

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
Charles B. Simmons, Jr., Master in Equity

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S.C. SUPREME COURT

Supreme Court Appellate Case No. 2021-000665  
Court of Appeals Appellate Case No. 2018-001209  
(Unpublished Opinion No. 2021-UP-113, filed April 7, 2021)  
Common Pleas Case No. 2017-CP-23-6301

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Raymond A. Wedlake, individually and  
derivatively, on behalf of all Members of  
Woodington Homeowners' Association, Inc. .... Petitioner,

v.

Benjamin Acord, William Craigo, Denis  
Esteve, and Brian James in their capacity  
as the current Board of Directors of the  
Woodington Homeowners' Association, Inc. .... Respondents.

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**RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## **COUNTER-STATEMENT OF QUESTIONS PRESENTED**

Petitioner's Petition for Writ of Certiorari essentially asserts that the questions presented are all questions raised in Petitioner's brief to the Court of Appeals as well as all questions raised in Petitioner's Petition for Rehearing. However, Petitioner's Petition for Writ of Certiorari only provides argument on a few topics, which can generally be summarized as follows:

1. Whether the Court of Appeals erred in affirming judgment in favor of Respondents on Petitioner's "individual claim";
2. Whether the Court of Appeals erred in affirming the Master's evidentiary ruling(s) regarding admission of the Bylaws of Woodington Homeowners' Association, Inc., in particular, the Master's refusal to admit into evidence certain exhibits pre-marked for identification by Petitioner after Petitioner's counsel had rested direct examination of Petitioner/Plaintiff;
3. Whether the Court of Appeals erred in affirming the Master not taking judicial notice of an exhibit to Petitioner's Complaint, which Petitioner asserts to be the Bylaws of Bylaws of Woodington Homeowners' Association, Inc.

Therefore, Respondents will address those topics in this Return, and Respondents would respectfully assert that any other questions should not be considered on account of Petitioner's failure to comply with the requirements of Rule 242(d), SCACR.

## **COUNTER-STATEMENT OF THE CASE**

Petitioner, Raymond Wedlake, is a homeowner in the Woodington Subdivision and is a member of the Woodington Homeowners' Association, Inc. (the "**Association**"), a nonprofit corporation. (R. p. 7)<sup>1</sup>. On October 5, 2017, Petitioner filed this lawsuit, primarily relating to

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<sup>1</sup> This is also admitted by the allegations of Petitioner's Complaint (R. p. 22).

various corporate governance matters, legal principles applicable to nonprofit corporations and their directors, and interpretation of the bylaws of the Association. (R. pp. 19-34). Respondents were named as defendants in the lawsuit in their capacity as the current Board of Directors of the Association. (R. pp. 19-34). At the time of the filing of Petitioner's/Plaintiff's Complaint in this action, the Board of Directors for the Association consisted solely of the four Respondents, Brian James, William Craigo, Denis Esteve, and Benjamin Acord. (Appendix 1, R. pp. 534-541). Ultimately, on April 20, 2018, a nonjury/bench trial was held before the Honorable Charles B. Simmons, Jr., Greenville County Master in Equity. (R. p. 7). At the time of trial on April 20, 2018, all of the Respondents were still serving as directors and constituted four out of the five directors for the Association. (Appendix 1, R. pp. 534-541). However, since the time of trial, the composition of the Board of Directors of the Association has changed and none of the Respondents are continuing to serve as directors or officers of the Association. (Id.).

Prior to the trial, Petitioner and Respondents stipulated to the issues for trial and filed a Stipulation of Issues for Trial on March 29, 2018. (R. pp. 178-179). Per the Stipulation of Issues for Trial, the stipulated issues were as follows:

*The parties hereto, by and through their undersigned counsel, hereby stipulate and agree to the following issues for trial and that the trial shall be limited to such issues:*

1. *Plaintiff seeks a declaratory judgment and declaratory relief as follows:*
  - a. *A declaration that the Board of the Woodington Homeowners' Association, Inc. (the "Association") must comply with, and enforce in accordance with their terms, the Association's bylaws.*
  - b. *That the court construe the Bylaws of the Association and declare that the bylaws place a duty on the Board of Directors to fill a vacancy on the Board*

*of Directors and the Board of Directors must make reasonable efforts to do so.*

*c. That the court construe the Bylaws of the Association and declare that the bylaws require a majority of all members to both enter into, and to renew, a management contract.*

*d. That the court construe the Bylaws of the Association and declare that the bylaws do not permit a Director to remain beyond a five-year term, and in any event, for not more than one additional year beyond such five-year period.*

*e. That the court declare that the Bylaws of the Association do not permit delegation of the role or authority of the Board.*

*f. That the court construe the Bylaws of the Association and declare that the Bylaws require the Board of Directors to send out a ballot to the membership for voting if a proposed amendment to the Bylaws is submitted by an eligible member.*

*2. Plaintiff seeks an award of Nominal Damages against defendants.*

*3. Plaintiff seeks an award of court costs and legal fees if such costs and fees are paid by the Association's insurance carrier.*

*4. Defendants Benjamin Acord, William Craigo, Denis Esteve, and Brian James (collectively, "Defendants") preserve all defenses to Plaintiff's claims and nothing herein shall be construed to infer a waiver of any defenses by Defendants or that Defendants in any way stipulate that the matters raised by*

*Plaintiff or the relief sought by Plaintiff are proper matters before the Court or proper matters to be heard by the Court.*

(R. pp. 178-179).

At the close of Petitioner's/plaintiff's case at the trial held on April 20, 2018, the Honorable Charles B. Simmons, Jr. granted involuntary nonsuit in favor of Respondents pursuant to Rule 41(b), SCRCF, and an Order of Judgment was filed on May 29, 2018. (R. pp. 7-17). Petitioner thereafter appealed the May 29, 2018 Order of Judgment to the Court of Appeals. (R. pp. 531-532). On April 7, 2021, the Court of Appeals issued Unpublished Opinion No. 2021-UP-113, which affirmed the trial court's Order of Judgment. On April 19, 2021, Petitioner filed a Petition For Rehearing With a New Panel of Judges; or, Alternatively *En Banc*. On June 15, 2021, the Court of Appeals issued an Order denying the petition for rehearing, and the Clerk for the Court of Appeals issued a letter advising that the petition for rehearing en banc had been rejected. On June 22, 2021, Petitioner filed a "Notice of Appeal", purporting to appeal the Court of Appeals Unpublished Opinion No. 2021-UP-113. On June 24, 2021, an Order of the Supreme Court was issued by the Clerk dismissing this matter due to the "Notice of Appeal" failing to contain the content required by Rule 242(d), SCACR. On July 12, 2021, Petitioner filed a Petition for Rehearing of Order, apparently purporting to seek reconsideration of the June 24, 2021 Order of the Supreme Court. On July 22, 2021, Petitioner filed a Petition for Writ of Certiorari.

### **ARGUMENT**

#### **I. STANDARD FOR DISCRETIONARY REVIEW BY THE SUPREME COURT**

Pursuant to Rule 242(b), "A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b) provides and exemplary listing of grounds for which discretionary review may be granted: (1)

where there are novel issues of law; (2) where there was a dissent in the decision of the Court of Appeals; (3) where a decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court; (4) where substantial constitutional issues are directly involved; and (5) where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. Respondents would respectfully submit that there are no special and important reasons for granting discretionary review of the Court of Appeals decision in Unpublished Opinion No. 2021-UP-113, and that none of the grounds specifically enumerated in Rule 242(b), SCACR are present in this case. Therefore, Respondents respectfully request that Petitioner's Petition for Writ of Certiorari be denied.

II. PETITIONER'S PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED AS BEING UNTIMELY

Petitioner's Petition for Rehearing was finally ruled upon by the Court of Appeals on June 15, 2021, which is certified by Petitioner in Petitioner's Petition for Writ of Certiorari on page 4 thereof. Additionally, in the "Administrative History" section contained on page 2 of Petitioner's Petition for Rehearing of Order filed on July 12, 2021, Petitioner admits to being served with the Court of Appeals Unpublished Opinion No. 2021-UP-113 on June 15, 2021. Rule 242(c), SCACR provides that "A petition for writ of certiorari shall be served on opposing counsel and filed with proof of service with the Clerk of the Court of Court of Appeals and the Clerk of the Supreme Court within thirty (30) days after the petition for rehearing or reinstatement is finally decided by the Court of Appeals." Thirty (30) days from June 15, 2021 (the date the Petition for Rehearing was finally decided by the Court of Appeals) was July 15, 2021. Petitioner did not serve or file the instant Petition for Writ of Certiorari until July 22, 2021. Thus, the Petition for Writ of Certiorari is untimely and should be denied as being untimely.

III. THE COURT OF APPEALS DID NOT ERR IN AFFIRMING JUDGMENT IN FAVOR OF RESPONDENTS ON PETITIONER'S "INDIVIDUAL CLAIM"

Petitioner asserts that he has some sort of individual cause of action for nominal damages, which appears to relate to an alleged failure by the Respondents to appoint him to fill a vacancy on the Board of Directors for the Association, although the exact legal theory of cause of action being asserted by Petitioner in this respect seems to be somewhat unclear.

"Under Rule 41 in a nonjury trial, the trial judge clearly may dismiss the action even though the plaintiff may have established a *prima facie* case." Johnson v. J.P. Stevens & Co., 308 S.C. 116, 118, 417 S.E.2d 527, 529 (1992). "Rule 41(b) allows the judge as the trier of facts to weigh the evidence, determine the facts and render a judgment against the plaintiff at the close of his case if justified." Id. See also, Waterpointe I Prop. Owner's Ass'n, Inc. v. Paragon, Inc., 342 S.C. 454, 458, 536 S.E.2d 878, 880 (Ct. App. 2000). "In an action at law, tried without a jury, the trial court's findings of fact will not be disturbed unless found to be without evidence which reasonably supports the court's findings." Duncan v. Little, 384 S.C. 420, 425; 682 S.E.2d 788, 790 (2009). "The trial court's factual findings in a law action are equivalent to a jury's findings" and "[q]uestions regarding credibility and the weight of the evidence are exclusively for the trial court." Jordan v. Judy, 413 S.C. 341, 348, 776 S.E.2d 96, 100 (Ct. App. 2015). The appellate court may not consider the case based on its view of the preponderance of the evidence, "but must construe the evidence presented to the [trial court] so as to support [its] decision whenever reasonably possible." Id. The appellate court "must look at the evidence in the light most favorable to the respondents and eliminate from consideration all evidence to the contrary." Id. The appellate court must affirm if there is any evidence to support the Master's findings. Waterpointe I Prop. Owner's Ass'n, Inc., 342 S.C. at 459, 536 S.E.2d at 881.

In this case, the Master never found any violation of any duty to Petitioner, including any violation of a duty to Petitioner to fill a vacancy on the Board of Directors. (R. pp. 7-17). The trial court found that Petitioner failed to meet his burden of proof to establish that Respondents owed a duty under the bylaws to fill a vacancy on the Board of Directors. (R. pp. 13-15). Absent a finding of any violation of a duty to Petitioner, any claim for damages must necessarily fail. The Court of Appeals rightly found that there was evidence in the record to support the Master's finding that Petitioner was not entitled to an award of nominal damages. (Court of Appeals Unpublished Opinion No. 2021-UP-113, p. 5).

Based on the foregoing, Respondents respectfully assert that there are no special or important reasons for the Supreme Court to grant discretionary review of this evidentiary finding.

IV. THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE MASTER'S REFUSAL TO ADMIT INTO EVIDENCE CERTAIN DOCUMENTS PRE-MARKED AS EXHIBITS FOR IDENTIFICATION BY PETITIONER AT TRIAL

Petitioner/Plaintiff pre-marked eleven exhibits denoted as Plaintiff's Exhibits 1 through 11, inclusive. (R. p. 231; R. pp. 328-381). However, the parties didn't stipulate to the admissibility of any records or other evidence. At trial, Raymond Wedlake was presented as Petitioner's/Plaintiff's sole witness. (R. p. 235, line 2-p. 323, line 16). During Petitioner's counsel's direct examination of Mr. Wedlake, only two exhibits were referenced and deemed admitted into evidence – Plaintiff's Exhibits 5 and 10. (R. p. 269, line 21-p. 270, line 22; R pp. 239-241; 267-268). After counsel for Petitioner had rested his direct examination of Mr. Wedlake, the following colloquy took place with the Court regarding what exhibits had been admitted into evidence:

21 MR. GROTE: Your Honor, before I proceed, I guess I  
22 have a quick clarification. I'm a little bit unclear on what

23 exactly they've admitted into evidence. They've marked several  
24 things. I think they referenced maybe two of them, but it  
25 doesn't appear to me that they moved ---

1 THE COURT: The only -- there have been two documents  
2 referenced, so I don't know, absence some stipulation that all  
3 the exhibits are in, then I think only two documents are in  
4 evidence.

5 MR. GIBSON: Well, if Mr. Grote would permit, I'd ask  
6 him to stipulate that they would all be in evidence.

7 MR. GROTE: I haven't really had an opportunity to  
8 review those. I think it's his obligation to admit his exhibits.  
9 At this point, Your Honor, ---

10 THE COURT: If you're objecting, then the only two  
11 documents that are in are Plaintiff's 5 and Plaintiff's 10.

12 MR. GIBSON: Your Honor, if I could ---

13 THE COURT: I'm sorry. I need you to be standing up  
14 when you're addressing the Court under the Rules of Civil  
15 Procedure.

16 MR. GIBSON: Yes, Your Honor. I apologize, Your  
17 Honor. Would this be an appropriate time to try to submit them  
18 in chronological order?

19 MR. GROTE: I think he's rested his questions at this  
20 point.

21 THE COURT: In light of Mr. Grote's objection, I have  
22 no option but to sustain the objection.

(R. p. 269, line 21-p. 270, line 22). After such colloquy, counsel for Petitioner did not move to re-open direct examination. Thereafter, Respondents' counsel proceeded with cross-examination of Mr. Wedlake. (R. p. 271, line 15-p. 320, line 3). Thereafter, counsel for Petitioner was given an opportunity to conduct re-direct examination of Mr. Wedlake and did in fact do so. (R. p. 320, line 4-p. 323, line 8). Despite being given the opportunity to conduct re-direct examination, counsel for Petitioner did not seek to admit into evidence any additional records during re-direct, including any pre-marked exhibits that he failed admit into evidence during direct examination of Mr. Wedlake. (R. p. 320, line 4-p. 323, line 8). Petitioner did not present any further witnesses and rested his case. (R. p. 323, lines 15-16). The trial court then entertained motions, leading to the granting of involuntary nonsuit under Rule 41(b), SCRCP. (R. p. 323, line 17-p. 326, line 20).

During the motion colloquy, the trial court acknowledged that the Bylaws of the Association had not been admitted into evidence. (R. p. 323, lines 19-24). During the colloquy, Petitioner's counsel never asked the trial court to re-open Petitioner's case. (R. p. 324, lines 11-17). Further, Petitioner did not make any post-trial motions.

“The admission or exclusion of evidence is within the sound discretion of the trial court and the trial court's decision will not be disturbed on appeal absent an abuse of discretion.” Conner v. City of Forest Acres, 363 S.C. 460, 467, 611 S.E.2d 905, 908 (2005). “An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support.” Id. “To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, *i.e.*, there is a reasonable probability the jury's verdict was influenced by the wrongly admitted or excluded evidence.” Id.

Based on the record, it is clear that the Master did not abuse his discretion with respect to refusing to admit certain exhibits pre-marked for identification at trial by Petitioner into evidence. Therefore, the Court of Appeals did not err in affirming the Master on this issue.

Further, even if the Master were found to have erred (which Respondents deny), any such error would be harmless, as there was absolutely no prejudice to Petitioner. First, subsequent to the evidentiary ruling complained of, Petitioner's counsel was given an opportunity conduct re-direct examination and thus had an opportunity to seek to admit additional evidence at that time. During such re-direct, Respondent's counsel could have sought to try to introduce additional records, including what Petitioner asserted to be the Bylaws of the Association. However, Petitioner's counsel failed to take advantage of the second chance opportunity. Second, an examination of the official exhibits obtained from the trial court reporter reveals that none of the exhibits pre-marked at trial by Petitioner were actually anything that Petitioner could purport to be

a complete copy the Bylaws of the Association. (R. pp. 328-381). Therefore, there is no prejudice to Petitioner by the trial court's exclusion of Plaintiff's Exhibits 1, 2, 3, 4, 6, 7, 8, 9, and 11 because even if all of those exhibits had been admitted into evidence, it still would not have cured the issue of failing to admit a complete copy of the Bylaws of the Association into evidence. Third, the Order of Judgment also states that "even had the bylaws been introduced, from what the record does show, Plaintiff would still not be entitled to the relief he seeks", thus indicating that the Master would not have ruled in Petitioner's favor even if the Bylaws had been introduced into evidence. (R. p. 14).

Based on the foregoing, Respondents respectfully assert that there are no special or important reasons for the Supreme Court to grant discretionary review of this routine evidentiary ruling, and that Petitioner's Petition for Writ of Certiorari should be denied.

V. THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE MASTER NOT TAKING JUDICIAL NOTICE OF AN EXHIBIT TO PETITIONER'S COMPLAINT, WHICH PLAINTIFF ASSERTS TO BE THE BYLAWS OF THE ASSOCIATION

Petitioner has asserted that the Master erred by failing to take judicial notice of the contents of an exhibit to Petitioner's Complaint, which Petitioner asserts are the Bylaws of the Association, and that the Court of Appeals erred in affirming the Master on this issue. Respondents disagree.

After the close of Petitioner's case at trial, the following colloquy took place:

13 THE COURT: All right. Thank you, sir. You can step  
14 down.

15 Any other witnesses from plaintiff?

16 MR. GIBSON: No, sir.

17 THE COURT: All right. Be glad to entertain any  
18 motions?

19 MR. GROTE: Yes, Your Honor. At this time I would  
20 move for a directed verdict on several issues. One, and I don't

21 mean to be facetious in this sense, but this is a case about  
22 interpretation of the Bylaws. I don't even know that the Bylaws  
23 have been admitted into evidence.

24 THE COURT: They have not.

25 MR. GROTE: There's really nothing before the Court to  
1 make a decision on. I'm not saying that in a facetious nature.  
2 It seems to me that if they want an interpretation of the Bylaws,  
3 the Bylaws have to be part of the evidentiary record and be  
4 before the Court. Without that, I mean, I don't know that the  
5 Court has enough information that it can even make a  
6 determination on these without -- you know, looking outside of  
7 the trial record.

8 As far as the specific issues, ---

9 THE COURT: Let me hear briefly from plaintiff's  
10 counsel, then I'm going to address and rule on the motion.

11 MR. GIBSON: Yes, sir. Several factors, Your Honor.  
12 Certainly the key provisions of the Bylaws were discussed in the  
13 pretrial brief. But more importantly they are Exhibit 3 to the  
14 Complaint and they are filed officially, e-filed officially, and  
15 they were cross-referenced as a result in all the written  
16 material. That would be my response, Your Honor, that it's part  
17 of the record.

18 THE COURT: Okay. Here's what I'm going to do,  
19 gentlemen. I'm going to take this as a motion for an involuntary  
20 non-suit, which I'm going to grant.

(R. p. 323, line 13-p. 324, line 20). Petitioner's counsel's argument was simply that since a document had been attached to the Complaint and had been referenced in other pretrial submissions, that it was part of the court record and thus was automatically admitted as evidence that could be considered at trial. Respondents respectfully assert that Petitioner's counsel never actually sought or argued that that the Master should take judicial notice of the exhibit to Petitioner's Complaint.

Even if Petitioner is deemed to have requested that the trial court take judicial notice of the document attached to Petitioner/Plaintiff's Complaint, Respondents assert that no error/abuse of discretion occurred and there is no special or important reason(s) for the Supreme Court to grant discretionary review of this issue.

As noted above, the admission or exclusion of evidence is within the sound discretion of the trial court and the decision of the trial court must stand absent an abuse of discretion. Conner, 363 S.C. at 467, 611 S.E.2d at 908. Judicial notice is generally governed by Rule 201, SCRE, which provides in relevant part:

**(b) Kinds of Facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Rule 201(b), SCRE.

Judicial notice takes the place of proof and “simply means that the court will admit into evidence and consider, without proof of the facts, matters of common and general knowledge.” Moss v. Aetna Life Ins. Co., 267 S.C. 370, 377, 228 S.E.2d 108, 112 (1976). “For a fact to be subject to judicial notice, it must be so notorious that the court may properly assume its existence without proof.” Masters v. Rodgers Dev. Group, 283 S.C. 251, 255, 321 S.E.2d 194, 196 (Ct. App. 1984). The Master simply did not err in failing to take judicial notice that the document attached to Petitioner’s Complaint was in fact the Bylaws of the Association, as the Bylaws were not general or common knowledge, nor were they capable of accurate and ready determination by the Master by resort to sources whose accuracy could not reasonably be questioned. The simple fact is that it was Petitioner’s obligation to authenticate and move to admit all necessary evidence at trial, and Petitioner simply failed to authenticate and to admit a copy of the Bylaws of the Association into evidence at trial.

Further, Petitioner’s reliance on 12(b)(6) motion to dismiss jurisprudence is misplaced. For purposes of a motion to dismiss under Rule 12(b)(6), the allegations in a complaint (and consequently exhibits thereto) are presumed to be true. Morrow Crane Co. v. T.R. Tucker Const. Co., 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct. App. 1988); See Burns v. Gardner, 328 S.C.

608, 614, 493 S.E.2d 356, 359 (Ct. App. 1997). However, in the present case, we are not dealing with a motion to dismiss under 12(b)(6), SCR.P. Rather, we are dealing with trial and evidence at trial. At trial, the allegations of a party's pleadings are not presumed to be true, but rather, the party must prove the allegations according to the applicable burden of proof. "Rule 41(b) allows the judge as the trier of facts to weigh the evidence, determine the facts and render a judgment against the plaintiff at the close of his case if justified." Johnson v. J.P. Stevens & Co., 308 S.C. 116, 118, 417 S.E.2d 527, 529 (1992).

In his Petition for Rehearing, Petitioner makes the argument for the first time that the Bylaws of the Association are recorded with the Greenville County Register of Deeds. However, this issue was never raised to Master, nor was it presented in Petitioner's Brief to the Court of Appeals. Therefore, Respondents assert that this matter cannot be raised or considered at this stage. See e.g., Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); Rule 208(b)(1)(B) ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.) Even if the issue were to be considered, it patently lacks merit and does not justify discretionary review by the Supreme Court. The document that Petitioner refers to is attached as Exhibit PFR2 to Petitioner's Petition for Rehearing filed with the Court of Appeals on April 19, 2021. The recording stamp on said document indicates that it was recorded on December 28, 2018. (Exhibit PFR2 to Petitioner's Petition for Rehearing). The trial of this matter was held on April 20, 2018. Therefore, the document referenced by Petitioner had not been recorded at the time of trial; therefore, it would have been impossible for the Master to have taken judicial notice of it at the trial, thus the Master could not have erred in this respect.

Petitioner's Petition for Writ of Certiorari also references rule 901, SCRE, and asserts that the Bylaws of the Association are self-authenticating. Respondents respectfully disagree. First, Rule 901, SCRE deals with the requirement of authentication rather than self-authentication. The record is devoid of Petitioner authenticating any copy of the Bylaws or moving the same into evidence at the trial. Rule 902, SCRE does address self-authentication, but even for publicly recorded documents, a certified copy is required for self-authentication. Rule 902(4), SCRE. Obviously, because the recorded document referenced in Petitioner's Petition for Rehearing was not recorded at the time of trial, a certified copy could not have been and was not presented to the Master at trial, nor moved into evidence at trial. Thus, Petitioner's claims of self-authentication are misplaced.

Finally, it should also again be noted that the Order of Judgment states that "even had the bylaws been introduced, from what the record does show, Plaintiff would still not be entitled to the relief he seeks", thus indicating that the Master would not have ruled in Petitioner's favor even if the Bylaws had been introduced into evidence. (R. p. 14).

Based on the foregoing, Respondents respectfully assert that there are no special or important reasons for the Supreme Court to grant discretionary review of this routine evidentiary ruling, and that Petitioner's Petition for Writ of Certiorari should be denied.

VI. MANY OF PETITIONER'S CLAIMS HAVE BEEN FOUND TO BE MOOT; THERE IS SUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT THE FINDINGS OF THE MASTER AND THE COURT OF APPEALS; AND RESPONDENTS ARE NO LONGER SERVING ON THE BOARD OF DIRECTORS OF THE ASSOCIATION

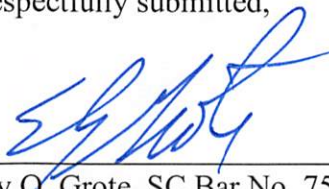
The Court of Appeals rightly affirmed that many of Petitioner's claims were moot at the time of trial, and there is ample evidence in the record to support such finding. (R. p. 13-15; Court of Appeals Unpublished Opinion No. 2021-UP-113). Additionally, there is sufficient evidence in the record to support the findings of the Master and of the Court of Appeals. Further, since the time of trial, the composition of the Board of Directors of the Association has changed and none of the Respondents are continuing to serve as directors or officers of the Association. (Appendix 1, R. pp. 534-541). Because none of the Respondents are currently serving as directors or officers of the Association, the Respondents no longer individually or collectively possess any managerial authority on behalf of the Association. Also, since the Respondents are no longer serving in any corporate capacity, they no longer serve in the capacity in which they were named in this suit (they were named in their capacity as directors). At this time, the Respondents, both individually and collectively, lack the ability to effectuate any of the declarations sought by Plaintiff. In the same vein, Respondents no longer have the individual or collective authority to agree, on behalf of the Association, to any of the requested declarations even if they wanted to, nor do they now have the authority to bind the Association to the requested declarations. Therefore, Respondents assert that the Supreme Court should decline discretionary review of this matter for the foregoing reasons as well.

### **CONCLUSION**

Respondents respectfully assert that there are no special, important, or compelling reasons for granting discretionary review in this matter. For all of the reasons stated herein, Respondents request that Petitioner's Petition for Writ of Certiorari be denied.

*(Signature page follows.)*

Respectfully submitted,



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