

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

C. Barry Dykes and Barbara Eisenhardt,
Individually and Derivatively On Behalf of
The Wild Wing Plantation Property Owners'
Association, Inc.,

Plaintiffs,

vs.

Wild Wing Company, LLC; Sunstar, LLC;
Ralph R. Teal, Jr.; SLF IV/SBI Wild Wing,
LLC; SLF IV/SBI JV, LLC; SLF IV/SBI
Properties MM, LLC; SLF IV/SBI
Development Holdings, LLC; Wild Wing
Residential Development, LLC; Stratford
Land Manager, L.P. d/b/a Stratford Land;
Stratford Land Fund IV, L.P.; SB Investments
LLC; Realstar Management, LLC; Graeme T.
Black; H. Gilford Edwards; Founders Wild
Wing, LLC; Founders Group International,
LLC; Dan Liu; Xian "Nick" Dou; Rick
Schultz; Rick Taylor and Thomas Plankers,

Defendants.

Wild Wing Plantation Owners' Association,
Inc.,

Nominal Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-26-04187

RECEIVED

Jul 16 2021

SC Court of Appeals

**ORDER GRANTING SUMMARY
JUDGMENT FOR DEFENDANTS
WILD WING COMPANY, LLC;
SUNSTAR, LLC; SLF IV/SBI WILD
WING, LLC; SLF IV/SBI JV, LLC;
SLF IV/SBI PROPERTIES MM, LLC;
SLF IV/SBI DEVELOPMENT
HOLDINGS, LLC; WILD WING
RESIDENTIAL DEVELOPMENT, LLC;
SB INVESTMENTS, LLC; REALSTAR
MANAGEMENT, LLC; FOUNDERS
WILD WING, LLC; FOUNDERS GROUP
INTERNATIONAL, LLC; and DAN LIU**

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This Order is entered as to certain Defendants consisting of Declarants and related persons and entities; these Defendants being: Wild Wing Company, LLC; Sunstar, LLC; SLF IV/SBI Wild Wing, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI Properties MM, LLC; SLF IV/SBI Development Holdings, LLC; Wild Wing Residential Development, LLC; SB Investments, LLC; Realstar Management, LLC; Founders Wild Wing, LLC; Founders Group International, LLC; and Dan Liu (hereinafter "Declarant Defendants"). Other Orders have been filed as to the remaining Defendants Ralph R. Teal, Jr.; Graeme T. Black; H. Gilford Edwards; Rick Schultz; Rick Taylor; Thomas

Plankers; Stratford Land Manager, LP; and Stratford Land Fund IV, LP (hereinafter the “Remaining Defendants”). Those Orders as to the Remaining Defendants are incorporated herein by reference. This Order addresses Declarant Defendants only.

PROCEDURAL HISTORY

On June 30, 2017, the Plaintiffs brought this action individually and allegedly in a derivative capacity on behalf of the Wild Wing Plantation Property Owners’ Association, Inc. (hereinafter “POA”), a nonprofit corporation, claiming that Declarants had not paid the correct amount of assessments to the POA. Plaintiffs initially brought causes of action for Breach of Fiduciary Duty, Unjust Enrichment, and Veil Piercing/Alter Ego/Amalgamation. An Answer and Counterclaim on behalf of Declarant Defendants was filed on October 3, 2017. Plaintiffs filed an Answer to the Counterclaim on November 16, 2017.

On June 10, 2019, the Plaintiffs filed an Amended Complaint which added nine new Defendants, made allegations that Amendments to the Declaration were improper, and asserted an additional cause of action under the South Carolina Unfair Trade Practices Act. Plaintiffs later filed a revised Amended Complaint on March 19, 2020. An Answer and Counterclaim to the Amended Complaint was filed on behalf of Declarant entities and their members on April 16, 2020. Plaintiffs filed an Answer to the Counterclaim on May 19, 2020.

On October 29, 2020, Declarant Defendants filed numerous Motions for Summary Judgment on the following grounds:

- The Business Judgment Rule;
- The Statute of Limitations;
- The Validity of the Amendments to the Declaration;
- Inadequate Derivative Capacity of the Plaintiffs;
- Lack of Standing of the POA; and
- South Carolina Unfair Trade Practices Act.

On October 30, 2020, Plaintiffs also filed several Motions for Summary Judgment. On May 4, 2021, this Court heard all Motions for Summary Judgment. All filed materials, briefs, memoranda, and supporting documents were incorporated as part of the Summary Judgment Motions record with all matters therein preserved for review. During the Summary Judgment Motions hearing, Plaintiffs announced on the record that they were dismissing their causes of action for Unjust Enrichment, Veil Piercing, and Alter Ego. These causes of action are therefore not addressed further. Plaintiff proceeded on their claims for Breach of Fiduciary Duty and the South Carolina Unfair Trade Practices Act.

At the conclusion of the hearing, this Court denied all of Plaintiffs' Motions and granted all Defendants' Motions for Summary Judgment. In accordance with the foregoing and for the following reasons, Plaintiffs' claims fail as this Court finds no issue of material fact and that Declarant Defendants are entitled to judgment as a matter of law.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue of material fact and it is clear that the moving party is entitled to a judgment as a matter of law. Rule 56, SCRPC. Although the court must view the facts and inferences therefrom in the light most favorable to the non-moving party, the non-movant may not rest on the mere allegations or denials of its pleading. Instead, the non-movant must set forth or point to specific facts showing that there is a genuine issue of material fact. *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009); *Hancock v. Mid-South Management Co.*, 381 S.C. 326, 330-331, 381 S.E.2d 801, 803 (2009); *Dickert v. Metro. Life Ins. Co.*, 306 S.C. 311, 313, 411 S.E.2d 672, 673 (Ct. App. 1991); *McNair v. Rainsford*, 330 S.C. 332, 341, 499 S.E.2d. 488, 493 (Ct. App. 1998). "When ruling on a motion for summary judgment, the trial judge must consider all of the documents and evidence within the records, including the

pleadings, depositions, answers to interrogatories, admissions on file, and affidavits.” *Higgins v Med. Univ.*, 326 S.C. 592, 599, 486 S.E.2d 269, 272 (Ct. App. 1997).

FINDINGS OF FACT

Plaintiffs brought this action alleging that Declarant Defendants have underpaid the POA.

Plaintiffs’ claims have two bases:

- (1) Plaintiffs contest the POA’s math as to how the Declarant annual contribution to the POA, if any, is calculated (hereinafter the “Math”); and
- (2) Plaintiffs contest two Amendments adopted by the POA extending the time frame within which Declarant payment options exist (hereinafter the “Amendments”).

Plaintiffs’ case relies entirely upon blending the actions of the POA as actions of the Declarants. There exists no evidence or law to support this theory. The actions complained of by the Plaintiffs were actions of the POA. There exists no rule of law that an appointing Declarant is somehow vicariously liable for the actions of its appointee.

Wild Wing Plantation is a residential golf community situated within the City of Conway, South Carolina. Wild Wing Company, LLC was the initial Developer and therefore served as the initial Declarant. There have since been three successor Declarants. The Declarant succession is as follows:

Declarant	Dates
Wild Wing Company, LLC	09/26/06 – 12/22/10
SLF IV/SBI Wild Wing, LLC	12/22/10 – 11/09/11
Wild Wing Residential Development, LLC	11/09/11 – 04/13/15
Founders Wild Wing, LLC	04/13/15 – Present

Declarants' rights were transferred by written Assignments. There were no assumptions of Declarant contingent liabilities.

In 2006, the POA was established as a Not-for-Profit Corporation to maintain and administer the Wild Wing community in accordance with the Declaration. The Declaration provides that the affairs of the POA shall be governed by a Board of Directors which was appointed by the Declarant. Once these directors are appointed to the POA Board, they assume a duty to the POA of a nonprofit entity as Board Members.

Duties of the Board of Directors in administering the POA include levying assessments against Lot Owners to defray the Common Expenses and to establish the means and methods of collecting such assessments. To assist in carrying out its duties, the Board of Directors hired a property manager, an auditing accountant, and formed a Finance Committee of Members all as permitted by the Declaration. Two of the Members of the Finance Committee were Plaintiffs Dykes and Eisenhardt.

The Declarants were also obligated to contribute monies to the POA. The Declaration provided the Declarant the option to pay assessments for each lot the Declarant owed or to pay the shortfall of "the actual amount of actual operating expenditures incurred" by the POA less "an amount equal to the total assessments made". This formula is common in many community governing documents. The Declarant Contribution has been calculated the same way since the inception of the POA.

In 2012, a Finance Committee made up of Lot Owners was established. Plaintiff Eisenhardt was one of the initial members. The Finance Committee was charged with reviewing all matters that may have a financial impact on the community and making recommendations to the Board of

Directors. This specifically included review and presentation of the Declarant Contribution Calculation. Plaintiff Dykes purchased his lot in Wild Wing Plantation in 2013 and was appointed to the Finance Committee in mid-2014. Immediately following his appointment, Plaintiff Dykes met with the POA property manager and obtained copies of all POA financial information. On April 28, 2015, Plaintiff Dykes met with members of Waccamaw Management and the POA accountant, Jim Corbett, to review the draft of the 2014 Annual Audit. During this meeting, Plaintiff Dykes raised concerns about the Declarant Contribution Calculation. Plaintiff Dykes took issue with the CPA's calculation, specifically with the fact that bad debt was excluded from the "actual amount of actual operating expenditures incurred". Following deliberation and discussion, the Finance Committee commissioned Mr. Corbett to further review, investigate, and advise as to this decision. Mr. Corbett testified that he reviewed the Declaration and Generally Accepted Accounting Principles along with the other CPAs in his office. He also met with Jane Atkinson, the Chief Financial Officer of Waccamaw Management. Ms. Atkinson had never seen bad debt included as an "actual operating expenditure incurred" in her many years of Association accounting. Mr. Corbett took his conclusions back to the Finance Committee explaining that the Declarant cannot be held responsible for the unpaid assessments of members of the POA. Despite Plaintiff Dykes' objection, the Finance Committee and the Board of Directors relied on its accountant, and later the property manager, and continued to calculate Declarant dues as it had since 2007.

In 2011 and 2016, the Declaration was amended to extend the period of time for the payment option. The Amendments were passed by vote of the POA pursuant to and in strict accordance with the procedures required by the Declaration. On November 9, 2011, the Board of Directors of the POA sent out official Notice to all Members of the POA, including Plaintiff

Eisenhardt, giving notice that a Special Meeting of the Members had been called for November 21, 2011 to amend the Declaration. The Notice attached the proposed Amendment to the Declaration for each Member's review. Pursuant to the Notice, a special meeting was held and there was a vote of the membership. Plaintiff Eisenhardt was in personal attendance at the special meeting, and voted in favor of the Amendment. In fact, the membership voted unanimously in favor of the Amendment.

Plaintiff Dykes purchased his property in Wild Wing Plantation in 2013, after the 2011 Amendment had been filed of public record. Mr. Dykes' deed and title insurance policy, which he received in his closing documents, specifically provided that the property was subject to the Declaration and all amendments thereto.

In 2016, both Plaintiff Dykes and Plaintiff Eisenhardt received Notice of the Special Meeting to vote on the proposed Amendment. The Notice included the proposed Amendment and a letter explaining the proposed Amendment. On November 4, 2016, both Plaintiff Dykes and Plaintiff Eisenhardt voted against the Amendment. However, once again, the Amendment passed with the required two-thirds majority vote of the membership, including a majority of the Lot Owner Members voting in favor of the Amendment.

Contrary to Plaintiffs' claims that the POA has been underfunded, the POA has never operated at a deficit since its inception. In addition:

- Lot owner dues have stayed consistent from 2006 to date;
- No special assessments have ever been levied from 2006 to date;
- No POA bills have ever gone unpaid; and
- The Reserve Fund of the POA is fully funded.

This Court finds that Plaintiffs' claims against the Declarant Defendants as to the Math fail because of the protection of the Business Judgment Rule, S.C. Code Ann. § 33-31-830 and the Statute of Limitations. Additionally, this Court finds that Plaintiffs claims against the Declarant

Defendants as to the Amendments fail due to the validity of the Amendments under South Carolina law and the Statute of Limitations. For these and other reasons as further set forth below, Summary Judgment is **GRANTED** for the Declarant Defendants and Plaintiffs' case is **DISMISSED WITH PREJUDICE**.

I. PLAINTIFF'S CLAIMS ARE BARRED BY THE BUSINESS JUDGMENT RULE.

In South Carolina, the actions of the directors of a nonprofit POA are governed by the Business Judgment Rule. "The burden of proving good faith is not on the governing board; the burden of proving a lack of good faith is borne, rather, by those challenging the board's actions." *Dockside Ass'n, Inc. v. Detyens*, 294 S.C. 86, 87, 362 S.E.2d 874, 874 (1987). Plaintiffs incorrectly contend that the Court in *Walbeck v. I'On Co., LLC*, 426 S.C. 494, 827 S.E.2d 348 (Ct. App. 2018) is controlling in this matter. *Walbeck* specifically addresses whether a developer owes a fiduciary duty to convey title to subdivision common areas to a homeowners association. Unlike *Walbeck*, this case involves the actions of a nonprofit POA. This Court finds that Plaintiffs' allegations are based on the actions of the nonprofit POA. Thus, these actions must be reviewed under the Business Judgment Rule.

In a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the 'business judgment rule,' and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action.

Goddard v. Fairways Dev. Gen. P'ship, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993) (Emphasis added).

The Business Judgment Rule as applied to a Nonprofit Organization is further specified in S.C. Code Ann. § 33-31-830, as is hereafter specifically addressed.

A corporation can only "exercise the powers granted to it by law, its charter or articles of incorporation, and any bylaws made pursuant thereto." *Lovering v. Seabrook Island Prop. Owners*

Ass'n, 289 S.C. 77, 82, 344 S.E.2d 862, 865 (Ct. App. 1986). When a corporation acts within its scope of authority, such conduct is considered *intra vires*. “Acts beyond the scope of a corporation’s powers as defined by law or its charter are *ultra vires*.” *Id.* In South Carolina, the business judgment rule operates to preclude judicial review of *intra vires* actions taken by a corporate governing board absent a showing of a lack of good faith, fraud, self-dealing or unconscionable conduct. *Dockside Ass’n, Inc. v. Detyens*, 294 S.C. 86, 87, 362 S.E.2d 874, 874 (1987) (internal citation omitted).

A director shall discharge his duties as a director, including his duties as a member of a committee in good faith; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner the director reasonably believes to be in the best interests of the corporation. S.C. Code Ann. § 33-31-830(a). In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person’s professional or expert competence, or a committee of the board of which the director is not a member. S.C. Code Ann. § 33-31-830(b). A director is not liable to the corporation, a member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section. S.C. Code Ann. § 33-31-830(d).

In Plaintiffs’ action against the Declarant Defendants, Plaintiffs have only complained about the actions of the POA. No evidence was produced to show the Declarant Defendants were separately liable. Plaintiffs’ case relies upon the incorrect conclusion that the Declarant Defendants are the Board of Directors of the POA. The Declarant Defendants are not the Board of Directors of the POA and the actions of the POA are not the actions of the Declarant Defendants. The actions

which Plaintiffs complain of were the actions of the POA through the POA accountant, the POA property management company, and the Finance Committee properly relied upon by the Board of Directors.

S.C. Code Ann. § 33-31-830 expressly allows the POA Board of Directors to rely on outside sources for guidance. Once the requirements of this section are met, it precludes review or second-guessing of the director's decisions. The Plaintiffs have not put forth any evidence or allegations that the Board of Directors acted contrary to the accounting work performed by these delegated hands. The evidence instead shows that the Board of Directors acted within their scope of authority and did not act in bad faith or with corrupt motives. The Board of Directors acted in reasonable reliance upon the POA accountant, the POA property management company, and the Finance Committee properly charged with responsibility for matters relative to calculating the Declarant's annual funding obligation. The decisions regarding the payment of Declarant contributions to the POA fall squarely within the Business Judgment Rule and are not subject to judicial review by this Court.

II. PLAINTIFF'S CLAIMS ARE BARRED BY THE SOUTH CAROLINA NONPROFIT CORPORATION ACT (S.C. CODE ANN. § 33-31-830).

As noted above, in conjunction with the Business Judgment Rule, the actions of the POA Board of Directors are also reviewed under S.C. Code Ann. § 33-31-830 of the Nonprofit Corporation Act. The applicability of S.C. Code Ann. § 33-31-830 is affirmed by the South Carolina Homeowners Association Act, which states "No provision of this article may be construed to be in conflict with the provisions of the South Carolina Nonprofit Corporation Act." S.C. Code Ann. § 27-30-170.

S.C. Code Ann. § 33-31-830 expressly insulates the POA Board of Directors when it relies on outside sources for guidance. Once the requirements of this section are met, review or second-

guessing of the directors' decisions is precluded. In the present case, the undisputed evidence shows compliance with S.C. Code Ann. § 33-31-830.

In discharging his duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:... public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence, [or] a committee of the board of which the director is not a member.

S.C. Code Ann. § 33-31-830(b).

By relying upon the POA property manager, the POA auditing accountant, and the POA Finance Committee, the Board of Directors discharged its duties in good faith and with the care of an ordinarily prudent person. Accordingly, this Court finds the actions taken by the POA Board in reliance upon the POA auditing accountant, the POA property manager, and the POA Finance Committee were in compliance with the Business Judgment Rule and S.C. Code Ann. § 33-31-830 and thus Summary Judgment is granted in favor of the Declarant Defendants.

III. PLAINTIFF'S CLAIMS ARE BARRED DUE TO PLAINTIFF'S FAILURE TO FILE THIS LAWSUIT WITHIN THE APPLICABLE STATUTE OF LIMITATIONS.

Plaintiffs' claims related to the Math in 2012 are also barred by the statute of limitations. A two-year statute of limitations and three-year statute of repose applies to the claims brought by Plaintiffs against these Defendants, pursuant to S.C. Code Ann. § 33-31-830 (f) which states,

An action against a director asserting the director's failure to act in compliance with this section and consequent liability must be commenced before the sooner of (i) three years after the failure complained of or (ii) two years after the harm complained of is, or reasonably should have been, discovered.

Actions initiated under § 15-3-530 must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action. *Walbeck v. I'On Co., LLC*, 426 S.C. 494, 519, 827 S.E.2d 348, 361 (Ct. App. 2018).

South Carolina follows the “discovery rule,” which requires that an action “must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action.” S.C. Code Ann. § 15-3-535; *See e.g., Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994); *see also Republic Contracting Corp. v. S.C. Dep’t of Highways and Public Transp.*, 332 S.C. 197, 207, 503 S.E.2d 761, 766 (Ct. App. 1998). The language in S.C. Code Ann. § 33-31-830 (f) is substantially the same as S.C. Code Ann. § 15-3-535, and the discovery rule also applies. The relevant inquiry is not what Plaintiffs subjectively knew at specific points in time, but rather, at what point Plaintiffs objectively had “enough information such that [they] should have acted promptly to determine whether a cause of action might exist against [Defendants] for the injuries claimed in this case.” *Ashley River Indus., Inc. v. Mobil Oil Corp.*, 135 F. Supp. 2d 733, 742 (D.S.C. 2000), *aff’d* 245 F.3d 849 (4th Cir. 2001); *see also Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 333, 534 S.E.2d 672, 678 (2000).

Plaintiffs and most other Members of the POA were part of the POA more than two or even three years prior to the commencement of this action. As Members of the POA, Plaintiffs and the Members they presume to represent have complete access to all books and records of the POA. Moreover, Plaintiffs were members of the Finance Committee more than two or even three years prior to the initiation of this action. The Finance Committee is intimately familiar with the financials of the POA especially considering its role in setting the budget, inclusive of the requested Declarant Contribution. Plaintiffs had actual knowledge of any alleged underfunding of the Declarant more than two or even three years prior to the filing of this lawsuit.

Plaintiffs’ claims regarding the Amendments are likewise barred by the two year statute of limitations in S.C. Code Ann. § 33-31-830(f). Plaintiffs amended their Complaint on June 10, 2019

to add their claims on Amendments that were passed in 2011 and 2016. Plaintiffs filed this action in 2017 exclusive of any claims or allegations concerning the Amendments. Plaintiffs amended their Complaint on June 10, 2019 to add their claims on the 2011 and 2016 Amendments. Plaintiff Eisenhardt has been a property owner in Wild Wing Plantation since 2007, and she was one of the three founding members of the Association's finance committee in 2012. Plaintiff Dykes has been a homeowner since 2013 and was appointed to the Association's Finance Committee at the 2014 Annual Meeting.

Plaintiff Eisenhardt was in attendance at the special meeting for the 2011 Amendment and voted in favor of the Amendment. Plaintiff Dykes purchased his property in Wild Wing Plantation in 2013 with record notice of the 2011 Amendment. Property Owners are charged with constructive notice of instruments recorded in their chain of title. *S.C. DOT v. Horry County*, 391 S.C. 76, 84, 705 S.E.2d 21, (2011) (quoting *Binkley v. Rabon Creek Watershed Conservation Dist.*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001)). A party has constructive notice if the party knows of "facts and circumstances of an injury [that] would put a person of common knowledge and experience on notice that some right... has been invaded or that some claim against another party might exist." *Barr v. City of Rock Hill*, 330 S.C. 640, 645, 500 S.E.2d 157, 160 (1998). Failure of the injured party to comprehend the full extent of damages is immaterial. *Id.* "The date on which discovery should have been made is an objective, not subjective, question." *Id.*

In 2016, both Plaintiff Dykes and Plaintiff Eisenhardt received Notice of the Special Meeting to vote on the proposed Amendment and cast their votes against the Amendment. At that time, Plaintiffs had knowledge of the harm complained of. Again, Plaintiffs failed to file until 2019. Therefore, this Court finds that Plaintiffs' allegations related to the Math are barred by the statute of limitations under S.C. Code Ann. § 33-31-830(f) and S.C. Code Ann. § 15-3-530.

IV. PLAINTIFF LACKS STANDING AND CLAIMS ARE BARRED PURSUANT TO THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT.

It is fundamental that before this Court can exercise jurisdiction over a case, the party bringing suit must have standing to do so. *See Anders v. S.C. Parole & Cmty. Corr. Bd.*, 279 S.C. 206, 211, 305 S.E.2d 229, 231 (1983). To possess standing, either the POA itself must have suffered a concrete, particularized injury or its members must have suffered such an injury and the other elements of associational standing must be satisfied. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 753 S.E.2d 846 (2014).

Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by § 39-5-20 may bring an action individually, *but not in a representative capacity*, to recover actual damages.

S.C. Code Ann. § 39-5-140(a) (Emphasis added).

“An unfair trade practices claim may not be brought in a representative capacity.” *Wogan v. Kunze*, 366 S.C. 583, 609, 623 S.E.2d 107, 121 (Ct. App. 2005).

This Court finds that the POA cannot satisfy the requirements to have standing on its own or for associational standing on behalf of its members. The POA itself does not possess standing because it has not suffered an injury-in-fact. The POA also fails to satisfy associational standing because the POA members have not suffered an injury-in-fact necessary to establish standing in their own right and the damage claims are not common to the entire membership, nor shared equally. Plaintiffs presume to bring this lawsuit as representatives of the POA. Plaintiffs' Amended Complaint alleges a Cause of Action under the Unfair Trade Practices Act in a representative capacity. South Carolina law makes clear that Plaintiffs may not bring an action for unfair trade practices in a representative capacity.

CONCLUSION

This Court has also reviewed Plaintiffs' remaining arguments and in light of the foregoing, this Court finds these arguments unpersuasive and unnecessary to address. Therefore, Plaintiffs' Motions for Summary Judgment are denied. The Motion for Summary Judgment by the Defendants mentioned herein is hereby **GRANTED** and the Plaintiff's case against the aforementioned Defendant is hereby dismissed with prejudice.

IT IS SO ORDERED!

The Honorable Judge R. Markley Dennis, Jr.
Judge of the South Carolina Business Court



Horry Common Pleas

Case Caption: C Barry Dykes , plaintiff, et al VS Wild Wing Company LLC ,
defendant, et al

Case Number: 2017CP2604187

Type: Order/Summary Judgment

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