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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Master-in-Equity

Circuit Court Case No. 2015-CP-07-02722
Appellate Case No. 2020-001309

Colleton River Plantation Club, Inc.……Respondent-Appellant,

v.

Joel S. Lee……Appellant-Respondent.

APPELLANT-RESPONDENT'S INITIAL REPLY BRIEF

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REPLY

Colleton Club makes a repeated error throughout its brief, which this Court should disregard: Bluffton Properties, LLC is not an "uncapitalized," "shell corporation" belonging to Joel Lee. (*See, e.g., Respondent-Appellant's Initial Brief* at pp. 6, 10, 14, 15). These characterizations are nothing more than inflammatory argument of counsel, **none of which was proven** (nor even sought to be proven) in the trial court. Those false assertions are the foundation on which many of Colleton Club's arguments rest. Because that foundation fails, the Club's arguments fail as well.

If the Club, as the architect of this litigation, feels so strongly that Bluffton Properties was or is a "shell corporation" of Joel Lee's, then it ought to have filed causes of action to pierce the corporate veil, or pursuant to the Statute of Elizabeth. The Club did not do that. The trial judge did not make any finding that Bluffton Properties is in any way whatsoever a "shell." The trial judge did not make any finding that Bluffton Properties is not funded. There was no evidence at all that Joel Lee is even a *member* of the company. This Court should disregard counsel's claims, observe that those claims contain no citations to the Record or to the trial order, and this Court should not permit the Club's attorney's argument to taint the Court's understanding of this dispute. *See McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E.2d 473, 475 (1933) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered"); *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127, 129 (Ct. App. 1991) ("Arguments of counsel are . . . not evidence"); *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986).

Another clarification: Joel Lee does not dispute that he owes Colleton Club for delinquent dues and assessments (if any) which accrued while he was the record owner of Lot A02. The trial court's error of law lies in its decision to hold Lee liable for ***ongoing*** dues and assessments, accruing post-conveyance and presumably into perpetuity. *See* Order, p. 13 (R. p. _) (itemizing dues, assessments, maintenance charges, and fees running from 2014 through 2018 and anticipating damages for future amounts, although Bluffton Properties became the record owner of Lot A02 as of May 2013; further holding: "Lee remains liable for the ongoing Assessments owed to Colleton under the Covenants despite the transfer of Lot A02") (R. pp. __) (*see also* Trial Ex. 2). Lee's responsibilities in this regard are defined by the *Declaration of Covenants and Provisions for Membership in Colleton River Plantation Club, Inc.*, which belong to (and were drafted by) Colleton Club, and which run with the land. (Tr. Ex. 1) (R. p. __). **Again, if the Club would like to (try to) impose perpetual, ongoing, personal liability on its members, enduring even after they convey their subject property, then covenants running with the land are the incorrect legal vehicle by which to do so.**

The Club could have required Joel Lee to enter into a personal contract—a membership agreement of some sort—which spelled out personal obligations extending beyond property ownership; it chose not to do this, either.[1] Instead, Joel Lee acquired a

[1] The Club cites the case of *The Callawassie Island Members Club v. Dennis* for the proposition that sophisticated parties can (sometimes) be perpetually bound by contracts. 425 S.C. 193, 821 S.E.2d 667 (2018). Goodness knows that the undersigned counsel could argue about the Callawassie cases for hundreds of pages. However, it is sufficient to say that *Dennis* is entirely distinguishable from this case, because *Dennis* involved a strictly contractual relationship. The fact that Colleton Club's "membership contract" runs with the land means that Joel Lee's membership was automatically severed upon his conveyance of the lot. Both the majority and

lot, which was subject to covenants requiring every lot owner to be a member of the Club. When Lee divested himself of the lot, the membership obligation went with the lot to the next owner, by operation of law.

The Club is essentially a homeowners' association.[2] It owns and maintains the common property—consisting of golf courses, swimming pool, tennis courts, etc.—for the benefit of its members, who are lot owners. It would be legal madness to hold that a person is still a member of a homeowners' association, owing ongoing assessments, years after they have conveyed their lot and far into the future. That is precisely the result that the trial court erroneously ordered.

Colleton Club wrings its hands in its brief: what is a Club to **do**, if it holds members by virtue of covenants running with the land but they divest themselves of their property? This Court should not think that the Club is without a remedy! The answer is simple: the Club should pursue ***the subsequent property owner*** for ongoing dues. But . . . what if the subsequent owner is a "shell company," as the Club frets here but it did not seek to prove? Well, the law has a mechanism for that precise situation. This Court

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the dissent in *Dennis* discussed how conveyance of real property would affect membership in the Club at issue in that case.

[2] According to the recently enacted South Carolina Homeowners' Association Act:

> "Homeowners association" or "association" means an entity developed to manage and maintain a planned community or horizontal property regime for which there is a declaration requiring a person, by virtue of his ownership of a separate property within the planned community or horizontal property regime, to pay assessments for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements and other real estate described in that declaration.

S.C. Code § 27-30-120, Definitions.

should not hold Joel Lee liable for the Club's own choice not to pursue Bluffton Properties. This Court's review of the trial court's decisions on questions of law "is plenary and without deference to the trial court." *Crossman Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 717 S.E.2d 589 (2011). This Court should reverse and remand for a finding of damages which are restricted to unpaid dues, fees, and assessments (if any) which accrued during the time period that Joel Lee was the record owner of Lot A02.

* * *

As this Court considers Colleton Club's self-created situation, it should consider that the Club is seeking a drastic remedy—to hold a former property owner liable for ongoing dues for a property he no longer owns. But the Club has skipped, or chosen not to pursue, the many legal requirements that would be necessary to try to hold Joel Lee responsible for ongoing dues. In its brief, the Club demands that this Court overlook the Club's own errors and the requirements of the law, and leap to the conclusion that the Club just wins. Given the number of homeowner associations in South Carolina, the Club's demand would create a perilous precedent.

I. The Master-in-Equity erred in attaching perpetual, ongoing post-conveyance liability to Lee, in violation of real property law in South Carolina and the contract itself.[3]

Colleton Club correctly quotes the *Town of McClellanville* decision for some of the legal principles which control the construction of the Club's *Declaration of Covenants and Provisions for Membership in Colleton River Plantation Club, Inc.* (the "Declaration" or the "covenants"). (*See,* Club's *Initial Brief*, p. 8, *citing S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001)). Those legal principles include the following:

1. Restrictive covenants are contractual in nature, with their meaning to be discerned by examination of the whole document.

2. A restriction is not to be enlarged or extended by implication beyond the clear meaning of its terms.

3. Restrictions should be strictly construed and all doubts resolved in favor of free use of property.

4. Where language is capable of two or more different constructions, the least restrictive construction will be adopted.

5. A restriction on the use of property must be created in express terms or by plain and unmistakable implication.

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[3] Colleton Club's brief seems to have re-numbered Joel Lee's issues on appeal. For simplicity in replying to the Club's arguments, this brief mirrors the Club's numbering. However, Lee expressly incorporates herein the issues and arguments contained within his *Initial Brief*, as well as in his *Initial Response Brief* on Cross-Appeal, and he does not waive or abandon any of them.

Town of McClellanville at 622, 550 S.E.2d at 302. Notably, the Club leaves out the maxim that "Restrictive covenants affecting real property cannot be properly and fully understood without resort to property law. Restrictive covenants differ from contracts in that they 'run with the land,' meaning that they are enforceable by and against later grantees." *Kinard v. Richardson*, 407 S.C. 247, 754 S.E.2d 888, 893 (Ct. App. 2014) (emphasis added).

The remainder of Colleton Club's brief consists of an attempt to get around the above-listed legal tenets by asking the Court to read certain isolated provisions of the Declaration in a vacuum—which is precisely what the *Town of McClellanville* case cautions against. That case involved language in a deed from the Department of Natural Resources ("DNR") to the Town, conveying a boat ramp and parking area. DNR argued that the deed's requirement that property "remain accessible" to use by the public meant that the Town could not charge a fee for access to the boat ramp. The South Carolina Supreme Court held that DNR wrongly placed too much focus on the meaning of the single word "remain," rather than examining the word in the context of the deed as a whole. *Town of McClellanville*, at 623-624, 550 S.E.2d at 302 ("Although the word 'remain' read alone might be considered ambiguous, the covenant as a whole is not.").

Wrongly, Colleton Club wants this Court to seize upon a few distinct terms found within Sections 7.1(a) and 14.2(a)(ii) of the covenants. Some of the many problems with the Club's arguments are that Section 7.1 does not mean what the Club wants it to say, and Section 14.2 does not apply to Joel Lee at all.

a. Section 7.1(a) should not be construed to impose perpetual post-conveyance liability on Lee.

Despite Colleton Club having actual and constructive notice of Lee's transfer of Lot A02 to Bluffton Properties (which the Club does not dispute having received), the Club argues that Lee's failure to formally provide the Club with the name and address of his prospective purchaser results in Lee being "jointly and severally" liable with Bluffton Properties for ongoing dues and fees, forever. For this argument, the Club relies on the first clause of Section 7.1(a), which states that an Owner must give the Club "prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require." (R. p. _). Misleadingly, the Club omits an essential term from the block quote on page 2 of its Brief. The ellipsis in the Brief deletes a key provision on which the notice hinges: The Owner's notice task is expressly "*S**ubject to*** Section 19.2." (*Id.*) (emphasis added). The Club would like to sweep Section 19.2 under the rug, because it means that notice by Joel Lee was contractually unnecessary.

Section 19.2, on which the notice in Section 7.1 is contingent, limits the requirements to an Owner's sale on the open real estate market. The provision's requirement was not triggered by Lee's transfer of the Lot to Bluffton Properties for estate planning purposes:

> **19.2 Right of Repurchase**
>
> The Club shall have the exclusive option to purchase **any Lot offered for sale** in the Community at the price and on the terms and conditions of any bona fide offer for such Lot. Evidence of any such bona fide offer shall be in writing and shall be submitted to the Club **by the selling Owner** for verification.

> Each Owner **shall notify the Club of its intent to sell his or her Lot** with notice setting forth the certified terms and conditions of the sale, the full name and primary address of the prospective bona fide purchaser (as distinguished from agents and intermediaries). The **Club shall have 30 days after receipt of such notice to exercise its option to purchase under this Section 19.2.** If the Club does not execute a sales contract with Owner during the specified time period, the selling Owner may proceed with the conveyance of his or her Lot to the prospective bona fide purchaser . . .

(Declaration § 19.2) (emphasis added) (R. p. _). Because Lee was transferring title for estate planning purposes, and not selling his Lot on the open market to a bona fide purchaser, the Club's right of first refusal (and Section 7.1's companion requirement of 30 days' written notice of the purchaser's name) was not triggered.[4]

The Club also argues that it was prejudiced because it "was unable to investigate the credit worthiness of Bluffton Properties." (Club *Br*. p 11). Respectfully, there is no provision in the governing documents whatsoever that gives Colleton Club the power to impede property owners from conveying their lots based on the Club's perception of a potential transferee's credit worthiness or financial responsibility. Instead, Section 7.1 is expressly and solely subject to the Club's right of first refusal in Section 19.2. A plain

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[4] Section 7.1 is self-restricted to real estate market transactions. As discussed in Lee's Initial Brief, if the section is held to prevent any other sort of transfer of title, then it is an unreasonable restraint on the alienation of property.

For example, under the reading that the Club urges, its right of first refusal would be triggered by probated transfer of property, or by transfers because of divorce, or by transfers from parent to child. But the clear language of the companion provisions in Sections 7.1 and 19.2 leave no doubt that the intent of the sections is a right of first refusal—**which the Club also testified at trial that it <u>never</u> exercised**. (R. p. _) (Trial Transcript pp. 60-61).

reading of the Declaration as a whole makes it clear that the Club's remedies are against the subsequent purchaser, if the purchaser fails to pay dues that accrue after conveyance.[5]

Next, Colleton Club goes on to extract the words "jointly and severally liable" from their context within the Declaration in an effort to argue that Section 7.1 makes Lee liable for ongoing, post-transfer dues otherwise undertaken by the new owner of Lot A02. Initially, even if the construction the Club urges is adopted by this Court (which it should not be, for the reasons discussed below and in Lee's *Initial Brief*), the plain words of the provision limit that liability to such time as "the date upon which the Board receives such notice[6] and all amounts outstanding prior to transfer are paid in full[7]." (R. p. _). Since both conditions were satisfied by Lee, there can be no ongoing liability—even **if** this provision is legal and construed as the Club urges. (*See*, Lee's *Initial Br*. pp. 8-29).

Moreover, the Club's suggested construction of this isolated snippet is not supported by the document as a whole. *See Town of McClellanville* at 622, 550 S.E.2d at 302 ("the paramount rule of [contract] construction is to ascertain and give effect to the intent of the parties as determined from the whole document."). Read in context, the

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5 An analogy to demonstrate why the Club's argument fails is that of a divorce, in which husband conveys all his interest in the marital home to wife. Upon that conveyance, husband would not be liable for ongoing HOA dues associated with the home; his name is no longer on the deed. If the wife fails to pay dues, the HOA must pursue wife. This is the same situation: Joel Lee conveyed the property to Bluffton Properties; Lee's name is no longer on the deed. The Club must pursue Bluffton Properties for nonpayment of dues, which it has failed to do in this lawsuit.

6 This was no later than July 2014, but probably earlier based on the evidence in the Record, as discussed in Lee's Initial Brief. (Order p. 11, ¶ 29).

7 The amounts were paid in full as indicated by the Satisfaction of Judgment filed by Colleton Club on September 23, 2014. (Tr. Ex. 5) (R. p. _). Thereupon, the Club pursued Bluffton Properties for additional amounts, in concession that Lee's obligation as Owner was fulfilled. (Tr. Ex 6) (R. p. _).

"joint and several" provision of § 7.1 is clearly intended to mean liability for the past dues of the transferor (i.e., pre-conveyance). This is because the Declaration, as a whole:

- Runs with, follows, and binds the Lot and its title, and not the person apart from the land. *See Queen's Grant*, 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct. App.2006) ("Restrictive covenants that require grantees to pay assessments for the upkeep of a particular parcel of property are held to be real covenants which 'touch and concern' land, **and therefore, run with the land**.") (*See also* Trial Ex. 1, Declaration of Covenants) (R. p.)
- Restricts its applicability to **owners** of bound property. (R. p.) (*Id.* § 1.1, Scope and Applicability, "All owners and occupants . . . are required to comply with the Governing Documents.").
- Clearly and unmistakably intends that dues and assessments are to be levied by the Club **against the lot**. (Declaration, Chapter 12) ("The primary source of funding [for the Club] is the assessments which this chapter authorizes the Club to levy against the Lots and collect from the Owner of each lot. Assessments are secured by a lien on each Lot as described in this chapter." (R. p.).
- Makes clear that "The obligation to pay assessments shall commence ***as to each Lot*** on the date on which the Lot is made subject to this Declaration." (Declaration § 12.5) (R. p.) (emphasis added).
- Makes clear that "Owners" are obligated to pay assessments levied against their lots. (Declaration § 12.6) ("By buying a Lot in Colleton River Plantation

> each Owner agrees to pay all assessments levied against his or her Lot.") (An "Owner" is defined by the Declaration as a person who holds "record title to a Lot." (R. p.) (*Id*., § 2.3).

When read as a whole, the Declaration limits potential liability to owners and the lot itself, not to former owners.

Furthermore, in its context within the body of the Declaration, Section 7.1 contains Lot use restrictions which are to be strictly construed by this Court, with all doubt resolved in favor of the least restrictive construction. *See* Declaration, Chapter 7, entitled "Use and Conduct." (R. p.); *see also*, *Town of McClellanville* at 622, 550 S.E.2d at 302 ("restrictions as to the use of real estate should be strictly construed and all doubts resolved in favor of the free use of property . . . "). The "jointly and severally" language of Section 7.1 on "Use, Occupancy, and Transfer" must be read in tandem with Section 12.6 on "Obligation for Assessments" and Section 12.7(c) on "Effect of Sale or Transfer." (R. pp.). *Brady v. Brady*, 222 S.C. 242, 72 S.E.2d 193, 195 (1952) ("Different provisions dealing with the same subject matter are to be read together."). Section 12.6 states:

> Upon transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges **due <u>at the time of conveyance</u>**.

(R. p.) (emphasis added).[8] Section 12.7(c) states "Sale or transfer of any Lot shall not affect the assessment lien or relieve ***such Lot*** from the lien for any subsequent assessments." (emphasis added) (R. p.).

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[8] On page 13 of its Brief, the Club seizes upon another fragment of the covenants: delinquency language in Section 12.6. But the Club leaves off the second half of the delinquency phrase, which gives limits it to the Owner and the Lot: "Any delinquency shall be the personal liability of each Owner and a lien upon each Lot until paid in full." Moreover, a delinquency is by definition "an overdue debt." *Black's Law Dictionary*. Section 12.6 (when read in its entirety,

In context, the design and intent of the Declaration is to impose liability for assessments on the owner of the lot at the time the assessments arise (i.e., contemporaneously). *See Leh v. Burke*, 331 A.2d 755 (Pa. Super. Ct. 1974) ("When a promise to do an affirmative act, such as in this case to make a monetary payment, is found to run with the land, the person in possession at the time the obligation matures is responsible for discharging it. Conversely, prior or subsequent owners of the property, including the original covenantor, are relieved of responsibility not arising contemporaneously with their interest in the land."). To the extent that the above-cited provisions and their clear meaning conflict with the terms of Section 7.1, the Declaration is ambiguous and the least restrictive construction should be adopted. *Town of McClellanville* at 622, 550 S.E.2d at 302 ("where the language of the restriction is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property. A restriction on the use of property must be created in express terms or by plain and unmistakable implication, . . . with all doubts resolved in favor of the free use of property.").

In sum, by its plain terms, Colleton Club's Declaration runs with the land, ties assessments to the land, and applies to the owners of the land. The trial order erred as a matter of law in imposing on Joel Lee liability for dues and assessments for the years 2014-2018, when Lee owned no property whatsoever that was subject to the Declaration.

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as it should be) leaves no doubt that the obligation for assessments is concurrent with lot ownership, and a delinquency would be an unpaid amount that accrued at the time of ownership.

This Court should reverse the trial court's error in holding Lee liable for dues arising at a time he held no interest in Lot A02.

b. Section 14.2 does not apply to Joel Lee.

Colleton Club makes frequent reference to Section 14.2, the "Designated User" provision. (R. p. __) (See Club Initial Br., pp. 8, 10-11). The Club's argument is that Bluffton Properties never designated a user, as required under the provisions of Section 14.2. (R. p. __). This argument is an improper attempt to confuse Lee's actions with those of Bluffton Properties. The party who has an obligation to act under Section 14.2 is the Lot Owner, in the event the Owner is a corporation. Indeed, the evidence shows that Colleton Club communicated with Bluffton Properties[9] and asked that it designate a user pursuant to Section 14.2. (R. p. __). The evidence also shows that Bluffton Properties did not do so. (R. p. __). Bluffton Properties' actions or inactions are legally immaterial to alleged personal liability of Joel Lee.[10] (*See also* Lee's *Initial Br*. pp. 29-31).

c. There was no fraud here.

Colleton Club's *Brief* has a toxic and unfair undercurrent: it repeatedly states as fact that Lee's actions in transferring title to Bluffton Properties were fraudulent. *See, inter alia*, Club Initial Br. p. 13 ("Accordingly, what Lee is asking this Court to do is essentially condone fraud."). But the trial court did not find fraud. The trial court did

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[9] This is further evidence that the Club had notice of the transfer.

[10] A limited liability company is a legal person, separate and apart from its individual members, whomever they may be. As a matter of law, liability cannot attach to an individual member of a company for the actions of the company, aside from by a suit to pierce the corporate veil, which Colleton has not brought in this instance. Purported covenant breaches by Bluffton Properties are legally irrelevant and should not be considered by this Court (*e.g.*, Trial Order pp. 10-13).

not make findings tending toward fraud. The Club did not prove fraud. If anything, the evidence showed mistake. Fraud is the subject of the Club's cross-appeal, and Lee incorporates herein his *Initial Response Brief*,[11] rather than re-hash his arguments here.

Lee respectfully asks that this Court would disregard the unproven and inflammatory accusations of fraud employed by the Club.

II. Perpetual, inescapable liability is against public policy.

It is difficult to understand Colleton Club's argument in this section of its brief, in which it seems to be arguing that Section 19.2 of the Declaration was never invoked and so this Court should not decide whether it is against public policy. But, since Section 19.2 is an integral term of Section 7.1—a term to which Section 7.1 is expressly subject—and since Section 7.1 is the basis of the trial court's order on appeal, then **of course this Court can decide whether the trial court's construction violates public policy**. The Club's entire argument before the trial court was that Lee breached Section 7.1 by not formally providing to the Club the details required in the first clause of Section 7.1, which clause specifically incorporates and is subject to Section 19.2. According to the Club, but for Lee's purported breach, the covenants would have permitted the Club to thwart the transfer to Bluffton Properties. (*See* Club Br. p. 15, "Lee's act of transferring his Lot to Bluffton Properties, LLC [was] in violation of the Covenants."). If this is so, then those provisions of the Declaration constitute an unreasonable restraint on the alienation of property, and they are void as against public policy for all the reasons argued in Lee's Initial Brief. (*See* Lee's Brief, pp. 22-29).

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[11] Filed with the Court of Appeals on June 21, 2021.

It might help to look at this a different way. The Club argues that it was damaged by Lee's alleged breach in failing to give it formal 30-days advance notice of his transfer to Bluffton Properties, and that the intended contractual consequence is that Lee is perpetually liable for ongoing dues and assessments, until the end of time.[12] But . . . hypothetically . . . what would or could the Club have done if Lee **had** sent a letter 30-days prior to conveying his Lot to Bluffton Properties? Pursuant to its own covenants, the only thing Colleton Club could conceivably have done was: nothing. Aside from Section 19.2, there is no provision whatsoever in the entirety of the Declaration that would permit the Club to interfere in the transfer of ownership of a lot. And this makes sense, because such a provision (if it existed) would be unlawful and against public policy in a State in which the ability to convey title is part and parcel of the "bundle of rights" that goes along with fee simple ownership. *See, e.g., Main v. Thomason*, 342 S.C. 79, 89, 535 S.E.2d 918, (2000), *overruled on other grounds by Byrd v. City of Hartsville*, 620 S.E.2d 76, 365 S.C. 650 (2005) (the "bundle of rights" includes the "right of possession, right to sell, lease, devise, and rent [] property.").

Moreover, the Club does not address Lee's argument that the trial court erred as a matter of public policy to find that "Lee **remains** liable for the ***ongoing*** Assessments owed to Colleton under the Covenants despite the transfer of Lot A02 to Bluffton Properties" and in granting judgment for "additional Assessments . . . accruing after November 30,

[12] Because—as a practical matter—Lee can never go back in history and provide the Club with 30-days' advance notice of a transfer that occurred back in 2014.

2018." (Order, pp. 15-16). This is tantamount to a perpetual liability, which is against public policy. (*See* Lee Initial Br. pp. 27-28).

For public policy reasons, the trial court was wrong to find that the covenants provide the Club with any lawful basis to hold Lee liable for ongoing dues associated with property that he does not own.

a. Section 12.6 does not preclude Lee's disparate treatment defense.

Colleton Club next argues that Section 12.6 is a heavy-knit blanket, which utterly insulates the Club from all accountability to its members for its actions. The Club quotes Section 12.6, in part: "Owners may not claim a reduction in their assessments due to action or inaction by the Club." (R. p.). The Club argues that this section means that Lee cannot defend against the Club's lawsuit based on the Club's actions.

Respectfully, as Inigo Montoya once told Vizzini, "I do not think that [section] means what you think it means."[13] Read in context, Section 12.6 contains boilerplate nonwaiver language intended to protect the Club in the event it forgets to send out its bills, or mails them to the wrong address. Section 12.6 is not a release by Joel Lee of his defenses in the event that the Club pursues him for dues that he does not owe (as it has done here).

This Court should reverse the trial court, remand the case for a determination of damages (if any) based on unpaid dues (if any) that accrued during the period that Joel Lee was record owner of Lot A02, and it should permit Lee to defend based on his defenses discussed on pages 31-32 of his Initial Brief.

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[13] Reiner, Rob. 1987. *The Princess Bride*. United States: Twentieth Century Fox.

CONCLUSION

Colleton Club seeks to have the Court save it from itself. The Club could have pursued numerous other legal avenues and remedies, but it chose not to do so. The sole dispute for post-transfer fees is between the Club and Bluffton Properties, LLC. This "is precisely the result to which these sophisticated purchasers of a resort home agreed when they decided to purchase the property and abide by the terms of the governing documents." *Dennis*, 821 S.E.2d at 672 ("When reading unambiguous contracts, we should not normally concern ourselves with the fairness of the result required by the terms of the contract."). For the above reasons, as well as for those set forth in Joel Lee's *Initial Brief*, this Court should reverse the trial court's error of law in holding Lee liable for ongoing dues and assessments, accruing after his conveyance of title to Lot A02.

Respectfully submitted,

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PROOF OF SERVICE

I certify that on August 2, 2021, I have served *Appellant-Respondent's Initial Reply Brief* on Respondent-Appellant Colleton River Plantation Club, Inc., by sending the same to its attorneys of record, Barry L. Johnson and Stephen Harrison Williams, at their email addresses of record with AIS, pursuant to the Supreme Court's Amended Order on the Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020).

[signature block appears on next page]

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