, however, an instrument titled Amendments to the Declaration of Covenants and Restrictions for Live Oak Village, Summerville, South Carolina (the “Amended Declaration”), was recorded in the Office of the Register of Deeds for Dorchester County in Book 3332 at Page 198.

14. The Amended Declaration was made by and among Mr. Payne; Mr. Drummond; *Mr. McFarland; Mrs. McFarland*; LowCountry Signature Homes, Inc.; Payne Homes, LLC; and The Village Development Corporation, LLC, and *the McFarlands* were among its signatories—the other signatories being those persons and entities who had signed the Initial Declaration.

15. According to the Amended Declaration, “Oak Village Development, LLC . . . ha[d] been designated as the ‘Developer’” and “Developer [wa]s the owner of certain real property” which “Developer” declared submitted to the covenants and restrictions set forth in the Amended Declaration and on which “Developer propose[d] to create a subdivision known as Live Oak Village . . . containing detached home site lots and common areas”

16. Though it was recited that Oak Village Development, LLC, was “designated as the ‘Developer,’” context ties this designation to the notion that the referenced “Developer” owned all of the real property declared subject to the covenants and restrictions for the “propose[d]” subdivision of Live Oak Village “to [be] create[d].”

17. Oak Village Development, LLC, however, did not own all of the real property declared subject to the covenants and restrictions for the “propose[d]” subdivision of Live Oak Village “to [be] create[d];” the McFarlands already owned the Lot before the Initial Declaration was recorded, and the McFarlands, necessary signatories to the Amended Declaration for the “propose[d]” subdivision of Live Oak Village “to [be] create[d],” were, in fact, declarants, and, notwithstanding the designation of Oak Village Development, LLC, “as the ‘Developer,’” as declarants for the “propose[d]” subdivision of Live Oak Village “to [be] create[d],” within the framework of the Amended Declaration, the reference “Developer” applies to the McFarlands in respect of the rights and protections “Developer” is afforded.

18. Likewise, the By-Laws state, “The developer of this Subdivision is the Declarant, Oak Village Development, LLC, referred to as ‘Declarant.’” Notwithstanding this designation of Oak Village Development, LLC, as “Declarant,” again, the McFarlands were, in fact, declarants, and within the framework of the Amended Declaration—which, it should be noted, controls in the event of any conflict with the By-Laws and, at that, was filed after the By-Laws—the reference “Developer” applies to the McFarlands in respect of the rights and protections “Developer” is afforded, within the framework of the By-Laws, too, the reference “Declarant” applies to the McFarlands in respect of the rights and protections “Declarant” is afforded.

19. The McFarlands’ ownership of the Lot pre-dated completion of the basic initial improvements (to common areas, including utility systems, and to drainage systems and other

improvements serving the lots) as well as construction of entrance walls, fencing, a subdivision identification sign, mail receptacles, and the private road through the subdivision called for under the plan of development set forth in the Amended Declaration.

20. With Oak Village Development, LLC, unable or unwilling to complete the work called for under the plan of development, Mr. Payne appointed Mrs. McFarland registered agent of the HOA in 2008 (a position she continues to occupy), placed the McFarlands in charge of the HOA's bank account, and left it up to the McFarlands to see that remaining items in the plan of development were accomplished.

21. No tax returns having been previously filed on behalf of the HOA, the McFarlands saw to it that proper returns, including for returns for prior years, were filed for the HOA, and since beginning in approximately 2004 (and continuing at present), all vendor accounts of the HOA (water, electric, phone) and the HOA's bank account have been in the McFarland name.

22. The affairs of the HOA are to be governed by the HOA Board.

23. The HOA President is the chief executive officer of the HOA.

24. In 2009, Mr. McFarland was duly elected HOA President and to the HOA Board.

25. In 2012, while Mr. McFarland was the duly elected HOA President and a duly elected member of the three-member HOA Board, the HOA became dysfunctional because of the acts/omissions of the other (i.e., besides Mr. McFarland) two members of the HOA Board, Mr. Hannemann and Thomas Morris ("Mr. Morris").

26. This led to the filing of a lawsuit in the fall of 2012, which remains pending, captioned Live Oak Village Homeowners Association, Inc., et al. v. Morris et al., Case No.

2012-CP-18-2583 (the "Pending Suit"), against Messrs. Hannemann and Morris, and two other defendants who are no longer owners in the subdivision.

27. The Pending Suit alleges Messrs. Hannemann and Morris's willful operation outside the scope of their authority as officers and/or directors of the HOA by taking, or failing to take, action as required by the HOA's governing documents, including, but not limited to, the following:

- (a) Voting to waive fines that applied to themselves;
- (b) Failing to hold timely or properly noticed meetings the HOA or HOA Board;
- (c) Allowing unauthorized persons to vote and participate in HOA Board meetings;
- (d) Voting on matters in which they have a personal financial interest;
- (e) Voting in violation of South Carolina Code Ann. § 33-31-830;
- (f) Failing to properly handle HOA funds;
- (g) Failing to enforce covenants and restrictions in a uniform and unbiased manner; and
- (h) Violating the covenants and restrictions.

28. The Pending Suit also alleges that Messrs. Hannemann and Morris have conspired for the purpose of injuring the HOA.

29. In response to the Pending Suit, Messrs. Hannemann and Morris asserted third-party claims against Mr. McFarland, alleging causes of action for (a) an accounting, (b) conversion of HOA funds, (c) breach of fiduciary duty, and (d) negligence.

30. The trial court granted summary judgment in favor of Mr. McFarland (i.e., against Messrs. Hannemann and Morris) as to all of these claims.

31. As a result of the dysfunction that had led to the filing of the Pending Suit, no HOA meetings or elections were held in the years 2013 and 2014.

32. As the duly elected HOA Present and the only duly elected member of the HOA Board who did not cause the HOA to become dysfunctional (the other two members of the HOA Board being Messrs. Hannemann and Morris, who were responsible for the dysfunction), Mr. McFarland has, ever since the HOA became dysfunctional in 2012, continued to serve, de facto and/or de jure, as HOA President and the only member of the HOA Board authorized to conduct HOA business, and all other members of the HOA besides Messrs. Hannemann and Morris have consistently acted in conformity therewith—indeed, though not consistently, even Messrs. Hannemann and Morris have at times acted in conformity therewith.

33. Messrs. Hannemann and Morris caused purported HOA annual meetings to be held on May 17, 2015, and April 25, 2016, but those meetings, and any action taken at them, were invalid.

34. The HOA's governing documents require timely payment of annual HOA assessments. When an assessment, or any portion thereof, is not paid when due it is delinquent; the unpaid balance accrues interest (and an additional penalty may be assessed); and HOA voting rights are suspended as the non-paying member is not in good standing with the HOA.

35. In addition to the actions alleged against them in the Pending Suit, which compromise their standing with the HOA and their authority to act on its behalf, Messrs. Hannemann and Morris did not timely pay their \$1,000 annual HOA assessments for the years 2013 and 2014, and when they finally did provide checks for late payment of these

assessments—their checks, it should be noted, were provided to Mr. McFarland’s counsel in the Pending Suit, in conformity with Mr. McFarland’s de facto and/or de jure status as HOA President and the only member of the HOA Board authorized to conduct HOA business—they were not actually received by the HOA until after May 17, 2015, and at that they did not account for interest or penalties; accordingly, Messrs. Hannemann and Morris were not in good standing with the HOA and were not authorized to act on HOA matters at the time of the purported May 17, 2015, HOA annual meeting, and their lack of good standing/authority to act persisted at the time of the purported April 25, 2016, HOA annual meeting, as has continued to persist.

36. Additionally, Messrs. Hannemann and Morris’s 2015 HOA assessments were not paid on time—though when they did pay them, they did so via deposit into the HOA bank account that Mr. McFarland controls as de facto and/or de jure HOA President and the only member of the HOA Board authorized to conduct HOA business.

37. Despite years of his fellow HOA members consistently acting in conformity with Mr. McFarland’s status as de facto and/or de jure HOA President and the only member of the HOA Board authorized to conduct HOA business during the pendency of the Pending Suit, which included Mr. McFarland’s preparation of the annual HOA assessment notice provided to all members of the HOA in or about April of each year to cover the period from June 1 of the current year through May 31 of the year to follow, on April 26, 2016, Mr. Hannemann, representing himself to be HOA President and an HOA Board member, wrote all members of the HOA advising that, as a result of the purported HOA annual meeting on April 25, 2016, a new HOA assessment was owed by all members in the amount of \$600 for the six-month period from June 1, 2016, through December 31, 2016.

38. In his April 26, 2016, letter, Mr. Hannemann advised that the HOA members' payments for the new \$600 assessments would be deposited into a "new corporate []HOA checking account by the current Treasurer [Mr. Morris]," and that, if a member instead paid his/her annual assessment in accordance with the notice Mr. McFarland sent, it "could put you in jeopardy."

39. On May 31, 2016, however, Mr. Hannemann, again representing himself to be HOA President and an HOA Board member, wrote another letter to all HOA members acknowledging that, despite the assessment notice in his April 26, 2016, letter, "some assessments were paid into an account other than the newly established []HOA checking account," i.e., they had been paid in accordance with the annual HOA assessment Mr. McFarland sent.

40. Mr. Hannemann's May 31, 2016, letter continued, "While disappointing, the Board does not contemplate any action against homeowners regarding this issue at this time. However, Mr. Morris and I have sent our assessments to the newly established P.O. Box and checking account."

41. On November 28, 2016, Mr. Hannemann, again representing himself to be HOA President and an HOA Board member, wrote all HOA members advising of a \$1,000 annual assessment for the year 2017; as for those members who already paid \$1,000 back in May of 2016 in accordance with the assessment Mr. McFarland had sent (which, in point of fact, were all of the HOA members besides Messrs. Hannemann and Morris), Mr. Hannemann advised that their HOA assessments for 2017 were \$600 and were due by December 31, 2016, and that "[f]ailure to pay your assessment in a timely manner, December 31, 2016, could result in a lien being placed against you and your property."

For a First Cause of Action
(Declaratory Judgment No. 1)

42. The preceding paragraphs of this counterclaim are incorporated herein.

43. This Court has the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

44. Under the circumstances set forth herein, Mr. McFarland is entitled to a judicial declaration that he and/or Mrs. McFarland are declarants under the operative declaration of covenants and restrictions for the Live Oak Village subdivision and that, notwithstanding the designation of Oak Village Development, LLC, “as the ‘Developer’” in the Amended Declaration and as “Declarant” in the By-Laws, within the framework of the Amended Declaration and By-Laws, the references “Developer” and “Declarant” apply to Mr. and/or Mrs. McFarland in respect of the rights and protections “Developer” and “Declarant” are afforded, to include, especially, the right to recover attorney’s fees and costs in HOA enforcement actions; moreover, Mr. McFarland is entitled to such a judicial declaration on account of the McFarlands’ unique status not only as signatories to the Amended Declarations but also on account of their active and essential role as otherwise respects the creation and/or development the subdivision and the HOA, which compels that Mr. and/or Mrs. McFarland be afforded the rights and protections as “Developer” and “Declarant,” to include, especially, the right to recover attorney’s fees and costs in HOA enforcement actions.

For a Second Cause of Action
(Declaratory Judgment No. 2)

45. The preceding paragraphs of this counterclaim are incorporated herein.

46. Given that the HOA was rendered dysfunctional by the actions of Messrs. Hannemann and Morris at a time when Mr. McFarland was the duly elected HOA President and

only HOA Board member in good standing with authority to act on the HOA's behalf, and given that Mr. McFarland has served in these capacities, de facto and/or de jure, ever since—dutifully handling the general and ordinary business of the HOA, to include, without limitation, maintaining the HOA's bank account, collecting annual HOA assessments, paying the HOA's expenses, providing accounting and budgetary information to HOA members, and tending to common area maintenance—with all other members of the HOA besides Messrs. Hannemann and Morris consistently acting in conformity therewith, Mr. McFarland is entitled to a judicial declaration that at all relevant times he has been, as he continues to be for the time being (while the Pending Suit remains pending), the de facto and/or de jure HOA President and the only HOA Board member authorized to conduct HOA business and, indeed, the de facto and/or de jure HOA and/or HOA Board at all times since the HOA became dysfunctional; conversely, Mr. McFarland is entitled to a judicial declaration that Mr. Hannemann is neither a duly elected HOA officer nor member of the HOA Board and that the purported HOA-related actions which he has taken or caused to be taken or otherwise taken part in since the HOA became dysfunctional in 2012 are, and have been, invalid.

For a Third Cause of Action
(Breach of Contract and/or Conversion)

47. The preceding paragraphs of this counterclaim are incorporated herein.
48. The governing documents of the HOA, including its covenants and restrictions and By-Laws, are contracts, and among purposes of those contracts is the protection of the property values in the subdivision.
49. The governing documents of the HOA specifically identify the legal entity that is the HOA as "Live Oak Village Homeowners Association, Inc.," which is the name by which the entity is recognized by the South Carolina Secretary of State.

50. As an entity, the HOA has one true bank account, which is the account that Mr. McFarland has maintained—as the de facto and/or de jure HOA President and the only Board member authorized to conduct HOA business and, indeed, the de facto and/or de jure HOA and/or HOA Board at all times since the HOA became dysfunctional—but while wrongfully claiming to act as HOA President and a member of the HOA Board, Mr. Hannemann has wrongfully established, or caused to be established, a new P.O. Box and HOA bank account, which, upon information and belief, is not, in fact, a business bank account properly belonging to the HOA, but is merely a personal account; and he, along with Mr. Morris, has deposited funds which rightfully belong to the HOA into this account, and demanded that all other HOA members do the same or else be put in jeopardy.

51. Mr. Hannemann's actions in violation of those governing documents (to include, without limitation, non-payment of the 2016 HOA assessment and causing continuing dysfunction of the HOA as set forth herein) are breaches of contract which have caused damage to Mr. McFarland (as well as the HOA) in an amount to be determined by a jury that includes, but is not limited to, the amount on deposit in the supposed new HOA bank account, over which the right of ownership has been improperly assumed by Mr. Hannemann to the exclusion of the rights of the rightful owner, the HOA, and loss of property value associated with the HOA dysfunction that Mr. Hannemann has caused and continues to cause.

For a Fourth Cause of Action
(Attorney's Fees and Costs)

52. The preceding paragraphs of this counterclaim are incorporated herein.

53. Among the rights and protections that the Amended Declaration affords is the following: "Should the Developer or Association employ counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions, because of a breach of the same, all costs

incurred in such enforcement, including a reasonable fee for the Developer's or Association's counsel, shall be paid by the Owner of such Lot(s) in breach thereof."

54. Likewise, the By-Laws provide: "Should the Declarant or the Association employ legal counsel to enforce any of the [subdivision's governing documents], all costs incurred in such enforcement, including court costs and reasonable attorneys fees, shall be paid by the violating Owner."

55. Moreover, the By-Laws recognize the right of an owner to bring an enforcement action "in an appropriate case," in which "appropriate case" the By-Laws would appear to place the owner on an equal footing with "the Declarant or Association": "Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or rights of use in and to the Recreational Amenities, or for instituting an action to recover sums due, for damages and/or for injunctive relief, such actions to be maintainable by the Declarant, the Board of Directors on behalf of the Association or, in an appropriate case, by an aggrieved Owner."

56. Whether by way of the rights and protections afforded "Developer" and "Declarant" in the Amended Declaration and By-Laws, respectively, or as an aggrieved owner pursuing an "appropriate case" or as may be allowed under S.C. Code Ann. § 15-53-100, on account of Mr. Hannemann's actions causing and continuing HOA dysfunction and requiring Mr. McFarland to defend against the instant Complaint as well as prosecute this counterclaim, Mr. McFarland is entitled to compensation from Mr. Hannemann for all reasonable attorney's fees and costs incurred in relation to this matter.

PRAYER FOR RELIEF

WHEREFORE, having fully answered the Complaint and also set forth his counterclaim against Mr. Hannemann, Mr. McFarland prays for dismissal of the Complaint with prejudice or

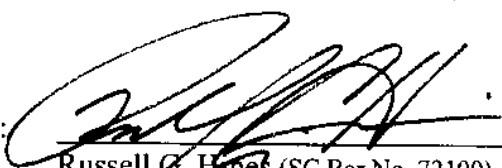
entry of judgment thereon in his (Mr. McFarland's) favor as to all claims Mr. Hannemann has asserted against him as well as judgment in his (Mr. McFarland's) favor as to all counterclaims asserted against Mr. Hannemann, including the following relief:

- (1) A judicial declaration that he and/or Mrs. McFarland are declarants under the operative declaration of covenants and restrictions for the Live Oak Village subdivision and that, notwithstanding the designation of Oak Village Development, LLC, "as the 'Developer'" in the Amended Declaration and as "Declarant" in the By-Laws, within the framework of the Amended Declaration and By-Laws, the references "Developer" and "Declarant" apply to Mr. and/or Mrs. McFarland in respect of the rights and protections "Developer" and "Declarant" are afforded, to include, especially, the right to recover attorney's fees and costs in HOA enforcement actions;
- (2) A judicial declaration that, at all relevant times, Mr. McFarland has been, as he continues to be for the time being (while the Pending Suit remains pending), the de facto and/or de jure HOA President and the only HOA Board member authorized to conduct HOA business and, indeed, the de facto and/or de jure HOA and/or HOA Board at all times since the HOA became dysfunctional, and conversely, a judicial declaration that Mr. Hannemann is neither a duly elected HOA officer nor member of the HOA Board and that the purported HOA-related actions which he has taken or caused to be taken or otherwise taken part in since the HOA became dysfunctional in 2012 are, and have been, invalid;
- (3) A money judgment against Mr. Hannemann for breach of contract and/or conversion in an amount to be determined by the trier of fact;
- (4) A determination that Mr. McFarland is entitled to recover from Mr. Hannemann all reasonable attorney's fees and costs relating to this matter and an award of the same against Mr. Hannemann; and
- (5) Any such other relief to Mr. McFarland the Court deems to be just and proper.

*****A JURY TRIAL IS DEMANDED ON ALL ISSUES SO TRIABLE*****

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,
YOUNG CLEMENT RIVERS, LLP

By: 

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*Attorneys for the Defendant,
William McFarland*

Charleston, South Carolina

Dated: 2/16/17

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF DORCHESTER)

✓ David Hannemann, as President of the)
Live Oak Village Homeowner's)
Association, Inc.,)

C/A No. 2016-CP-18-01812

Plaintiff,)

Versus)

William McFarland,)

Defendant.)

REPLY TO COUNTERCLAIM

FILED-RECORDED
2017 MAR -6 PM 12:39
CLERK OF COURT
DORCHESTER COUNTY

Plaintiff David Hannemann, as President of the Live Oak Village Homeowner's Association, Inc. (hereinafter, "Plaintiff"), submits this reply to the Counterclaims of Defendant William McFarland, as set forth below. Any allegation not specifically admitted herein is expressly denied.

REPLY TO COUNTERCLAIM

As to Parties

1. The Plaintiff admits the allegations contained in Counterclaim Paragraph 1.

2. The Plaintiff admits the allegations contained in Counterclaim Paragraph 2.

As to Jurisdiction and Venue

3. The Plaintiff admits the allegations contained in Counterclaim Paragraph 3.

4. The Plaintiff admits the allegations contained in Counterclaim Paragraph 4 to the extent that the Court has jurisdiction over the parties to the counterclaim; however the Plaintiff denies that he made any acts or omissions which support the Defendant's Counterclaim.

5. The Plaintiff admits the allegations contained in Counterclaim Paragraph 5 to the extent that venue is proper in Dorchester County; however the Plaintiff denies that he made any acts or omissions which support the Defendant's Counterclaim.

As to Facts

6. The Plaintiff admits the allegations contained in Counterclaim Paragraph 6.

7. The Plaintiff admits the allegations contained in Counterclaim Paragraph 7 regarding the location of the subdivision known as Live Oak Village, that the Defendant and his wife reside therein, and due to this residence they are consequently members of the Live Oak Village Homeowner's Association. The Plaintiff is without knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Counterclaim Paragraph 7, and therefore denies the same.

8. The Plaintiff craves reference to the records identified in Counterclaim Paragraph 8 and denies any allegation inconsistent therewith.

9. The Plaintiff is without knowledge or information to form a belief as to the truth of the allegations contained in Counterclaim Paragraph 9, and therefore craves reference to the specific records identified therein and denies any allegation inconsistent therewith.

10. The Plaintiff craves reference to the records identified in Counterclaim Paragraph 10 and denies any allegation inconsistent therewith.

11. The Plaintiff craves reference to the records identified in Counterclaim Paragraph 11 and denies any allegation inconsistent therewith.

12. The Plaintiff craves reference to the record identified in Counterclaim Paragraph 12 and denies any allegation inconsistent therewith.

13. The Plaintiff craves reference to the records identified in Counterclaim Paragraph 13 and denies any allegation inconsistent therewith.

14. The Plaintiff craves reference to the records identified in Counterclaim Paragraph 14 and denies any allegation inconsistent therewith.

15. The Plaintiff craves reference to the records identified in Counterclaim Paragraph 15 and denies any allegation inconsistent therewith.

16. The Plaintiff denies the allegations contained in Counterclaim Paragraph 16.

17. The Plaintiff denies the allegations contained in Counterclaim Paragraph 17.

18. The Plaintiff denies the allegations contained in Counterclaim Paragraph 18.

19. The Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Counterclaim Paragraph 19, and therefore denies the same.

20. The Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Counterclaim Paragraph 20, and therefore denies the same.

21. The Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Counterclaim Paragraph 21, and therefore denies the same.

22. The Plaintiff admits the allegations contained in Counterclaim Paragraph 22 to the extent that they refer to the governing documents of the Live Oak Village Homeowner's Association.

23. The Plaintiff admits the allegations contained in Counterclaim Paragraph 23 to the extent that they refer to the governing documents of the Live Oak Village Homeowner's Association.

24. The Plaintiff admits the allegations contained in Counterclaim Paragraph 24.

25. The Plaintiff admits the allegation contained in Counterclaim Paragraph 25 to the extent that the Board of Directors of the Live Oak Village Homeowner's Association was comprised of the Plaintiff, the Defendant, and Thomas Morris in 2012. Any other allegations contained in Counterclaim Paragraph 25 are expressly denied.

26. Responding to Counterclaim Paragraph 26, the Plaintiff admits that a lawsuit bearing a civil action number of 2012-CP-18-2583 was filed, that the Defendant has correctly identified the parties associated with that action, and that two defendants associated with that action no longer own property in the Live Oak Village subdivision. The Plaintiff denies any other allegations contained in Counterclaim Paragraph 26.

27. To the extent that Counterclaim Paragraph 27 references a pleading filed in Civil Action No. 2012-CP-18-2583, the Plaintiff craves reference to that pleading and denies any allegations inconsistent therewith.

28. To the extent that Counterclaim Paragraph 28 references a pleading filed in Civil Action No. 2012-CP-18-2583, the Plaintiff craves reference to that pleading and denies any allegations inconsistent therewith.

29. To the extent that Counterclaim Paragraph 29 references a pleading filed in Civil Action No. 2012-CP-18-2583, the Plaintiff craves reference to that pleading and denies any allegations inconsistent therewith.

30. To the extent that Counterclaim Paragraph 30 references an order issued in Civil Action No. 2012-CP-18-2583, the Plaintiff craves reference to that order and denies any allegations inconsistent therewith.

31. Responding to Counterclaim Paragraph 31, the Plaintiff admits that no meetings of the Live Oak Village Homeowner's Association occurred in 2013 or 2014. The Plaintiff denies any and all other allegations contained in Counterclaim Paragraph 31.

32. Responding to Counterclaim Paragraph 32, the Plaintiff admits that he did at times attempt to work with the Defendant regarding the affairs of the Live Oak Village Homeowner's Association until a meeting of that association could properly occur. The Plaintiff denies the remaining allegations contained in Counterclaim Paragraph 32.

33. Responding to Counterclaim Paragraph 33, the Plaintiff admits that he called and conducted a valid meeting of the Live Oak Village Homeowner's Association on May 17, 2015 and on April 25, 2016. However the Plaintiff denies any other allegations contained in Counterclaim Paragraph 33.

34. The Plaintiff admits the allegations contained in Counterclaim Paragraph 34 to the extent that they refer to the governing documents of the Live

Oak Village Homeowner's Association, and denies any allegation inconsistent therewith.

35. The Plaintiff denies the allegations contained in Counterclaim Paragraph 35.

36. Responding to Counterclaim Paragraph 36, the Plaintiff admits that he and Thomas Morris paid their homeowner's association assessment for 2015 and that the Defendant continues to control the bank account originally established for the Live Oak Village Homeowner's Association. The Plaintiff denies the remaining allegations contained in Counterclaim Paragraph 36.

37. Responding to Counterclaim Paragraph 37, the Plaintiff admits that in his capacities as President and Board Member of the Live Oak Village Homeowner's Association, he wrote to his fellow Board Members regarding an assessment for the first six months of 2016; the Plaintiff craves reference to the letter and denies any allegations inconsistent therewith. The Plaintiff denies any remaining allegations contained in Counterclaim Paragraph 37.

38. The Plaintiff craves reference to the letter described in Counterclaim Paragraph 38 and denies any allegations inconsistent therewith.

39. Responding to Counterclaim Paragraph 39, the Plaintiff admits that in his capacities as President and Board Member of the Live Oak Village Homeowner's Association, he wrote to all members of the Association on May 31, 2016; the Plaintiff craves reference to the letter described in Counterclaim Paragraph 39 and denies any allegations inconsistent therewith. The Plaintiff denies any remaining allegations contained in Counterclaim Paragraph 39.

40. The Plaintiff craves reference to the letter described in Counterclaim Paragraph 40 and denies any allegations inconsistent therewith.

41. Responding to Counterclaim Paragraph 41, the Plaintiff admits that in his capacities as President and Board Member of the Live Oak Village Homeowner's Association, he wrote to all members of the association on November 28, 2016; the Plaintiff craves reference to the letter described in Counterclaim Paragraph 41 and denies and allegations inconsistent therewith. The Plaintiff denies any remaining allegations contained in Counterclaim Paragraph 41.

AS TO THE FIRST CAUSE OF ACTION
Declaratory Judgment No. 1

42. Responding to Counterclaim Paragraph 42, the Plaintiff incorporates all responses above as if expressly contained herein verbatim.

43. The Plaintiff admits the allegations contained in Counterclaim Paragraph 43.

44. The Plaintiff denies the allegations contained in Counterclaim Paragraph 44.

AS TO THE SECOND CAUSE OF ACTION
Declaratory Judgment No. 2

45. Responding to Counterclaim Paragraph 45, the Plaintiff incorporates all responses above as if expressly contained herein verbatim.

46. The Plaintiff denies the allegations contained in Counterclaim Paragraph 46.

AS TO THE THIRD CAUSE OF ACTION
Breach of Contract and/or Conversion

47. Responding to Counterclaim Paragraph 47, the Plaintiff incorporates all responses above as if expressly contained herein verbatim.

48. The Plaintiff admits that the affairs of the Live Oak Village Homeowner's Association are governed by covenants and by-laws. However, the Plaintiff denies the allegations contained in Counterclaim Paragraph 48 particularly to the extent that the Defendant claims that the governing documents of the Live Oak Village Homeowner's Association create a contract enforceable between individuals.

49. The Plaintiff admit the allegations contained in Counterclaim Paragraph 49.

50. Responding to Counterclaim Paragraph 50, the Plaintiff admits that he has opened a new bank account and post office box for the Live Oak Village Homeowner's Association in light of the Defendant's refusal to turn over control of the Association's original bank account and post office box. The Plaintiff also admits that he, as President of the Live Oak Village Homeowner's Association, has deposited assessments collected from members into this account. The Plaintiff denies the remaining allegations contained in Counterclaim Paragraph 50.

51. The Plaintiff denies the allegations contained in Counterclaim Paragraph 51.

AS TO THE FOURTH CAUSE OF ACTION
Attorney's Fees and Costs

52. Responding to Counterclaim Paragraph 52, the Plaintiff incorporates all responses above as if expressly contained herein verbatim.

53. The Plaintiff craves reference to the document described in Counterclaim Paragraph 53 and denies any allegations inconsistent therewith.

54. The Plaintiff craves reference to the document described in Counterclaim Paragraph 54 and denies any allegations inconsistent therewith.

55. The Plaintiff craves reference to the document described in Counterclaim Paragraph 55 and denies any allegations inconsistent therewith.

56. The Plaintiff denies the allegations contained in Counterclaim Paragraph 56.

AS TO THE DEFENDANT'S PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that this Honorable Court inquire into these matters and issue an order dismissing the Counterclaims, finding that the Defendant is entitled to no relief under the Counterclaims as a matter of law, or any other relief that the Court deems just and proper.

FURTHER ANSWERING AND AS A FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

57. The allegations contained in the Defendant's Counterclaims fail in their entirety to state a claim upon which relief may be granted against the Plaintiff, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS A SECOND AFFIRMATIVE DEFENSE
(Waiver and/or Estoppel)

58. The Counterclaims of the Defendant are barred by the doctrines of waiver and/or estoppel, in light of the Defendant's failure to notice annual meetings of the Live Oak Village Homeowner's Association for multiple years.

FURTHER ANSWERING AND AS A THIRD AFFIRMATIVE DEFENSE
(Lack of Privity)

59. The Defendant's Counterclaim for breach of contract fails as a matter of law due to lack of privity.

FURTHER ANSWERING AND AS A FOURTH AFFIRMATIVE DEFENSE
(Unclean Hands)

60. The Counterclaims against the Plaintiff are barred by the doctrine of unclean hands because of the improper and inequitable conduct of the Defendant, directly related to the subject matter of this litigation.

FURTHER ANSWERING AND AS A FIFTH AFFIRMATIVE DEFENSE
(Reservation and Non-Waiver)

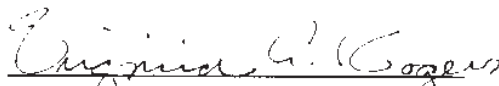
61. The Plaintiff reserves any additional and affirmative defenses as may be revealed or become available to him during the course of his investigation and/or discovery in this case and is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, the Plaintiff prays that the Counterclaims of the Defendant be dismissed, that judgment be entered in favor of the Plaintiff on all claims, and that the Defendant be required to compensate the Plaintiff for attorney's fees and costs associated with the pursuit of this action. The Plaintiff also particularly prays that the Court deny the Defendant's request for declaratory relief and specifically find that:

- a. The Defendant and his wife, non-party Mrs. McFarland, are neither "Developers" nor "Declarants" under the Amendments to the Declaration of Covenants and Restrictions for Live Oak Village, Summerville South Carolina, dated November 26, 2016 and recorded at Book 332, Pg. 198;
- b. The Plaintiff is a duly elected member of the Board of Directors for Live Oak Village Homeowner's Association and the duly elected President of this entity;
- c. The Defendant is not the President of the Live Oak Village Homeowner's Association, nor a member of its Board of Directors, either as the result of a valid election by the Association or as a "de facto" or "de jure" holder of these titles.

Respectfully Submitted,

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com


James B. Hood (SC #70212)
Virginia A. Rogers (SC #101849)


Attorneys for the Plaintiff
David Hannemann, as President of the Live
Oak Village Homeowner's Association, Inc.

March 3, 2017
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the **Reply to Counterclaim** was served on each party or counsel of record by mailing, e-mailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 3 day of March, 2017.



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IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

MASTER-IN-EQUITY HEARING
JUNE 16, 2020

DAVID HANNEMANN, AS PRESIDENT OF THE LIVE OAK
VILLAGE HOMEOWNER'S ASSOCIATION,

Plaintiffs,

vs. CASE NO. 2016-CP-18-01812

WILLIAM MCFARLAND,

Defendants.

TIME: 10:00 a.m.

LOCATION: Dorchester County Courthouse
St. George, SC

BEFORE: Honorable James E. Chellis

REPORTED BY: JENNIFER M. ADAMS
CERTIFIED SHORTHAND REPORTER
CLARK & ASSOCIATES, INC.
CHARLESTON, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM

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A P P E A R A N C E S

ON BEHALF OF PLAINTIFFS:

HOOD LAW FIRM
BY: JAMES B. HOOD, ESQ.
172 Meeting Street
Charleston, SC 29401

ON BEHALF OF DEFENDANTS:

YOUNG, CLEMENT, RIVERS, LLP
BY: RUSSELL G. HINES, ESQ.
25 Calhoun Street, Suite 400
Charleston, SC 29401

1 THE COURT: This is David
2 Hannemann, H-A-N-N-E-M-A-N-N, as president of the
3 Live Oak Village Homeowner's Association, Inc.,
4 plaintiff versus William McFarland,
5 M-C-F-A-R-L-A-N-D, defendant. Civil action
6 number 2016-CP-18-01812.

7 Russ?

8 MR. HINES: Yes, Your Honor.

9 THE COURT: Who do you have today
10 with you in the courtroom?

11 MR. HINES: Mr. and Mrs. McFarland,
12 Your Honor. Mr. McFarland is the defendant.
13 Mrs. McFarland is here also.

14 THE COURT: All right. I want to
15 apologize to both you and Mr. Hines for the error
16 in getting this notice scheduled. We had
17 Wednesday's hearing and scheduled those, and she
18 got distracted for some other reason and didn't
19 get back to the Tuesday hearing; so that's why
20 we've had this little last minute change.

21 I did ask Mr. Hines, Jamie, whether he
22 had any objection to me holding the hearing
23 remotely, and his indication was that he was fine
24 with it, but that he may have one or two or three
25 additional documents that he might want to

1 present to the court; and if so, would he be able
2 to supplement the record post-hearing if we
3 allowed him to do that or if he needed to put
4 that in.

5 I don't particularly have any problem
6 with that. I suspect you wouldn't have any
7 problem. So, Mr. Hines, I think that will take
8 care of any reservation that you had about the
9 remote hearing.

10 Mr. Hood, do you have any objection to
11 the remote hearing?

12 MR. HOOD: I do not. Thanks.

13 THE COURT: All right.

14 MR. HOOD: In terms of the
15 scheduling snafu, if that's the worst thing that
16 happens this week, that's a pretty good week in
17 my world.

18 THE COURT: There you go. I
19 appreciate that. You're both very kind to
20 accommodate me. I've had some health issues that
21 I've had to be very careful with. I appreciate
22 you both being very accommodating.

23 Mr. Hood, I have reviewed the file, and,
24 from my understanding, we are here -- well, there
25 are two issues, I guess, that I need to address

1 with you procedurally. Mr. Hines filed a motion
2 for reconsideration of the Pendente Lite hearing
3 or the issue of Pendente Lite.

4 I never issued an order on that, and I'm
5 wondering, Mr. Hines, if you still want -- do you
6 want me to issue an order on that, or are you
7 going to withdraw that motion, or what is your
8 position on that issue?

9 MR. HINES: Your Honor, and this is
10 me being perhaps -- well, if it's an
11 overabundance of caution, please forgive me. I
12 don't intend to do too much fussing about that
13 motion at this date.

14 But rather than withdraw it -- and,
15 again, I do a lot of appellate work, and forgive
16 me for being in that mindset of just constantly
17 not wanting to have some sort of pitfall, I'm not
18 -- obviously, we stand by the motion, but if the
19 Court would give us a ruling, even if that
20 ruling, obviously, is simply a Form 4 denial,
21 which, again, we -- I'm not asking for that in a
22 sense of --

23 THE COURT: Okay. Yeah, I think
24 that's a proper position to take. Actually, I
25 should have anticipated that; and so what I will

1 do is, I'm going to deny the motion for
2 reconsideration, and I will enter a Form 4 on
3 that particular motion for reconsideration.

4 So that takes us to the next procedural
5 issue, which is a motion for summary judgment,
6 which is what is pending; is that correct?

7 MR. HINES: Your Honor, there are
8 cross-motions. I mean, our motion, in our
9 opinion, Mr. McFarland's motion was the first
10 filed motion.

11 And in response to that, Mr. Hood filed
12 the cross-motion for summary judgment. And then,
13 more recently, supplemented that. It's
14 essentially, as I read it, just an additional
15 argument that he's offering in support of summary
16 judgment, which is --

17 THE COURT: I saw that.

18 MR. HINES: You know, I certainly
19 don't have any objection to the argument being,
20 you know, argued here. I mean, that's -- but our
21 motion, I should clarify, is a motion -- it's
22 technically at least -- it's a motion for partial
23 summary judgment.

24 We're asking for summary judgment in
25 Mr. McFarland's favor as to all of the

1 plaintiff's claims. Mr. McFarland had
2 counter-claims as well, but those are not
3 addressed by our motion.

4 THE COURT: All right. So I'm
5 looking at a motion that was filed August the
6 24th of 2018. That was the defendant's motion
7 for summary judgment as to all plaintiff's
8 claims. That's the motion you're speaking of,
9 correct?

10 MR. HINES: Yes, Your Honor, it is.

11 THE COURT: All right, sir. So I
12 guess then, Mr. Hood, you would agree with me
13 that we go forward on defendant's motion, and
14 then you can present your motion?

15 MR. HOOD: Yes, sir.

16 THE COURT: And your response to
17 his motion and then your motion for summary
18 judgment?

19 MR. HOOD: Yes, Your Honor.

20 THE COURT: Okay. Well, I'm ready
21 to hear you, Mr. Hines. Go ahead.

22 MR. HINES: Thank you, Your Honor.
23 May it please the Court.

24 THE COURT: Yes, sir.

25 MR. HINES: Our motion is targeted

1 specifically at the defendant's ability to assert
2 -- to bring this action.

3 And the -- I guess I want to start with
4 -- in a little different order than the way that
5 we presented it in the motion itself because I
6 think this is may be the most -- the simplest way
7 of providing Your Honor with a proper basis to
8 rule in our favor, which is -- it has to do with
9 the lack of authorization or proper authorization
10 to bring this lawsuit as required in the Articles
11 of Incorporation for the HOA.

12 And let me -- I should pause for this
13 moment to remember or to be mindful of the fact
14 that, I could get into some more background on
15 this, Your Honor, because I realize that you've
16 got, well, a docket full of cases, and I don't
17 want to cover any ground that is unnecessary for
18 you.

19 But this is -- let me start by saying,
20 this is an HOA dispute. It's a neighborhood in
21 Summerville. It's called Live Oak Village.
22 Mr. Hannemann has brought this lawsuit as
23 president of the HOA. Mr. McFarland denies and
24 disputes Mr. Hannemann's status as the president
25 of the HOA and contends that he is in fact the

1 lawful president of the HOA.

2 So Mr. Hannemann's claim seeks
3 declaratory relief that is to the effect that he
4 is the lawful president and is -- and requires, I
5 guess, injunctive relief to Mr. McFarland to
6 provide or to hand over to him the checkbook and
7 the bank records for the HOA. And, I mean,
8 that's -- it's also a request for attorney's
9 fees.

10 But the basic dispute is, who is the
11 president, and who -- and should -- well, and
12 Mr. Hannemann claiming that he is, that he should
13 have the relevant financial documents to -- that
14 are needed to carry out that office.

15 THE COURT: So that's sort of an
16 overview of the case in terms of -- of place and
17 subject matter that's before us; is that --

18 MR. HINES: Yes, Your Honor. That
19 was a bit of a brief background before I get into
20 my arguments.

21 THE COURT: Let me just tell both
22 of you that, you know, I'm from Summerville. I
23 grew up in Summerville. I'm well aware of the
24 location of this particular subdivision; so I'm
25 -- I have a clear view of the subdivision in my

1 mind and as we speak about it. I do know that
2 it's a subdivision of seven homes, which means
3 there are only seven owners, and, therefore, my
4 understanding is, there's seven members of the
5 association.

6 MR. HINES: Yes, Your Honor.

7 THE COURT: Okay. Now, if you want
8 to -- so that -- from the overview, I kind of
9 remember all of this, and I'm glad that I can
10 visualize the subdivision, and I think I do sort
11 of understand the underlying facts or issues in
12 dispute, and I'll be glad to hear from you
13 further now, Mr. Hines.

14 MR. HINES: Thank you, Your Honor.
15 Now, this is in Exhibit 1-A to our motion. I'm
16 not sure how readily available it is to you, Your
17 Honor, but I will hopefully be able to say this
18 clear enough that, even if the document is not --
19 is not in front of you, you will be able to
20 follow.

21 And I need to make an important
22 correction to our motion because I left out,
23 well, a very important word in my quotation of
24 this profession of the Articles of Incorporation.
25 So what this is, this is from the Articles of

1 Incorporation for the -- for the HOA.

2 THE COURT: Yes, sir.

3 MR. HINES: And if you'll indulge
4 me a little bit of reading, this is on paragraph
5 9, and it reads, "Notwithstanding, anything
6 contained herein to the contrary, the association
7 shall be required to obtain the approval of
8 three-fourths (three-quarters of all members) of
9 a duly called meeting of the members at which a
10 quorum is present, prior to the payment of legal
11 or other fees to persons or entities engaged by
12 the association for the purpose of suing or
13 making, preparing, or investigating any lawsuit
14 or commencing."

15 I somehow left out the word "commencing"
16 in my recitation of this or my quotation of this
17 in my motion -- "Or commencing any lawsuit other
18 than for the following purposes."

19 It then proceeds to identify some
20 purposes that would be exempt from that what I
21 just read, but they're not relevant to this case.
22 There's no question here that Mr. Hannemann had
23 brought this lawsuit without obtaining
24 three-fourths of the votes of the members. And
25 in his --

1 THE COURT: What would be
2 three-fourths of seven? I'm trying to calculate
3 that, but I didn't get to it.

4 MR. HINES: Well, we're not going
5 to get -- we're not going to be able to do it
6 exactly. Obviously if we had eight, it would
7 make it a little easier to -- we'd say, what,
8 maybe six. So three-fourths of seven would have
9 to be -- oh, goodness. I'm going to embarrass
10 myself, but I guess that means at least five.

11 THE COURT: Three times seven, 21
12 divided by four -- I mean, yeah, four. So we
13 need 5.2 people to be there.

14 MR. HINES: Yes, so I guess it --

15 THE COURT: Five and a quarter
16 people.

17 MR. HINES: So six is the way I
18 would interpret that, obviously, because --

19 THE COURT: We have six, right.

20 MR. HINES: But the -- well,
21 luckily, it's not -- we aren't in a situation
22 where we had five and didn't have six. We don't
23 have any, you know, or presumably we have
24 Mr. Hannemann. I mean, if we -- his implicit
25 vote by the fact that he brought the suit.

1 But the main dispute here, as I
2 understand it, from plaintiff's response to this
3 is that this provision doesn't prevent him from
4 bringing this lawsuit because in -- they focused
5 on the language that the -- the provision stops
6 prior to the payment of legal or other fees to
7 persons.

8 They're suggesting that this provision
9 operates so as to say, you can -- he can go ahead
10 and bring the lawsuit and bring it -- and, you
11 know, as HOA business in the name -- you know, as
12 president of the HOA without obtaining approval,
13 and then they indicate, well, the three-fourths
14 part, that only has to do with whether or not the
15 HOA is going to pay for it.

16 And he can then, at some point in the
17 future, after having brought the case with no
18 approval, come back to the HOA and request the
19 three-fourths vote to then be -- have the HOA
20 reimburse the fees that he's essentially fronted
21 the HOA.

22 Your Honor, respectfully, on the one
23 hand, I think that is -- is really irrelevant in
24 any event because of the language. And forgive
25 me my mistake and somehow the typo; but the very

1 next clause, that "Or commencing any lawsuit",
2 really I think that makes that a non-starter
3 because the point is, it's not just contingent on
4 the payment. It is indeed contingent on the
5 commencement of the suit.

6 And so, you know, with that one -- well,
7 rather than, I will -- well, let me also make
8 this point. Right before the hearing started,
9 Megan, Your Honor's clerk, was kind enough to
10 scan and to e-mail around a document that I
11 wanted to address today.

12 And this is a document, I'm hoping, that
13 Mr. Hood has available to him through e-mail.
14 And I will give him a moment to make sure he
15 does. It looks like he does.

16 MR. HOOD: I do.

17 MR. HINES: Thank you, Jamie. It's
18 a letter dated May 31, 2016, from Mr. Hannemann.
19 One of the things that it is talking about in
20 this letter is, he's written it to the -- all the
21 membership of the HOA, and he's saying how, you
22 know, it reflects, obviously, the dispute about
23 who is the president and what is the -- who is on
24 the board.

25 And he -- noting the schism, I guess, of

1 different -- different claims to the act to be in
2 the right as a director and officer. He writes
3 in here, "Members of the HOA, Live Oak Village
4 HOA, have been informed that some assessments
5 were paid into an account, other than the newly
6 established LOV HOA checking account."

7 Well, Your Honor, the LOV, the newly
8 established account is an account that
9 Mr. Hannemann and Mr. Morris -- I mean, Mr.
10 Thomas Morris, who's claiming to be the president
11 and treasurer and board members, respectively,
12 create it.

13 Now, notably, this lawsuit is about
14 Mr. -- you know, a major part of this lawsuit is
15 Mr. Hannemann saying, I want the checkbook and
16 bank account records and control of the bank
17 account from you, Mr. McFarland. Well, the very
18 fact that he's seeking that from Mr. McFarland,
19 it shows that -- in fact the account that Mr.
20 McFarland controls is indeed the HOA's account.

21 I mean, that's why Mr. Hannemann wants
22 it because he recognizes it to be the HOA's
23 account. And that -- so when he talks about this
24 newly established account, that's another
25 account. That's not the account that

1 Mr. Hannemann has -- you know, is trying to get
2 access to in this -- or control of in this case
3 through his claim of being the rightful
4 president.

5 And the point there is to show -- and I
6 guess, somewhat in passing it is that, those
7 members that are paying to that other account are
8 paying Mr. McFarland in recognition of his status
9 as president; but more importantly for this
10 particular argument, it's his last two sentences
11 -- or, yeah, last two sentences: "If this
12 request is not honored."

13 He's asking Mr. McFarland, again, for
14 the checkbook and records. "If it's not honored
15 within the next 15 days, the board may have no
16 choice but to seek legal action. The board does
17 not wish to incur any additional expenses for the
18 association members; however, such legal costs
19 can, through additional assessments, be passed
20 along to each member."

21 What he's saying right there is, well,
22 irreconcilable, respectfully, with the argument
23 that was presented in response to our motion
24 that, oh, no, this what I've done in bringing
25 this lawsuit doesn't -- it creates some financial

1 exposure to the HOA; and I think, you know, Your
2 Honor, perhaps the best for me to do it is to
3 just say, I believe this provision is clear. You
4 can't commence the lawsuit without a
5 three-fourths vote.

6 THE COURT: Okay. Let me stop you
7 right there, Mr. Hines. I've gone through each
8 of your exhibits on your motion for summary
9 judgment and do not see a copy of the Articles of
10 Incorporation that you're referring to. Do you
11 know what exhibit it is or where you found it?

12 MR. HINES: Your Honor, it's --
13 this might be a little tricky. In the
14 plaintiff's lawsuit, there were four exhibits
15 filed.

16 THE COURT: It's part of the --
17 it's part of the complaint?

18 MR. HINES: Well, it is, and it is
19 also one of the exhibits, and the way I -- and I
20 did it this way, and forgive me if this has
21 caused some confusion. But it's Exhibit 1-A, to
22 get to your point, and the reason I did it that
23 way is --

24 THE COURT: Exhibit 1-A of what?

25 MR. HINES: Well, of my motion, and

1 it's also Exhibit A to the complaint, Your Honor.

2 THE COURT: All right. Well, I'm
3 going to look at Exhibit A of your motion. Oh, I
4 gotcha, the complaint. So you have to scroll
5 through the complaint to get down to that, I
6 guess.

7 MR. HINES: Yes, Your Honor.

8 THE COURT: Thank you very much.
9 That helps. Now, just so I can -- I've heard
10 what you said, but I would like to focus on the
11 exact language, though, that you called out for
12 me.

13 MR. HINES: Yes, Your Honor. It's
14 three pages in. It's paragraph 9, and it begins,
15 notwithstanding is the first -- is the first
16 word. It's actually C-9 on that page.

17 THE COURT: I see paragraph 9. Is
18 that the paragraph that we're talking about?

19 MR. HINES: Yeah, Your Honor. It
20 begins, "Notwithstanding anything contained
21 herein to the contrary."

22 THE COURT: Let me see. I must be
23 looking at the wrong one.

24 MR. HINES: I believe it should be
25 the third page.

1 THE COURT: Let me start over.
2 Okay?

3 MR. HINES: Okay.

4 THE COURT: The first page has got
5 paragraphs 1 and 2, and the second page finishes
6 up with paragraph 2, and then three, four, five,
7 six, seven and eight. The third page begins with
8 a paragraph C.

9 MR. HINES: And then it's
10 subparagraph 9 of that, Your Honor.

11 THE COURT: Nine, okay. Got it.
12 Okay. Thank you. All right. That's helpful.
13 So give me one second just because I want to read
14 it so I can focus in on what you're saying to me.

15 MR. HINES: Of course.

16 THE COURT: Okay. Thank you. Go
17 ahead.

18 MR. HINES: Yes, Your Honor. And
19 perhaps the best way to go about it at this point
20 would -- and I'll -- because I submit to the
21 Court, this -- I was previously trying to get
22 into what I understood to be the plaintiff's
23 response to it.

24 And I certainly don't want to speak for
25 Mr. Hood, and I know he'll certainly speak well

1 enough for himself, but my understanding is that
2 the plaintiff's response was that, oh, no, this
3 isn't a problem. We acknowledge we don't have
4 the votes, you know, that vote of the
5 three-fourths of the membership.

6 That approval was not obtained prior to
7 bringing the lawsuit; however, this provision
8 doesn't -- doesn't stop the lawsuit because
9 really what it's focused on is about -- about
10 prior to the payment of legal fees.

11 And I'll suggest to you on two points.
12 Number one, I don't know how there would be any
13 way construe this document that doesn't run into
14 the problem of absurdity. You know, when we're
15 construing the legal documents, contracts, which
16 is the same way.

17 This is a contract that the -- you know,
18 we're looking at the intent of the drafter, and
19 we're looking that -- you know, my understanding
20 of canons of construction is that we -- if there
21 is an -- well, a question of a reasonable and
22 practical interpretation of the language, it
23 would be -- versus one that is absurd, then, you
24 know, the reasonable and practical interpretation
25 of the plain language would prevail.

1 And the whole idea of saying -- is
2 between -- well, what Mr. Hannemann seems to be
3 saying is, oh, no, you don't to have the vote in
4 advance. I can go ahead and bring suit in the
5 name of the HOA. I can go ahead and incur the
6 expenses, as long as I'm the one paying them and
7 not the HOA; and then I can go back to the HOA
8 after -- you know, at some point later and ask
9 for -- for its approval of the three-fourths.

10 And that way if they do that, they'll
11 pay me. Well, frankly, I don't understand how
12 that ever worked because, you know, you need --
13 in this situation, it would be like -- he's
14 basically going to be asking for some form of
15 charity or pity from the HOA at that point
16 because, as I understand it, the HOA would have
17 no obligation to pay unless they decided, well,
18 yeah, sure, we'll pay. We'll just vote to pay
19 it.

20 You've already, you know, struck out on
21 your own, whether you should or you shouldn't
22 have. It just seems to me to be a very odd and
23 unworkable way to go back to the HOA with a bill
24 in hand and say, well, now will three-fourths of
25 you guys vote to -- to pay this bill that I've

1 incurred without telling you guys about it or
2 obtaining approval in the first place? And so, I
3 just think that whole notion of the operation of
4 that provision is unreasonable.

5 It's also inconsistent, in fact, with
6 what Mr. Hannemann is saying in this May 31st,
7 2016 letter to the HOA members that I mentioned,
8 where he's talking about the board not wishing to
9 incur additional expenses for association
10 members; however, such legal costs can, through
11 additional assessments, be passed along to each
12 member.

13 Well, that's the whole point of
14 three-fourths provision anyway is to protect the
15 members from exposure to those costs without
16 advanced notice and an opportunity to -- to vote
17 on whether or not the endeavor should be embarked
18 upon to begin with, you know, and never be in a
19 lawsuit.

20 And then, in addition to all of that,
21 and maybe even to the point of making all of that
22 to -- a bridge that doesn't even have to be
23 crossed is -- is this language here that we've
24 read from this provision which includes the --
25 well, the pertinent part anyway, it has the

1 clause, "Or commencing any lawsuit, other than
2 purposes that aren't relevant." Well, it clearly
3 is not making it contingent just on payment, even
4 just the plain languages. It's also talking
5 about commencement.

6 And so, Your Honor, with that, I think I
7 will move on to my next argument unless Your
8 Honor has questions, and then I'll also, of
9 course, be -- well, once Mr. Hood has a chance to
10 respond, I might have a reply to that.

11 My next argument about this is -- well,
12 it's not based upon the article, so it's not
13 similar in that way; but it's also the idea here
14 if you -- looking back to this May 31st, 2016
15 letter, we're talking about the lawsuit that
16 Mr. Hannemann is referring to in this May 31,
17 2016 letter is this lawsuit. That's this lawsuit
18 being filed, you know, some months after this. I
19 think it was in September.

20 In any event, it was within months after
21 this May 31 date. Well, the lawsuit was filed --
22 and this is admitted in the discovery responses
23 -- without obtaining -- not only without
24 obtaining three-fourths approval here of the
25 articles. And I should note the articles are the

1 supreme governing document. To the extent
2 there's any inconsistency between the articles
3 and the declarations, the covenants or -- and the
4 bylaws, the articles have supremacy.

5 THE COURT: Well, let me ask you a
6 question first. How would you characterize the
7 complaint? Is it that -- all right. I want to
8 look at item 9 of the notwithstanding language.
9 Is the lawsuit a collection of -- a set forth
10 collection of assessments?

11 MR. HINES: No, Your Honor.

12 THE COURT: Is the lawsuit a
13 collection of other charges, which the owners are
14 obligated to pay pursuant to the association
15 documents?

16 MR. HINES: No, Your Honor. That
17 would be a fine, for instance.

18 THE COURT: All right. Is it --
19 does it qualify under subsection C, the
20 enforcement of any applicable use or occupancy
21 restriction contained in the association
22 documents?

23 MR. HINES: No, Your Honor. I
24 mean, we're not talking about an -- anything of
25 that nature.

1 THE COURT: Is it an emergency,
2 where waiting to obtain the approval of the
3 members creates substantial risks of irreparable
4 injury to the association property or to members?
5 The imminent expiration of a statute of
6 limitations should not be deemed an emergency,
7 obviating the need for the requisite vote of
8 three-fourths of the members.

9 MR. HINES: No, Your Honor, it's
10 not an emergency, and I think that that is
11 proved. You know, this wasn't a situation. Now,
12 there was this TRO that was sought, you know, I
13 guess back in -- last year, which, you know, some
14 years after the lawsuit had been filed.

15 And that specifically had to do with
16 other members of the lawsuit trying, well, to
17 operate within the governing documents to bring
18 about basically -- and I'm not trying to get into
19 that any deeper than I have to, but only to say
20 that there was no -- there was no motion for a
21 TRO. This lawsuit was certainly not presented in
22 any way where there was any notion of an emergent
23 need to file it.

24 And so, you know, I suppose that would
25 be the only one of these where -- where it's not

1 obvious from -- it's not just, you know, sort of
2 -- the word emergency is one that I suppose that
3 people could, in certain circumstances, debate
4 whether or not there is an emergency, as opposed
5 to the other things, which you can clearly say,
6 no, they don't apply.

7 But in this case, it would -- it's not
8 brought with any sort of emergency being
9 reflected not only in the plain language of the
10 complaint, nor in the fact that there was no
11 effort to -- to do the things that would be done
12 to stop emergent harm, such as a TRO, preliminary
13 injunction, things like that; so I don't --

14 THE COURT: So let me ask you this:
15 If none of the five, or rather four -- it's
16 actually five because there's the issue of
17 qualification of members of the association. If
18 none of those are the -- are the basis upon which
19 the lawsuit is brought, why would paragraph 9
20 have any applicability here in -- in what you're
21 -- I'm really not certain what you're trying to
22 establish by bringing this to my attention.

23 MR. HINES: Well, you -- and thank
24 you for letting me try and clear that up, Your
25 Honor. What these are, these A, B, C, D, you

1 know, the identified purposes there, those are
2 instances where paragraph 9 can be disregarded.
3 Those are instances where you do not have to have
4 the three-fourths.

5 And so by contrast, what I'm suggesting,
6 what I'm saying, Your Honor, is that, because
7 this lawsuit is not one of those narrowly defined
8 instances where you don't have to have the vote,
9 you do have to do the vote. You do have to have
10 the three-fourths. And so that wasn't obtained,
11 and therefore, paragraph 9 -- this lawsuit runs,
12 well, right into that paragraph 9.

13 THE COURT: I don't understand
14 that. You're going to have to explain it better.

15 MR. HINES: Let me -- if you will
16 indulge me one more time, let me -- I'll read
17 this aloud, and maybe -- this is "Notwithstanding
18 anything contained herein to the contrary." So
19 this -- obviously it's saying, this provision has
20 a certain significance to it where -- to the
21 extent that there may be anything that could
22 suggest otherwise, this --

23 THE COURT: Well, let's stop right
24 there. Hold on a second. Is there anything else
25 in the articles of this contrary to paragraph 9?

1 MR. HINES: Your Honor, I'm not
2 aware of it. I view that language as sort of --
3 as a sort of safeguard to say -- to signal that
4 this, even if there was something to the
5 contrary, it doesn't matter for the purposes of
6 what I'm about to say in these documents; meaning
7 that -- and when I say that, I don't mean, I
8 shouldn't be too informal.

9 What I mean is this is -- this
10 introductory clause is saying, you can ignore
11 everything else in this document except for what
12 is about to be stated on this point.

13 THE COURT: Okay.

14 MR. HINES: "The association shall
15 be required to obtain approval of three-fourths
16 of the members." I'm going to admit -- well, "At
17 a duly called meeting of the members at which
18 quorum was present prior to the payment of legal
19 or other fees to persons or entities engaged by
20 the association for the purpose of suing or
21 making, preparing or investigating any lawsuit or
22 commencing any lawsuit, other than for the
23 following purposes."

24 And so it's saying, you have to do this
25 before a lawsuit is commenced except for these

1 certain specifically identified instances where
2 you can do it without having to get that
3 approval; but none of those instances that are
4 exceptions apply here.

5 THE COURT: Okay. So I got you.
6 So you're saying A through E, and then the tag on
7 members issue. Any lawsuit is -- requires
8 three-fourths members.

9 MR. HINES: Unless it's a lawsuit
10 to collect assessments, collection of -- and
11 really what this looks like here, Your Honor,
12 it's saying --

13 THE COURT: For the purpose of
14 suing or making, preparing investigation.

15 MR. HINES: If you're suing to
16 collect assessments, you don't need to do that.
17 If you're suing to collect fines, you don't need
18 to do that.

19 THE COURT: Okay.

20 MR. HINES: Yeah. It's saying --

21 THE COURT: I understand now.

22 MR. HINES: And I'll submit, my
23 understanding is the argument plaintiff has made
24 in response to that is that, well, no, this
25 really focuses on the payment, and that's when I

1 get into Mr. Hannemann's ability to front costs
2 and then come back and seek costs by asking for
3 the three-fourths provision because they
4 acknowledge three-fourths provision would apply
5 in their -- in their briefing. Well, Your Honor,
6 I will find that to the extent that I need to. I
7 didn't highlight it.

8 THE COURT: Well, go ahead. I
9 understand -- I understand the more careful
10 reading of that paragraph. I understand what
11 your point is.

12 MR. HINES: And then, Your Honor,
13 on a different point that we argued, we also
14 argued judicial estoppel, and here's why. There
15 is quite a history between these litigants to be
16 sure, and the litigation dates back, in fact, to
17 2012.

18 And in the 2012 litigation,
19 Mr. McFarland brought suit in the name of the HOA
20 as the president of the HOA, and Mr. Hannemann
21 was the defendant in that lawsuit. Mr. Hannemann
22 successfully argued -- he didn't actually argue
23 this provision, which -- and that's why I've got
24 this saying the articles are the supreme
25 governing document anyway.

1 So that's why I said there is no higher
2 authority in terms of governing documents in the
3 articles, but Mr. Hannemann, in response to what
4 Mr. McFarland had done in bringing a lawsuit in
5 the name of HOA prior, he said, well, you didn't
6 have proper approval of the board as required by
7 the bylaws.

8 It says, the bylaws say that you have to
9 have two-thirds of the vote to bring a lawsuit,
10 and -- and he won on that point. And that --
11 Judge Goodstein agreed, and she granted summary
12 judgment on that claim. It went up to the Court
13 of Appeals, and the Court of Appeals affirmed on
14 that point. And the Court of Appeals also
15 reversed on another point, that he said it came
16 -- the case went back down on that one.

17 But on the point about whether or not
18 Mr. McFarland could bring this lawsuit or the
19 prior lawsuit in the name of the HOA, without the
20 approval, he lost; and one of the things
21 Mr. McFarland made in -- I mean, he,
22 Mr. McFarland, lost and Mr. Hannemann won on that
23 point.

24 And in our point here, Your Honor, for
25 judicial estoppel, and it -- honestly, I think

1 the -- it's a point that I do believe is
2 persuasive, but I wouldn't want to get it side
3 tracked from the Articles of Incorporation point,
4 which has nothing to do with judicial estoppel,
5 and I think is -- well, it's as straightforward
6 as perhaps you're going to get.

7 But in the judicial estoppel argument,
8 our point is that Mr. Hannemann is essentially
9 doing the same thing that he successfully
10 prevented Mr. McFarland from doing in -- in other
11 litigation about this -- this HOA. You know
12 he's --

13 THE COURT: Right.

14 MR. HINES: -- he's bringing this
15 lawsuit. Now, he is saying, I'm David Hannemann,
16 as president of the HOA. The other lawsuit was
17 brought as the HOA; but Mr. Hannemann is, you
18 know, I think that's a distinction, Your Honor,
19 with that difference.

20 He's bringing -- this is an official
21 action that he's taking on behalf of the HOA; and
22 in fact, his letter from May 31, 2016, which
23 forecasts this lawsuit says as much, when he's
24 talking about, if this request is not honored,
25 the request to turn over the banking documents,

1 the board will have no choice but to seek legal
2 action, and the board does not wish to incur any
3 additional expenses for the association members;
4 however, they can be -- they can be passed along
5 through additional assessments and passed along
6 to each member.

7 The same thing would go in terms of what
8 he's -- what he's said in his response to our
9 motion when he tries to explain how our argument
10 about the requirement for the three-fourths vote
11 is not applicable. He says, no, the
12 three-fourths vote -- you know, again, that's
13 when we get into the point about -- about the
14 three-fourths only applying to the payment.

15 And, again, our point is that that's not
16 so, as I've explained; but he's acknowledging the
17 applicability of the three-fourths. This is on
18 page 14, Your Honor, of his response on our
19 motion. And he's -- and this relates to what we
20 were just talking about. He cites the articles,
21 the provision of the Articles of Incorporation
22 that we were just discussing and continues.

23 "Mr. McFarland's contention fails
24 because the provision site, it requires only that
25 three-fourths of the members must consent prior

1 to the payment" -- and that's in italicized
2 language -- "Of legal fees." "Here, no such
3 payment has been made as Mr. Hannemann has paid
4 those fees himself. If he decides to seek
5 reimbursement from the association, the
6 three-fourths provision would apply."

7 Now, as I've discussed, that whole
8 distinction about payment and whatnot, that -- I
9 think that doesn't apply because, one, it's an
10 absurd construction of the document, and
11 moreover, it doesn't recognize the language about
12 commencement of the litigation anyway, which --
13 so it's not just contingent on payment.

14 But the reason I'm bringing that up, for
15 the purpose of making the equitable estoppel
16 argument is to -- or judicial estoppel argument,
17 Your Honor, is to say, clearly, he's
18 acknowledging the applicability to this lawsuit
19 of that provision, which is a provision that
20 talks about the HOA -- HOA litigation, which is
21 what this is.

22 So, Your Honor, I -- you know, that's
23 that argument. I think at this point, I'm happy
24 to listen to Mr. Hood's response in reply to it,
25 but that's -- that's where we're coming from when

1 we argue judicial estoppel.

2 THE COURT: Mr. Hines, tell me
3 where in your -- in your summary judgment, you've
4 raised the issue of judicial estoppel. What
5 page?

6 MR. HINES: Your Honor, it's at the
7 very -- it's a question that's understandable
8 because really our primary point here -- it's on
9 page 12. Well, let me make sure. It is not the
10 most prominent argument, and that's why I'm happy
11 to move on.

12 But it is on page 12 and 13. It's
13 embedded within our argument B about
14 Mr. Hannemann not having the requisite approval
15 to bring suit, which really focuses on the
16 Articles of Incorporation; but I have included in
17 here the argument on judicial estoppel.

18 And you will see further still, it
19 begins at the bottom of page 12, "Mr. Hannemann
20 judicially stopped to argue," and it continues on
21 to 13 -- "That he, as HOA president, can bring
22 suit in the absence of approval required of the
23 governing documents, having already defeated the
24 claims Mr. McFarland brought."

25 THE COURT: Right. Okay.

1 MR. HINES: And so that's where I
2 cite Exhibit 17, which is the Court of Appeals'
3 opinion that, you know, affirms that success that
4 Mr. McFarland had; and then, in footnote, I cite,
5 you know, the law on judicial estoppel.

6 THE COURT: Let me ask you, and
7 this is sort of interesting question: If it's an
8 unpublished opinion, now, does it have any
9 precedential value?

10 MR. HINES: Your Honor, I don't
11 know that it would have precedential value, and
12 broadly -- in fact, you know what? Let me ask
13 you that question straight -- well, without any
14 equivocation. It does not have precedential
15 value, no question about that, in terms of
16 precedent to the broader world of the bench and
17 bar.

18 But as to the litigant himself, who
19 successfully maintained that position, Your
20 Honor, I think that it absolutely has the value
21 necessary for the -- in position of a judicial
22 estoppel.

23 THE COURT: Okay.

24 MR. HINES: But, Your Honor, in --
25 well, I'll move on if you don't have any other

1 questions on judicial estoppel, but that's where
2 we are with it. I've got one more argument to
3 make, and then I can, well, stand down for a bit
4 and listen to Mr. Hood.

5 THE COURT: Well, let me ask you to
6 hold up one second, please. Mr. Hood raises
7 judicial estoppel in his -- in a supplemental
8 response or memorandum to his motion, and he's
9 raised out -- well, he laid out in their
10 argument, abandonment, judicial estoppel.

11 And he lays out the elements of judicial
12 estoppel. Let's just go through those, if we
13 can, Mr. Hines, while you're on this issue.

14 MR. HINES: Yes, sir, and I'll be
15 happy to. And I also note, we do cite those. I
16 know they're in a footnote, but it's footnote 11
17 on our --

18 THE COURT: All right. So we both
19 agree that the law of judicial estoppel is -- is
20 the same for both of you; is that a fair
21 statement?

22 MR. HINES: Yes, Your Honor. It's
23 the same governing legal principle.

24 THE COURT: So the first position
25 point is two inconsistent positions taken by the

1 same party or parties in privity with one
2 another.

3 MR. HINES: And here, the party
4 that we're talking about, Mr. Hannemann, the very
5 same party. Hannemann in this case; Hannemann in
6 the other case.

7 THE COURT: And the positions are
8 inconsistent?

9 MR. HINES: Yes, Your Honor.

10 THE COURT: According to your
11 position?

12 MR. HINES: Yes, sir. Our position
13 is they are inconsistent.

14 THE COURT: All right.

15 MR. HINES: And, you know, and
16 they're inconsistent because, you know --

17 THE COURT: All right. Two -- two
18 is the position that must be taken in the same or
19 related proceedings involved in the same party or
20 parties in privity with each other.

21 MR. HINES: I think we checked that
22 box, too, Your Honor, because the other
23 proceeding was HOA litigation where Mr. McFarland
24 brought suit in the name of the HOA against
25 Mr. Hannemann. Same HOA, same Mr. McFarland,

1 same Mr. Hannemann. We have the other situation
2 here.

3 Mr. Hannemann bringing, you know, in his
4 official -- you know, official HOA suit, and,
5 again, I understand there's a distinction between
6 HOA -- the name of the HOA and Mr. Hannemann
7 bringing this suit as president of, but --

8 THE COURT: So if you qualified the
9 two, it would only be because it's related
10 proceedings involving the same parties in privity
11 with each other?

12 MR. HINES: Yes.

13 THE COURT: "Three, the party
14 taking the position must have been successful in
15 maintaining that position and have received some
16 benefit."

17 MR. HINES: Well --

18 THE COURT: So walk me through that
19 one.

20 MR. HINES: Mr. Hannemann -- we
21 checked that box because Mr. Hannemann defeated
22 McFarland or defeated that claim. He won. He
23 made a motion for summary judgment. That claim
24 was -- it was -- he was awarded summary judgment
25 on that claim, and that was affirmed by the Court

1 of Appeals, so that is the success that he had in
2 maintaining that position.

3 THE COURT: What was the benefit he
4 received?

5 MR. HINES: Well, the benefit was
6 -- was defeating that claim. I mean, I suppose,
7 Your Honor, the idea is that there was a claim
8 against him, and he defeated it, and so if there
9 has to be an independent benefit, aside from
10 having the benefit of prevailing against that
11 claim, well, I can't say that there wasn't one.

12 I'm saying that it's not readily -- you
13 know, it would have to be something, well, as a
14 benefit obviously in not having to defend against
15 a claim, not being exposed to the potential
16 liability for the claim. But I submit that the
17 benefit and the success and the benefit are
18 intertwined. The success in defeating the claim
19 is indeed a benefit.

20 THE COURT: Okay.

21 MR. HINES: The next one, "The
22 inconsistency must be part of an intentional
23 effort to mislead the Court. Now, on this one, I
24 will grant you that is a tougher point because I
25 suppose that we have -- in terms of intent, you

1 have to get into, you know, the mind of the
2 actor, in this case, Mr. Hannemann.

3 But what I would say here, Your Honor
4 is, if every other box is checked, as we argue
5 that it is, inconsistent positions, obtaining a
6 benefit, same or you know, a related litigation,
7 totally inconsistent.

8 And in the face of all of that, the
9 position is still insistent that, no, I can --
10 I'm still trudging ahead, making this claim,
11 despite their complete inconsistency, despite the
12 fact that I actually obtained a benefit in
13 another case, that that's what makes it
14 intentional.

15 I mean, the intent part is because there
16 is no way for Mr. Hannemann to now go forward
17 with this case, if indeed every other one of the
18 boxes has been checked. And how can
19 Mr. Hannemann go forward with the case without
20 this being an intentional effort to -- to talk
21 out of both sides of his mouth to the Court. I
22 don't see how it can be.

23 So, I mean, I think you're never going
24 to have a case where you're going to apply
25 judicial estoppel where the guy goes, yeah, I'm

1 definitely trying to pull a fast one on the Court
2 here. I'm trying to -- you know, that evidence
3 is never going to happen in -- in short of, well,
4 something like -- well, it's just not going to
5 happen in any kind of realistic sense.

6 But I'm suggesting that in the face of
7 here, our raising this point, bringing it to a
8 head, if it can be said, and we obviously argue
9 that it can, that every one of the other five or
10 four elements, four of the five are available
11 here applicable here, to include complete
12 inconsistency --

13 THE COURT: Okay.

14 MR. HINES: -- that can't be
15 pursued without trying to mislead the Court in
16 the way that this principle is designed to -- to
17 stop.

18 THE COURT: Okay.

19 MR. HINES: Now, I can, at this
20 point -- well, should I wait, Your Honor, for
21 Mr. Hood to bring up his motion before I get into
22 defending against the judicial estoppel claim for
23 his? It seems to me that might be the best way
24 to go about it, but --

25 THE COURT: Yeah, let's wait.

1 Let's wait. Well, let's make sure the -- and
2 then you are submitting a -- you check off --

3 MR. HINES: Total inconsistency.

4 THE COURT: -- number 5, the two
5 positions are totally inconsistent. Okay. I
6 think I understand your position on judicial
7 estoppel. All right.

8 MR. HINES: I do have one more
9 argument, Your Honor. I'm happy to do it however
10 you like in terms of proceeding with this one
11 argument that I do need to -- I mean, it's
12 briefed, and, you know, and I can be brief; but
13 there is one more argument, if you will allow me
14 to make it.

15 THE COURT: Well, I would like to
16 hear it before we go on.

17 MR. HINES: That argument is this,
18 Your Honor.

19 THE COURT: And show me where it is
20 in your written brief.

21 MR. HINES: Yes, Your Honor. It is
22 on page -- well, it's the very first argument we
23 make, and I will have a page number for you
24 momentarily. It's on page 7, and this is
25 argument A.

1 And really, I guess there's two aspects
2 of this argument. There is A-1 and A-2, and the
3 distinction here is one of timing, especially.

4 THE COURT: Okay.

5 MR. HINES: But A-1 follows like
6 this, Your Honor: As I mentioned, there was --
7 there is quite a history between these litigants.
8 Well, there's no question, and let me say this:
9 Mr. Hannemann's claims of the presidency of the
10 HOA relates back to an annual meeting that he
11 claims was properly conducted in the spring of
12 2015.

13 And that's in the -- and so where he
14 says -- and that meeting was conducted, and I can
15 tell you exactly -- on May 17th of 2015. And he
16 does have an affidavit from Attorney Capers Barr
17 to that effect. Now, I would note this here: I
18 am not --

19 (A recess transpired.)

20 THE COURT: Okay. We're back on
21 now. All right. So you were on argument A and
22 A-1 of your --

23 MR. HINES: Yes, Your Honor.

24 THE COURT: -- on page 7 of 14 on
25 your written brief.

1 MR. HINES: Yes, Your Honor, and I
2 would note, I think where I had left off, I was
3 mentioning that Mr. Hannemann's claim to be the
4 president, really, it dates back to May 17, 2015,
5 an annual meeting of the HOA, at which his claim
6 is that he was elected as a board of director or
7 a member of the board of directors.

8 And then the board of directors -- they
9 had a meeting called by the board of directors,
10 that he was elected president, and Mr., I think,
11 Morris was elected treasurer. But the point is,
12 it dates back to May, this May 17, 2015 time and
13 the annual meeting at that time; and, two, in
14 support of that, he filed with his lawsuit, an
15 affidavit from Capers Barr, you know, to that
16 effect.

17 And the point I'm making here at the
18 outset is, it's not at all necessary for me to
19 take any issue with Capers Barr as to anything --
20 well, I suppose I'm taking an issue with a
21 conclusion that Capers is saying here, but what
22 I'm talking about here are things that Capers
23 hasn't addressed. And I don't know if Capers,
24 for that matter, was supposed to address them.

25 So, I mean, I'm not fussing with Capers

1 is what I'm trying to say, but I'm saying that,
2 on a deeper level than what he presents here is
3 where the problem is, and -- and so I'm not --
4 it's not -- this isn't a situation where the --
5 it's Capers, his position versus my position or a
6 position I'm arguing.

7 It's actually -- it's a position that
8 Capers doesn't address is what I'm arguing. So
9 Capers, for all I know, could -- I don't know
10 what his opinion is on what I'm addressing
11 because my point is -- and this is nowhere stated
12 in what -- in his materials which are --

13 THE COURT: So what you're just
14 trying to tell me in this particular argument is
15 that you don't think Mr. Hannemann was -- had
16 standing because he hadn't paid his dues; is that
17 -- or assessments --

18 MR. HINES: That's exactly right,
19 Your Honor.

20 THE COURT: -- in 2013 or 2014? Is
21 there any argument about that?

22 MR. HINES: Well, as far as his
23 nonpayment of them, there is no argument about
24 that. And, now, he took the position, because of
25 the litigation that was going on in 2012, that he

1 could pay that -- pay those -- he and Mr. Morris,
2 who did the same thing -- and it's important to
3 note that for a reason that I'll explain in just
4 a moment.

5 They said that they paid that money in
6 escrow to their attorney, Lydia Davidson. Now,
7 in fact, they -- they did not pay that money in
8 escrow in the sense that -- I think that people
9 understand that term of art because what they're
10 saying is that they gave checks to their lawyer,
11 and the lawyer kept them on file.

12 And, ultimately, when that money was
13 paid to the HOA, that's reflected in Exhibit --
14 Exhibit 13 to our motion. It was paid in April
15 of 2015, and we got -- there was a check for
16 Mr. Morris for \$2,000 because it's \$1,000 a year
17 assessment; so there's Mr. Morris for the years
18 2013 and '14, and Mr. Hannemann for 2013 and '14;
19 and those checks, copies of them are provided in
20 that exhibit.

21 THE COURT: Okay.

22 MR. HINES: And you will notice on
23 the one for Mr. Hannemann, it's written in the
24 four lines, failed checks replacement; and the
25 point of that is simply to say, even the notion

1 that this money was escrowed is -- is really --
2 well, it's not accurate, you know, the idea that
3 these funds never left their possession. They --
4 the checks were written that were given to a
5 lawyer to say --

6 THE COURT: They'd have to
7 negotiate it.

8 MR. HINES: Yes. And they went
9 stale, and new checks were written in 2015; so
10 even the notion of an escrow is really incorrect,
11 but, I guess, more importantly than that, in
12 moving probably the point about the escrow is
13 that, there is no provision for escrow on these,
14 these funds.

15 I mean, from the standpoint of the HOA,
16 who needs the funds to operate, what you give
17 them to. Ms. Davidson or anybody else in the
18 world, if they don't have the money, they can't
19 do anything with the money; so they were not
20 paid.

21 THE COURT: All right.

22 MR. HINES: Now, the thing about
23 that is, they take the position, and that -- they
24 take the position that -- oh, and the other thing
25 about it is that the governing documents -- we

1 cite this in our brief -- require that unpaid --
2 if the assets are not timely paid, there's a
3 mandatory accrual of interest on those payments.
4 Now, even though that money was not paid for
5 2013, 2014 -- it wasn't paid until the spring of
6 2015, they just paid the principal amounts of
7 \$1,000, no interest.

8 We submit -- and I think this is plain
9 from the language that we cite from the governing
10 documents, that there's a mandatory accrual of, I
11 guess, 18 percent interest; and this is from --
12 well, I think it's from the declaration. But
13 it's cited on pages 7 and 9. "Any assessment not
14 paid within 30 days after the date shall bear
15 interest."

16 Okay. So these were not timely paid,
17 and when they were paid the principal amounts,
18 there was no interest added. The point of that
19 is to say that, here in the spring of 2015, where
20 the \$2,000 for the years '13 and '14 were finally
21 provided, they were not provided with the
22 interest that applied automatically, and they --
23 that meant they had not paid in full what they
24 owed.

25 And yet, at the same time -- essentially

1 at the very same time; we are talking about
2 within a matter of weeks, here comes this meeting
3 in May of 2017, where they claim to have been
4 voted as directors, and they were voted, you
5 know, from which Mr. Hannemann's claim to be the
6 president arises.

7 Now, as I understand the argument in
8 response to that, which is in the plaintiff's
9 response, they say, well, sure, but to suspend
10 our voting rights, the board of the HOA had to
11 take action; and so, even if we hadn't paid, you
12 know, that's -- that doesn't prevent us from
13 holding -- you know, from voting and from being
14 officers.

15 And they -- you know, they go through --
16 here, this is on page 9. The argument is headed,
17 and this is their paper. "Mr. Hannemann was
18 never stripped of his voting rights and thus is a
19 member in good standing capable of serving it."

20 And the point they try to make -- and
21 they go through this point about the board having
22 powers versus duties and the board having the
23 power -- basically meaning, your voting rights
24 are not automatically suspended is what they say,
25 just because you haven't paid.

1 But the point is, and the first instance
2 I want to make is that the argument in -- that we
3 got in response to this is not that they paid,
4 the argument is that their voting rights weren't
5 suspended; and that, according to them, took the
6 affirmative act of the board.

7 Well, for one, the documents themselves
8 don't bear that out, or at least the document
9 themselves -- let me show you like this. I have
10 to concede, they're coming from a place in the
11 documents that is -- where there is a textual
12 basis for what they say, and this is with regard
13 to enforcement; and they cite it in their -- in
14 their papers, and I think it's accurately quoted.

15 And it reads, "Subject to the provisions
16 hereof, upon violation of the declaration,
17 bylaws, or any of the rules and regulations duly
18 adopted hereunder, including, without limitation,
19 the fairly to timely pay any assessments, the
20 board shall have the power." And it goes on to
21 list various things to include, "To suspend an
22 owner's right to vote."

23 And they're saying, well, see, you have
24 to have board action to suspend voting rights,
25 even if there's a violation. And I understand

1 that that's there, but they don't cite the --
2 this is on page 17 of the bylaws, which is
3 Exhibit 1-B of our -- of our motion. The
4 procedure reads, "Except with respect to the
5 failure to --

6 THE COURT: Is this part of your
7 complaint, or is it part of a summary judgment?

8 MR. HINES: This is the -- well,
9 this is an argument for summary judgment.

10 THE COURT: Okay. I think this
11 particular exhibit you're referring to, I need to
12 -- I want to try to get to it.

13 MR. HINES: This is Exhibit B to
14 the plaintiff's complaint. It's also exhibit 1-B
15 to our motion.

16 THE COURT: Hold on a second.
17 Believe it or not, I'm toggling between all these
18 exhibits.

19 MR. HINES: Well, I thank you for
20 your patience, Your Honor. I know that's not an
21 easy task. And if you -- when you find that
22 exhibit, Your Honor, I'm on page 17 of the
23 bylaws.

24 THE COURT: Amended summons and
25 complaint. It's part of the complaint?

1 MR. HINES: Yes, if you're -- the
2 plaintiff's complaint, if you go to there,
3 Plaintiff's Exhibit B.

4 THE COURT: Well, I'm sorry, that
5 is the wrong complaint. That's the first case.
6 There it is. Nope, that's not it. Exhibit 1
7 complaint. All right. What paragraph? Where
8 are we now?

9 MR. HINES: If you're on page 17 of
10 the bylaws -- what we're looking at here is the
11 bylaws because this -- this was exhibit -- well,
12 if you're looking at this through the -- from the
13 plaintiff's complaint, it's Exhibit B, which is
14 the HOA bylaws; and then on page 17 is where I'm
15 looking, and then there is --

16 THE COURT: Okay. I've got Exhibit
17 B or 1-B; is that it?

18 MR. HINES: Correct. It would be
19 1-B for our motion. What I did is I tracked the
20 -- the complaint exhibits in this motion.

21 THE COURT: Okay. So what
22 paragraph are we dealing with?

23 MR. HINES: B is the one that I had
24 -- it is cited in their -- in their response to
25 us, and it says B enforcement, and I'm having to

1 acknowledge the fact that, where they're coming
2 from is they're saying that, if there's a
3 violation of the governing documents, the board
4 shall have the power to do various things, to
5 include, to suspend the owner's right to vote in
6 the association.

7 THE COURT: Okay.

8 MR. HINES: Our argument is -- it's
9 a nuance here, Your Honor. It was not done in
10 the sense of a normally operating board; and
11 here's why this breaks down, this being their
12 argument: Their argument, for one, is that the
13 board would have to suspend their board voting
14 rights.

15 Well, they are -- and the reason I say
16 they is that the plaintiff in this lawsuit is
17 Mr. Hannemann. The other person, who is aligned
18 with him throughout this litigation is
19 Mr. Morris. Those are the two people who didn't
20 pay; and the idea being that they would have --
21 those two could block any effort to enforce this
22 against them.

23 So you have Mr. McFarland, and then you
24 have these other two men: Mr. Hannemann and
25 Mr. Morris. And so Mr. Morris and Mr. Hannemann

1 are saying, our voting rights never were
2 suspended by the board, and they're not
3 acknowledging the fact that the board was them.
4 It was Mr. Hannemann, Mr. Morris and Mr.
5 McFarland.

6 Now, there is no way in the world that
7 Mr. Hannemann and Mr. Morris were going to
8 suspend their own voting rights; so, I mean, the
9 idea is that this provision for one, really does
10 not contemplate the situation that we have here,
11 which is where the board members themselves are
12 the violators.

13 So I submit that -- that it would be an
14 absurd construction of this document to say that
15 when you have a three person board and two of the
16 three people are committing the same violation,
17 that if you're going to construe this to require
18 the board to go through a normal voting process
19 and have the majority vote to impose -- to
20 suspend voting rights, those two violators on the
21 board, well, they can immunize themselves from
22 having these consequences.

23 And that -- and so their argument there,
24 I think, actually in a way, it strengthens our
25 position because this argument that they are

1 making would make, I think, good sense if you had
2 a normal operating board, or at least, it could
3 make sense if you had -- if you had a normal
4 operating board, and they had a problem with an
5 owner who wasn't on the board.

6 That's not the problem. Even the
7 language of it talks about imposing it to suspend
8 the owner's rights. Well, you know, it really
9 isn't talking about -- I mean, it's a board
10 member dealing with its safety. And the reason
11 why -- I think what further strengthens that
12 argument is the way that -- we should remember
13 that what we're dealing with here is, well, the
14 life blood of the association is assessments.

15 I mean, you know, this -- this
16 obligation is one which is recognized as trumping
17 -- well, as being, if not the most, there's
18 certainly nothing that is -- that takes
19 precedence ahead of it because you'll notice in
20 procedure, the next paragraph down, which is C on
21 the very same page, it talks about the procedure
22 for enforcement.

23 And let's say you have a problem with
24 some -- I don't know -- you didn't get proper
25 approval to do some sort of renovation or

1 something on your house, or your mailbox had
2 fallen into disrepair, whatever it was. You
3 might get, you know, this goes through this
4 procedure of a written demand to cease and desist
5 and goes through sort of the process.

6 Well, all of that is except with the
7 respect to the failure to pay assessments; so,
8 you know, failure to pay assessments is carved
9 out of that whole process. And our position here
10 is that, indeed when the board itself is the
11 violator, when a controlling interest in the
12 board is the violator, that it has to be
13 automatic to suspend their rights, because
14 otherwise it's not -- you know, it's
15 immunization.

16 It's a license -- you know, being on the
17 board is a license to violate the rules; and
18 Mr. McFarland for -- you know, for his sake, did
19 everything he could do as the other member of the
20 board.

21 And this is in Exhibit 16, where he
22 writes on May 1st, which is before the meeting
23 that -- on May 17th, from which Mr. Hannemann's
24 position derives, you know, to include, "You both
25 have failed to timely pay your 2013 and '14

1 annual assessments, which are still outstanding
2 and have engaged in a conspiracy and" -- oh,
3 yeah, excuse me, and he says, "You do not have
4 the authority to participate in the meeting as
5 you're both members not in good standing. You've
6 both failed to pay your assessments from 2013 and
7 '14."

8 The point is, so he at least, to the --
9 you know, as the only board member we can -- we
10 can maintain as the only board member at that
11 time authorized to act. You know, he -- you
12 know, he exercised his one vote, which I would --
13 which is essentially the majority if the other
14 two board members are conflicted out of voting.

15 But in any event, this provision, for
16 the sake of reasonableness, has to apply
17 automatically upon nonpayment. And, you know,
18 that's where we're coming from. They've taken
19 the position that, you know, there was no board
20 action, but they've taken that position without
21 acknowledging the fact that they could prevent
22 board action because they were the board, and
23 they were the ones that were violating it.

24 And to me and to us, the only reasonable
25 construction of this language is that, you can't

1 very well have not paid your assessments and then
2 proceed to hold a meeting at which you're elected
3 to be board members, and thereafter point
4 yourself or elect yourself to be officers.

5 And, you know, how could you be -- you
6 know, the very idea of that makes sense to -- to
7 be derelict in those duties and yet take on the
8 responsibilities of -- that officers and
9 directors have to the entity, it just seems to be
10 an absurd construction of the document.

11 So if we are right, that they did --
12 that they haven't paid, that they didn't pay and
13 they were in arrears, which, again, our position
14 is there's just -- there is no genuine issue of
15 fact, and I don't see in their -- in what they
16 respond to us, where they actually argued that
17 they were wrong about that because indeed, they
18 did pay the \$2,000 apiece in 2015.

19 And then, now, this gets into -- gives
20 me a natural segue into this argument 1-A that we
21 -- that we pick up on, which is, they've
22 continued to not pay assessments from 2016 to the
23 present. Let me -- and let me make this point
24 before I get going ahead of that. This is
25 Exhibit 14 to our motion. This is a letter from

1 Mr. Hannemann to all members. It is extensively
2 dated June 15th, 2012. That 2012 is a typo.

3 It's obvious from the text of the
4 letter, and what that real date is 2015, which
5 you can -- which I don't think there's any
6 dispute about that because the letter reads,
7 "This letter is to notify all Live Oak Village
8 homeowner's association members that Mr. Morris
9 and I have paid our 2015 and '16 assessments of
10 \$2,000 each; however, the board does not
11 recognize Mr. McFarland as treasurer of the HOA.
12 We deposited our checks into the Bank of America
13 account on June 11th, 2015."

14 And then, "Enclosed is a copy of our
15 dues checks as well as the bank deposit receipt.
16 My June 1, 2015 letter to all indicated
17 assessments for 2013, '14 and 2014, '15
18 previously held in escrow, were provided to and
19 cashed by the LOV HOA; therefore, Mr. Morris and
20 I are now current in our payment of all LOV HOA
21 assessments."

22 Well, right here, there's an
23 acknowledgment that those needed to be paid to be
24 current, and what's also acknowledged here is
25 that the place to pay them to be current was the

1 bank account into which they were deposited,
2 which is the bank account that is the HOA's bank
3 account; and we know that because that's the bank
4 account that Mr. Hannemann is trying to get
5 control of in this case.

6 Why else would he be trying to get
7 control of it under his claim of being the
8 president if it were not the bank account for the
9 HOA? And that's where he put his own money.
10 Well, that's the only time that he's put his own
11 money since 2015.

12 In every other year since they create --
13 they, despite the pendency of this lawsuit, and
14 even though in this lawsuit, his express claim
15 is, I'm the president, and I have to have that
16 particular bank account that you, Mr. McFarland,
17 are not giving me control over. I have to have
18 that to be president and to exercise my duties.

19 They went and created, they being him
20 and Mr. Morris, another bank account and started
21 depositing their HOA money in that account.
22 Well, by their own -- I mean, there is no other
23 inference to draw from their own actions and the
24 averments of his pleading, that that's not the
25 HOA bank account. If it were, why is -- you

1 know, I mean, the HOA bank account is the one
2 that he's trying to get in this case.

3 And my point there is to say, Your
4 Honor, he acknowledged in 2015, in that June
5 letter, that to pay -- properly pay the
6 assessments, they needed to be paid into the
7 account in which he deposited them at that time.
8 He did that. Now, we disagree about the interest
9 having not been paid, and that's -- you know,
10 that's another problem that we talked about in
11 the argument 1-A.

12 But in any event, he says to the whole
13 HOA, here's my proof that I've paid up on my
14 dues. I've put them straight into this account,
15 but he hadn't paid anything else in that account
16 since. They created another account, and they're
17 the only ones putting money in it. The other
18 members, and I -- you know, paid the money to the
19 McFarlands or to Mr. McFarland.

20 And so anyway, that point about who
21 they've paid them to is not necessary to my
22 argument, which is to say, he's both -- he was
23 not in good standing at the time of the May 17,
24 2015 meeting because of the nonpayment of 2013,
25 '14 dues and the failure to pay the automatically

1 accrued interest, and that, as a result, he was
2 not in good standing and with voting rights in
3 May of 2015 when he claims to have been elected
4 to the board, and from that position, elected
5 president; and from there, his claim in this case
6 springs.

7 And as I understand it, his only
8 argument to the contrary is that, well, my -- my
9 voting rights were never suspended by a board
10 action, and we say, that's true, in terms of a
11 normal operating board; however, you and
12 Mr. Morris, both of whom -- and you can see it at
13 the end of the day, they're in lock step because
14 this is in our exhibit.

15 I think, again, it's 13. It's the one
16 where Mrs. Davidson is paying the money for
17 Mr. Morris and Mr. Hannemann in the spring of
18 2015. Yeah, you had the controlling two votes on
19 the board, and so, you know, the point is that,
20 sure, you guys didn't vote to suspend your own
21 voting rights.

22 But that's -- you know, there's no way
23 to make that not an absurd position in construing
24 what these documents mean, and to the extent that
25 a board member could do anything about it,

1 Mr. McFarland specifically said on May 1st in
2 that e-mail, which is Exhibit 16 in our -- in our
3 motion, you're not in good standing; you haven't
4 paid. So I mean, you know, that's his vote to
5 suspend the voting rights, the only vote that
6 could be cast.

7 And then the problem that they have
8 after that date is -- they've had since 2016 when
9 they stopped paying money into the HOA account
10 that is the HOA account is, they continued to not
11 pay; and the only money that's in that account is
12 their money. All the other money from the HOA
13 members are going into the one that
14 Mr. McFarland, you know, is controlling as --
15 under his claim as president.

16 And I would note one of -- I think one
17 other point, and this is in Plaintiff's Exhibit 3
18 to plaintiff's response and cross-motion. And
19 I'm providing this just as an example of what
20 Mr. McFarland is doing, by the way.

21 Like, you can see where Mr. McFarland
22 has sent to -- that what they provided here is a
23 copy of the assessment invoice that Mr. McFarland
24 sent out in 2016, along with his letter to the
25 HOA. It goes through and explains about the --

1 what he's been doing with preventative repair
2 actions and talks about, you know, the various
3 activities, what has been going on, including the
4 proposed budget.

5 The point is, Mr. Hannemann and
6 Mr. Morris have not been paying money -- they've
7 paid money into this other account, which has to
8 be acknowledged is not the HOA's account; and no
9 one else has been paying money into that account.
10 And Mr. McFarland has documented and sent around
11 to everyone the --

12 THE COURT: His accounting of --
13 his accounting of the receipts and disbursements
14 in that account.

15 MR. HINES: Thank you, Your Honor.
16 I'm sorry, I know that was tedious. I'll --
17 you're exactly right. That's what I was poorly
18 saying.

19 THE COURT: All right.

20 MR. HINES: But that -- that's my
21 argument.

22 THE COURT: Let me suggest that we
23 -- I'm going to ask that we take a brief recess.
24 I'm going to shut down the meeting.

25 (A recess transpired.)

1 THE COURT: Mr. Hines, I believe
2 you've indicated at the very end of the session,
3 the morning session, you had finished your
4 argument on your motion for summary judgment?

5 MR. HINES: Yes, Your Honor. I
6 would, if possible, like to reply to Mr. Hood's
7 argument, but I have nothing further on our
8 argument to present to you today.

9 THE COURT: Okay. Of course. All
10 right. Mr. Hood, I will be glad to hear from
11 you.

12 MR. HOOD: Thank you, Your Honor.
13 I think what I'd like to try to do is start with
14 a little bit of background and then address the
15 three arguments that Mr. Hines made, and then
16 tell the Court why I think summary judgment in
17 our favor is appropriate, and hopefully that will
18 conclude my talking portion today.

19 First, you know, we talked about some
20 things transpiring in 2015, and I think it's
21 important to realize and appreciate that this
22 issue, these ongoing challenges date back not to
23 '15 but to 2012; and in 2012, as it's alleged in
24 our complaint and is referenced in Mr. Hines'
25 briefing, there was a meeting in October of 2012

1 where David Hannemann and Tom Morris were voted
2 in as board members.

3 Shortly thereafter, there was a meeting
4 held for the purpose of the board members
5 electing officers, at which point in time,
6 Mr. Hannemann was elected president.

7 Mr. McFarland, who has served essentially as the
8 HOA from day one, just simply refused, and still
9 refuses, to accept his removal from sort of the
10 office of president.

11 So what he did in response was he
12 initiated the first lawsuit that was filed in
13 November of 2012, which you have seen, and we
14 have discussed earlier. So, I mean, this is --
15 it is at the basic level, a peaceful level
16 transfer of power issue; and Mr. McFarland
17 rationalizes that everything that's happened is
18 of someone else's doing.

19 He has rationalized that all of the
20 problems associated with this is because people
21 were out to get him rather than dealing with the
22 problem through the -- the procedures set forth
23 and abide the law in the covenants and
24 controlling documents. He simply has declared
25 there to have "dysfunction" and because the board

1 in his estimation dysfunctional, he has acted --
2 continued to act as president of the board,
3 notwithstanding all of the other meetings, events
4 that have transpired.

5 And I think the word dysfunction is the
6 word that was used in the answer -- or the
7 amended answer and counter-claim that he filed in
8 this case. And I think you can also substitute
9 for the word dysfunction, his removal from the
10 office of president. He's correlating those two
11 as the same thing.

12 He simple doesn't appreciate the change
13 and circumstances. That's been the case since
14 2012. That continues today; and the reason I go
15 back to that is because, you know, if you start
16 to look at some of the technical arguments that
17 Mr. Hines was alluding to in terms of "the true"
18 bank account for the association, then you need
19 the context of understanding that there were
20 subsequent meetings.

21 There were subsequent votes. There were
22 subsequent decisions made that would have
23 resulted in an ordinary circumstance, the then
24 acting officers transferring the corporate
25 documents to the newly elected officers for the

1 ongoing management of the organization. It
2 simply hasn't happened. And so you're left with
3 this process, which is an imperfect process to
4 deal with homeowner's association issues.

5 And I say it's imperfect just simply
6 because, I mean, I would imagine everyone that
7 reads the file in this case thinks, doesn't --
8 don't these folks have something better to do
9 with their time? I mean, you're talking about an
10 HOA that has seven houses in one subdivision that
11 has spun up this much litigation. And here we
12 are. That's why I say it's imperfect.

13 So what I want to try to do is explain,
14 really respond directly to those bullet points
15 that Mr. Hines has made as succinctly as I can
16 because I think they're pretty straightforward.
17 He's already previewed some of our arguments, but
18 I don't think that he previewed them the way that
19 I will; so I want to just walk through this
20 briefly.

21 The first issue that Mr. McFarland
22 raises to suggest that summary judgment is
23 appropriate is that he says, David Hannemann, my
24 client, was obligated to procure three-quarters
25 of a vote of approval to initiate the lawsuit.

1 In support of that position, he looks to Article
2 of Incorporation paragraph 8C9, which you and
3 Mr. Hines worked through together.

4 There's no dispute about what the
5 controlling documents are. There's no dispute
6 about any of those sorts of things. I will say,
7 I very much disagree with Mr. Hines'
8 interpretation of that paragraph. And I'm going
9 to explain why.

10 Before this -- the interpretation issue,
11 I would like to point out that there is a
12 fundamental distinction here, which is
13 Mr. Hannemann, my client, did not pursue this
14 case as the HOA. This is not the association
15 filing the lawsuit. It's David Hannemann, as
16 president of the HOA, and that is a very
17 significant and deliberate distinction that was
18 made when you compare it to the original lawsuit
19 that McFarland filed as the HOA.

20 The HOA was the plaintiff; so when I
21 look at this provision contained in the bylaws,
22 it talks about the association shall be required
23 to obtain the approval. So the first -- my first
24 fundamental problem with this argument that's
25 made by McFarland here is, this is David

1 Hannemann, in his individual capacity, serving as
2 president, who's bringing this lawsuit for
3 declaratory judgment. I do not believe this
4 provision applies to him. I do not believe that
5 as it's stated, it applies to him.

6 If, however, you were to disagree with
7 me on that, I would -- I would then say, well,
8 let's look at the language and let me show you
9 why even if Mr. McFarland's argument that David
10 Hannemann really is the HOA, even though it's not
11 read that way, his argument would fail. This
12 provision specifically says that, "A vote of
13 three-quarter members at a duly called meeting,
14 the members at which quorum is present is
15 required prior to the payment of."

16 Okay. This is a provision -- and I
17 think this is probably the one thing that
18 Mr. Hines said that I agree with. This is a
19 provision and it's, you know, put -- placed into
20 these documents to ensure that the members are
21 not forced to pay legal fees and expenses that
22 they don't agree that should be pursued.

23 This is not a provision that gives the
24 members a three-quarter supermajority vote over
25 whether to initiate or not initiate litigation.

1 That's not what it says. McFarland would have
2 you convert a fee paying issue into a
3 commencement initiation issue, which it clearly
4 does not do.

5 If David Hannemann were paying me to
6 prosecute this lawsuit out of HOA funds, then it
7 would be a very different conversation. If
8 Mr. Hannemann were actually pursuing this as the
9 HOA, it would be a different argument. Here,
10 neither of those are happening.

11 So this is, by its own language, a
12 provision that is designed -- it specifically
13 protects the members of the association from
14 incurring these fees and expenses associated with
15 these things for purposes of suing, making, or
16 preparing or investigating any lawsuit or
17 commencing any lawsuit. That's it.

18 So can they pursue, investigate? Yes,
19 you can, but the association is not obligated to
20 pay for it unless you get prior approval to do
21 so. So my first position --

22 THE COURT: Okay. I was wondering
23 about how that -- how he was getting to that.
24 That's helpful for me to understand it. Thank
25 you.

1 MR. HOOD: So the third response is
2 -- to this specific issue is, if you disagree
3 about the fact that Mr. Hannemann had brought the
4 suit in his individual capacity, and if you also
5 disagree that this is a fee sharing issue, and
6 this is actually an initiating issue, then I
7 would say, I disagree with that assessment, but
8 respectfully would point subpart D of that same
9 section, where it says -- where it accepts a list
10 of lawsuits from this provision.

11 And subset D is in an emergency, where
12 waiting to obtain the approval of members creates
13 a substantial risk of irreparable injury to the
14 association property or to the members. And
15 y'all discussed that earlier.

16 And I think Mr. Hines candidly
17 acknowledged that, if one of these exceptions
18 that were to apply, that would be potentially the
19 one. He didn't agree that it was because he
20 didn't consider it to be an emergency. I,
21 however, would disagree with that assessment.

22 I mean, if you look at where things
23 stand and where they have stood since the first
24 lawsuit is filed, you have Mr. McFarland
25 operating as the de facto president sending and

1 receiving bills. You have David Hannemann
2 conducting meetings, votes, issues, you know,
3 notices, things like that; holds himself out as
4 president.

5 You have the potential for one or both
6 of them or someone to be failing to honor and
7 live up to their obligations set forth in the
8 bylaws and the controlling documents, which
9 creates risk of personal liability to them. You
10 have risk to the association for things like
11 insurance, DNO insurance.

12 Otherwise, you've got money that's in
13 one account; you have money that's in a separate
14 account. And so, you know, I disagree with the
15 assessment that this isn't an emergency. I will
16 candidly acknowledge that things are sitting
17 idle.

18 And so one may say, if things were idle,
19 how can it really be, you know, an emergency.
20 Well, I mean, you could ask any harbor pilot, if
21 you had a ship that's sitting there rudderless
22 without power, is that an emergency? I think
23 they'd say, heck yeah, it is. And that's what
24 we're dealing with here.

25 So with respect to their ultimate

1 argument for summary judgment, Your Honor, I
2 think that they fail because the provision
3 doesn't apply to David Hannemann in the capacity
4 in which he's brought suit.

5 Alternatively, I believe that this is a
6 fee sharing, which is inapplicable here because
7 no fees have been requested or utilized, and
8 alternatively, from that would be that if -- if
9 this is something that required David Hannemann
10 to get approval to initiate a lawsuit, it would
11 fall under the section of paragraph D.

12 And I do briefly want to mention the
13 exhibit that Mr. Hines has raised today. That's
14 the May 31st, 2016, letter, and this letter was
15 authored by David Hannemann and sent to the
16 members of the -- of the HOA. And this is used
17 to say, you see here this last sentence, what
18 Hannemann is doing and intends to do is to force
19 the HOA to pay.

20 Well, there is a provision that he can
21 pursue to have the HOA pay. He would follow
22 paragraph 8.C9, and he would have to put it up
23 for a vote; but more importantly, Hannemann is
24 not asking the association to pay for this
25 litigation. He's asking the Court to order

1 McFarland to pay for this litigation, and that's
2 part of the complaint that was brought because
3 the language contained in the documents give us
4 -- give Mr. Hannemann the ability to recover his
5 fees pursuant to the Article 15-D of the bylaws.

6 But when you look at this letter, I
7 think it's pertinent and really, salient to a lot
8 of the things I said in my opening comments,
9 which are, what's happening in this HOA? Here,
10 you have talked, describing the communications
11 that the people are claiming that accounts are
12 being paid one way or the other.

13 So that's showing a little bit of the
14 dysfunction, I think, that Mr. Hines alludes to
15 in his counter-claim. But that last paragraph
16 says again, "The board of directors is again
17 requesting the LOV HOA records and checkbook to
18 be turned over to a lawfully elected board."

19 Mr. McFarland is still sitting on all of
20 the documents, including the checkbook, and he
21 refuses to turn them over. He's still sitting on
22 them today, and he will continue to sit on them
23 until probably the Supreme Court of South
24 Carolina orders it to be done. So I think this
25 letter is really insightful in terms of talking

1 about the composition of -- of the organization,
2 and really, what was going on.

3 But one thing it does not do is it does
4 not assess fees. It does not create an
5 assessment. It talks about it in the future, and
6 as sort of like a trespass in the future. That's
7 not actionable. It hasn't happened yet. If it
8 were to happen, that would be an issue for the
9 members to raise at that time.

10 So with that, Your Honor, I think I've
11 covered my points that I wanted to make in
12 conjunction with their first argument about
13 whether Mr. Hannemann could properly pursue these
14 actions. Do you have any questions before I move
15 on?

16 THE COURT: There was a statutory
17 provision you referred to in your complaint, the
18 payment of attorney's fees.

19 MR. HOOD: Yes, sir.

20 THE COURT: Can you give me a brief
21 idea of what -- I'll look it up, but can you tell
22 me what it said? Is that the -- it was a
23 Title 15 claim -- I mean, Title 15, so that
24 wouldn't be in the corporate section. That's a
25 procedural section.

1 MR. HOOD: Yeah. So I cited in
2 there 15-53-100. Would you like me to look it
3 up? I can look it up real quick. I think this
4 is a cost provision or DJ actions. Yeah, this
5 is; so this is 15-53-100 is under the DJ action
6 section where the court can award that these were
7 equitable and just.

8 Yeah, I should probably amend my
9 complaint to make reference to 15D of the bylaws
10 that I just alluded to, so that Mr. Hines is the
11 one noted, at least, of our position; but I
12 think, assuming that we survive summary judgment,
13 I -- I would ask to either move to conform with
14 the evidence or I can file an amended pleading
15 just to include that reference in there.

16 Any other questions you have about that
17 first point, Your Honor?

18 THE COURT: One other question,
19 Mr. Hood. Mr. McFarland is being sued in his
20 individual capacity, as I understand it.

21 MR. HOOD: That's right.

22 THE COURT: All right. The actions
23 that he has been asserting in terms of his
24 resistance to the request for the transfer of
25 power, for the lack of a better way of describing

1 this, have been actions taken as or on behalf of
2 or as present of or as a member of the
3 homeowner's association; in other words, it's a
4 different capacity. Would you agree with that?

5 MR. HOOD: I don't think his --
6 there's a distinction between him acting
7 individually and acting as a member of the
8 association. I don't think that's a recognized
9 different capacity. I don't believe it -- so
10 that's one, and with respect to, and on behalf of
11 the association.

12 Given that, that he was removed as a
13 board of director in a properly called meeting in
14 2015 and no longer serving as the president or a
15 board of director, he doesn't have the ability to
16 legally act in that capacity; so I think in his
17 actions --

18 THE COURT: Yeah.

19 MR. HOOD: -- while -- while he's
20 purporting them to be that way, really represent,
21 an, you know, disgruntled former board member,
22 former president, who refuses to acknowledge the
23 results of the elections.

24 THE COURT: All right. Got it.
25 Thank you.

1 MR. HOOD: Yes, sir. All right.
2 The second -- and I've just taken the issues that
3 y'all addressed, and -- so the second one has to
4 do with judicial estoppel. I think I can
5 dispatch with that one a little quicker. I've
6 cited --

7 THE COURT: Let me just -- let me
8 just stop you here. I don't agree with the
9 judicial estoppel argument. I think we have
10 different parties, and so I will not be ruling in
11 favor of Mr. Hines on that issue.

12 MR. HOOD: Okay. Well, then I will
13 not waste any more of your time. The last issue
14 has to do with -- that Mr. McFarland alleges that
15 Hannemann was not in good standing for failure to
16 pay his assessments, and his voting rights
17 therefore were suspended, so he's not really who
18 he says he is.

19 So to take a look at -- at that, first
20 of all, it was raised that I did not specifically
21 go through all of the facts that I would have at
22 the trial, if necessary, to talk about the steps
23 that Hannemann made to pay his assessments, when
24 they were paid, and the fact that what he did was
25 adequate, given the circumstances.

1 The fact that he's being criticized for
2 not depositing the money into an account that's
3 controlled by Bill McFarland after he's refused
4 to turn it over is somewhat laughable to me; but
5 he is being criticized of that, nonetheless.
6 It's like a -- it's like a bully taking away
7 somebody's phone and then telling them that they
8 didn't call the police, you know, I mean.

9 I do want to talk about the specific
10 technical provision that Russ -- or excuse me,
11 Mr. Hines argued because I think that it's
12 important for me to -- to provide some context to
13 how he is asking the Court to interpret the
14 enforcement provisions and the -- sort of the
15 effect of the assessments.

16 Mr. Hines suggests that there is an
17 automatic provision -- automatic voting
18 suspension that arises in these circumstances,
19 essentially because Morris and Hannemann are two
20 of three board members who wouldn't ever vote for
21 themselves, if I articulating that correctly.

22 And I very much disagree with that,
23 primarily because the analysis is more of the
24 question of, is there even this automatic
25 provision that he's alluding to because what he's

1 trying to ask the Court to do is to create a
2 provision that it doesn't exist within the
3 document; and I think it's clear from looking at
4 Section 15B of the bylaws -- and I'm sorry to
5 keep toggling back and forth.

6 But what 15B makes clear is that the
7 board has the power to suspend voting rights of a
8 member not in compliance; but if the board votes
9 to do that, then it has to do that in compliance,
10 you know, with a certain process.

11 THE COURT: Go ahead.

12 MR. HOOD: Now, I want to pull up
13 the notwithstanding language that y'all went
14 through. Just give me a second so I can pull it
15 up. So it's section -- the first one is
16 section 6.3, and so section 6.3 comes from the
17 Declaration of Covenants and Restrictions.

18 THE COURT: What exhibit is it? Do
19 you have that as a separate exhibit in your --

20 MR. HOOD: Yes, Your Honor. That's
21 Exhibit No. 3 to Mr. Hines' motion.

22 THE COURT: Oh, in his motion?

23 MR. HOOD: Yes, sir.

24 THE COURT: All right. Covenants,
25 I got it, and it's what paragraph?

1 MR. HOOD: It's 6.3. It's found on
2 the top of page 15 of that document; and so, if I
3 understand McFarland's argument, he's saying that
4 because there is a provision that provides that
5 interest shall bear, that that also means that
6 the fact that interest hasn't been paid is an
7 indication that they're not in good standing, and
8 therefore, they're not able to note.

9 For Mr. McFarland's standpoint, the
10 problem with that argument is that the bylaws
11 don't follow his thought process on it. It
12 doesn't create this automatic action that he
13 wants to think exists.

14 THE COURT: Let me get this
15 straight, Mr. Hood. It seems to me like
16 Mr. Hines was arguing that, because there was a
17 failure to have paid the assessments, that
18 automatically disqualified the -- your client,
19 Mr. Hannemann, and Mr. Morris from being members
20 on the board of directors because they were in
21 default of payment of assessments; is that the
22 bottom line?

23 MR. HOOD: I believe -- I believe
24 so, Your Honor.

25 THE COURT: And do you agree with

1 that statement? Is that he's trying to say, that
2 this sort of arises out of that, like a phoenix
3 out of the ashes?

4 MR. HOOD: I believe that's what
5 he's articulating is that when the -- when my
6 client paid the money in escrow --

7 THE COURT: Right.

8 MR. HOOD: -- that that was not
9 adequate, and because that was not adequate,
10 interest was owed, and because the interest was
11 owed and it was not paid, they're not in good
12 standing; because they're not in good standing,
13 they can't vote; they can't act, so the
14 subsequent meetings that took place are invalid.

15 THE COURT: Okay.

16 MR. HOOD: And I would say --

17 THE COURT: That's nothing, as I
18 keep telling you -- is there anything in the --
19 anything in writing that explicitly states that
20 in the declaration?

21 MR. HOOD: There is not, Your
22 Honor. There is no -- there is no provision that
23 says -- and first of all, let me preface this
24 with the statement that I believe, if I had to
25 get into the factual dispute of whether he had

1 paid the assessments or not, I could do that
2 because I think we can establish that. I'm
3 trying to avoid that because this is summary
4 judgment.

5 THE COURT: Okay. I got it, right.

6 MR. HOOD: But so, to answer your
7 question directly, no, there is no such
8 provision. There is no provision that says, a
9 members who fails to pay interest and assessments
10 and/or interest by such and such date is a member
11 not in good standing; and then the voting
12 provision would say, only members in good
13 standing can vote.

14 These rules don't have that language in
15 them. And so what Mr. McFarland is advocating
16 here is the spontaneous creation of an automatic
17 suspension of voting rights in this unique
18 situation because he thinks it's unlikely that
19 Mr. Hannemann and Mr. Morris would invoke those
20 fines on themselves essentially.

21 THE COURT: Okay.

22 MR. HOOD: But my position on this
23 is, if you look at 6.3, which talks about the
24 creation of interest, you still have to go back
25 to the bylaws in section 515-B of the bylaws,

1 which is on page 17 of that document, because it
2 talks about powers that the board has.

3 And it says, "The board shall have the
4 power to suspend owners' voting rights to the
5 association." The point there is that power
6 exists; that power has not been exercised. In
7 the absence of the exercise of that power, no
8 voting rights have been suspended.

9 And I don't think you can fabricate an
10 outcome determinative sort of post hoc
11 rationalized automatic springing of terminating
12 voting rights in a situation as bizarre and
13 peculiar as this one to get the result that
14 you're looking for.

15 THE COURT: All right. Okay.

16 MR. HOOD: All right. So that's
17 the -- that takes care of the voting issue, or
18 excuse me, the --

19 THE COURT: The payment.

20 MR. HOOD: Yeah, the payment issue.
21 So I think, at this point, Your Honor, I talked
22 about all three of the issues that have been
23 raised by Mr. Hines affirmatively. And, of
24 course, I would refer to our briefing for, you
25 know, more complete -- and if, for a minute, I

1 could just move over to my affirmative motion
2 because if you will recall, we -- we came before
3 you, I thought, to argue these motions a while
4 back, and there had been some actions taken by
5 Mr. McFarland -- or maybe it was Mrs. McFarland.

6 THE COURT: Right.

7 MR. COURT: Someone needs to try to
8 call board meetings and that turned into a TRO
9 that you addressed earlier.

10 THE COURT: Right.

11 MR. HOOD: And so we were thinking
12 that we would leave that hearing and try to
13 schedule a trial sooner rather than later to get
14 this issue resolved so we could find out who's
15 going to be, you know, the president; and then
16 they can call meetings, and then they can vote
17 each other in or out. They can, you know, run
18 their own campaigns, whatever they want to do
19 over there, follow the rules, you know, that
20 everybody live by.

21 And then a lot of things happened since
22 then, and I'm not -- I mean, one of them was the
23 lawyers had a hard time getting things scheduled,
24 and then all of a sudden, you know, I think Russ
25 wanted -- or Mr. Hines wanted to actually have

1 these motions heard; and the COVID came, and here
2 we are.

3 So no one is -- I'm not pointing any
4 fingers at that, I'm just trying to give you some
5 perspective. And I had been want to say, I
6 suggest we just dispatch with the motions for
7 summary judgment, and let's just have the trial
8 and be done with it. And Mr. Hines, being the
9 good advocate for his client, you know, said,
10 well, I understand; let's have this hearing.

11 So my point was, well, if we're going to
12 go ahead and have the hearing, I'll go ahead and
13 argue my motions, too. And that was in part
14 prompted by the fact that Mr. McFarland and his
15 wife in the recent months have filed with the
16 South Carolina Human Affairs Commission, a
17 complaint against my client.

18 And so, I -- I supplemented my briefing
19 with a description of what transpired, and the
20 reason that it just sort of struck me is because
21 we've been dealing with Mr. McFarland since the
22 original lawsuit in 2012. There have been
23 multiple trials, appeals. I understand that they
24 had -- he lost -- he lost claim one appeal. They
25 came back at another trial. They lost that case.

1 I don't think the motion for
2 reconsideration has been resolved yet, but this
3 has all been percolating for many years, for many
4 different actions, all based -- or not based on,
5 but all had a common thread that Mr. McFarland
6 was not the president of the HOA, but was trying
7 to wrongfully act as the president of the HOA.

8 So when I saw that he had taken
9 advantage of the South Carolina procedural
10 mechanism for pursuing people to feel like they'd
11 been -- had their First Amendment Bill of Rights
12 violated by the housing folks, and he declared
13 under penalty of perjury and tested to the
14 accuracy of it, that David Hannemann was
15 president of the HOA and was taking these actions
16 all during the same timeframe in which he's now
17 arguing to this board that he wasn't in good
18 standing, and he didn't have the right to do
19 because he hadn't paid his assessment.

20 And I just don't know how you can have
21 it both ways. I mean, it's clear to me that you
22 have someone who's abusing the legal system to
23 try to make it so undesirable, that he will not
24 relent; and so he is taking advantage of, first
25 suing on behalf of the HOA, after he was voted.

1 He loses there.

2 Then he can sue to try to return the
3 information and give back, but recognized that
4 Hannemann is the president, give back the papers
5 that he'd refused to give back; and then he filed
6 a counter-claim associated with all of that,
7 contesting the validity. Meanwhile, because this
8 hadn't moved fast enough, he goes to Human
9 Affairs Commission and says, hey, they've taken
10 all these actions and are officially taking
11 positions that are a violation of unprotected
12 constitutional rights.

13 Well, he can't make that argument
14 against a neighbor. He can only make it against
15 someone who has a position of authority. That
16 would be the association; that would be the
17 landlord, that sort of thing. Those were the
18 people who can be the target.

19 So if he were to recognize that
20 Hannemann -- and were to state that he was --
21 just happened to be a neighbor, who was acting
22 like a president, he wouldn't have the ability to
23 pursue those claims; so instead, David gets
24 served with a challenge or a complaint from the
25 South Carolina Human Affairs Commission. I need

1 to respond to it, to which we had to provide all
2 this context contacts and everything else.

3 That's -- enough is enough.

4 So if we're going to have a motion
5 hearing, I want the Court to know what else is
6 happening out there because I don't think that
7 Mr. McFarland can maintain with the South
8 Carolina Human Affairs Commission that David
9 Hannemann was president and acted in a way that
10 caused him harm, and then asked you to penalize
11 Mr. Hannemann for not being president but acting
12 like he is.

13 And those two positions are completely
14 incompatible, and in response to that,
15 Mr. McFarland files an attestation or --

16 (A recess transpired.)

17 THE COURT: Go ahead.

18 MR. HOOD: Okay. So, Your Honor, I
19 just wanted to -- to comment on that attestation,
20 and I think, you know, what -- what I see in my
21 interpretation of that document is, uh-huh, I
22 probably shouldn't have filed that housing
23 discrimination complaint, and we're trying to
24 back pedal, kind of like caught crawfish, where
25 you sort of walk backwards.

1 And it says, he intends to clarify their
2 position. He is still trying to prosecute
3 someone for violating First Amendment rights, and
4 -- or 14th Amendment rights, rather. I think
5 there's some racial discrimination allegations
6 and national origin allegations and things like
7 that.

8 And so he is trying to prosecute those,
9 which would not be actionable if the person is
10 not acting in an official capacity. Like I said,
11 you can't sue a property owner. You can sue a
12 homeowner's association if they discriminate, and
13 you know, while people live in neighborhood or
14 wherever it may be.

15 So you've got incompatible position, and
16 in my briefing, I start with waiver, and I
17 concluded it with judicial estoppel; and as we
18 talked about judicial estoppel today, I don't
19 think, Your Honor, that judicial estoppel applies
20 because that issue has not been fully resolved
21 yet in his favor.

22 And so we don't have, and we haven't
23 gotten to that point; and I didn't appreciate
24 that until I think you and Mr. Hines were
25 discussing the judicial estoppel in y'all's

1 conversation, and I'm glad that it came after my
2 waiver argument.

3 And so, what I would suggest, Your
4 Honor, is that -- that that is -- I would abandon
5 my judicial estoppel argument based on our
6 discussion because I don't think procedurally I'm
7 there yet. And so Mr. Hines didn't have to
8 address that.

9 But on the waiver issue, the distinction
10 between expressed waiver and implied waiver is
11 worth mentioning. I think that this conduct
12 amounts to expressed waiver, but I don't think if
13 the Court were to look at that and disagree, I
14 think that clearly there's sufficient implication
15 from the conduct to surpass the standard for
16 implied waiver.

17 You know, "Implied waiver results merely
18 from the conduct of a party against who the
19 doctrine is a vote, which voluntarily relinquished
20 to his known right is reasonably inferable." So,
21 what known right is reasonably inferable? Well,
22 if he's taking the position to the South Carolina
23 Human Affairs Commission that Hannemann is
24 president, then he, in my estimation, has
25 impliedly waived his ability to claim that he is

1 not the president in the ongoing litigation.

2 So I think, from a waiver standpoint,
3 that his conduct of filing of this rises to that
4 level. I don't think that the waiver issue is
5 the only reason why summary judgment is
6 appropriate.

7 Instead, I would say that summary
8 judgment is appropriate in this case because
9 Mr. Hannemann was properly elected in 2015 at a
10 properly called meeting with proper notice with
11 the quorum. The election was held. The results
12 of the election were recognized by a present
13 attorney, Capers Barr, and his affidavit
14 certifying the legality of that is attached as
15 Exhibit 1-C to our motion.

16 So I believe that that -- that is the
17 basis that's the launching point for Mr.
18 Hannemann's proper summary judgment that he is
19 the rightful and lawful president of the HOA. I
20 do not believe that the argument to the contrary
21 are adequate, and I don't believe that they even
22 raise questions of fact as to them because the
23 documents don't support the theories they are
24 pursuing.

25 They're trying to create theories that

1 are not specifically identified. In
2 Mr. McFarland's complaint, that the and
3 legitimacy of Hannemann's election is -- is
4 connected to this dysfunctional component, that's
5 not a basis to disagree with the results of an
6 election.

7 The only other argument he would have
8 is, the elections weren't valid because of the
9 fees assessment and the automated -- automatic
10 suspension of the voting rights, which we've
11 already addressed.

12 THE COURT: Okay.

13 MR. HOOD: So I bring up the filing
14 of the Human Affairs Commission in part to
15 complete the record or the lengths to which this
16 case has gone. I don't -- and I do think the
17 implied waiver applies, but I don't think that's
18 the reason summary judgment is appropriate.

19 I think summary judgment is appropriate
20 because the only reasonable inference is that
21 David Hannemann was properly elected. He's the
22 president. He should be given the -- recognized
23 as president, and Mr. McFarland should be ordered
24 to turn over all of the books and records, so
25 they can all be reconciled.

1 And then, if people have a problem with
2 Mr. Hannemann's conduct, they have the bylaws and
3 the operating documents, controlling documents,
4 to which they can hold him accountable for his
5 conduct thereafter.

6 And then, with respect to the fees, you
7 know, we would just ask the Court, if you're
8 inclined to grant the fees, which are
9 significant, given the length that we've gone to,
10 that we be permitted to provide --

11 THE COURT: Okay.

12 MR. HOOD: -- an affidavit of fees
13 that, you know, is appropriate.

14 THE COURT: All right. Okay.

15 MR. HOOD: So with that, Your
16 Honor, thank you very much.

17 THE COURT: All right. Mr. Hines,
18 in reply?

19 MR. HINES: Yes, Your Honor. And
20 again, may it please the Court. The first thing
21 that I want to mention is, of course, the summary
22 judgment standard. And a standard, as well known
23 to all of us, is that, insofar as Mr. Hood is
24 moving -- and Mr. Hannemann is moving for summary
25 judgment against -- in his favor against

1 Mr. McFarland, obviously, it'd be -- it requires
2 that the evidence and the reasonable inferences
3 that are capable of being drawn from them be
4 viewed in a light most favorable to
5 Mr. McFarland.

6 And so that's, let me -- that's my very
7 first theme that I want to mention because, in
8 speaking of theme, it did occur to me and it was
9 certainly well done, as I would expect it to be,
10 given Mr. Hood's skill; but there were -- there
11 was some, respectfully, sort of vacillation there
12 between jury argument and legal argument.

13 If I may try to describe then sense that
14 I got from it, which is that, you heard a lot of
15 things, Your Honor, that -- that were quite
16 negative of Mr. McFarland. You know, that you --
17 you heard, you know, he's disgruntled.

18 You heard, you know, all about his
19 refusals and him being in the wrong. Well, Your
20 Honor, every level of that, what we have is a
21 difference of a factual dispute.

22 I mean, you know, Mr. Hood is making an
23 able argument, but is an argument, nonetheless,
24 and I would -- for instance, he said something,
25 and I believe this -- I believe he misspoke here.

1 I think he indicated that in October of 2012,
2 that Mr. Hannemann and Mr. Morris were duly
3 elected as board members, and then subsequent to
4 that, Mr. Hannemann became president. If I heard
5 him say that, I may have misheard him; but if
6 that's what was said, it is not correct.

7 THE COURT: Well, what I understood
8 him to say was that -- I think he was alluding to
9 2012 as the -- sort of the origin date of discord
10 between these parties; and he -- I didn't
11 understand him to say that they were nominated as
12 directors of 2012, or rather 2016, I believe, was
13 the date. And that's what seems to be the
14 documentary evidence, and the case seems to
15 support that, too.

16 MR. HINES: And, Your Honor, as far
17 as what he said, I just want to be clear, they
18 were not elected board members, and I'm
19 distinguishing board members from officers. The
20 way this works is that board members would be
21 elected at an annual meeting of the HOA
22 membership, and officers and directors would be
23 elected by the board members themselves.

24 Now, and I think the 2011, 2012 time
25 frame is an appropriate place to start to tell

1 this story, if we were going to tell the whole
2 story; however, in this -- and again, I'm
3 speaking, and I want to be clear.

4 On the issues that we have raised to the
5 Court for summary judgment in our favor, I
6 believe that every one of them stands on its own
7 two feet. I understand, you know, we disagree,
8 though respectfully understand the Judge has
9 already ruled on the equitable estoppel argument;
10 but I'm not trying to argue that further.

11 THE COURT: Judicial estoppel.

12 MR. HINES: You're correct, Your
13 Honor, excuse me, judicial estoppel. You're
14 absolutely right. My point is only to say that I
15 see those as what you might call rifle shot
16 arguments, where they isolate bedrock factual
17 information that can be relied upon in making
18 rules as a matter of law.

19 But what Mr. Hood has talked about in
20 terms of one -- as soon as he goes back and talks
21 about 2012, Your Honor, suffice it to say, there
22 is a wealth of information and evidence -- let me
23 say evidence that you just don't have before you;
24 and it's not necessary to have it before you for
25 you to grant my motion, I should say.

1 THE COURT: Well, let me ask you
2 something. Let me to interrupt you there.

3 MR. HINES: Yes, sir.

4 THE COURT: And I apologize. I
5 don't mean to get you off your -- I don't mean to
6 get you off balance, but this lawsuit is about
7 whether or not I should direct Mr. Hannemann as
8 the president; and secondly, whether or not I
9 should order Mr. McFarland to deliver over the
10 books and records of the association set under
11 his control. And I mean, and it's -- that's
12 really the bulls eye here, isn't it?

13 MR. HINES: It is, and that's why
14 -- Mr. Hood is the one who brought up the --

15 THE COURT: So why do we need to go
16 back -- why do we need to go back beyond the
17 certification of -- of Mr. Barr and his affidavit
18 that solidifies that the meeting was conducted in
19 accord with the bylaws, articles, and the
20 covenants?

21 MR. HINES: We need to go back
22 before that for a couple of reasons, but the
23 reason -- the reason that I was going back as far
24 as I was going back, for instance, to 2012 into
25 the discord is because I thought Mr. Hood was

1 trying to give some of that context; but as far
2 as Mr. Barr -- this needs to be said. Mr. Barr,
3 when he certifies that -- and this is -- this is
4 no -- in no way any sort of -- I'm not saying
5 anything negative about Mr. Barr.

6 THE COURT: I understand that. As
7 to Mr. Barr, I understand that.

8 MR. HINES: Thank you, Your Honor.
9 But what I'm saying is that Mr. Barr is
10 essentially Mr. Hannemann and Mr. Morris' lawyer.
11 I mean, so when -- when he gives the opinion that
12 everything is kosher, that's like, well, Mr. Hood
13 would tell you the same thing. They're
14 advocates.

15 I mean, I just want to be clear. What
16 Mr. Barr said is certainly not chiseled in stone,
17 and furthermore, and as I was trying to suggest
18 to begin with, this whole issue of how
19 Mr. Hannemann's nonpayment of dues in 2013 and
20 '14 and -- and finally paying, catching up those
21 principal amounts in 2015, how that impacts his
22 standing in that -- in that May 2017 -- excuse
23 me, May 17, 2015, time. Mr. Barr never addresses
24 that.

25 And so the point, I guess, to be clear,

1 Mr. Barr doesn't tell the whole story. What he
2 is able to say is, I can count people. I know
3 there is a quorum. I know that various things
4 were done, but he doesn't say anything about the
5 standing or voting rights of Mr. Hannemann and
6 Mr. Morris at that time. And the, I guess, other
7 point --

8 THE COURT: Let me back up -- let
9 me back up a second. Again, I hate to interrupt
10 you, and I apologize, but let's go to that
11 meeting that Mr. Barr issues his affidavit about.
12 Is there a dispute as to the -- procedurally, the
13 meeting was properly called?

14 MR. HINES: Your Honor, I don't
15 know -- I don't -- I don't know that there is,
16 and I'm not trying to hedge unduly here. I'm
17 trying to make the point that we have not
18 argued -- our argument is, at the time that
19 meeting was called, neither Mr. Morris nor
20 Mr. Hannemann was a member in good standing of
21 the HOA with voting rights.

22 THE COURT: I understand that.

23 MR. HINES: Now, as far as the
24 getting of the notice and the time that it was --
25 I believe that -- I don't think our quarrel is

1 with that, Your Honor. You know, so it's not
2 about some -- indulge me just for one moment.

3 I want to turn around and look at my
4 clients and make sure that I'm not forgetting
5 something because they're well versed in this as
6 well. Excuse me, Your Honor, if I could have one
7 moment, please.

8 THE COURT: Feel free to comment --
9 I mean, to address them, to talk to them.

10 MR. HINES: Thank you. Thank you,
11 Your Honor, I'm back. Yes, as I was suggesting
12 is that our problem with that meeting is -- is it
13 has to do with the nonpayment of 2013 and '14
14 assessments and --

15 THE COURT: Well, let me ask you
16 this question: Did your clients appear -- come
17 to the meeting and object to that?

18 MR. HINES: Well, my clients did
19 not come to the meeting. Mr. McFarland did write
20 to Mr. Hannemann, and this is in Exhibit 16 --
21 actually, he sent this to Mr. Hannemann and
22 Mr. Morris, another homeowner, Mr. Holcombe, and
23 also Attorney Brandt Shelbourne.

24 And this is on May 1st, 2015, and this
25 is when he -- you know, if you will indulge me a

1 a little bit of reading, Your Honor, this is
2 Exhibit 16.

3 "Dear Mr. Hannemann and Mr. Morris, I
4 received your letter purporting to speak on
5 behalf of the Live Oak Village HOA Board of
6 Directors calling for a board meeting today,
7 Friday, May 1st, 2015. While you obviously could
8 do whatever you choose to do on your own, I do
9 not agree that you have the authority to call a
10 board meeting, nor do you have the authority to
11 participate in one, as you are both members not
12 in good standing. You've failed to pay." And
13 Your Honor, it goes on in that -- in that way.

14 THE COURT: All right. But the
15 point is, that letter was written after the
16 meeting, correct?

17 MR. HINES: It was before the
18 meeting, Your Honor. That meeting was on May
19 1st, 2015. It was -- it was in advance of the
20 meeting on May 17th, 2015; so there was clearly a
21 prior objection.

22 And I also would mention, Your Honor,
23 when that meeting took place, as far as an
24 objection is concerned, that that meeting was in
25 the middle of litigation that was already

1 ongoing. You know, how in this case, Your
2 Honor -- in fact there was an effort, as I
3 understood it, to try and use the democratic
4 processes provided by the governing documents to
5 -- to see if that would, I guess, produce an
6 election that was valid.

7 Well, essentially that happened, you
8 know, in this other case; meaning, when this
9 happened in 2015, the allegedly proper meeting,
10 that was -- that happened in the middle of the
11 ongoing litigation in 2012, which is still
12 ongoing, as a matter of fact, because it's on
13 appeal.

14 So it's, you know, there's definitely --
15 it's -- there's no question about it, and so in
16 addition to Mr. McFarland's e-mail that I just
17 read to you, our Exhibit 16 to our motion, you
18 know, the idea that there was a very significant
19 difference of opinion as to who was in the right
20 between Mr. Hannemann and Mr. Morris on one side
21 and McFarland and Holcombe.

22 I haven't talked much about Holcombe,
23 but he was sort of lined with the McFarlands in
24 that case; so as far as the objection, it was
25 both expressly made and certainly the climate of

1 objection was ongoing because this was still in
2 the middle of a litigation.

3 THE COURT: But the issue is, I
4 mean as I see it, Mr. Hines, is that -- or if you
5 explain that that letter was -- predates the
6 meeting.

7 MR. HINES: Yes, Your Honor.

8 THE COURT: But he still did not
9 attend the meeting and -- and voice his objection
10 to the -- to the whole of the parties who did
11 attend the meeting.

12 MR. HINES: No, he did not attempt
13 to voice that objection that he had already made.
14 He didn't reiterate it in person, Your Honor,
15 that's true; but I'm not aware of any requirement
16 that he do so.

17 THE COURT: Well, here's the
18 problem with it is that, one, from the date of
19 the letter to the date of the meeting, he could
20 have changed his mind; two, he could have
21 appeared at that -- at that meeting, and if he
22 didn't want to participate in the meeting, he
23 could have stated that I am here merely to object
24 to the procedural foundations that are coined in
25 the meeting and list his objection so that there

1 would be a record of that objection in the
2 minutes of the meeting itself.

3 But having failed to appear, having
4 failed to express those objections in a duly --
5 and what the Hannemann asserts as a properly
6 called meeting, I mean, I would -- I would tend
7 to believe or tend to feel that he has waived his
8 right to object to the issue of -- to the issues
9 that he is objecting to.

10 And they may be those that are sent out
11 in the letter, but I think he had a
12 responsibility to go to the meeting and say, you
13 can't have the meeting because of the following
14 reasons.

15 MR. HINES: Your Honor, there --
16 well, this gets into -- let me mention this more
17 as sort of a procedural matter, and Mr. Hood can
18 certainly correct me if I'm wrong. I'm not aware
19 that this is even an argument that he has made.

20 So I -- and I don't have a problem
21 obviously, you know, well, that and the Court
22 might have -- you know -- that the Court
23 considers these matters. But to the extent that
24 this is something, I mean, this is -- this
25 particular argument, that the -- of a waiver of

1 the ability to object to this meeting in May of
2 2015 on the basis of.

3 Even though the litigation was ongoing,
4 even though there was prior written objection to
5 Hannemann and Morris exercising this authority --
6 and I don't know that it's a part of the
7 materials that have already been provided to you,
8 but I'm quite confident I can send to you the
9 letter that was written afterwards objecting
10 to -- you know, reiterating the objection that
11 there was a waiver for having not attended and
12 objected then.

13 That argument having been raised, as I
14 understand it for the first time this moment, I
15 would request the opportunity to -- to brief it
16 and to see --

17 THE COURT: Which argument is that
18 now?

19 MR. HINES: I don't know that
20 Mr. Hood has argued that there's a waiver of
21 because I understand --

22 THE COURT: No. I raised that it's
23 -- I mean, I'm just trying to explain to you
24 that, you know, if he sat upon his rights by not
25 attending the meeting, that he had a right to

1 attend, whether he agreed -- whether he agreed or
2 didn't agree that it was proper to call.

3 I mean, he had a responsibility to the
4 other members of the group of homeowners to
5 express his objection. Failing to object to have
6 expressed his objection, I would say he sat on
7 his rights and he's therefore lost them; so, now,
8 I'm not -- I just tell you that.

9 You know, actions have consequences, and
10 the failure to act has a consequence in this
11 circumstance, especially at this critical moment
12 of the election of president of the organization.

13 MR. HINES: Your Honor, I'm -- for
14 one, again, I would have to reiterate my request
15 to have an opportunity to brief this issue and to
16 provide the relevant documents because I think
17 there are additional documents that -- that would
18 reflect objections at this time and that would
19 also bear upon the question.

20 For instance, and Your Honor, this gets
21 -- well, it can get us into the weeds, but here
22 we go. Mr. Hood has already talked about the
23 complaint, the HUD complaint that Mr. McFarland
24 made along with Mrs. McFarland on the basis of --
25 of national -- that has to do with discrimination

1 on the basis of national origin.

2 And the climate at these meetings at
3 this -- or the meetings that had been had was
4 such that I think the idea of being there, just
5 for the purpose of objecting, was one that is --
6 is a very difficult thing to fairly impose upon
7 Mr. McFarland. I'm not sure there's any --
8 respectfully, I'm not sure there's any basis to
9 impose that upon him that the law recognizes.

10 I mean, I understand the idea of waiver,
11 but I -- for instance, if he shows up to this
12 meeting, there's no judge. There's just him
13 saying one thing and other people saying
14 something else. And so I don't know how his --
15 you mentioned he could have changed his mind.

16 Well, Your Honor, I think if we're going
17 to get to that kind of conjectural situation, I
18 think the idea would have to be that what he said
19 and didn't change, you know, that has -- that has
20 to give, especially looking at this with a --
21 because what we're talking about now is a summary
22 judgment that would be against me. I don't know
23 how that evidence could not be -- the evidence
24 would have to, at least the summary judgment
25 stage, have to be taken as there would -- would

1 not to indicate a change of line.

2 I mean, having written one thing that
3 clearly stated the objection and never stated
4 otherwise, and then I can show you, if I'm
5 allowed to brief this in follow-up with
6 appropriate supporting documents, the objections
7 that were -- that reiterated afterwards, because
8 what happened afterwards, as I recall, is that
9 Mr. Hannemann or Mr. Morris sent out meeting
10 minutes to, you know, to the neighborhood.

11 But back in June of 2012, see this is --
12 Your Honor, there's a former property manager for
13 the neighborhood. Her name is Kathleen Green.
14 She attended another meeting that was quite
15 contested, and she sent an e-mail that, you know,
16 I have here as a -- well, I have it just because
17 I've got the whole kit and caboodle here
18 basically.

19 I hadn't expected that we would get to
20 where it was valid or relevant, but the climate
21 at these meetings was quite uncomfortable.
22 Mr. Holcombe actually had attended this meeting
23 for the purpose of objecting to it, just like
24 what we're talking about. Mr. Holcombe is
25 another man who's -- you know, he's part of the

1 lawsuit that was the original one, and he's been,
2 you know, aligned in his issues with the
3 McFarlands.

4 But he did attend the meeting, and the
5 meeting -- there actually is somewhere a tape
6 recording of it, and it's -- you know, there was
7 certainly an unpleasantness, and, you know, a
8 hostility to the meeting; and what I have here is
9 an e-mail that was written the day after the
10 meeting. I guess the meeting, I think, was on
11 31st of May 2012.

12 This is an e-mail from a former property
13 manager of the HOA who attended. Her name is
14 Kathleen Green, and she's writing up what she --
15 you know, what she says, her accounting of the --
16 of the, you know, the meeting.

17 And she is -- you know, at one point,
18 she says, of the meeting, if they argued it was a
19 valid meeting, and then this had to do with the
20 situation where Mr. Morris had done some, you
21 know, landscaping work in his yard. It was said
22 to be unauthorized, and the landscaping work was
23 to rip out essentially everything in front of the
24 yard, and there was a backhoe that was left in
25 the yard for -- and he even apologized for this

1 in other documents that we have.

2 He left the yard, as he said, a barren
3 landscape and the backhoe was left there for
4 weeks, and there was no plan as to when it was
5 going to go anywhere and what was going to
6 happen. And so him being on the board at the
7 time, you know, well, Kathleen Green issued him a
8 fine for --

9 THE COURT: So, Mr. Hines, let me
10 get to this. Why is that relevant to this issue
11 that we have about Mr. Hood's complaint?

12 MR. HINES: Well, I don't know that
13 it's relevant.

14 THE COURT: Are you just trying to
15 paint a picture for me that there is discord and
16 vitriol between these parties that is
17 longstanding? I mean, because I get that.

18 MR. HINES: But I was suggesting
19 that -- you were asking what was being
20 potentially required of Mr. McFarland was to go
21 and create --

22 THE COURT: Well, as to that kind
23 of vitriol?

24 MR. HINES: Yes, yes. I mean, and
25 to do so for -- I'm not able to understand why

1 that would have been necessary given his written
2 objections and I can -- you know, before and the
3 lawsuit that was going on at the time and
4 objections that I can provide to you that were --
5 that were sent afterwards.

6 THE COURT: Okay.

7 MR. HINES: But, again, that -- you
8 know, I'm responding as best I can, Your Honor,
9 and I understand --

10 THE COURT: I understand now. I
11 just wanted to clarify. I don't want to spend
12 too much time on that -- that back history. I
13 think I get -- I understand the picture of the
14 discord between these parties.

15 MR. HINES: And my only point of --
16 I mean, and Your Honor, I think for my purposes,
17 I would be pleased obviously to know that
18 inasmuch as Mr. Hannemann says, this is all
19 Mr. McFarland's fault.

20 Well, Mr. McFarland has an equally
21 strong and evidentiarily based opinion. So my
22 only point is to say, all that stuff isn't
23 neither here nor there for the purposes of today.
24 My argument is -- but I guess I am suggesting to
25 grant summary judgment against me, against

1 Mr. McFarland today, I think it intrudes upon all
2 hosts of factual questions that we would have to
3 try.

4 THE COURT: Give me one -- give me
5 one factual question that is material that would
6 -- that would defeat an order or have a -- to
7 grant a summary judgment reversed.

8 MR. HINES: Well, all right. Let
9 me just go through this. As I understand it,
10 Mr. Hannemann says that -- or his argument just
11 now was that our point that their nonpayment of
12 the attorney's fees -- and Your Honor, let me say
13 this: I think it depends on what the basis is
14 that you would rule.

15 THE COURT: All right. All right.
16 Let's assume this, just for the sake of argument,
17 that I ruled in favor of Mr. Hannemann in terms
18 of being appointed -- being the president and
19 directed that the books and records of the
20 homeowner's association be turned over him, but I
21 denied his request for attorney's fees.

22 MR. HINES: Well, Your Honor, I
23 like the second part a lot better than the first,
24 and excuse me for a moment of perhaps misplaced
25 levity.

1 But if you ruled that, and that was your
2 argument, Your Honor, I guess -- and the reason
3 is -- Mr. Hood had argued that -- I thought he
4 would, in responding to my argument, that the --
5 I thought he had said, Your Honor, there's a
6 certain amount of context that you need to
7 understand because the technical arguments that
8 Mr. Hines is making, you know, and the -- you
9 know, they need -- you know, they don't really
10 fit this context.

11 And I was arguing actually the opposite,
12 which is to say, my arguments, there is -- you
13 know, my technical arguments are right, and
14 that's -- you know, he's saying that, even if
15 there is technically something to what he has to
16 say, we need to massage this, Your Honor,
17 because, you know, this really doesn't fit the
18 context of his whole back story.

19 And then -- and there's this, well, he
20 -- I mean, the -- the capacity in which
21 Mr. Hannemann is bringing this lawsuit, well,
22 he's not bringing it in his individual capacity.
23 I mean, you know, it is captioned as president of
24 the HOA. I can -- and, you know, it doesn't seem
25 to me that in their filings and opposition to our

1 motion, that he even challenged the idea that
2 this was -- that this was any -- you know, the
3 heading C on page 14 of their response.

4 "Mr. Hannemann, as president -- as
5 association president, is -- is authorized to
6 bring this suit." I mean, he's doing it as
7 association president and is not judicially
8 estopped from arguing that he has the authority
9 to sue on behalf of the association.

10 Now, you know, that's a heading, okay,
11 and so maybe you say, oh, it's a heading, you
12 know, can you -- just some straight language in
13 the heading, okay. But if you continue to read,
14 it's clearly saying that, you know, they're
15 responding again to the argument.

16 "Mr. McFarland contends that
17 Mr. Hannemann did not have the capacity to sue on
18 behalf of the association." That's what he's --
19 because he did not obtain the approval of
20 three-fourths. They never said in here, well,
21 that he doesn't have the authority to sue -- the
22 argument you've heard today is -- is not taking
23 us head on about the language of the -- of the
24 articles.

25 It's saying, we don't even come within

1 the language of the articles to begin with. Now,
2 I understand that, you know, that's a legal
3 argument, and I'm not suggesting that it cannot
4 be -- you know, a different argument might not be
5 pursued, but I am saying that it's a bridge too
6 far because the whole -- for the very making of
7 this argument, the very pleading of the case, as
8 president of, the very engagement with us about
9 the applicability of three-fourths.

10 When they make -- you know, when they go
11 and say, Mr. McFarland's contention failed
12 because the provision cited above requires only
13 the three-fourths of the members consent prior to
14 payment of fees, and then it goes on to say, "If
15 he decides to seek reimbursement from the
16 association, the three-fourths provision would
17 apply."

18 Well, the very fact that he could seek
19 reimbursement means that he's bringing the suit.
20 This is engagement by the -- by or on behalf of
21 the HOA. The provision itself doesn't apply to
22 just an individual who brings a lawsuit. The
23 provision -- he says, prior to the payment of
24 other legal or other fees to persons or entities
25 engaged by the HOA for the purpose.

1 And it goes on to say those other
2 things, and then also it has -- and I need to
3 make this clear. We went over earlier, but "It
4 is for the purpose of suing or making, preparing,
5 or investigating any lawsuit, or any
6 commencement." Like, you know, that language is
7 quite important.

8 And I candidly somehow in a typo, I
9 didn't have that word "commencement" in there,
10 but it -- regardless, it's in the document, and
11 that is the controlling document.

12 Mr. Hood said that there's no dispute
13 about the document that controls. This is not
14 just a payment provision. It has to do with
15 commencement; and I would say also on that same
16 point, Mr. Hood, was -- his argument seemed to
17 suggest --

18 THE COURT: Mr. Hines, let's
19 address Mr. Hood's first point on the 9, the
20 paragraph 9 of the article's language. He's
21 saying -- as I understand it, he's saying, this
22 doesn't apply to us because we are not bringing
23 the suit; my client has strategically decided not
24 to bring the suit, such that it would violate
25 this particular provision.

1 MR. HINES: Your Honor, that's an
2 argument if you accept that argument.

3 The idea would be that provision has no
4 application, whatsoever, and he did it for
5 strategic reasons that would have been known to
6 all on his side when they brought the case, which
7 means, when they responded to our motion for
8 summary judgment, they would not have gone to the
9 trouble of explaining how it does apply.

10 It just didn't stop them from bringing
11 the lawsuit. It had to do with payment. So,
12 Your Honor, I'm not suggesting there can't be
13 some sort of development, and even, you know, a
14 change in courses on legal arguments.

15 But in this case, this is law
16 intertwined with fact. The idea that
17 strategically he brought the case so as to avoid
18 that problem, so to speak, is completely belied
19 in a way that's irreconcilable by two things.

20 Number one, he brought it as president
21 of the HOA, but number two, they -- in responding
22 to our argument that says this thing, it applies,
23 they didn't disagree. They didn't say it doesn't
24 apply, this provision. They just said, it
25 doesn't apply the way you guys think it does.

1 It doesn't require him to have approval
2 for the suit. It just requires him to have
3 approval to get paid, but that -- to make that
4 argument is to concede his application. You
5 know, I mean, I don't -- you know, the argument
6 that you're hearing today is an argument that
7 moots that whole notion of its applicability.

8 It doesn't apply at all. But they're
9 conceding it applies. They're saying it
10 doesn't -- I mean, and I think they're having to
11 concede that point, Your Honor, because they did
12 not strategically bring the case in this way. It
13 is brought as president of the HOA, you know, and
14 I think how they brought --

15 THE COURT: What does that -- what
16 does that mean to you, Mr. Hines? I mean, tell
17 me what that means to you.

18 MR. HINES: Well, it means, Your
19 Honor, that -- that he had to have the approval
20 that he didn't have to bring a lawsuit, and I
21 would say, this is not an --

22 THE COURT: Wait a minute. Let's
23 go back to more basic law. He has -- he has set
24 in his -- he's brought the case in his capacity
25 as an -- as an agent of an entity.

1 MR. HINES: Correct. So he's
2 bringing it on behalf of the entity.

3 THE COURT: Would the entity have
4 the -- and the entity have the authority -- would
5 the entity have had the authority to bring the
6 action?

7 MR. HINES: Sure.

8 THE COURT: Okay. So he didn't
9 exceed his authority as an agent?

10 MR. HINES: Well, I mean, I think
11 -- I think -- I'm trying to think about if that,
12 one, if I think that is a material -- you know,
13 if it's relevant.

14 Ultimately, whether the answer to that
15 question, Your Honor, is yes or no, the violation
16 of this provision of the articles dooms that
17 because I -- because I don't know -- in fact,
18 there is no question here of any other authority
19 as an agent beyond express. So when I was --
20 when I said the entity itself could have brought
21 it, which is essentially what he's done.

22 This is the entity bringing it. It is
23 dressed up in a way that is trying to create a
24 distinction that doesn't exist, and, Your Honor,
25 it's -- well, it's quite telling that this

1 distinction doesn't even appear in the papers --
2 in the writing in response to us. I mean, again,
3 there's -- nowhere in here is there -- is there
4 the notion that this provision that we've talked
5 about doesn't apply, that that comes around in
6 the argument.

7 And that is fine to make that argument,
8 but the very fact of the development of that
9 argument, it undermines itself. The very fact
10 that that argument wasn't made until the way they
11 had been proceeding turned into a road block. It
12 betrays the problem with -- with the position.

13 And as far as the -- when I asked if it
14 would be within the authority, when you asked me
15 if it's within the authority of the HOA to bring
16 a lawsuit, I was thinking about, I guess, it
17 wouldn't be ultra vires. I mean, it's an HOA
18 issue, and, also, I would say that the HOA --
19 what Mr. Hannemann has done is purported to bring
20 it to the HOA.

21 He has expressively not brought it as an
22 individual. He is bringing in a -- wearing his
23 hat of the chief executive officer of the HOA
24 that he claims to be. The other thing I would
25 mention, Your Honor, and I could put my hands on

1 it quickly, but -- perhaps you might recall. In
2 the pendente lite order that you mentioned way
3 earlier this morning.

4 It seems like a, you know, quite a long
5 time ago, but the one in response to the motion
6 for the exemption or TRO, my understanding is
7 that the Court was -- was operating on the idea
8 that Mr. Hannemann bringing this lawsuit in this
9 way was indeed -- that's -- the HOA was before
10 the Court.

11 So, you know, if the idea is -- I mean,
12 I'm having a hard time swearing the idea of the
13 -- of the restriction that it was imposed HOA
14 wide, how that would work if it was -- if the
15 restriction that was imposed through that
16 pendente lite order, how that could square with
17 the idea that this isn't Mr. Hannemann, who now
18 has -- has brought the HOA to Court, because if
19 it's just limited to Mr. Hannemann in some sort
20 of an individualized capacity to Mr. McFarland, I
21 don't know how we would be able to reach out and
22 grab the rest of what's there with that order.

23 THE COURT: Let me ask Mr. Hood to
24 explain that.

25 MR. HOOD: Sure.

1 THE COURT: The task, the capacity
2 under which Mr. Hannemann brought the action.

3 MR. HOOD: Thank you.

4 THE COURT: Clarify this one for
5 me.

6 MR. HOOD: Okay. If you will
7 recall, I have three specific responses to that
8 noted position taken by Mr. Hines. Number one,
9 in looking at section 8C-9 of the Articles of
10 Incorporation.

11 THE COURT: Right.

12 MR. HOOD: It specifically says,
13 "The association shall be required to obtain the
14 approval of three-fourths of the members prior to
15 the payment of legal or other fees to persons or
16 entities engaged by the association for the
17 purposes of, including by the lawsuit, for
18 commencing the lawsuit."

19 THE COURT: Right.

20 MR. HOOD: This is not a
21 prohibition of David Hannemann as president from
22 initiating the lawsuit. It simply doesn't do
23 what he's saying that it does.

24 THE COURT: That's correct. All
25 right. I got it.

1 MR. HOOD: I think the second point
2 with what we've briefed through extensively is
3 that this is a fee issue, and this is about
4 payment; and there hasn't been an issue with that
5 because the association isn't paying any fees.

6 THE COURT: Right. All right. Let
7 me -- Mr. Hines, do you have -- have you fully
8 replied to Mr. Hood's motion for summary
9 judgment?

10 MR. HINES: No, Your Honor. I was
11 intending to present that orally. You know, at
12 this point, you've given -- well, I do very much
13 appreciate Your Honor's time.

14 I would be happy to put that in written
15 form and submit that to you to consider, I mean,
16 because I've got a number of points that I made
17 that I was going to go over, and I can -- I can
18 hit those in some relatively brief written
19 submission and provide that to you if you would
20 prefer.

21 THE COURT: I think I'd rather hear
22 you go through them right now.

23 MR. HINES: I mean, I'm happy to do
24 that, Your Honor. I mean, that's why I was going
25 to kind of tick those off.

1 THE COURT: All right. Let's all
2 take a five-minute break.

3 (A recess transpired.)

4 THE COURT: All right. Mr. Hines,
5 I think it's your turn to tell me about your --

6 MR. HINES: Yes.

7 THE COURT: -- the rest of your
8 argument.

9 MR. HINES: Thank you, Your Honor.
10 And on this one about the articles, I know
11 Mr. Hood, I think he indicated there were three
12 different reasons, and I think I've gone over
13 with you one -- my opposition to one of those.

14 And one of them is the one where he says
15 that it just doesn't apply to begin with, you
16 know, the one where it applies to the suit by the
17 association, and this isn't that. Now, and it's
18 obvious, as I thought Mr. Hood just mentioned to
19 you a moment ago, that this isn't Mr. Hannemann
20 bringing this lawsuit.

21 This is Mr. Hannemann, as president of
22 the HOA, and that -- that capacity -- my final
23 point on that, should not be disregarded because,
24 you know, he -- I'm suggesting that the
25 distinction between his lawsuit being brought in

1 the name of the HOA or by Mr. Hannemann, as its
2 president and chief executive officer, claiming
3 to be that is a distinction without a difference.
4 But I can move on.

5 THE COURT: All right. Let me just
6 say that my inclination here is to say that the
7 -- that article 9 or paragraph 9 would -- would
8 require three-fourths of the members to commence
9 a lawsuit unless the lawsuit is an emergency.

10 MR. HINES: Your Honor, and I think
11 -- I think that's accurate, actually, and I think
12 there actually are a few more exceptions.

13 THE COURT: Well, there are others,
14 but I'm just trying to cut to the bone here.

15 MR. HINES: But if that --

16 THE COURT: That is, in my opinion,
17 just as I read it now and think about it and have
18 both of y'all go over it with me several times
19 today, I think that that is a peg on which
20 Mr. Hannemann's lawsuit can hang his hat on.

21 MR. HINES: On the emergency. Now,
22 on that point, that brings me to two things, Your
23 Honor. The question of whether or not this is an
24 emergency would then be a factual question. I
25 mean, whether or not emergency circumstances were

1 present.

2 Now, the reason I suggest -- I mean,
3 because either way, because the question then
4 becomes, for summary judgment to be granted, you
5 have a situation where the party against whom the
6 summary judgment would be granted is entitled to
7 the facts being viewed in light most favorable to
8 them.

9 Now, the reason why I would suggest that
10 of the two parties, that we are the ones who can
11 claim that there is no reasonable way in which
12 this could be viewed as an emergency are the
13 facts that Mr. Hannemann himself, not in his
14 pleading, not in any argument written, not in any
15 suggestion prior to today has it been suggested
16 that this is an emergency. That was not even an
17 argument that was raised.

18 And, again, it's not about -- I'm not
19 being hair splitting in saying that there cannot
20 be a development or an evolution of arguments,
21 but in this case, you have argument intertwined
22 with fact. If indeed this was an emergency,
23 that's not something that you just realize years
24 later. You don't realize the emergent nature of
25 these four years in. You know, that is -- and

1 that --

2 THE COURT: Well, hold on now.

3 There was a TRO brought.

4 MR. HINES: Last year, three years
5 after the lawsuit was filed.

6 THE COURT: Yeah, but I mean -- and
7 we resolved that, so I mean, that in and of
8 itself expresses the emergency.

9 MR. HINES: But, Your Honor, the
10 fact that -- the very fact that a relief in the
11 form of a TRO was available from the time this
12 lawsuit is filed and was not sought -- in fact,
13 the TRO by the way was --

14 THE COURT: We resolved it.

15 MR. HINES: But we resolved it by
16 keeping the status quo. We resolved it --
17 meaning that if the status quo was not an
18 emergency, it means, how could the status quo
19 being an emergency if the status quo is the way
20 that the TRO was resolved.

21 And the other thing, Your Honor, I would
22 mention, if you look at Mr. Hannemann's own
23 letter, the one from May 31st, 2016, even then,
24 he says, there is --

25 THE COURT: Hold on, Mr. Hines,

1 hold on. The TRO was brought, which in and of
2 itself requires some sort of emergency in order
3 to be granted. We -- that TRO was resolved with
4 an agreement, but it was subsequently tried --
5 your client, through a proxy, tried to avoid.

6 He must have thought it was an
7 emergency. He was proxying his wife bringing
8 this claim for purposes to have the meeting, and
9 that's when I had to sort of tighten the bolts on
10 the case, and say, listen, just nothing can be
11 done until we have a hearing, until we get this
12 hearing done.

13 So I think the elements of emergency
14 have been met by the actions of the parties in
15 the case, and then, even -- even -- you can
16 stretch that to the filing with the housing
17 people that Mr. McFarland didn't take this
18 serious enough, that it raises discrimination
19 issues.

20 So they keep bringing it -- they keep
21 bringing to the floor the case and keep stirring
22 so that apparently they think there's something
23 really serious that has to and should be done.
24 So I don't think that -- I don't think that the
25 emergency issue is a question of fact here. I

1 think that that's been easily established.

2 MR. HINES: But, Your Honor, I want
3 to make clear that the emergency in question,
4 that doesn't mean important. Now, emergency,
5 let's -- if I may, the document itself -- oh,
6 goodness.

7 THE COURT: Which document are you
8 talking about?

9 MR. HINES: This is from the
10 articles, Your Honor, and forgive me, I've --

11 THE COURT: Article 9, I've got it.

12 MR. HINES: Yes, sir. Let me -- I
13 wanted to -- the emergency, it says, "In an
14 emergency, where waiting to obtain the approval
15 of the members creates a substantial risk of
16 irreparable injury to the association property or
17 to the members (the imminent exploration of a
18 statute of limitations shall not be deemed an
19 emergency obviating the need for the request --
20 for the requisite vote of the three-fourths of
21 the members."

22 Now, Your Honor, you know, it's not --
23 and so the idea, the very fact that there has not
24 been an allegation of irreparable injury, I
25 think, Your Honor, torpedos the idea that

1 Mr. Hannemann -- the emergency circumstances were
2 present.

3 This even says, "If your statute of
4 limitations is about to expire, that's not even
5 an emergency." And in the March 31 letter where
6 he -- the letter he wrote in 2016 saying, I'm
7 going to -- we're going to sue, he says, if it's
8 not honored -- "This request is not honored
9 within the next 15 days, the board may have no
10 choice but to seek legal action."

11 So even from May 31, 2016, he was saying
12 15 days is -- is going to be allowed before we
13 can take legal action, and in fact, it was months
14 thereafter; so the idea that he was operating --

15 THE COURT: Well, let me ask
16 Mr. Hood to address that issue, the emergency
17 issue and the creation of substantial risk of
18 irreparable harm.

19 MR. HOOD: Okay. So as I alluded
20 to earlier, Your Honor, the circumstances we have
21 here, we have an association -- an association
22 where one person contends there was a proper
23 election; another group of people contend that
24 election was a farce, and a good way to avoid
25 there being a quorum is not to go to a meeting,

1 by the way. Let's not forget that.

2 So you have two people that are
3 contending that they're the president, both of
4 which are contending the other is not, one of
5 whom is still carrying on, Mr. McFarland, during
6 this time period, necessitating intervention by
7 us to ask the Court to stop something from
8 happening because it was, in fact, getting a -- a
9 special meeting was trying to take place to sort
10 of clean up all these loose ends.

11 So when you talk about irreparable harm,
12 the irreparable harm that I see besides being a
13 rudderless, powerless homeowner's association is
14 that you have no one who can uniformly speak to
15 the association, to third parties. You have no
16 one who can coordinate, communicate, and fund
17 necessities and seek proper reimbursement and
18 accounting for that; otherwise, you have two
19 different people doing it.

20 The obligations of the officers are set
21 forth in the bylaws, and Mr. -- and this is in my
22 briefing, Mr. Hannemann is exposed to potential
23 liability associated with failing to take those
24 actions because he is unable to do so.

25 THE COURT: Correct.

1 MR. HOOD: And so by Mr. McFarland
2 keeping all this information away, liability
3 exposure is mounting for Mr. Hannemann; and
4 Mr. McFarland could say the same thing back
5 against Mr. Hannemann, if he chose to.

6 MR. HINES: Your Honor, for that to
7 be true, though, respectfully, Mr. Hannemann is
8 saying that he became the lawfully and legally
9 elected president on May the 17th, 2015, at which
10 time he needed to have the documents that he
11 seeks in this lawsuit, the bank account
12 information and control.

13 And he needed to have -- what he's
14 saying to you now is that it was an emergent need
15 that he have that, an emergency, to prevent
16 against irreparable harm to the organization.
17 And he waited 19 -- well, 16 months to bring a
18 lawsuit, and then four years later, when we're
19 arguing this motion after, you know, briefing,
20 all the argument on this, we're going to get hung
21 up on, I mean, the emergency part.

22 Your Honor, respectfully, there's
23 nothing about the way that he has actually
24 conducted himself that suggests he was operating
25 under -- to deal with an emergency, and moreover,

1 you know, I would say that I think maybe this --
2 the analogy that could help clear this up and to
3 show why it's not an emergency.

4 Like, the very -- the reason that we
5 don't have -- it shows the absence of irreparable
6 harm, Your Honor, when the way that the TRO --
7 and, of course, we did move to reconsider that,
8 and Your Honor is going to -- as I understand it,
9 deny that; but the fact that the status quo was
10 maintained shows that the status quo does no
11 threat of irreparable harm.

12 And another thing is, we don't have a
13 rudderless ship. We have a ship with a rudder
14 working just fine. Actually, there's another
15 rudder that says I should be the rudder. That's
16 what it is. This isn't a -- I mean, if you look
17 at the -- I submitted to you earlier today -- or
18 mentioned earlier today Exhibit 3 from the
19 plaintiff's filings.

20 And this is just one example of this in
21 the record because, again, this is a summary
22 somewhere judgment hearing and not a trial; but,
23 you know, it explains, here's the letter to the
24 homeowners. It talks about how we replaced worn
25 safety signs and repaired concrete caps and all

1 of the things that Mr. Hood just said couldn't be
2 done were in fact done.

3 Your Honor, if we're going to lose this
4 one, to lose it on this point is respectfully,
5 Your Honor, it's -- well, Your Honor, we
6 shouldn't lose it on this point. I mean, it's --
7 the -- it would be incorrect, Your Honor.

8 Most respectfully, this is -- the very
9 idea that emergency gets mentioned for the first
10 time all these years later means it couldn't have
11 been an emergency. You don't just remember it
12 was an emergency. Oh, yeah, no, it was an
13 emergency. That's right. That's why we did
14 that. There's just no way. That's not the way
15 emergencies work.

16 Your Honor, the other point I wanted to
17 mention on the issue of -- well, the last point
18 about the -- you know, another thing about this,
19 and this gets into some of the water that's under
20 the bridge here, Your Honor. Well, in the
21 original lawsuit, it wasn't just a lawsuit by
22 Mr. McFarland, who brought the suit in the name
23 of the HOA, and it was also Mr. and Mrs. Holcombe
24 and Mrs. McFarland against Mr. Hannemann and
25 Mr. Morris and some others who no longer live in

1 the neighborhood.

2 There were counter-claims made in that
3 lawsuit. The counter-claims specifically alleged
4 against all of the rifle shot -- or excuse me,
5 shotgun blast as it were, against every single
6 one of the plaintiffs, even plaintiffs who were
7 not officers or directors, that they were
8 converting HOA funds.

9 Well, you know, summary judgment was
10 granted in favor of the counter-claim defendants;
11 meaning, Mr. McFarland and Mrs. McFarland and so
12 forth. So, you know, there is here -- this gets
13 to the point of both, one, there is no emergency.
14 Mr. McFarland has accounted for every penny.

15 Okay. We have a dispute as to who is at
16 the helm, but we don't have a dispute about
17 whether or not we are getting -- we're navigating
18 the seas safely. You know, we have don't have a
19 rudderless or powerless ship.

20 The powers are being exercised. The
21 rudder is being, you know, skillfully -- there is
22 no argument here that the neighborhood has gone
23 to -- gone to heck. It's not. And he's done it
24 on essentially a shoestring budget because
25 Mr. Morris and Mr. Hannemann have not even paid

1 their assessments into the actual HOA account in
2 years.

3 MR. HOOD: Wait a second. Wait a
4 second. Russ, are you telling me that your
5 client is spending HOA funds to pay for your
6 litigation without having three-quarters vote to
7 do so?

8 MR. HINES: Not at all. I'm
9 talking about, he's making sure that the light
10 bill gets paid and the gate is operable for the
11 neighborhood, and he's paying for the -- you
12 know, the phone service that you have to use to
13 -- no, the HOA funds are not being paid to me at
14 all.

15 MR. HOOD: See, the problem with
16 the position you're advocating is that you're
17 suggesting if I eliminated the words and re-filed
18 the exact same lawsuit, eliminated the words "As
19 president of the HOA," then we could do all of
20 this all over again for three more years?

21 MR. HINES: I don't know that
22 that's true, but I know the lawsuit that we --
23 that is filed, we are -- our summary judgment
24 motion is meritorious as to it. That's the suit
25 I argued against.

1 I have to think about the one that
2 wasn't -- that was pleaded, but I -- but that's
3 not before the Court anyway. And, Jamie, I'm not
4 trying to be obstreperous about that. I'm just
5 saying that let's, you know --

6 MR. HOOD: Well, we're just going
7 in circles, and I --

8 MR. HINES: No, no.

9 MR. HOOD: I'm just trying to
10 figure out what you're responding to so I can
11 make sure that I have got in the record the Judge
12 has asked about emergency and now we're talking
13 about water under the bridge. I just want to
14 make sure I'm following what you're saying
15 because this is sort of getting hard for me to
16 keep track of, you know. I'm sorry, I
17 interrupted you.

18 MR. HINES: And that's fair. And,
19 Your Honor, I -- well, what I'm working against
20 is the lawsuit that exists, not the one that
21 doesn't exist, and --

22 MR. HOOD: Okay.

23 MR. HINES: And the Judge had said
24 earlier something about actions have
25 consequences. Well, the lawsuit was pleaded and

1 has specifically been pursued by Mr. Hannemann.
2 You know, that's an action. That's how the
3 action -- it is literally a civil action, and it
4 is an action that was brought to bring it as such
5 and to pursue it as such. And that's the suit
6 that I am arguing against.

7 Now, the reason that I mentioned water
8 under the bridge is because I thought in
9 Mr. Hoods' arguments that he had gotten into --
10 you know, he talked about dysfunction in 2012.
11 You know, there are certainly elusions, there are
12 references to the past.

13 But one of the things that I thought he
14 mentioned about that, and one of the reasons why
15 he did mention that was this idea that that had
16 something to do with why it didn't violate the
17 bylaws for Mr. Hannemann to not pay his HOA dues.
18 I thought he was saying that, yes, well, there
19 was good reason that he had to pay his dues in
20 the escrow, which is what I mentioned early.

21 He did not actually escrow the funds,
22 that checks were written to a lawyer that weren't
23 cashed and went stale, and the funds never
24 actually left his -- his possession. And that's
25 -- and I made that point to say, it's -- well,

1 it's not accurate to even say they were escrowed,
2 but regardless, there is nothing in any
3 document -- there was a point earlier asking
4 about, where in the documents does it say this.
5 It says nothing in the documents about -- the
6 governing documents about the ability to not pay
7 your dues.

8 And so the whole idea -- and even if
9 there was a dispute, and even in the -- when
10 there is a dispute as to who is who, there's
11 still no -- and I mean, who is the rightful
12 president, there's still no basis to not pay the
13 assessments.

14 And I'm saying that's all the more so
15 where there is not even a whiff of any sort of
16 impropriety with the money that was in fact
17 alleged, and well, was completely refuted; and
18 summary judgment was granted on that claim. And
19 so, you know, there's -- and this is in the --
20 well, it's in the amended declaration, and I
21 wanted to mention this.

22 You know, this is on page 13 of the
23 amended declaration, which is Exhibit 4 of our
24 filing. The particular language is in this
25 paragraph B in the middle of the page.

1 "No diminution or abatement of
2 assessments or any dues or charges shall be
3 claimed or allowed by reason of any alleged
4 failure of the association to take some action or
5 to perform some function required to be taken or
6 performed by the association under this
7 declaration or for inconvenience or discomfort
8 arising for the making of improvements or
9 repairs, which are the responsibility of the
10 association or from any action taken by the
11 association to comply with any law, ordinance, or
12 with any order or directive of any municipal or
13 other government authority."

14 Well, I can continue reading, Your
15 Honor, but I realize I've read quite enough, and
16 it's in our documents. But the point is, you've
17 got to pay your assessments, and all they say,
18 is, well, you know, there was litigation going
19 on, and so we didn't pay them; but they can't say
20 there was any reason to not pay them.

21 Litigation didn't concern whether or not
22 assessments were owed. The litigation -- I mean,
23 the assessments were owed. They paid them. They
24 didn't pay all of them. I mean, they didn't pay
25 the interest accrual.

1 So that's -- the reason I jumped ahead
2 to that argument, Your Honor, is because that's
3 the other argument that I had made, and I thought
4 Mr. Hood, when I mentioned water under the
5 bridge, had been trying to put into context that
6 he thought was important to justify the
7 nonpayment of the dues in 2013 and '14.

8 And I was suggesting that that context
9 doesn't -- there is not context to justify that,
10 and that is supported both by the actual context
11 and also the language of the governing documents,
12 which -- which throws cold water on that -- on
13 that argument anyway.

14 And so that gets us to the point, Your
15 Honor, which I was talking about a little bit
16 before, which is what -- that the whole basis for
17 Mr. Hannemann's claim to the presidency, it stems
18 from this meeting that was -- is alleged to have
19 been proper in May of 2015, and that meeting, we
20 contend, was -- did not result in him being
21 validly elected as the president because he had
22 not -- he, just like Mr. Morris, had not paid
23 their dues for 2013 and '14 on time.

24 They transmitted a check via counsel in
25 2015, right -- shortly before that meeting. When

1 they did that, they paid only the principal
2 amounts of \$1,000. They didn't pay the interest,
3 which is automatically tacked on to it.

4 And as I understand it, they -- well, I
5 submit, there is no justification, or there's no
6 way to view that, other than that they didn't pay
7 the dues on time. The interest accrual is
8 automatic. Their argument then is simply that,
9 well, the board of directors never acted to
10 suspend their voting rights.

11 But they were two of the three board of
12 directors. And Mr. Hoods says, well, yeah, but
13 -- essentially he says, but you never even asked
14 them if they'd vote to suspend their voting
15 rights or that seemed to me the tone of it
16 saying -- because at one point it was suggested
17 that, well, Mr. McFarland doesn't think they
18 would have voted that way.

19 Well, first of all, Mr. McFarland, I
20 think, is justified in being quite confident they
21 wouldn't have, but that's a moot point anyway.
22 It's a conflict of interest transaction. Two
23 board of directors interested in that very thing,
24 they couldn't vote on it if they had been asked
25 to vote on it.

1 I mean, the very idea of presenting to
2 them the issue of should your violations of the
3 declarations result in punishment, that's -- they
4 couldn't -- that question couldn't be put to
5 them.

6 It couldn't even be -- it couldn't even
7 be suggested that they might be of such noble
8 character that they would evaluate themselves
9 just as -- that with blind justice as they would
10 anyone else. So it's a nonstarter to say that
11 they -- you know, that there was some vote that
12 could have been taking -- that they -- where they
13 might have voted to do that.

14 The only two directors -- or two of the
15 three directors, and there is no question, by the
16 way, that at this time, Mr. McFarland was one of
17 the three directors because even though they said
18 they voted him out of the presidency in 2012,
19 there were three members of the board of
20 directors. There was never anyone voted in to
21 take Mr. McFarland's place on the board in 2012,
22 and so there's no question that he was a board
23 member.

24 And as the only board member, he
25 communicated in advance of their meeting, that

1 you guys aren't in good standing because you
2 haven't paid. And -- and so the idea that that's
3 -- that whole thing is not laid out in a straight
4 line in the documents. It is -- every bit of it
5 is textually supported with the documents and is
6 consistent with the only reasonable
7 interpretation of the documents that can be had.

8 So it -- certainly the idea of it being
9 cleaner would be -- would be great, but it is
10 nonetheless correct to use canons of construction
11 to get us there, and to say otherwise is to say,
12 sure, you cannot pay your assessments; you can be
13 in violation of the documents that you are
14 supposed to be protecting and faithfully carrying
15 out, you know, at the same time as you're a board
16 member. It doesn't make sense, and -- and the
17 idea that -- well, Your Honor, I guess I've
18 repeated myself on that one.

19 THE COURT: I got that out of you.

20 MR. HINES: Your Honor, and one
21 point -- well, if I could make one last point
22 because I think -- well, my point -- when we
23 asked for declaratory judgment, when we asked for
24 -- Mr. Hood argues that we, you know that the
25 Court ought not -- or the Court ought to toss our

1 counter-claims out or to rule against us on the
2 counter-claims as a matter of law, I don't know
3 if that's really been addressed too much.

4 But, I mean, our counter-claims, one,
5 asked for us to be -- well, to be declared --
6 declarants. That has to do with the fact that
7 Mr. -- I mean, there's at least a factual
8 question on that point. If you look at 4, the
9 admitted declarations, it's plain as day. You
10 can see Mr. McFarland, Mrs. McFarland are on that
11 declaration.

12 They have signed it declaring their
13 property subject to the HOA or the regime; so I
14 don't think there's any way that summary judgment
15 can be granted against us on that.

16 And the other one on the claim for
17 conversion, that has to do with a claim that -- I
18 mean, really, that -- that claim is bound up in
19 the question of whether or not Mr. Hannemann is
20 in the right, because if Mr. Hannemann is not in
21 the right, then I don't see how that claim could
22 go -- could go away on summary judgment because
23 the idea would be then that Mr. Hannemann was
24 wrongfully acting as president and -- and has
25 wrongfully been a part of this second account,

1 second bank account, and putting money into that
2 in the name of the HOA, which he ought not be
3 doing.

4 The only other point that I can think of
5 that I'd make real quickly, Your Honor, is on
6 this point about waiver. Mr. Hood -- and I
7 appreciated him doing this, you know, waived his
8 judicial estoppel argument against us because of
9 the HUD complaint. Respectfully, I don't know
10 how the issue of waiver can be found on summary
11 judgment.

12 It's very much bound up in factual
13 questions, and for instance, the waiver itself is
14 the voluntary relinquishment of a known right,
15 the question of voluntariness and a known right
16 is all -- it includes within it, questions of
17 intent that, you know, the Court would have to
18 determine, to make credibility determinations,
19 would have to do things that wouldn't be
20 appropriate on summary judgment.

21 And, furthermore, as this certification
22 says, and again on summary judgment, what is
23 stated in here substantively, and then also in
24 the complaint can't be given short tripped. I
25 mean, this has to be -- come in at this as if --

1 as Mr. McFarland explains, that he is of a
2 Mexican American, I guess, of native origin, and
3 he has laid out in the -- in the HUD complaint
4 the issues that he believes are discriminatory.

5 And as he explained here, there is no
6 intention, whatsoever, to take -- to waive -- the
7 whole -- Mr. Hood's judicial -- the very making
8 of a judicial estoppel argument shows, even
9 though he has now withdrawn it, the making of the
10 argument shows that the two positions are totally
11 inconsistent.

12 So at least, as he sees them, and I
13 would agree, that to call them treasurer -- I
14 mean, if on their face, the idea is that
15 Mr. Hannemann is the president and Mr. Morris as
16 the treasurer, and -- which is opposed to what
17 we're saying in this case, shows you that there
18 is no clear intent to waive anything because it
19 requires some further explanation, which is to
20 say, the only thing that they're saying in that
21 HUD complaint is that they -- these acts, which
22 we believe are discriminatory, are being
23 perpetrated by people who are claiming to be
24 officers and directors.

25 As it said here in the certification,

1 they'll make that point clear to HUD. If they
2 make that point clear to HUD, and HUD says, well,
3 then you don't have a claim, well, that's a HUD
4 issue. It's not an issue here because I'm --
5 Mr. Hood has said, as a matter of fact candidly,
6 I don't know. I can't tell you whether he is
7 right or wrong at this moment, because I'm -- but
8 I think -- I'm not certain that you can't have a
9 HUD complaint that's based upon their
10 representations of authority.

11 It's asserted that -- that they have to,
12 in fact, lawfully be directors and officers to
13 make that complaint against them. I'm not
14 certain that that's settled. I can't argue it, I
15 mean, but I think it's certainly something that
16 shouldn't just be glossed over, the idea that --
17 there's no question Mr. Hannemann claims to be
18 president.

19 That's what he says right here in the
20 front of this lawsuit. There's no question
21 Mr. Morris claims to be treasurer. They make
22 those claims. All the McFarlands have done in
23 the HUD complaint is saying -- taking them at
24 their word for what they are while acting as
25 such. I mean, the HUD complaint is about

1 discrimination, they claim, and doing it while
2 wearing the mantle of directors and officers.

3 That is a claim that's, as I understand
4 it, in its early stages. The information that's
5 here in this affidavit, which I suggested, needs
6 to be viewed in a light most favorable to
7 Mr. McFarland, is that that's going to be
8 explained as this matters goes along.

9 And I will say this for my part of it,
10 to the extent that there was some intentional
11 duplicity here, which I'm aware of none of it, I
12 mean, I suppose I have an obligation, I guess, to
13 make sure that there's candor certainly towards
14 this Court because I'm not representing the
15 McFarlands with respect to the HUD issue.

16 The only intersection is how it impacts
17 this, but my point is, if there was any note -- I
18 mean, I wouldn't be a party to any sort of
19 representation to this Court that I didn't
20 believe to be accurate, as sworn to you under
21 penalty of perjury by Mr. McFarland; but meaning
22 that, I understand this is talking about
23 something that hadn't yet happened, which is
24 clarifying.

25 But in -- to the fullest extent that I

1 am able to do it in their counsel in this case, I
2 certainly wouldn't abide anything less than
3 making that clarification to HUD, and however
4 that -- however that shakes out with HUD, that's
5 just, so be it, being that -- that clarification,
6 I think, ought to be made to HUD. And I -- and
7 as far as I have anything to do with it, it will
8 be made to HUD.

9 But there is no waiver here. The very
10 idea that the HUD complaint would upend years of
11 consistently maintaining a position that is
12 acknowledged to be absolutely to the contrary,
13 you know, that's no waiver. I mean, the law
14 abhors a forfeiture like that. And if it were
15 going to be found, it certainly would have to be
16 found upon a record of a much deeper exploration
17 of what was voluntary and knowing about the
18 alleged waiver.

19 And the only evidence of record that we
20 have on that, which is provided in a couple of
21 different ways is it -- is the one through the
22 certification; two through the completely, as
23 Mr. Hannemann acknowledges, opposed views between
24 the record in this case and what was filed in
25 HUD, and to view that in a light most favorable

1 to Mr. McFarland, I submit, it wouldn't be
2 appropriate to rule against him on summary
3 judgment.

4 THE COURT: Okay. Anything you
5 want to reply to this, Mr. Hood?

6 MR. HOOD: No, Your Honor. I think
7 you've been more than fair about things.

8 THE COURT: Okay. Hold on one
9 second, please. All right. Are you ready for me
10 to rule?

11 MR. HOOD: I am, yes, sir.

12 MR. HINES: Your Honor, if -- yes.
13 I don't have anything -- let me think one --
14 quickly. I read from something earlier, and I
15 didn't know if I needed to add it to the record.
16 It was -- oh, goodness. Well, it had to do with
17 that e-mail from Ms. Kathleen Green from June 1st
18 of 2012.

19 Your Honor, if I could -- I don't have
20 the ability to hand that up. If I could e-mail
21 that around and let that be a part of our record
22 just for --

23 THE COURT: You can submit it after
24 the hearing as an exhibit.

25 MR. HINES: Thank you, Your Honor.

1 THE COURT: All right. Here's my
2 ruling. I'm going to grant Mr. Hood's motion for
3 summary judgment. I'm going to direct that
4 Mr. Hannemann be declared the president of the
5 association.

6 I'm going to direct that Mr. McFarland
7 be required to turn over the contents of all of
8 the homeowner's association books and records
9 that are in his possession. If he knows of any
10 other books and records that may be in the
11 possession of others, that he notify
12 Mr. Hannemann of those books and records so that
13 he can seek them, if he believes them to be
14 necessary.

15 I would like to say that I believe
16 Mr. McFarland, although he expressed his -- in a
17 letter that predated the hearing or predated the
18 meeting, his objection -- his objections to the
19 basis upon which was those -- the letter that you
20 referred to, Mr. Hines, that expressed his
21 objections.

22 MR. HINES: Yes, Your Honor. It
23 was an e-mail. Yes, Your Honor.

24 THE COURT: Yeah. Those objections
25 were not carried to the meeting themselves, and

1 therefore, he waived his right to assert the
2 objections before the full body of the
3 homeowner's association or the board of
4 directors, whichever those two entities were
5 making that decision on the appointment of the --
6 of the officers.

7 I believe that -- Mr. Hood, I believe
8 your client had the right to bring the action. I
9 think and would find that an emergency existed
10 with -- that created a substantial risk of
11 irreparable harm such that that -- the proceeding
12 that he brought was necessary, and that emergency
13 issue, factual issue that supports that is the
14 fact that you brought a TRO to enforce the -- or
15 to request the injunction or delivery of those
16 documents.

17 I'm going to grant Mr. Hood's client
18 attorney's fees; however, we will hold a hearing
19 subsequent to today's date for purposes of a
20 determination of what those fees would be. There
21 will be a separate hearing on the attorney's
22 fees, and they'll have to be filed -- that
23 petition for attorney's fees, if you're going to
24 assert it, has to be filed within ten days of the
25 order being entered.

1 If you waive your right to attorney's
2 fees, you don't file the order to file the motion
3 for attorney's fees. Now, I've had questioning
4 of whether or not that ten days is from the date
5 of the case being the law of the case or ten days
6 from the actual -- the actual entry of the order.

7 I would prefer it to be with the date of
8 the actual entry of the order so that we can
9 supplement the order with the determination of
10 the amount of attorney's fees. You can take that
11 up on appeal if you -- if there's an issue with
12 -- if there's an issue that you want to appeal.
13 Do either of you have any questions?

14 MR. HINES: Your Honor, I guess one
15 thing is, I know you got into the -- the waiver
16 part of this, and I had mentioned that letter,
17 and I guess I don't know if I got a specific
18 answer to it at the time.

19 I believe there could be some documents
20 relative to that waiver issue that I'd like to
21 also provide to the Court for the record in
22 addition to the letter, if I may do that.

23 The other point would be, it sounds like
24 -- you mentioned the -- your ruling. Are you
25 expecting that Mr. Hood will prepare a proposed

1 order to that effect and send it to you, and as
2 you mentioned, the -- that order, once you've
3 signed it and entered it, would then allow for
4 ten days for, you know, the attorney's fees issue
5 to be presented?

6 THE COURT: Yeah. I'm going to
7 award attorney's fees. I've got a paragraph I
8 can send him that will -- that he can utilize or
9 massage to the extent that he deems necessary or
10 appropriate for this -- this particular case.

11 It's basically file the claim for
12 attorney's fees with your affidavits and proof of
13 attorney's fees within ten days of the entry of
14 the order, and that entry of the order will be a
15 supplemental order to the order that I enter in
16 the order for summary judgment.

17 But I don't -- I don't think it's
18 appropriate at this step. I mean, it's very
19 difficult to have a hearing on attorney's fees at
20 this stage because they aren't known yet. And I
21 think we need to decide those in a separate
22 hearing. You may have some -- I mean, there may
23 be witnesses that you might want to call to
24 dispute these, that kind of thing.

25 MR. HINES: I understand, Your

1 Honor. I was just asking to make sure I had an
2 understanding of the -- of the timing of it, and
3 so I -- as I understand it, there will be the
4 order, and then that will allow for the -- the
5 window of that ten days for Mr. Hood to submit
6 what he would like, and then that would obviously
7 allow me an opportunity to -- to respond to that
8 and whatever the appropriate time would be and go
9 from there.

10 THE COURT: Okay. And I think,
11 too, that there is -- my recollection is that
12 there is some appellate law that -- if this case
13 goes on appeal, and it's remitted to me for
14 determination of attorney's fees, I can determine
15 the fees on appeal as well.

16 MR. HINES: Well, Your Honor, to
17 the extent that would be a part of your order, I
18 guess let me -- this is just me being -- coming
19 from a paranoid world of appellate law, I would
20 object to that proposition; but it sounds like
21 you're not necessarily taking that up right this
22 minute anyway.

23 THE COURT: No, no. And I'm just
24 mentioning it. I just want you to -- I mean, you
25 can -- I mean, it will probably come back. If

1 it's appealed and remitted back to me, then we'll
2 have to, you know, regards to remitted, you know,
3 it will be -- you know, just start over again on
4 the issue of the attorney's fees. But they still
5 remain alive in other words.

6 MR. HINES: Your Honor, I guess, as
7 far as the attorney's fees are concerned, does --
8 does your order indicate the basis on which those
9 fees would -- would be granted?

10 THE COURT: Mr. Hood, I want you to
11 provide the proper basis for the attorney's fees
12 as you've argued for them in your briefs.

13 MR. HINES: Your Honor, when the
14 attorney's fees are taken up at the later date,
15 to the extent that I want to take issue with the
16 basis that he is arguing, may I do that at that
17 time?

18 THE COURT: Oh, absolutely. I
19 mean, you're going to have probably a couple of
20 motions going on at that time. One would be a
21 reconsideration, which may be on the law, the
22 basis for the attorney's fees, and that might be
23 a more appropriate place to address that rather
24 than in the hearing on the attorney's fees.

25 But you can always -- I would think

1 maybe the better procedural thing would be to --
2 procedurally, would be a motion for
3 reconsideration or to amend, and then you would
4 -- then we'd go into the hearing -- make that
5 decision and go into the hearing on the
6 attorney's fees, and you can renew your objection
7 and just to preserve -- preserve that issue in
8 case this will --

9 MR. HINES: My biggest concern on
10 the attorney's fees point, Your Honor, in that
11 regard would be, I thought Mr. Hood -- I thought
12 I understood him to say that he thought perhaps
13 some form of amendment to his pleading might be
14 in order to pursue that issue, whether it was to
15 conform with the evidence or to -- and candidly,
16 my point in mentioning that is -- is not to try
17 to be unduly hard to get along with.

18 Well, I'm not able -- I mean, my -- to
19 oppose that would require me to talk about
20 prejudice. The prejudice that I'm talking about
21 is prejudice in the ability to make an argument
22 against it. I mean, I'm not trying to unduly
23 hang Mr. Hood up on that point.

24 But I guess I'm yet to understand
25 exactly the basis. He mentioned, I think, the --

1 I just want to be able to -- when he includes the
2 basis on which -- because, you know, the
3 provision on which he's relying to get the
4 attorney's fees, which as I understand, is not
5 yet a part of the complaint, I want to be able to
6 argue that that provision doesn't apply because
7 as again we --

8 THE COURT: Okay. Well, let me
9 hear from Mr. Hood on that.

10 MR. HOOD: Russ, what the complaint
11 says, it includes a prayer for and a specific
12 claim for an award of attorney's fees pursuant to
13 Title 53-30 in the DJ Statute of South Carolina,
14 and I think it's 15-53-100, which is the
15 declaratory judgment statute and the specific
16 provision contained therein allowing the Court to
17 award attorney fees, and that's 15-53-100.

18 And so that's what I said in my
19 affirmative argument, and I also mentioned that
20 paragraph 15-DE of the -- of the bylaws had a
21 provision contained in it for an award of fees,
22 and if we were to proceed forward, then I would
23 move to amend, if necessary, to add that, or I
24 can respectively ask the Court to move to amend
25 the pleadings conformed with the evidence.

1 But I'll put it in the proposed order.
2 We'll have the specific legal basis on which the
3 attorney's fees were requested and on which
4 they're relevant.

5 MR. HINES: And, Your Honor, all
6 I'm saying is, as I'm hoping we can clear this up
7 now, given -- I'd like -- for instance, Mr. Hood
8 had indicated that an amendment might be ordered
9 whether to conform with the pleadings or he makes
10 a motion; and my point here is not to try to
11 stand in the way of that, at least not, per se.

12 But I thought there was some recognition
13 that maybe the basis on which the fees would be
14 award is not as yet a part of the complaint, and
15 I'm not -- well, all I want to do is to be able
16 to argue to Your Honor that the -- because I
17 didn't understand him to be proceeding under the
18 -- in conjunction with the fact that the
19 declaratory judgment language, the statute
20 language and declaratory judgment statute was --
21 that you mentioned that in conjunction with the
22 idea of meeting an amendment of some sort to talk
23 about the provision of bylaws.

24 It seemed to me to indicate that the
25 provision of the declaratory judgment statute was

1 not what he was relying on for the fees but
2 rather the bylaw division.

3 THE COURT: Let me say this.
4 During the course of that -- during his discourse
5 on the attorney's fees, he mentioned that he
6 probably should or perhaps should amend his
7 pleadings to allege the bylaws or there's some
8 provision in maybe the covenants or bylaws.

9 To the extent that that was a motion to
10 have the pleadings conform to the -- to the
11 evidence that's before me, I'm going to allow
12 that motion; so I'm granting a motion to conform
13 the pleadings to the evidence based upon that
14 additional bases upon which attorney's fees can
15 be avoided.

16 MR. HINES: And, Your Honor, I
17 understand.

18 THE COURT: That way you'll be able
19 to take both issues up on appeal rather than just
20 one.

21 MR. HINES: Well, because I just
22 want to be -- Your Honor, let me -- and I'm
23 sorry. It might be just in my mind that's making
24 this more complicated that it ought to be. But
25 as I understand the provision that he's -- that

1 he's citing to -- if you will let me flip to it.
2 Just one moment.

3 THE COURT: Sure.

4 MR. HINES: This is provision 15-D.
5 It says, "Should the declarant" -- and this is in
6 pertinent part, I guess, or at least -- "Should
7 the declarant or the association employ legal
8 counsel to enforce any of the foregoing, all
9 costs incurred in such enforcement, including
10 costs and reasonable attorney's fees shall be
11 paid by the violating owner."

12 And I guess I'm wondering -- I
13 understand that there's a fee recovery. There's
14 the language of attorney's fee recovery in that
15 provision. I've not understood him to explain
16 how -- if you just look at that language, the
17 language talks about that fee recovery provision
18 in favor of the declarant or the association.

19 I didn't -- I thought his argument -- he
20 never argued that Mr. Hannemann was the
21 declarant, and I thought he argued affirmatively
22 that Mr. Hannemann wasn't the association; so I
23 want just -- I want to make sure I've preserved
24 the argument that -- that what he's relying on --
25 well, I don't know that he ever -- because of the

1 amendment issue, Your Honor, I don't know that
2 ever he actually did argue how that would apply.

3 And so I just want to make sure that I
4 can argue against his application once I
5 understand how he intends to apply it to himself,
6 to his client.

7 THE COURT: Okay. And that's fine.
8 You'll be able to do that.

9 MR. HINES: Thank you, Your Honor.
10 I just -- all I'm trying to do now is not to have
11 myself boxed in on the ability to argue. I'm not
12 trying to jam -- jam your Court up with some sort
13 of procedural technicality about the amendment.
14 I'm not claiming prejudice and the inability to
15 marshal evidence or something against the
16 amendment. I just want to be able to present
17 legal argument.

18 THE COURT: Okay. You know, you
19 will -- there wouldn't be any prejudice because
20 you, yourself, are asking for attorney's fees,
21 and I think you're well aware of the documents
22 provided to members of the association and the
23 association to assert -- to recover attorney's
24 fees.

25 So I don't think it's -- it's any

1 surprise to you that the -- that the whole of the
2 documents that we're dealing with do allow for
3 the payment of attorney's fees.

4 And to the extent Mr. Hood wants to
5 include the fact, the basis of those attorney's
6 fees and a conclusion of law to the effect of
7 those attorney's fees, that's something that you
8 can address in a subsequent motion for
9 reconsideration or amendment, and then you can
10 renew that objection for when we do actually have
11 the attorney's fees hearing.

12 MR. HINES: Okay. Thank you, Your
13 Honor, because that's -- I want to be able to
14 object, not only to the amount of the fee, but to
15 the basis of the fee and to have that argument
16 heard.

17 THE COURT: Actually, we all
18 understand that, and I don't want -- I certainly
19 don't want to put you in jeopardy in terms of a
20 procedural issue that -- that you haven't
21 covered.

22 MR. HINES: Thank you, Your Honor.

23 THE COURT: There's nothing worse
24 than to have the -- to read in the Court of
25 Appeals' opinion that you failed to preserve an

1 issue.

2 MR. HINES: Because that's --
3 that's stomach ulcer material there.

4 THE COURT: I'll also tell you that
5 in our -- in our convention bar discussions, that
6 we have judicial conferences that we go to. The
7 Appellate Courts always mention this preservation
8 issue as a very difficult and complex one, and it
9 is -- it does creep up on you.

10 And when you just think you have
11 everything covered and all of a sudden, there's a
12 lack of preservation, and your client is going to
13 say to you, what happened? But I will make sure,
14 to the extent I can, Mr. Hines, that you'll be
15 able to preserve all of your issues for appeal
16 that you need to appeal, if you want to appeal
17 this.

18 Hopefully, I would prefer that it not be
19 appealed. I would prefer that you -- that you --
20 that your client let things roll for a while and
21 see how we go with a different leadership in
22 place. It would be nice if they could enjoy
23 living in Summerville, which is a delightful
24 little town to live in. And they're right on the
25 edge of Summerville, so when I was a little boy,

1 that would have been the town limits they're
2 living on, and I guess it's extended out now from
3 that area, but anyway --

4 MR. HINES: Well, thank you, Your
5 Honor.

6 THE COURT: Summerville is a
7 wonderful, little place to live in, and it's just
8 too bad that we've got neighbors that are
9 squabbling with each other in close proximity
10 from one another.

11 MR. HINES: Thank you, Your Honor.
12 Thank you for your time. You're very -- you're
13 very gracious.

14 THE COURT: Anything else from you,
15 Mr. Hines?

16 MR. HINES: One last thing, Your
17 Honor, and I think this is probably -- the
18 Pendente Lite order, I assume that upon entry of
19 the order that's forthcoming, that that maybe
20 would have some provision in it to -- well, to
21 void the order. I mean, I assume that this order
22 would be taking the place of that order or at
23 least renewing that order moot.

24 THE COURT: Well, I just signed an
25 order that denied the motion for reconsideration;

1 so that's already filed. And Mr. Hood, he'll
2 just address that the Pendente Lite order gets
3 replaced by the -- well, and by its nature, the
4 final would -- should replace that; so it will
5 supersede and -- supercedes the Pendente Lite
6 order.

7 But I do want you to have conjunctive
8 relief in that order that says that, as long as
9 this case is alive and well through any kind of
10 procedural mechanisms, whether it's an appeal or
11 anything like that, that there will be no changes
12 or no -- I want that -- I want that to become a
13 permanent order, in other words, as long as this
14 case is in litigation. Does that make sense?
15 I'm not sure if that --

16 MR. HINES: Your Honor, I think I
17 understand what you're saying, although I
18 respectfully do have to disagree with -- with
19 that, and I suppose at this juncture, I don't
20 know -- again, this is the paranoid appellate
21 lawyer in me, but I -- I think there is a
22 problem.

23 If I may just at least briefly
24 mention -- and I'd be happy to be brief this in
25 writing, but as I understand it, what that order

1 would be purporting to do is to -- is to restrict
2 the activities of the parties that are not before
3 the Court, and to -- to cease the operation of
4 the -- of the governing documents in a way that
5 I'm -- I'm not sure, you know, on what -- what
6 the authority for that would be. You know, for
7 instance, I mean, there's other homeowners. I
8 mean, well, we have Mr. --

9 THE COURT: Well, that's a good
10 point. That's a good point.

11 MR. HINES: And so --

12 THE COURT: Mr. Hood, do you have
13 any suggestions?

14 MR. HOOD: I don't know that I have
15 any suggestions off the top of my head, but I
16 will -- as I'm preparing a proposed order for --
17 for Your Honor, I will look at ways to try to
18 narrowly handle that to address Mr. Hines'
19 concerns.

20 THE COURT: Well, we can take two
21 -- at least these two parties, we can say, you
22 can't bring any actions to change anything as a
23 member of the association during the pendency of
24 the case. That takes two major players out.

25 MR. HINES: But, Your Honor, I

1 would also mention that -- that there's nothing,
2 as I can see it -- if the situation were to
3 develop, wherein a democratic -- under, you know,
4 democratic governance that's provided for under
5 the governing documents where -- you know, under
6 proper procedure, members of the HOA were to
7 exercise their voting rights so as to affect the
8 change in that organic and democratically.

9 I don't know how that would be -- would
10 be something the policy should oppose or that
11 this lawsuit should even necessarily concern
12 itself with.

13 As I understand it, this lawsuit was
14 about where we are now and not where we are
15 tomorrow; meaning that, as of the Court's ruling,
16 speaks as of a moment in time and would have to
17 be, obviously, you know, subject to, you know,
18 appeal and rights of that nature.

19 But it would -- well, it'd be the ruling
20 and would have to be abided by, but if in a way
21 that doesn't offend that ruling, which speaks
22 about the past and who -- and who is, at this
23 moment, the president and who is entitled the
24 checkbook at this moment.

25 I don't know why the order would need to

1 change or to restrict a free and fair democratic
2 process for -- in respect to -- because what
3 would be reflected by that, necessarily, would be
4 the wishes of a majority.

5 I mean, Mr. McFarland could not do
6 anything on his own. You know, it would have to
7 be other neighbors that agreed, and, you know, if
8 a majority of the neighbors agree to take some
9 sort of action, I don't know why that would be a
10 bad thing.

11 I mean, essentially the idea that it
12 would be a bad thing, from Mr. Hannemann's
13 perspective, but only -- I don't know how he
14 could say it would be a bad thing other than to
15 say, well, I just don't like it because they
16 don't have -- they're not on my side.

17 And I don't know who's side -- you know,
18 I'm not -- I don't know what would happen, you
19 know, as far as -- you know, I'm just suggesting
20 that I don't know why Mr. Hannemann -- it's
21 almost like he would be getting relief that he's
22 really not asked for. He asked to be declared
23 president as of -- president and given the
24 checkbook.

25 I don't know that he could continue

1 that, that he is entitled to say not only that,
2 but I should be essentially locked into place
3 even if other homeowners who are -- and members
4 of HOA, who are not before the Court, decide to
5 take action and invoke, even if it's with
6 Mr. McFarland to -- you know, to use the
7 democratic process provided by the governing
8 documents to make a change.

9 I mean, it would still be a reflection
10 of -- reflecting of the majority will in a way
11 that I don't see where that would be something
12 that Mr. Hannemann would have any right to object
13 to.

14 THE COURT: Well, I certainly think
15 that I have jurisdiction over two parties, and I
16 can enjoin that from bringing actions or
17 exercising rights.

18 MR. HINES: Your Honor, I'm just --
19 let's just assume for the sake of this argument
20 that --

21 THE COURT: Hold on. I'm looking
22 at the Pendente order right now. What I said was
23 that, "No officer of the association shall be
24 authorized to call a special meeting, and, two,
25 section 3-B of the association bylaws shall be

1 suspended. No special meeting pursuant to this
2 section of the bylaws shall be requested without
3 an order from this Court." So I'm not precluding
4 you from getting a meeting scheduled; you just
5 have to come to me and ask for one.

6 MR. HINES: Your Honor, and I just
7 -- on two points on that one, and I know that
8 you've been very gracious with time already, but
9 this is sort of a little bit of a new issue
10 because it's beyond the Pendente Lite nature of
11 the order previously, as I understand is, is
12 that, that would mean five other homes, who are
13 not before the Court would still have to bring
14 themselves to the Court to exercise rights that
15 the --

16 THE COURT: Well, no, it's not.
17 It's just the officers.

18 MR. HINES: Okay.

19 THE COURT: And then 3-B of the
20 association is suspended. I'm not sure what 3-B
21 says. What does 3-B say? Is that specialty
22 members of the national special meeting?

23 MR. HINES: Because there are
24 mechanisms -- there are mechanisms whereby the
25 membership can ask for -- I mean, I guess I would

1 have to object to anything that restricts the
2 right of the members to operate in conjunction --
3 or in accordance with the governing documents
4 going forward; meaning that --

5 THE COURT: I mean, you don't
6 represent them, and we can ask for that.

7 MR. HINES: Well, inasmuch as I
8 can't ask for it, Your Honor, I suppose that I
9 don't know how it could be imposed against them.
10 It seems that -- as long as -- and I would ask
11 for it on behalf of, of course, Mr. McFarland
12 because I don't --

13 THE COURT: Well, he's under my
14 jurisdiction, and I can suspend him.

15 MR. HINES: I get that, but I do
16 think that would be relief, Your Honor, that is
17 not within the bounds of the pleadings.

18 I don't know that the relief -- since
19 he's within the jurisdiction of the Court, I
20 don't know that he's necessarily -- or that he is
21 amenable to any relief being imposed against him,
22 even relief that's -- that's beyond what was
23 framed in the pleadings by Mr. Hannemann.

24 And I guess, Your Honor, forgive me, I
25 know this been a long day, and to your great,

1 well, credit, you've put up with a lot of talking
2 from me. I'm just -- my concern really is trying
3 to make sure that I'm thinking through this for
4 our record purposes, and I certainly can't relent
5 on -- with respect to Mr. McFarland on his rights
6 to. I mean, he has obligations and he has rights
7 underneath these documents, and I don't --

8 THE COURT: Well, I mean, Mr. Hood
9 did ask for me to -- to authorize any further
10 relief, territory, or otherwise as the Court
11 deems necessary in regard to this.

12 So I think there's an adequate request
13 for this sort of equitable -- this kind of --
14 this is an equity issue here, the injunction.
15 All I'm trying to do, Mr. Hines, I want your
16 client -- I really -- I'm not sure what's
17 motivating your client. It's unclear to me.

18 But the -- what I've tried to say in my
19 comments about the area of Summerville that they
20 live in, is that living there in Summerville and
21 that area, that little seven-unit subdivision, I
22 mean, it may be hard for y'all to realize coming
23 from the city, that you can have a little piece
24 of paradise right at the edge of town.

25 I mean, they're within a half a mile of

1 downtown Summerville, maybe three-quarters of a
2 mile. And y'all probably hadn't been up to
3 Summerville recently, but it's -- it's a pretty
4 neat, little downtown area.

5 And to be in this constant -- in the
6 constant sound and fury of litigation over the
7 running of the homeowner's association, just
8 seems to me to be a little bit beyond -- I mean,
9 it's a little bit unreasonable and a little
10 irrational. And I would -- you know, he probably
11 -- it would be helpful for him to his health, I
12 would think, to let go of it a little bit.

13 And, Mr. Hines, you've done a wonderful
14 job arguing for him, and I certainly respect
15 everything you've said today; but this life we
16 live in is really, really very short, and to be
17 tangled up like he is and the focus that he has
18 got on this, I think he might feel a lot, lot
19 better if he were to let it go and let's roll
20 with somebody else for awhile and see what we can
21 come up with.

22 You know, things may change; things may
23 get better; they may need to be changed back. We
24 never know. I noticed that one of the parties
25 that were -- one of the person's who -- one of

1 the homeowners, his name is Michael Knight, he
2 recently died; so I don't know if that -- I mean,
3 so, you know, this is a dynamic situation and
4 things are going to change from time to time.

5 And I just am a proponent for people
6 living in peace and harmony, and I would -- I
7 would ask that your clients try to do that, try
8 to -- try to take a step back, take a deep
9 breath, and let's see what we can do with
10 Mr. Hannemann and Mr. -- to the extent that he's
11 going to operate; and if things change -- need to
12 change, then I would suspect that there will be
13 an opportunity to ask that that be done.

14 But what I'm -- so at any rate, I guess
15 I've said enough about that. That's just my --
16 that's, I guess, my love song for the day to each
17 of you to tell your clients that my interest is
18 in harmony and not in disruption, not in
19 disharmony, discord, discontent.

20 I just like for them to all get along,
21 given the circumstances, recognizing --
22 especially recognizing that they have a very
23 unique situation in where they live in
24 Summerville.

25 MR. HINES: And, Your Honor, let me

1 say that I understand where you're coming from,
2 and I truly do appreciate, I think, the spirit of
3 what you were saying, which I think is -- well,
4 that point is -- you know, it ought to be one
5 that's very well taken.

6 And the only, what I'm saying,
7 contradictory to that is just, again, wearing my
8 legal hat is just to say, you know, I'm sort of
9 -- when I say legal hat, my appellate lawyer hat
10 is to say, I understand and appreciate it and do
11 respect it and think that it -- I can appreciate
12 the value in it.

13 But just to continue my role as
14 Mr. McFarland's advocate for the hear and now, I
15 do have to object to the ruling and also on the
16 equitable -- as far as the equitable grounds,
17 obviously the equity, you know, does have to
18 follow the law.

19 And I don't -- and, respectfully, I
20 don't know that -- I don't believe this ruling is
21 consistent with the law in that it will -- well,
22 it will be more relief than Mr. Hannemann is
23 entitled to under these pleadings, and it will
24 effect -- effectively grant, you know, relief
25 that's far more material than -- that would be so

1 soon within any sort of necessary and proper.

2 And in fact, it's not really necessary
3 or proper to -- to effectuate the relief that the
4 Court is granting him, and -- and it does
5 interfere with these contract rights and his
6 rights that -- that Mr. Hannemann doesn't have
7 any right to take away from him and the other
8 members under the documents.

9 And I say that with zero disrespect. In
10 fact, the utmost respect for what the Court has
11 said and the spirit in which it is said, which is
12 very much appreciated. It's just that the
13 circumstances are such where I -- I'm required by
14 our rules to say it, to advocate for
15 Mr. McFarland.

16 THE COURT: The points are well
17 taken. I appreciate it. Mr. Hood, do you have
18 any other questions?

19 MR. HOOD: Just in terms of timing,
20 what is your expectation to get the proposed
21 order?

22 THE COURT: What do you think you
23 need?

24 MR. HOOD: Ten days.

25 THE COURT: Oh, wow. That's mighty

1 handsome of you. If you need a little longer,
2 that's fine.

3 MR. HOOD: Maybe Friday week, so I
4 mean, I've got to tell you with this Corona
5 situation, I was excited to come up there. I
6 thought, this will be my first time in a
7 courtroom since March.

8 THE COURT: Yeah.

9 MR. HOOD: I've got discovery going
10 out the same week it comes in.

11 THE COURT: Yeah. Everybody is at
12 home.

13 MR. HOOD: That's right. If it's
14 okay with Your Honor to get it to -- well, maybe
15 I should -- would you like to give it to
16 Mr. Hines first before I submit it to Your Honor?

17 THE COURT: Yeah. I think in
18 fairness to Mr. Hines, it would be appropriate to
19 share the order. There may some language in the
20 order that he may suggest that -- that you add or
21 subtract.

22 You know, I don't expect you to agree
23 with it and, you know, every point. I do think
24 it's appropriate to share the order. Sometimes I
25 don't require that, but in this circumstance, I

1 think it's a good idea.

2 Why don't -- in just looking at the
3 calendar, we're at the 16th of June. We have the
4 4th of July coming up. That's a holiday. Why
5 don't you have the order -- try to get the order
6 to me by the -- let's say the 12th, 13th. That
7 will be the -- let's say the -- July the 13th is
8 my son's birthday.

9 Let's do it on July 13th, to get the
10 order to me, ready for my consideration by July
11 13th; and that's taking into account that we've
12 got some -- we've got the 4th of July weekend
13 involved here. I don't want you guys overdoing
14 yourselves. Y'all are both young and both of you
15 have young children; is that right?

16 MR. HINES: Yes, sir.

17 THE COURT: How old are your
18 children?

19 MR. HINES: I've got ten and seven
20 over here, two little boys.

21 THE COURT: Oh, boy.

22 MR. HOOD: I have 15, 11 and 8.

23 (Off-the-record discussion.)

24 THE COURT: Well, get it by July
25 13th.

1 MR. HOOD: Thank you, Your Honor.
2 We'll get it to you by July 13th.

3 THE COURT: Okay. That's good.
4 Thanks gentlemen.

5 MR. HINES: Thank you, Your Honor.
6 (The deposition was concluded at
7 3:41 p.m.)

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1 CERTIFICATE OF REPORTER
STATE OF SOUTH CAROLINA
2 COUNTY OF DORCHESTER

3
4 I, Jennifer M. Adams, Certified
Shorthand Reporter and Notary Public for the
State of South Carolina at Large, do hereby
5 certify that the witness whose attached in the
foregoing hearing was by me duly sworn to testify
6 to the truth, the whole truth, and nothing but
the truth in the within-entitled cause; that said
7 hearing was taken at the time and location
therein stated; that the testimony of the witness
8 and all objections made at the time of the
examination were recorded stenographically by me
9 and were thereafter transcribed by computer-aided
transcription; that the foregoing is a full,
10 complete and true record of the testimony of the
witness and of all objections made at the time of
11 the examination; and that the witness was given
an opportunity to read and correct said hearing
12 and to subscribe the same.

13 Should the signature of the witness
not be affixed to the hearing, the witness shall
not have availed himself/herself of the
14 opportunity to sign or the signature has been
waived.

15 I further certify that I am neither
related to nor counsel for any party to the cause
16 pending or interested in the events thereof.

17 Witness my hand, I have hereunto
affixed my official seal on June 30, 2020 at
18 Charleston, Charleston County, South Carolina

19

20

21 Jennifer M. Adams
Court Reporter And Notary Public
My commission expires: 02/07/2022

22

23

24

25

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kit (1)	limits (1)	massage (2)	momentarily (1)
Knight (1)	line (3)	MASTER-IN-	money (26)
know (256)	lined (1)	EQUITY (1)	months (5)
knowing (1)	lines (1)	material (4)	moot (2)
known (7)	list (3)	materials (2)	moots (1)
knows (1)	listen (3)	matter (9)	morning (2)
kosher (1)	Lite (8)	matters (2)	Morris (36)
< L >	literally (1)	MCFARLAND (96)	motion (67)
lack (3)	litigant (1)	M-C-F-A-R-L-A-N-	motions (5)
laid (3)	litigants (2)	D (1)	motivating (1)
landlord (1)	litigation (24)	McFarlands (5)	mounting (1)
landscape (1)	little (23)	McFarland's (12)	mouth (1)
landscaping (2)	LIVE (15)	mean (109)	move (10)
language (32)	living (4)	meaning (8)	moved (1)
languages (1)	LLP (1)	means (9)	moving (3)
Large (1)	LOCATION (3)	meant (1)	multiple (1)
laughable (1)	lock (1)	mechanism (1)	municipal (1)
	locked (1)	mechanisms (3)	< N >
	long (6)	Meeting (75)	name (13)
	longer (3)		

narrowly (2)
 national (4)
 native (1)
 natural (1)
 nature (5)
 navigating (1)
 neat (1)
 necessarily (4)
 necessary (13)
 necessitating (1)
 necessities (1)
 need (29)
 needed (7)
 needs (4)
 negative (2)
 negotiate (1)
 neighbor (2)
 neighborhood (7)
 neighbors (3)
 neither (4)
 never (17)
 new (2)
 newly (4)
 nice (1)
 Nine (1)
 noble (1)
 nominated (1)
 nonpayment (7)
 nonstarter (1)
 non-starter (1)
 Nope (1)
 normal (4)
 normally (1)
 notably (1)
 Notary (2)
 note (8)
 noted (2)
 notice (6)
 noticed (1)
 notices (1)
 notify (2)
 noting (1)
 notion (6)
 Notwithstanding (7)
 November (1)
 nuance (1)
 number (8)

< O >

OAK (6)
 object (10)
 objected (1)
 objecting (4)
 objection (19)
 objections (11)
 obligated (3)
 obligation (3)
 obligations (3)
 obstreperous (1)
 obtain (8)
 obtained (3)
 obtaining (6)
 obviating (2)
 obvious (3)
 obviously (15)
 occupancy (1)
 occur (1)
 October (2)
 odd (1)
 offend (1)
 offering (1)
 office (3)
 officer (4)
 officers (15)
 official (5)
 officially (1)
 Off-the-record (1)
 oh (15)
 Okay (56)
 old (1)
 once (3)
 ones (3)
 ongoing (8)
 opening (1)
 operable (1)
 operate (4)
 operates (1)
 operating (9)
 operation (2)
 opinion (9)
 opportunity (7)
 oppose (2)
 opposed (3)
 opposite (1)
 opposition (2)
 orally (1)
 order (52)
 ordered (2)

orders (1)
 ordinance (1)
 ordinary (1)
 organic (1)
 organization (4)
 origin (4)
 original (4)
 ought (6)
 outcome (1)
 outset (1)
 outstanding (1)
 overabundance (1)
 overdoing (1)
 overview (2)
 owed (5)
 owner (3)
 owners (3)
 owner's (3)

< P >

p.m (1)
 page (25)
 pages (2)
 paid (47)
 paint (1)
 paper (1)
 papers (3)
 paradise (1)
 paragraph (26)
 paragraphs (1)
 paranoid (2)
 part (25)
 partial (1)
 participate (3)
 particular (10)
 particularly (1)
 parties (15)
 party (9)
 passed (4)
 passing (1)
 patience (1)
 pause (1)
 pay (47)
 paying (12)
 payment (25)
 payments (1)
 peace (1)
 peaceful (1)
 peculiar (1)

pedal (1)
 peg (1)
 penalize (1)
 penalty (2)
 pendency (2)
 Pendente (9)
 pending (2)
 penny (1)
 people (20)
 percent (1)
 percolating (1)
 perform (1)
 performed (1)
 period (1)
 perjury (2)
 permanent (1)
 permitted (1)
 perpetrated (1)
 person (5)
 personal (1)
 persons (5)
 person's (1)
 perspective (2)
 persuasive (1)
 pertinent (3)
 petition (1)
 phoenix (1)
 phone (2)
 pick (1)
 picture (2)
 piece (1)
 pilot (1)
 pitfall (1)
 pity (1)
 place (14)
 placed (1)
 plain (5)
 plaintiff (4)
 Plaintiffs (4)
 plaintiff's (14)
 plan (1)
 players (1)
 pleaded (2)
 pleading (5)
 pleadings (8)
 PLEAS (1)
 please (6)
 pleased (1)
 point (101)

pointing (1)	primarily (1)	purported (1)	reasonable (8)
points (6)	primary (1)	purporting (3)	reasonableness (1)
police (1)	principal (4)	purpose (9)	reasonably (2)
policy (1)	principle (2)	purposes (13)	reasons (5)
poorly (1)	prior (16)	pursuant (4)	recall (4)
portion (1)	privity (3)	pursue (7)	receipt (1)
position (40)	probably (11)	pursued (4)	receipts (1)
positions (7)	problem (21)	pursuing (3)	received (3)
possession (4)	problems (1)	put (13)	receiving (1)
possible (1)	procedural (9)	putting (2)	recess (5)
post (1)	procedurally (4)		recitation (1)
post-hearing (1)	procedure (5)	< Q >	recognition (2)
potential (3)	procedures (1)	qualification (1)	recognize (3)
potentially (2)	proceed (2)	qualified (1)	recognized (5)
power (11)	proceeding (5)	qualify (1)	recognizes (2)
powerless (2)	proceedings (2)	quarrel (1)	recognizing (2)
powers (3)	proceeds (1)	quarter (1)	recollection (1)
practical (2)	process (9)	question (30)	reconciled (1)
prayer (1)	processes (1)	questioning (1)	reconsider (1)
precedence (1)	procure (1)	questions (10)	reconsideration (8)
precedent (1)	produce (1)	quick (1)	record (13)
precedential (3)	profession (1)	quicker (1)	recorded (1)
precluding (1)	prohibition (1)	quickly (3)	recording (1)
predated (2)	prominent (1)	quite (11)	records (10)
predates (1)	prompted (1)	quo (6)	recover (2)
preface (1)	proof (2)	quorum (6)	recovery (3)
prefer (4)	proper (16)	quotation (2)	refer (1)
prejudice (5)	properly (9)	quoted (1)	reference (2)
preliminary (1)	property (7)	< R >	referenced (1)
prepare (1)	proponent (1)	racial (1)	references (1)
preparing (6)	proposed (5)	raise (2)	referred (2)
present (13)	proposition (1)	raised (9)	referring (3)
presented (4)	prosecute (3)	raises (3)	re-filed (1)
presenting (1)	protect (1)	raising (1)	reflect (1)
presents (1)	protecting (1)	rate (1)	reflected (3)
preservation (2)	protects (1)	rationalized (2)	reflecting (1)
preserve (4)	proved (1)	rationalizes (1)	reflection (1)
preserved (1)	provide (9)	reach (1)	reflects (1)
presidency (3)	provided (11)	read (13)	refusals (1)
PRESIDENT (73)	provides (1)	readily (2)	refused (3)
presumably (1)	providing (2)	reading (4)	refuses (3)
pretty (3)	provision (63)	reads (5)	refuted (1)
prevail (1)	provisions (2)	ready (3)	regard (3)
prevailing (1)	proximity (1)	real (3)	regardless (2)
prevent (4)	proxy (1)	realistic (1)	regards (1)
preventative (1)	proxying (1)	realize (6)	regime (1)
prevented (1)	Public (2)	really (34)	regulations (1)
previewed (2)	pull (3)	reason (21)	reimburse (1)
previously (3)	punishment (1)		reimbursement (4)

reiterate (2)	resolved (9)	safety (2)	shoestring (1)
reiterated (1)	respect (11)	sake (4)	short (3)
reiterating (1)	respectfully (13)	salient (1)	SHORTHAND (2)
related (4)	respectively (2)	sat (2)	Shortly (2)
relates (2)	respond (5)	saw (2)	shot (2)
relative (1)	responded (1)	saying (55)	shotgun (1)
relatively (1)	responding (5)	says (41)	show (6)
relent (2)	response (23)	SC (4)	showing (1)
relevant (9)	responses (2)	scan (1)	shows (7)
relied (1)	responsibilities (1)	schedule (1)	shut (1)
relief (13)	responsibility (3)	scheduled (4)	side (5)
relinquished (1)	rest (2)	scheduling (1)	sides (1)
relinquishment (1)	restrict (2)	schism (1)	sign (1)
relying (3)	restriction (3)	scroll (1)	signal (1)
remain (1)	Restrictions (1)	se (1)	signature (2)
remember (4)	restricts (1)	seal (1)	signed (3)
remitted (3)	result (4)	seas (1)	significance (1)
remote (2)	resulted (1)	second (16)	significant (3)
remotely (1)	results (4)	secondly (1)	signs (1)
removal (2)	return (1)	section (13)	similar (1)
removed (1)	reversed (2)	see (25)	simple (1)
renew (2)	reviewed (1)	seek (9)	simplest (1)
renewing (1)	rifle (2)	seeking (1)	simply (8)
renovation (1)	right (88)	seeks (2)	single (1)
repair (1)	rightful (3)	seen (1)	sir (13)
repaired (1)	rights (40)	sees (1)	sit (1)
repairs (1)	rip (1)	segue (1)	site (1)
repeated (1)	rises (1)	send (3)	sitting (4)
replace (1)	risk (6)	sending (1)	situation (15)
replaced (2)	risks (1)	sense (10)	six (5)
replacement (1)	RIVERS (1)	sent (9)	skill (1)
replied (1)	road (1)	sentence (1)	skillfully (1)
reply (5)	role (1)	sentences (2)	snafu (1)
REPORTED (1)	roll (2)	separate (4)	solidifies (1)
REPORTER (4)	rudder (4)	September (1)	somebody (1)
represent (2)	rudderless (4)	serious (2)	somebody's (1)
representation (1)	rule (5)	served (2)	somewhat (2)
representations (1)	ruled (3)	service (1)	song (1)
representing (1)	rules (6)	serving (3)	son's (1)
request (13)	ruling (10)	session (2)	soon (2)
requested (3)	run (2)	set (6)	sooner (1)
requesting (1)	running (1)	settled (1)	sorry (5)
require (6)	runs (1)	seven (9)	sort (38)
required (13)	Russ (5)	seven-unit (1)	sorts (1)
requirement (2)	RUSSELL (1)	shakes (1)	sought (2)
requires (8)	< S >	share (2)	sound (1)
requisite (3)	safeguard (1)	sharing (2)	sounds (2)
reservation (1)	safely (1)	Shelbourne (1)	SOUTH (11)
resistance (1)		ship (4)	speak (6)

speaking (3)	straightforward (2)	supermajority (1)	terminating (1)
speaks (2)	strategic (1)	supersede (1)	terms (15)
special (4)	strategically (3)	supplement (2)	territory (1)
specialty (1)	Street (2)	supplemental (2)	tested (1)
specific (7)	strengthens (2)	supplemented (2)	testify (1)
specifically (11)	stretch (1)	support (5)	testimony (2)
spend (1)	stripped (1)	supported (2)	text (1)
spending (1)	strong (1)	supporting (1)	textual (1)
spirit (2)	struck (2)	supports (1)	textually (1)
splitting (1)	stuff (1)	suppose (8)	Thank (27)
spontaneous (1)	subdivision (6)	supposed (2)	Thanks (2)
spring (4)	subject (4)	supremacy (1)	theme (2)
springing (1)	submission (1)	supreme (3)	theories (2)
springs (1)	submit (11)	sure (28)	thereof (1)
spun (1)	submitted (1)	surpass (1)	thing (31)
squabbling (1)	submitting (1)	surprise (1)	things (34)
square (1)	subparagraph (1)	survive (1)	think (152)
St (1)	subpart (1)	suspect (2)	thinking (3)
stage (2)	subscribe (1)	suspend (16)	thinks (2)
stages (1)	subsection (1)	suspended (8)	third (4)
stale (2)	subsequent (7)	suspension (3)	Thomas (1)
stand (4)	subsequently (1)	swearing (1)	thought (19)
standard (3)	subset (1)	sworn (2)	thread (1)
standing (18)	substantial (5)	system (1)	threat (1)
standpoint (3)	substantively (1)	< T >	three (18)
stands (1)	substitute (1)	tacked (1)	three-fourths (32)
start (8)	subtract (1)	tag (1)	three-quarter (2)
started (2)	success (4)	take (26)	three-quarters (4)
STATE (4)	successful (1)	taken (17)	throws (1)
stated (8)	successfully (3)	takes (4)	tick (1)
statement (3)	succinctly (1)	talk (7)	tighten (1)
states (1)	sudden (2)	talked (10)	TIME (49)
statue (2)	sue (7)	talking (24)	timeframe (1)
status (8)	sued (1)	talks (12)	timely (4)
statute (6)	suffice (1)	tangled (1)	times (2)
statutory (1)	sufficient (1)	tape (1)	timing (3)
stems (1)	suggest (11)	target (1)	Title (3)
stenographically (1)	suggested (4)	targeted (1)	today (18)
step (3)	suggesting (12)	task (2)	today's (1)
steps (1)	suggestion (1)	technical (4)	toggling (2)
stirring (1)	suggestions (2)	technicality (1)	Tom (1)
stomach (1)	suggests (2)	technically (2)	tomorrow (1)
stone (1)	suing (8)	tedious (1)	tone (1)
stood (1)	suit (20)	tell (17)	top (2)
stop (8)	Suite (1)	telling (5)	torpedos (1)
stopped (2)	summary (49)	ten (8)	toss (1)
stops (1)	Summerville (11)	tend (2)	Total (1)
story (4)	summons (1)	term (1)	totally (3)
straight (5)	supercedes (1)		tougher (1)

town (3)	understandable (1)	votes (6)	wondering (3)
track (1)	understanding (8)	voting (31)	word (9)
tracked (2)	understood (5)	vs (1)	words (5)
transaction (1)	undesirable (1)	< W >	work (5)
transcribed (1)	unduly (3)	wait (6)	worked (2)
transcription (1)	uniformly (1)	waited (1)	working (2)
transfer (2)	unique (2)	waiting (3)	works (1)
transferring (1)	unnecessary (1)	waive (3)	world (5)
transmitted (1)	unpaid (1)	waived (5)	worn (1)
transpired (6)	unpleasantness (1)	waiver (23)	worse (1)
transpiring (1)	unprotected (1)	walk (3)	worst (1)
treasurer (6)	unpublished (1)	want (55)	worth (1)
trespass (1)	unreasonable (2)	wanted (9)	wow (1)
trial (5)	unworkable (1)	wanting (1)	write (1)
trials (1)	upend (1)	wants (3)	writes (2)
tricky (1)	use (5)	waste (1)	writing (4)
tried (3)	utilize (1)	water (5)	written (17)
tries (1)	utilized (1)	way (56)	wrong (6)
tripped (1)	utmost (1)	ways (3)	wrongfully (3)
TRO (13)	< V >	wealth (1)	wrote (1)
trouble (1)	vacillation (1)	wearing (3)	WWW.CLARK-
trudging (1)	valid (4)	Wednesday's (1)	ASSOCIATES.COM
true (6)	validity (1)	weeds (1)	(1)
truly (1)	validly (1)	week (4)	< Y >
trumping (1)	value (5)	weekend (1)	y'all (7)
truth (3)	various (4)	weeks (2)	y'all's (1)
try (19)	versed (1)	well (180)	yard (4)
trying (42)	versus (4)	went (7)	Yeah (24)
Tuesday (1)	view (4)	We're (32)	year (4)
turn (7)	viewed (4)	we've (10)	years (12)
turned (4)	views (1)	whatnot (1)	YOUNG (3)
two (44)	VILLAGE (6)	whatsoever (2)	< Z >
two-thirds (1)	violate (3)	whichever (1)	zero (1)
typo (3)	violated (1)	whiff (1)	
< U >	violating (3)	wide (1)	
uh-huh (1)	violation (7)	wife (2)	
ulcer (1)	violations (1)	WILLIAM (2)	
ultimate (1)	violator (2)	window (1)	
ultimately (2)	violators (2)	wish (2)	
ultra (1)	vires (1)	wishes (1)	
unable (1)	visualize (1)	wishing (1)	
unauthorized (1)	vitriol (2)	withdraw (2)	
unclear (1)	voice (2)	withdrawn (1)	
uncomfortable (1)	void (1)	within-entitled (1)	
underlying (1)	voluntariness (1)	witness (7)	
undermines (1)	voluntary (3)	witnesses (1)	
underneath (1)	vote (36)	won (3)	
understand (57)	voted (8)	wonderful (2)	