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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.

FINAL REPLY BRIEF OF APPELLANT

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Respectfully, Mr. Hannemann's[1] responsive brief does not effectively undermine Mr. McFarland's appellate arguments, which are already sufficiently stated in Mr. McFarland's principal brief to comfortably withstand Mr. Hannemann's challenge thereto. But Mr. McFarland would take this opportunity to underscore the following brief points on reply.

ARGUMENT IN REPLY

1. The Court should give no credence to Mr. Hannemann's unwarranted disparagement of Mr. McFarland.

At times, Mr. Hannemann seems more interested in mudslinging than actually rebutting Mr. McFarland's legal arguments. (*See, e.g.,* Resp.'s Br. p. 5 n.2 ("Even after the final order was entered declaring Hannemann was the duly elected President and directing McFarland to turn over the HOA records, McFarland still refused to surrender the HOA records. Attempting to address this recalcitrance, Hannemann filed a Motion for Rule to Show Cause. Rather than complying with the Trial Court's order, McFarland filed a petition in the Court of Appeals, arguing that the final order was automatically stayed under Rule 241(a), SCACR. The Court of Appeals stayed the rule conditioned on McFarland delivering the documents by December 22, 2020. McFarland finally produced copies of bank statements for the

[1] Shorthand references already defined in Mr. McFarland's principal brief are continued in this reply brief (e.g., "Mr. Hannemann" is Plaintiff/Respondent, David Hannemann, and "Mr. McFarland" is Defendant/Appellant, William McFarland).

HOA, but he retains control of the original HOA bank account and all records. Meanwhile, once the TRO was dissolved, several HOA members requested that a HOA member meeting be held. Hannemann expressed his willingness to call such a meeting once he had the HOA financial records from McFarland. While McFarland continued to withhold the records, Mrs. McFarland and other HOA members moved forward and claim to have held a HOA members meeting on October 30, 2020, at which they purported to have elected McFarland to the Board (along with two other Directors).")

To hear Mr. Hannemann tell it, Mr. McFarland just flatly defied the master's order, but this is just not true. It is clear from even a cursory review of the correspondence between Mr. Hannemann and Mr. McFarland's counsel in the run up to Mr. Hannemann's motion for a rule to show cause that Mr. McFarland's legal position (which was that he was not in violation of the master's order because it was subject to the automatic stay under Rule 241(a), SCACR) was thoughtfully considered and taken in good faith. (*See* R. pp. 726–37.) Moreover, in response to Mr. McFarland's petition for review of the master's order granting Mr. Hannemann's motion for a rule to show cause, this Court did in fact stay not only the scheduled rule to show cause hearing but also the master's order on the merits itself "upon [Mr. McFarland's] deliver[y] of the documents in question *to the master* by the end of the day on December 22, 2020." (R. pp. 44–45 (emphasis added).) As

the italicized language in the foregoing quote shows, this Court did not, as Mr. Hannemann seems to suggest, condition the stay on Mr. McFarland delivering the documents *to Mr. Hannemann* by December 22, 2020,[2] but on Mr. McFarland delivering the documents *to the master* by that date. Nonetheless, on December 22, 2020, Mr. McFarland not only provided the documents to the master but also provided them to Mr. Hannemann, whereupon Mr. Hannemann's counsel expressly acknowledged Mr. McFarland's compliance with this Court's order. (*See* R. pp. 797–806.)

Indeed, Mr. Hannemann's counsel not only acknowledged Mr. McFarland's compliance with this Court's order but also acknowledged that, with the documents Mr. McFarland provided, "Mr. Hannemann has the information needed to schedule the requested special meeting and he will be providing the HOA members with notice for the same." (R. p. 800.) As Mr. Hannemann states in his brief, "once the TRO was dissolved, several HOA members requested that a HOA member meeting be held." (Resp.'s Br. p. 5 n.2.) Specifically, it was three members—Carlton Holcombe, Tobias Guarino, and Mrs. McFarland, between them amounting to 3 of the 7 total votes of the HOA membership—who sent the following correspondence to all HOA members on September 15, 2020: "In accordance with LOVHOA

[2] (*See* Resp.'s Br. p. 5 n.2 ("The Court of Appeals stayed the rule conditioned on McFarland delivering the documents by December 22, 2020.").)

Bylaws Section 3(B), as homeowners in good standing owning a majority of the outstanding membership votes, we are writing today to request a Special Members Meeting with the object of removing and electing board members." (R. p. 725.) On October 6, 2020, however, Mr. Hannemann responded to the September 15, 2020, special meeting request, stating, "due to Mr. McFarland's ongoing failure to comply with an Order entered by the Dorchester County Master in Equity, it is impossible to effectively evaluate the September 15th meeting request because we are unable to determine which members are eligible to vote," and thus, "it is impossible to determine whether a Special Meeting has been properly requested." (R. pp. 738–39.)

Although Mr. Hannemann wants to portray Mr. McFarland as the proverbial skunk at the garden party here, as Mr. Hannemann's response to the September 15, 2020, special meeting request well illustrates, it is in fact the other way around. Faced with a special meeting request from HOA members entitled to vote not just one-fourth (1/4) of all votes of the HOA membership but indeed more than 40% of the votes, Mr. Hannemann stonewalled them (or at least attempted to) on the bogus ground that it was just not possible to determine if they had properly requested a special meeting.[3] But as confirmed by the certifications of four HOA members, i.e.,

[3] Mr. Hannemann had no real reason to question voting rights to begin with. Of course, as stated above, his own counsel ultimately confirmed that the requested special meeting should be called—but by then the other members of the

members holding a majority of all votes of the HOA membership, specifically, the three members who made the September 15, 2020, special meeting request (Messrs. Holcombe and Guarino and Mrs. McFarland) plus one additional HOA member, Lynn Myers, it is not Mr. McFarland but Mr. Hannemann who opposed the democratic process of HOA governance and the majority will. (*See* R. pp. 745-760, 725.) And, as also confirmed by those certifications, that controlling majority of the HOA membership does not merely "*claim* to have held a HOA members meeting on October 30, 2020, at which they purported to have elected McFarland to the Board (along with two other Directors)" (emphasis added), they in fact rightfully did so, properly noticing the October 30, 2020, meeting pursuant to S.C. Code Ann. § 33-31-702,[4] and in all respects duly and validly holding the said meeting and taking

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HOA had already acted to validly hold the meeting, as explained in their certifications. (*See* R. pp. 725, 745–60.) And in any event, as expressly found by the master in ruling in favor of Mr. Hannemann in the principal summary judgment order (on Mr. Hannemann's own argument), suspension of voting rights required formal action, which Mr. Hannemann knew had never been taken—nor was there any reason to suspect such action was at all warranted as to the members who made the September 15, 2020, request. In other words, and notwithstanding Mr. McFarland's challenge to the master's order, Mr. Hannemann was plainly contradicting his own prior position in suggesting there could have been anything amiss with respect to the meeting requestors' voting rights.

[4] In pertinent part, § 33-31-702 provides as follows:

> (a) A corporation with members shall hold a special meeting of members:
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> ***

action therein, as attested in each of their certifications. (*See* R. pp. 725, 745–60.) Indeed, even though he did not hesitate to get into matters that post-dated the orders on appeal in his brief, one such matter of which he did not advise the Court is that Mr. Hannemann has now "resigned" as an officer/director of the HOA. Accordingly, and while Mr. McFarland maintains that Mr. Hannemann did not validly hold the officer/director position from which he (Mr. Hannemann) claims to have resigned, it is in fact now the case that even Mr. Hannemann himself does not claim to be an HOA officer or director.

> (2) except as provided in the articles or bylaws of a religious corporation, if the holders of at least five percent of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting describing the purpose or purposes for which it is to be held.
>
> ***
>
> (c) If a notice for a special meeting demanded under subsection (a)(2) is not given pursuant to Section 33-31-705 within thirty days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection (d), a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to Section 33-31-705.
>
> ***

2. Mr. Hannemann expressly brought this lawsuit in his (purported) capacity as HOA president, not in his individual capacity.

Without question, Section 8(C)(9) of the Articles applies to this suit, which, without question, Mr. Hannemann brought in his (purported) official capacity "as President of the Live Oak Village Homeowner's Association, Inc.," without obtaining the requisite three-fourths vote of the membership. (R. pp. 374–76 at Resps. No. 24–29.) As the Bylaws make clear, "[t]he President [is] the chief executive officer of the Association." (R. p. 71 § 7(B).) "A corporation can act only through the authorized acts of its corporate directors, officers, and other employees and agents." 18B Am. Jur. 2d *Corporations* § 1139. By purporting to act as HOA president in bringing this lawsuit, Mr. Hannemann purported to act for and on behalf of the HOA itself. Indeed, in the Pendente Lite Order, the master found "Each party represents in his pleadings that he holds the office of the President of Live Oak Village Homeowner's Association, Inc.;" "Each party maintains he acts on behalf of by Live Oak Village Homeowner's Association, Inc.;" and "Live Oak Village Homeowner's Association, Inc., as a functioning homeowners association, is sine qua non to the pending lawsuit." (R. p. 4.)

CONCLUSION

For the foregoing reasons, along with those already set forth in his principal brief, Mr. McFarland asks the Court to reverse the master and enter, or direct that the master enter, judgment in his favor as to all Mr. Hannemann's claims against him, or at least to reverse the master's grant of Mr. Hannemann's motion for summary judgment (if not in whole, in part), and to remand this matter to the master for such further proceedings as are necessary, to include, without limitation, trial.

Respectfully submitted,

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APPELLANT'S CERTIFICATION FOR FINAL REPLY BRIEF

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I, Russell G. Hines, do hereby certify that the Final Reply Brief of Appellant complies with Rule 211(b), SCACR. Additionally, the undersigned hereby certifies that this filing complies with the Supreme Court order of April 15, 2014.

Respectfully submitted,

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