

FIGURE BOA.1 - Affirmation of Dismissal of Appellant's Case in Whole**FORM 4**

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2305996

Raymond A Wedlake et al
 PLAINTIFF(S)

Woodington Homeowners Association Inc et al
 DEFENDANT(S)

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Aug 09 2021

SC Court of Appeals

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

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

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

See Pg. 2

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/08/2021 .

Members Of Woodington Homeowners Association Inc
 Woodington Homeowners Association Inc
 Raymond A Wedlake for Raymond A Wedlake
 Woodington Homeowners Association Inc
 Raymond A Wedlake for Raymond A Wedlake

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

This matter comes before the court on Appellants Civil Appeal of the Magistrate Court Order granting Defendants' Motion to Dismiss Plaintiff's Complaint on October 16th, 2020.

The Circuit Court, pursuant to S.C. Code §18–7–170, in Appeals from the Magistrate Court, shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the [magistrate], in whole or in part, as to any or all the parties and for errors of law or fact.

After review of the return, review of the filings on record, and consideration this Court finds no error of law or abuse of discretion. Further, this Court agrees with the Magistrate Court that this lawsuit is an attempt to re-litigate the issues that have already been decided in previous actions. The decision of the Magistrate Court is affirmed.



Greenville Common Pleas

Case Caption: Raymond A Wedlake , plaintiff, et al VS Woodington Homeowners Association Inc , defendant, et al

Case Number: 2020CP2305996

Type: Order/Electronic Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

FIGURE BOA.2 - South Carolina Code of Laws Statute

SECTION 18-7-170. Judgment on appeal. (emphasis added)

Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may **affirm or reverse** the judgment of the court below, **in whole or in part**, as to **any or all the parties** and for errors of law or fact.

Aug 09 2021

SC Court of Appeals

FIGURE BOA.3 - Transcript of Record

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
3
4 Raymond A. Wedlake, et)
5 al.,) TRANSCRIPT OF RECORD
6 Appellants,) 2020 CP-23-05996
7 -vs-)
8 Board of Directors of)
9 WHOA, et al.,)
10 Respondents.) April 22, 2021
11 Greenville, South Carolina

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Aug 09 2021

SC Court of Appeals

12 B E F O R E:

13 HONORABLE LETITIA H. VERDIN, JUDGE
14
15

16 A P P E A R A N C E S:

17 PRO SE
18 Attorney for the Appellants

19 STEPHANIE TROTTER KELLAHAN, ESQUIRE
20 MICHAEL MURPHY, ESQUIRE
21 Attorneys for the Respondents
22

23 Margaret A. Woods
24 Circuit Court Reporter
25

1 THE COURT: Let's see where we are. Is everyone -- Mr.
2 Wedlake is, uh, on a call in and so he is, um, we can't see
3 him but he's here, he can hear us and I think see us but he,
4 um, we just can't see him. Hold on just one moment.

5 (Pause.)

6 THE COURT: I'm sorry, I was gettin' some feedback from
7 my law clerk's office, um, it it -- from both of us havin'
8 this on at the same time so I apologize. Uh, so anyway s --
9 we cannot see him but he had a motion just a few minutes ago,
10 he was able to argue it, uh, what, um, uh, very well without
11 us, um, uh, havin' him actually, uh, visually present. Uh,
12 Mr. Wedlake, are you there?

13 THE APPELLANT: Yes, I'm here.

14 THE COURT: Fantastic. Okay, uh, as I explained
15 Mr. Wedlake is familiar with how I do, uh, the, uh, how I do a
16 magistrate appeal that's set for fifteen minutes, uh, but just
17 so that ya'll understand since Mr. Wedlake is the appellant in
18 this case, uh, I'm gonna give him about five minutes then
19 since you all are the respondents, uh, anyone who wants to
20 argue I'll let ya'll share about five minutes and then because
21 he, uh, filed the appeal I'll, uh, go back and let him have
22 the last word on it and then if I have any questions or
23 comments at the end then we can, uh, then that'll give us the
24 fifteen minutes. I have read everything, uh, I read it and
25 took some time yesterday afternoon and read everything, uh, in

1 this case so I think I'm, uh, fairly up to speed although I
2 would anticipate that I'll take this matter under advisement.
3 Uh, alright, Mr. Wedlake, you wanna kick us off, let's start
4 your clock at about five minutes.

5 THE APPELLANT: Uh, I'm just about ready, uh, to begin,
6 uh, Your Honor, I've I've got, I think I've got the right
7 files in front of me now for the summary.

8 THE COURT: Good, let's go.

9 THE APPELLANT: So, uh, uh, again I, uh, state for the
10 record that in my brief, uh, I have, uh, filed, uh, ten cases,
11 on page 7 there four, on page 10 there's two, uh, and on
12 page 13 I have reference to, uh, four other cases giving, uh,
13 precedence, uh, for my position in this case and, again, this
14 is, uh, highlights from my brief, uh, from appeal for
15 dismissal, I prepared them and, uh, I ask for all the public
16 index documents again to be recognized as part of the record
17 for this hearing.

18 THE COURT: Certainly they are.

19 THE APPELLANT: So, uh, again, this case that I cited two
20 defendants, the Board of Directors Woodington, and McCabe, uh,
21 Trotter and Beverly, uh, initially and then, uh, later added
22 as an amended complaint State Farm. Uh, I have again filed a
23 a bunch of other things: memorandums in opposition,
24 particularly one to a, uh, proposed order page 2 in the hear,
25 uh, court review. My, uh, ---

1 THE COURT: Uh, ---

2 THE APPELLANT: --- complaint had dated fifty --
3 presented fifty-one facts with references to statutory law and
4 other law and most facts presented evidence contained in
5 exhibits and, again, most facts presented genuine contentious
6 issues and, uh, I think it's important not a single defense
7 counsel disputed any specific single fact, uh, therefore I
8 believe there's a set a facts more than sufficient to
9 constitute cause of action. Uh, several of the, uh, causes of
10 action I stated were were never litigated before and, uh, this
11 was covered in the statement of issues where thirteen issues I
12 believe the judge erred on pages 3 and 4 ---

13 THE COURT: Alright.

14 THE APPELLANT: --- and, uh, I won't, uh, spend the time
15 to, uh, read them other than, again, it's it's, uh, that that
16 I believe the judge has erred on all of those facts.

17 THE COURT: 'kay.

18 THE APPELLANT: The, uh, two newly named parties were,
19 uh, McCabe, Trotter and Beverly as well as State Farm, they
20 were not involved as defendants in any prior, uh, uh, suits,
21 for the most parts, again, the issues presented are genuine
22 issues of material fact. I believe there's a black letter
23 precedence that specifically as related to claims of
24 collateral estoppel making as such the dismissal grounds do
25 not apply for my case. And, uh, page 6 a standard of review,

1 dismissal can't be granted unless there's a failure to state
2 facts sufficient and I, uh, uh, put in front of the Court three
3 memorandums in opposition to dismissal in each case against
4 each defendant ---

5 THE COURT: Yes, sir.

6 THE APPELLANT: --- and many evidential exhibits support,
7 uh, many facts.

8 THE COURT: Okay.

9 THE APPELLANT: Evidence, uh, contained in these
10 exhibits that support the facts I believe so -- uh, and
11 all every insufficient facts claim so a justified dismissal
12 again that no so -- sufficient facts can exist, uh, per Rule
13 12(b)(6), ---

14 THE COURT: Okay.

15 THE APPELLANT: --- uh, again, I don't believe any of the
16 facts were contested, disputed, or claimed to be nonfacts or
17 claimed to be unsupported facts.

18 THE COURT: 'kay.

19 THE APPELLANT: Well page 8, uh, I believe, uh, it's an
20 error of law to conclude the dismissal of the entirety of the
21 case applies and I think, believe this is an important point
22 that, uh, if the Court were to decide that some aspects apply to
23 res judicata then those would be the things that the Court
24 would, uh, dismiss but not the whole case which is the point
25 of dismissal in part, ---

1 THE COURT: Okay, and we're ---

2 THE APPELLANT: --- we -- and my ---

3 THE COURT: (Indiscernible cross-talk.)

4 THE APPELLANT: --- conclusion again just states that,
5 uh, I believe there's several genuine issues of fact that
6 exist and dismissal should not be gray -- granted in the face
7 of such issues remaining unresolved ---

8 THE COURT: Okay.

9 THE APPELLANT: --- and the pertinent point is again
10 newly broad issues were brought in my case particularly
11 relative to collateral estoppel so, uh, basically that that's
12 it then.

13 THE COURT: Alright, thank you so much. Alright, I will
14 turn it over to the respondents, as I said if ya'll would, um,
15 um, share that five minutes that would, that would be helpful
16 and then we'll, uh, and we'll turn it back over to Mr. Wedlake
17 for the last word but it it -- which -- whoever wants to go
18 first is, or if one wants to go and not the other I'm fine.

19 MR. MURPHY: Um, I guess we're first named, uh, Your
20 Honor, so I guess I'll I'll be very brief, uh, represent the,
21 uh, the board in this matter is the respondent. Uh, you know,
22 these are the same issues that have been litigated time and
23 time again, there's a, uh, you know, the case is currently up
24 on appeal, it's two ni -- 2019-CP-23-01501, this is a lawsuit
25 brought by Mr. Wedlake in the circuit court, uh, against the

1 board, uh, you know, alleging that they had breached their
2 covents [sic], breached the the fiduciary duty, uh, by
3 accepting the invo -- legal invoice from McCabe, Trotter,
4 Beverly in a lawsuit that he brought against them so they
5 needed the, a legal defense so they hired McCabe, Trotter,
6 Beverly. He's alleging they, uh, breached their fiduciary
7 duty by obviously accepting the invoice and then sending out
8 ballots, uh, for assessment to pay for those legal bills and
9 then he's alleging they breached fiduciary duty in a governing
10 documents by, uh, by then, uh, counting those ballots, uh, in
11 accordance with the governing documents and bylaws, now that
12 suit was dismissed via summary judgment, court found, uh,
13 Judge Miller's decision said the Court acted in adherence with
14 the bylaws, governing documents, uh, the South Carolina, uh,
15 Nonprofit Corporation Act, that case is currently up on appeal
16 waiting decision by the appellate court. Uh, this action in
17 the magistrate court is just rehashing the same old, uh, same
18 old issues, again, he's alleging the board is now in breach of
19 contract by, uh, by accepting the legal invoice, uh, sending
20 out the assess -- uh, the vote for the assessment and counting
21 the ballots, uh, you -- base -- it's the same underlying
22 issues that he's trying relitigate this time only in
23 magistrate's court because as he has said he doesn't feel like
24 gets a fair shake in the circuit court so, you know, again,
25 I -- we believe Judge Saunders correctly ruled that these

1 issues, uh, have been decide on the merits, they're granted
2 summary judgment by Judge Miller, the circuit court has held
3 that the board has acted in accordance with the governing
4 documents, it has done nothing improper, so however the, you
5 know, Mr. Wedlake wants to craft issue whether breach of
6 contract, breach of fiduciary duty, negligence, whatever, the
7 board has not acted improper so the, Judge Saunders was
8 correct to rule that, uh, and dismiss this case based, uh, on
9 estoppel grounds and we ask the Court to affirm, uh, Judge
10 Saunders' decision.

11 THE COURT: Thank you. Uh, Ms. Kellahan.

12 MS. KELLAHAN: Your Honor, just briefly. Uh, I agree
13 with everything Mr. Murphy just said, I think I just wanted to
14 point out that in Mr. Wedlake's appeal he now claims that this
15 suit or that some of his claims were not brought derivatively,
16 they were brought on behalf of his neighbors, that is, that
17 directly contradicts everything he said, uh, up into the point
18 of this appeal. Several times in his pleadings before, uh,
19 the magistrate he stated that he has standing to bring a
20 derivative suit, uh, the pending class action is irrelevant to
21 his derivative suit, uh, he has provided evidence that the
22 action brought is a derivative suit and, uh, in his memo in
23 opposition to the proposed order he says plaintiff's case was
24 brought both individually and derivatively, so to the extent
25 he is now arguing to this court that it's not a derivative

1 lawsuit, uh, he didn't get a ruling on that from the
2 magistrate, he didn't file a 59(e) motion and so he has
3 abandoned the ability to make that claim. Uh, similarly on
4 the, uh, one difference we have from the board of directors is
5 that Mr. Wedlake has also alleged, uh, casting plaintiff in a
6 false light, the magistrate interpreted that as a claim for
7 defamation and found that statute of limitations had run, now
8 Mr. Wedlake says that's really a breach of privacy claim. He
9 did not elicit a ruling on that theory from the magistrate and
10 did not file a Rule 59(e) motion on that so believe he has
11 abandoned that claim, even if he had made that claim the
12 statute of limitations for a breach of privacy claim is three
13 years, uh, and he brought this suit almost four years after
14 the statement was made.

15 Uh, the only other thing that I would, I would bring to
16 the Court is, uh, Mr. Wedlake says the defendant didn't
17 dispute any other facts and that's right, we didn't have to,
18 it was a 12(b)(6) motion, what we were saying is even if
19 everything that he stated was true he hasn't stated a cause of
20 action or ---

21 THE COURT: 'kay.

22 MS. KELLAHAN: --- he can't pursue that claim for all the
23 procedural issues: standing, statute a limitations and those
24 issues, so we believe that the magistrate's ruling was correct
25 for all the reasons she stated therein and it should be

1 upheld.

2 THE COURT: Thanks so much, I appreciate it. Well,
3 Mr. Wedlake, we're back to you, I'll give you 'bout three
4 minutes to wrap up.

5 THE APPELLANT: Uh, yes. Now now, uh, like, again, there
6 there is evidence in front of the Court that disputes this, uh,
7 this claim about, uh, these are the same issues again and
8 again, the evidence presented in exhibits in front of the
9 Court shows that there are different issues that have been
10 brought in this case which are not subject to collateral
11 estoppel. The, uh, the bit about the, again, a procedural,
12 uh, misdirection and individually and/or delegitimacy is --
13 derivatively and, uh, you know, all all this stuff again to,
14 uh, take the focus away from the issues of the case and put
15 them on what I call "legal wrangling technicalities" I believe
16 to be again it's nothing more than misdirection and
17 obfuscation, I believe the facts in evidence I had, oh, uh,
18 presented with my case show that none of that stuff is true nor
19 that can be taken as the Court as true, ---

20 THE COURT: Okay.

21 THE APPELLANT: --- that relative to the false light,
22 this again I've stated in in my pleadings, this was really a,
23 uh, preponderance of evidence things just to put other
24 evidence in front of the Court to show the Court, to help the
25 Court understand the nature of my case which again is easily

1 substantiated based on all the evidence that I have presented
2 to the Court ---

3 THE COURT: Okay.

4 THE APPELLANT: --- so well that's a wrap for me.

5 THE COURT: Well, ha, ha, ha, okay. Well I certainly do
6 appreciate it, I appreciate, uh, once again the excellent
7 arguments on all sides here. Uh, uh, again, give me about two
8 weeks on this one, um, I generally don't ask for that much
9 time, uh, when I'm, uh, when I'm takin' matters under
10 advisement but, uh, but, uh, uh, in this case I know there's a
11 lot to look through, I've looked through it once but, uh,
12 after hearin' arguments and gettin' some things cleared up,
13 just give me a little time to be able to go through all this
14 so, um, I -- you should hear somethin' from me, uh, before two
15 weeks, alright. Thank you so much.

16 MR. MURPHY: Thank, Your ---

17 THE APPELLANT: Thank ---

18 MR. MURPHY: --- Honor.

19 THE APPELLANT: --- you.

20 MS. KELLAHAN: Thank you, Your Honor.

21

22

23

24

25

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on April 22, 2021 at the time and place heretofore set forth; and that the foregoing pages numbered from 2 through 11, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

July 6, 2021

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

FIGURE BOA.4 - Role / duty / function of a Court of Law [excerpts]

<https://www.ukessays.com/essays/criminology/the-relationship-between-police-courts-corrections.php>

The Courts are the place where justice is made. “The purposes of the courts are to seek justice and to discover the truth” (The Structure of Criminal Justice. 2013). ...

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<https://www.findlaw.com/litigation/legal-system/the-role-of-courts-in-government.html>

SC Court of Appeals

The judicial branches of the federal and state governments operate within their respective court systems. A court is an institution that the government sets up to settle disputes through a legal process. People come to court to resolve their disagreements. Courts decide what really happened and what should be done about it. They decide whether a person committed a crime and what the punishment should be. They also provide a peaceful way to decide private disputes that people can't resolve themselves.

=====

<https://iron-set.com/us/users-questions/what-is-the-duty-of-judiciary>

The duties of the judicial branch include:

- * Interpreting state laws;
- * Settling legal disputes;
- * Punishing violators of the law;
- * Hearing civil cases;
- * Protecting individual rights granted by the state constitution;

=====

<https://www.heritage.org/courts/report/what-the-proper-role-the-courts>

Accordingly, the Founders vested the legislative power (the power to make the laws) in Congress, the executive power (the power to enforce the laws) in the President, and the judicial power (the power to interpret the laws and decide concrete factual cases) with the courts. ...

=====

https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/court_role

We need courts to interpret and apply the law when parties dispute. In that way, courts take law out of dry and dusty law books, and make it part of the living fabric of our lives. Courts apply the law to specific controversies brought before them. They resolve disputes between people, companies and units of government.

Often, courts are called on to uphold limitations on the government. They protect against abuses by all branches of government. They protect minorities of all types from the majority, and protect the rights of people who can't protect themselves. They also embody notions of equal treatment and fair play. The courts and the protections of the law are open to everybody.

=====

<https://www.politicalsciencenotes.com/articles/8-major-functions-of-judiciary-discussed/350>

8 Major Functions of Judiciary – Discussed!

Some of the major functions of judiciary are as follows:

- (1) It interprets the laws: ...
 - (2) Protector of Civil Rights: ...
 - (3) Decides the cases: ...
 - (4) Custodian of fundamental rights: ...
 - (5) Guardian of the Constitution: ...
 - (6) Decides the conflicts of jurisdiction between the Centre and State Governments in Federations: ...
 - (7) Advisory: ...
 - (8) Miscellaneous functions: ...
- =====

<https://www.preservearticles.com/political-science/functions-of-the-judiciary/86>

Administration of justice is the primary function of the judiciary. ...

(1) Judicial Functions:

Firstly, when a dispute is brought before a court, it is the responsibility of the court to ‘determine the facts’ involved. The usual manner in which the courts determine the facts is through evidence given by the contestants. Once the facts have been established, the court proceeds to decide what law is applicable to a particular controversy or circumstance. Herein the judiciary becomes the interpreter of laws, which is the prime function of the judiciary. So the major task of the judiciary is to ‘determine’ the facts of laws and to apply them to particular circumstance.

(5) Protector of the Fundamental Rights:

Fifthly, the judiciaries also act as the defenders of the individual’s right. Such role of the judiciary is important as it prevents the individual’s rights from being violated. An individual need not wait until harm is done to him. If he had, sufficient reasons to believe that attempts would be made to violate his ‘rights’ he could approach the courts for protection.

FIGURE BOA.5 - Initial Brief of Appellant to Circuit Court

STATE OF SOUTH CAROLINA
The Court of Common Pleas

2021 MAR -8 AM 10:31

FILED-CLERK OF COURT
PAUL B. WICKENS
GREENVILLE, SC

APPEAL FROM GREENVILLE COUNTY
The Honorable Laura M. Saunders, Magistrate Judge

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Aug 09 2021

Civil Action No. 2020-CV-23-10201384
Appellate Case No. 2020-CP-23-05996

SC Court of Appeals

Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc.
and on behalf of other-similarly-situated Members of Woodington Homeowners'
Association, Inc.

..... Appellants,

v.

Board of Directors of Woodington Homeowners' Association, Inc., comprised of Mona Craigo,
Edward Decker, and Sandra LaCroix at the time of filing and McCabe, Trotter & Beverly, P.C.
and State Farm Fire and Casualty Company

..... Respondents.

INITIAL BRIEF OF APPELLANT

Raymond A. Wedlake
703 Creekview Drive
Greenville, SC 29607
Tel: (864) 254-9262
wedlakera@mail.com
Appellant (*Pro Se*)

March 2, 2020

James P. Walsh, Esq.
Clarkson, Walsh & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29606
Tel: (864) 632-4400
jwalsh@clarksonwalsh.com
Counsel for the Board

Stephanie Trotter Kellahan, Esq.
McCabe Trotter & Beverly, PC
P.O. Box 212069
Columbia, SC 29221
Tel: (803) 724-5000
stephanie.kellahan@mccabetrotter.com
Attorney McCabe Trotter & Beverly

Nicholas A. Farr, Esq.
Gallivan, White & Boyd, P.A.
Post Office Box 10589
Greenville, SC 29603
Tel: (864) 271-9580
nfarr@gwblawfirm.com
Attorneys for State Farm

Table of Contents

Table of Authorities		iv - v
Administrative History	.....	1 - 2
Overview	.....	2 - 3
Statement of Issues on Appeal	.....	3 - 4
Statement of the Case	.....	4 - 5
Standard of Review	.....	6 - 8
Argument	.....	8 - 19
A) The Judge erred by concluding that collateral estoppel applied to C1384 to dismiss the case in its entirety, which is an Error of Law. Errors of Fact led to Errors of Law	.....	8 - 10
A1. Collateral Estoppel - Overview; Errors of Fact	.....	8 - 9
A2. Collateral Estoppel - as to Defendant: MTB; Errors of Law	.....	9 - 10
A3. Collateral Estoppel - as to Defendant: Board; Errors of Law	.....	10
B) The Judge erred by totally dismissing all Causes of Action, which is an Error of Law	.....	11
C) The Judge erred by accepting that Appellant was not a party to a WHOA insurance contract, which is an Error of Fact that led to Error of Law	.....	11 - 13
C1. The State Farm policy covers WHOA	.....	11 - 12
C2. Appellant is a policyholder of the WHOA-insurance contract	.....	12
C3. Specific exclusions prohibit SF from providing coverage	.....	12
C4. Specific exclusions prohibit SF from providing coverage	.....	12 - 13
C5. Appellant could be considered as a "third-party"	.....	13
C6. Appellant as the "Claimant"	.....	13
C7. MOP3 cited dismissal as Error of Law	.....	13
D) The Judge erred by apparently ignoring CPS and all its exhibits, which is an Error of Law	.....	14

E) The Judge erred by stating that C1384 was brought as a derivative suit on behalf of WHOA, which is an Error of Fact. Appellant is not prohibited from bringing a derivative suit. Such thinking is an Error of Law	.....	14 - 15
E1. C1384 was not brought as a derivative suit on behalf of WHOA	....	14
E2. <i>Res Judicata</i> annuls a claim of “... prohibited from bringing a derivative suit ...”	....	14 – 15
F) The Judge erred by ignoring Appellant’s request for the Court to dismiss in part, which represents abuse of judicial discretion	....	16
G) The Judge erred by usurping matters that must be determined by a jury, which represents abuse of judicial discretion. Premature dismissal denied Appellant’s right to request a jury trial	....	16
H) The Judge erred by not addressing nor hearing pending Motions, dismissing prematurely without issuing Orders to dispose of pending Motions. Such is an Error of Law and also represents abuse of judicial discretion	....	16 – 17
I) The Judge erred by granting premature dismissal that precluded requested discovery and ADR, which is an Error of Law and also represents abuse of judicial discretion	....	17
J) The Judge erred by denying Appellant a right to bring a “... preponderance of evidence ...”, which is an Error of Law	....	17
K) The Judge erred by apparently accepting alleged failure by Appellant as to Conspiracy, which is an Error of Law	....	17 – 18
L) The Judge erred regarding aspects related to extortion, which is Error of Law	....	18 – 19
L1. Prosecution of one’s own cause cannot be barred	....	18
L2. Civil penalties result from extortion	....	18
L3. The Court labeled CPS (extortion) as a civil action	....	18
L4. Jurisdiction for criminal cases	....	18

M) The Judge erred by not accepting nor acting upon Appellant's MOPO, which is an Error of Law and also represents abuse of judicial discretion	....	19
M1. Appellant filed objections to a Proposed Order	....	19
M2. An official Transcript exists		19
Conclusion		20

Table of Authorities

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<i>Carrigg v. Cannon</i> , 552 S.E.2d 767, 347 S.C. 75 (2001)		10
<i>Beall v. Doe</i> , 281 S.C. 363, 315 S.E. 2d 186 (Ct. App. 1984)		10
<i>Jennings v. First of Ga. Underwriters Co.</i> , 283 S.C. 455, 457, 322 S.E.2d 694, 695 (Ct. App. 1984)		13
<i>Dawkins v. Fields</i> , 354 S.C. 58, 69 (S.C., 2003)		13
<i>Evening Post Publ'g Co. v. Berkeley County Sch. Dist.</i> , 392 S.C. 76, 82 (S.C., 2011)		13
<i>Holtzscheiter v. Thomson Newspapers, Inc.</i> , 506 S.E.2d 497, 332 S.C. 502, 507, September 22, 1998		13

Rules

South Carolina Rules of Civil Procedure: Rule 12(b)(6)	.....	6, 7, 15, 19
South Carolina Rules of Civil Procedure: Rule 23	.....	14, 15
South Carolina Rules of Civil Procedure: Rule 9(g)	.....	18
South Carolina Rules of Civil Procedure: Rule 12(f)	.....	19

Statutes

S.C. Code Ann. § 36-2-210	.....	13
S.C. Code Ann. § 36-2-301	.....	13
S.C. Code Ann. § 38-55-170	.....	13
S.C. Code Ann. § 40-5-80	.....	18
S.C. Code Ann. § 40-11-110	.....	18
S.C. Code Ann. § 22-3-520	.....	18
S.C. Code Ann. § 22-3-550	.....	18

COMES NOW Raymond A. Wedlake, Appellant (*Pro Se*) and submits this Brief as part of Appeal of dismissal of Case 2020-CV-23-10201384 (C1384), stating as follows. This Brief focuses mainly upon “Magistrate’s Return” (MAR) dated 01/28/21, and “Order Granting Defendants’ Motion to Dismiss”, dated 12/28/20. The Judge’s MAR filing with this Court contained both documents.

ADMINISTRATIVE HISTORY

Dated 06/10/20, Appellant filed a “Complaint / Breach of Contract by the Board; Plus Conspiracy by McCabe to Extort Corporate Funds, and Casting Plaintiff in a False Light”, which was supported by Affidavit, figures and exhibits, that cited two Defendants: Board of Directors (Board) of Woodington Homeowners’ Association, Inc. (WHOA), and McCabe, Trotter & Beverly, P.C. (MTB) (Attachment IB.1). Prior to C1384, MTB was never cited as a Defendant in any lawsuits brought by Appellant. Appellant’s Complaint on page 3 began a “Supplement to Complaint” (SUC) which contained “**FACTS**” that related to the Board in paragraphs 28 – 78, and facts that related to MTB in paragraphs 79 – 86 .

Dated 09/11/20, Appellant filed a “Memorandum in Opposition to Defendant McCabe Trotter & Beverly, PC’s Motion to Dismiss” (MOP1, Attachment IB.2).

Dated 09/28/20, Appellant filed a “First Amended Complaint ...” (FAC). Clarification specifically stated in paragraph 1 of FAC (Attachment IB.3), saying it was an addendum to “Complaint plus Supplement” (CPS). FAC showed (emphasis added):

1. By reference, Plaintiff includes his original “Complaint Breach of Contract by the Board; Plus Conspiracy by McCabe to Extort Corporate Funds, and Casting Plaintiff in a False Light”, along with its “Supplement to Complaint” (Complaint Plus Supplement, CPS), along with its supporting Exhibits and Affidavit, in their entirety. Consequently, this FAC is like an addendum to CPS.

Appellant sent a letter to the Judge dated 10/05/20 (Attachment IB.4).

Dated 10/30/20, Appellant filed "Motion for a Continuance to Postpone a 11/24/2020 Scheduled Hearing to Allow Discovery" (Attachment IB.5). Attached to this Motion were three exhibits (Exhibits MC.1 – MC.3). These exhibits were titled: "Plaintiff's Requests for Admissions from [... Defendants ...]".

Dated 11/05/20, Appellant filed "Request for Production of Documents from Defendant State Farm Fire and Casualty Company" (Attachment IB.6). SF is used to denote State Farm.

Two other MOP's were filed. Dated 11/16/20, Appellant filed "Memorandum in Opposition to Defendant's Board of Directors ... Motion to Dismiss Plaintiff's Complaint" (MOP2, Attachment IB.7). Dated 11/19/20, Appellant filed "Memorandum in Opposition to State Farm Fire and Casualty Company's Notice of Motion and Motion to Dismiss" (MOP3, Attachment IB.8).

Dated 12/17/20, Appellant filed a "Memorandum in Opposition to Defendants' Proposed Order" (MOPO, Attachment IB.9). After MOPO was effectively disregarded, then as dated 12/28/20, Appellant filed "Notice of Civil Appeal" (NOA, Attachment IB.10).

OVERVIEW

MAR presented very little content. Instead, MAR elected to refer to "Order Granting Defendants' Motion to Dismiss" (OGD) dated 12/28/20, which was attached to MAR as an exhibit. Appellant filed extensive objections to content found in OGD in his MOPO.

Complaint (06/20/20) presented fifty-one (51) facts, with references to statutory law and other law. Most facts presented evidence contained in exhibits. Most facts presented genuine-contentious issues. Not a single Defense counsel (Counsel) disputed any specific-single fact.

Therefore, the set of facts is more than sufficient to constitute a cause of action (COA). As verified by MAR: several COA, many never litigated before, were brought before the Court in C1384.

STATEMENT OF ISSUES ON APPEAL

- A) The Judge erred by concluding that collateral estoppel applied to C1384 to dismiss the case in its entirety, which is an Error of Law. Errors of Fact led to Errors of Law.**
 - A1. Collateral Estoppel - Overview; Errors of Fact
 - A2. Collateral Estoppel - as to Defendant: MTB; Errors of Law
 - A3. Collateral Estoppel - as to Defendant: Board; Errors of Law
- B) The Judge erred by totally dismissing all Causes of Action, which is an Error of Law.**
- C) The Judge erred by accepting that Appellant was not a party to a WHOA insurance contract, which is an Error of Fact that led to Error of Law.**
 - C1. The State Farm policy covers WHOA
 - C2. Appellant is a policyholder of the WHOA-insurance contract
 - C3. Specific exclusions prohibit SF from providing coverage
 - C4. Specific exclusions prohibit SF from providing coverage
 - C5. Appellant could be considered as a "third-party"
 - C6. Appellant as the "Claimant"
 - C7. MOP3 cited dismissal as Error of Law
- D) The Judge erred by apparently ignoring CPS and all its exhibits, which is an Error of Law.**
- E) The Judge erred by stating that C1384 was brought as a derivative suit on behalf of WHOA, which is an Error of Fact. Appellant is not prohibited from bringing a derivative suit. Such thinking is an Error of Law.**
 - E1. C1384 was not brought as a derivative suit on behalf of WHOA
 - E2. *Res Judicata* annuls a claim of "... prohibited from bringing a derivative suit ..."
- F) The Judge erred by ignoring Appellant's request for the Court to dismiss in part, which represents abuse of judicial discretion.**
- G) The Judge erred by usurping matters that must be determined by a jury, which represents abuse of judicial discretion. Premature dismissal denied Appellant's right to request a jury trial.**

- H) The Judge erred by not addressing nor hearing pending Motions, dismissing prematurely without issuing Orders to dispose of pending Motions. Such is an Error of Law and also represents abuse of judicial discretion.
- I) The Judge erred by granting premature dismissal that precluded requested discovery and ADR, which is an Error of Law and also represents abuse of judicial discretion.
- J) The Judge erred by denying Appellant a right to bring a "... preponderance of evidence ...", which is an Error of Law.
- K) The Judge erred by apparently accepting alleged failure by Appellant as to Conspiracy, which is an Error of Law.
- L) The Judge erred regarding aspects related to extortion, which is Error of Law
 - L1. Prosecution of one's own cause cannot be barred
 - L2. Civil penalties result from extortion
 - L3. The Court labeled CPS (extortion) as a civil action
 - L4. Jurisdiction for criminal cases
- M) The Judge erred by not accepting nor acting upon Appellant's MOPO, which is an Error of Law and also represents abuse of judicial discretion.
 - M1. Appellant filed objections to a Proposed Order
 - M2. An official Transcript exists

STATEMENT OF THE CASE

NOA (12/28/20, Attachment IB.10) appealed the OGD (12/28/20, Attached to MAR) that dismissed C1384 with prejudice. NOA was timely filed as dated with the same date of OGD. (Because OGD content effectively ignored Appellant's MOP1 (Attachment IB.2), MOP2 (Attachment IB.7), and MOP3 (Attachment IB.8), Appellant did not file a previously prepared "Motion to Reconsider". Filing a request to "Reconsider" would have been pointless, based upon information and belief.)

Dismissal of C1384 in its entirety represents several Errors of Law, and also represents several Errors of Fact. C1384 Affidavits and exhibits completely supported CPS (Attachment

IB.1) and its FAC addendum (Attachment IB.3), and cited both law and case precedents that substantiated meritorious issues of fact brought before the Court. CPS and FAC cited two newly-named parties: MTB and State Farm (SF), who were **not** involved as Defendants in any of Appellant's prior suits. CPS together with its FAC stated fifteen (15) COA. C1384 referred to Statutes from the SC Code of Laws, and presented evidence that showed how Defendants violated statutory law.

CPS and its FAC addendum asked for relief based upon:

- a) twelve counts brought against the Board – many of which were newly brought, never coming before any Court at any previous time (CPS: A1 – A6 and C1 – C6);
- b) four counts brought against MTB – all newly brought, never coming before any Court at any previous time (CPS: B1, B2, D1, D2);
- c) three counts brought against SF -- all newly brought, never coming before any Court at any previous time (FAC: G, H1, H2);
- d) two general counts for award and other relief (FAC: E, and CPS: F).

The Judge ignored most of such COA and counts requesting relief. For the most part, issues presented in C1384 are genuine issues of material fact. All this evidence fully denounces erroneous content found in OGD:

... alleged in the complaint and the inferences reasonably deduced therefrom do not entitle the plaintiff to relief on any theory of the case.

Black-letter precedents as enunciated by Appellate Courts of South Carolina, relative to claims for Collateral Estoppel (COE), make clear dismissal grounds did not apply to C1384. No evidence nor facts documented pertinence of this doctrine as related to the entirety of C1384.

STANDARD OF REVIEW

This appeal is from granting of dismissal for C1384. Issues arising under this appeal are both questions of law and of fact. One issue is the proper judicial standard to use for interpretation of "... state facts sufficient ..." set forth in Rule 12(b)(6), and is thus a question of law. As such, the standard would be a *de novo* review by this Court.

The Judge did not apply case-precedent directives from the SC Supreme Court, nor from the SC Court of Appeals. Dismissal cannot be granted unless there is "... failure to state facts sufficient ...". Each of three "Memorandum in Opposition ... Dismiss" (MOP1, MOP2, and MOP3) contained a section titled "Standard of Review". Filed with the Court were many evidential exhibits that supported many facts stated in CPS, FAC, MOPs, MOPO, and other pleadings:

- a) forty-six (46) exhibits for CPS (Attachment IB.1);
- b) ten (10) exhibits for MOP1 (Attachment IB.2);
- c) twenty (20) exhibits for FAC (Attachment IB.3);
- d) three (3) exhibits for "Motion for a Continuance to Postpone a 11/24/2020 Scheduled Hearing to Allow Discovery" (Attachment IB.5);
- e) three (3) exhibits for "Request for Production of Documents from Defendant State Farm Fire and Casualty Company" (Attachment IB.6);
- f) eleven (11) exhibits for MOP2 (Attachment IB.7);
- g) one (1) exhibit for MOP3 (Attachment IB.8);
- h) seven (7) exhibits for MOPO (Attachment IB.9);

Evidence contained in these exhibits that supports facts annuls every "... insufficient facts ..."
claim. With such facts and evidence, granting of dismissal was wrongful. The Court:

"must review the evidence and all inferences in the light most favorable to the unmoving party." (*W.R. Livingston v. Noland Corporation, et al*, 9293 S.C. 521, 362 S.E.2d 16 (SC Sup. Ct. 1987).

"... the trial court must consider the evidence and all reasonable inferences that can be drawn therefrom in the light most favorable to the party opposing the Motion and to grant the Motion if there is no evidence to support an alleged cause of action." *Carver v. Medical Society*, 286 SC 347 (1985).

A standard of review by appellate courts for issues of law is that:

"[a]n appellate court may decide questions of law with no particular deference to the trial court." (*Dreher v. Dreher*, 370 S.C. 75, 79, 634 S.E.2d 646, 648 (2006).

A Federal Standard states that cases should be given:

"liberal rather than a restrictive interpretation" ... (See, *Eisen v. Carlisle & Jacquelin*, 391, F.2d 555, 563 (2d Cir. 1968).

To justify dismissal, no sufficient facts can exist pursuant to Rule 12(b)(6), SCRCF

(excerpted, emphasis added):

**RULE 12 DEFENSES AND OBJECTIONS - WHEN AND HOW
PRESENTED - BY PLEADING OR MOTION -
MOTION FOR JUDGMENT ON PLEADINGS**

(b) How Presented. Every defense, in law or fact, to a cause of action ... shall be asserted in the responsive pleading ...

(6) failure to state facts sufficient to constitute a cause of action, ...

Even a couple of facts supply "... facts sufficient to constitute a cause of action ...". Facts stated in Appellant's pleadings have not been contested, nor disputed and claimed to be "non-facts", nor claimed to be unsupported facts. Without contrary claims against facts as presented to the Court, then as OGD stated (emphasis added): "... the court must base its decision solely upon the **allegations set forth on the face of the complaint ...**". Based upon the

face of CPS and FAC, it was an Error of Law to conclude that dismissal of the entirety of C1384 was valid under Rule 12(b)(6). Content from Appellant's MOP1, MOP2, and MOP3 also addressed inappropriateness of dismissal. In MOP's, several-supporting-case precedents cited rationale under which C1384 could not be dismissed in its entirety.

ARGUMENT

A) The Judge erred by concluding that collateral estoppel applied to C1384 to dismiss the case in its entirety, which is an Error of Law. Errors of Fact led to Errors of Law.

A1. Collateral Estoppel - Overview; Errors of Fact

A1a) Counsel misled the Judge to conclude in OGD that all new and separate issues fell under a "... same theory ..." claim (STC). Evidence before the Court proved otherwise. New and separate issues cannot possibly be related to a STC. New issues brought against new and different Defendants cannot possibly fall under a STC. Further, it is only those issues that a Court judged to fall under any STC that legitimately could be dismissed. It was an Error of Fact for the Judge to dismiss the entirety of C1384 under a presumption that everything fell under a STC.

Other than being stated as a general, non-specific claim - without any supporting evidence - another OGD claim (emphasis added):

"... These are the same exact claims that plaintiff has brought before the Magistrate's Court in this lawsuit in an attempt to re-litigate the issues that have already been decided in previous actions. ..."

was shown and proven by evidence to be false. Further, it is only those claims that a Court judged to be "... same exact claims ..." that legitimately could be dismissed. It was an Error of Fact for the Judge to dismiss the entirety of C1384 under a presumption that everything was

exactly the same. Factually, the OGD admits "... almost identical ...", and thus concurs that facts were **not** exactly the same (emphasis added):

In Case 2019-CP-23-01501 Plaintiff laid out **almost identical** facts to allege ...

A1b) A joint "Motion to Dismiss the Plaintiff's Complaint" was not filed by Defendants, which is an Error of Fact in MAR. Each of three Defendants filed their own motion. On 08/24/20, MTB filed their "Defendant McCabe Trotter & Beverly, PC's Motion to Dismiss", which alleged a bar based upon COE. On 10/02/20, the Board filed their: "Defendants' Board ... Motion to Dismiss Plaintiff's Complaint?", which also alleged a bar based upon COE. On 10/20/20, SF filed their: "State Farm Fire and Casualty Company's Notice of Motion and Motion to Dismiss". SF's motion made no mention of COE. Thus, dismissal of C1384 in its entirety was an Error of Law, since SF cannot be dismissed due to COE. MAR showed (emphasis added):

... Defendants listed above filed a **joint Motion to Dismiss** the Plaintiff's Complaint on several grounds, including for **collateral estoppel** ...

A2. Collateral Estoppel - as to Defendant: MTB; Errors of Law

A2a) Collateral estoppel requires a party to be involved in a prior action

In MOP1 (Attachment IB.2), Appellant argued, as supported by paragraphs 8 -- 10:

A) Plaintiff's Claims Related to Invoicing and Payment of Legal Fees to MTB are NOT Barred by Collateral Estoppel

and:

B) The Purported Defense of Collateral Estoppel is without Merit

... **Only a party to a prior action or one in privity with the party can be precluded from relitigating an issue on the basis of offensive collateral estoppel.** *Carrigg*, 347 S.C. at 80, 552 S.E.2d at 770.

Thus, the defense must fail, and cannot be considered as a legitimate reason leading to dismissal.

A2b) Collateral estoppel can only be applied after a final judgment on case merits

A judgment must exist, based upon merits of a case, in order to apply COE. A Court-of-

Appeals case: *Carrigg*, confirms:

Under the doctrine of **collateral estoppel**, once a **final judgment on the merits** has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim. ...

Carrigg v. Cannon, 552 S.E.2d 767, 347 S.C. 75 (2001)

A2c) Collateral Estoppel requires that an issue was actually litigated and directly determined in the prior action

Appellant's claim of conspiracy by MTB was never an issue, nor was any conspiracy claim actually litigated, nor determined in any prior litigation:

"In order, however, to assert collateral estoppel successfully, the party seeking issue preclusion still must show that the **issue was actually litigated and directly determined in the prior action** ..." (quoting *Beall v. Doe*, 281 S.C. 363, 315 S.E. 2d 186 (Ct. App. 1984).

A3. Collateral Estoppel - as to Defendant: Board; Errors of Law

In MOP2 (Attachment IB.7), an entire section "B" was supported by paragraphs 17 – 22, where case precedent as in A2b and A2c also apply, all of which showed that COE cannot be applied to C1384 without incurring Error of Law:

B) Plaintiff's Claims Related to the Board's Payment of Legal Fees to MTB are NOT Barred by Collateral Estoppel, Which is a Claim Having No Merit

B) The Judge erred by totally dismissing all Causes of Action, which is an Error of Law.

Appellant's Complaint (06/10/20) raised ten (10) COA in paragraphs 88 – 96. Litigation did not occur in any previous suit upon all COA from the original Complaint. C1384 brought five (5) more, new COA against SF in paragraphs 25 – 29 , that similarly were never brought before. It is only those COA that the Court may deem were "the same", or similar enough to claims brought in previous suits, that could possibly be subject to dismissal. All COA could not possibly be subject to dismissal.

MAR correctly showed "... filed ... several causes of action, ..." (emphasis added):

The above case came before this Court as a pretrial motion hearing on November 24 2020. Appellant filed a suit against all Respondents raising **several causes of action, ...**

C) The Judge erred by accepting that Appellant was not a party to a WHOA insurance contract, which is an Error of Fact that led to Error of Law.

C1. The State Farm policy covers WHOA

OGD admits correctly that: "... The State Farm policy at issue was issued to WHOA. ...". Appellant is a Member of WHOA. Members comprise the Association. WHOA is not comprised of any other entities. So, Appellant as a Member along with other Members that comprise WHOA are parties to whom the insurance contract (ICO) was issued. Appellant plus other Members pay to maintain the ICO in force; we are policyholders. To claim that policyholders are not parties to the ICO is tacitly ridiculous, and utterly absurd. For the Judge to dismiss claims against SF by Appellant, who is a party to the ICO, based upon presumption that Appellant was not a party, was an Error of Fact that led to this Error of Law.

OGD erroneously stated:

V. Plaintiff is not a party to the State Farm Insurance Policy

In this matter, Plaintiff has asserted a breach of *contract* claim against State Farm, disputing whether the claims he has asserted against WHOA are covered by the terms and conditions of the State Farm policy. The State Farm policy at issue was issued to WHOA. The plaintiff is not a party to the insurance contract. ...

C2. Appellant is a policyholder of the WHOA-insurance contract

The fact that Appellant is a policyholder, and pays to maintain the WHOA ICO in force, conveys to Appellant every right and standing to require that SF abide by contractual provisions found in the ICO;

C3. Specific exclusions prohibit SF from providing coverage

The ICO specifically excludes SF from providing coverage to WHOA Board under “g. Personal Profit Or Advantage”. The Board is gaining a personal profit and advantage by SF paying a law firm to provide the Board with “free” legal counsel. Further, Appellant is one of “... members of the organization ...”, and such personal profit and advantage is not being “... shared equitably by the members of the organization.”. The ICO, “Section II – Exclusions”, shows (emphasis added):

g. Personal Profit Or Advantage

Damages arising out of any transaction of the insured from which the insured will gain any personal profit or advantage, which is not shared equitably by the members of the organization.

C4. Specific exclusions prohibit SF from providing coverage

The ICO specifically excludes SF from providing coverage to WHOA Board under “1. Non-monetary Relief”. The Board incurred costs to assuage their egos, based upon information and belief. These costs are excluded from coverage because they are

"Non-Monetary Relief". Given that Appellant's FAC amended from \$1 "Nominal Damages" to a claim of **\$0 ZERO DOLLARS** against the Board, then costs incurred were for "... other non-monetary relief ...". They are specifically excluded. Further, there is no Court order forcing the Board to "... comply with an agreement to provide such relief." . The ICO, "Section II – Exclusions", shows (emphasis added):

i. Non-Monetary Relief
Any costs incurred to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief.

C5. Appellant could be considered as a "third-party"

Possibly, this Court might consider Appellant as a "third-party" (THP) to ICO. Statutes confirm that THP beneficiaries have standing under the ICO; see SC Code of Laws Section 36-2-210 and -301, and Section 38-55-170, as found in MOP3 (Attachment IB,8). Case precedents cited in MOP3 confirm rights of THP to the ICO: "... can be enforced by such third party."); *Jennings v. First of Ga. Underwriters Co.* ...

C6. Appellant as the "Claimant"

Appellant would have shown that he is stated as the "Claimant" in his claim against SF, but SF withheld requested statements of filed claims from Appellant. Discovery to obtain such information was thwarted by premature dismissal of C1384. Appellant thus cannot produce such evidence for the Court. MOP3 cited *Dawkins v. Fields* and *Evening Post Publ'g Co. v. Berkeley County Sch. Dist.*, among others, relative to wrongful denial of discovery.

C7. MOP3 cited dismissal as Error of Law

In MOP3 and its Exhibit D, Appellant cited substantial rationale and gave argument showing why dismissal of SF would constitute additional Error of Law.

D) The Judge erred by apparently ignoring CPS and all its exhibits, which is an Error of Law.

As shown herein on page 1, FAC (Attachment IB.3) was merely an addendum to CPS (Attachment IB.1). Dismissal cannot be based solely upon FAC. Not addressing all claims found in CPS, as supported by all its exhibits, is an oversight that represents Error of Law. OGD concluded:

... HEREBY ORDERED that the plaintiff's amended complaint be dismissed in its entirety with prejudice.

E) The Judge erred by stating that C1384 was brought as a derivative suit on behalf of WHOA, which is an Error of Fact. Appellant is not prohibited from bringing a derivative suit. Such thinking is an Error of Law.

E1. C1384 was not brought as a derivative suit on behalf of WHOA

C1384 was brought by and for the benefit of, as stated in the case caption: "Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc.". This is an individual claim not subject to any "derivative" concerns. In addition, plainly separate and distinct, as stated following an "... and ...", C1384 was brought "... and on behalf of other-similarly-situated Members of Woodington Homeowners' Association, Inc. ...". An exhibit cited six-other-similarly-situated Members. A group of seven Members (11%) does not comprise "WHOA" which has sixty-six-(66)-voting units.

This Error of Fact was applied as part of the conclusion to dismiss – an Error of Law, based upon information and belief.

E2. *Res Judicata* annuls a claim of "... prohibited from bringing a derivative suit ..."

A claim of "... prohibited from bringing a derivative suit ..." under Rule 23, SCRCp, was previously ruled upon by this Circuit Court, who dismissed such claim. Therefore, a previously-

ruled judgment against the Board cannot be tried again, due to the Doctrine of *Res Judicata*. From a previous case 2017-CP-23-06301 (C6301), whose caption similarly showed:

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

in a "Motion to Dismiss by Defendants [Board] ... and Alternatively to Strike ..."

(Attachment IB.11), the Board stated (emphasis added):

1. Rule 12(b)(6), SCRCF. Plaintiff's Complaint fails to state a claim and fails to state facts sufficient to constitute a cause of action against these Defendants. The grounds include, but are not limited to the following:
 - b. Plaintiff has failed to meet the requirements of Rule 23, SCRCF, and therefore **lacks standing to bring a derivative suit**. The grounds specifically include, but are not limited to ... that Plaintiff does not represent the interests of the members of the Woodington Homeowners' Association, Inc. or the community. Therefore, Plaintiff's **claims must be dismissed**.

On 01/23/18, this Court issued an "Order Denying Motion to Dismiss, and in the Alternative Motion to Strike ..." (Attachment IB.12), which showed in pertinent part (emphasis added):

... I find in favor of Plaintiff, **denying Board Defendants' Motion in all respects**.

THEREFORE, IT IS ORDERED, that Board Defendants' Motion to Dismiss, and, in the alternative, to Strike or for a More Definite Statement is DENIED. ...

As related to "derivative", the conclusion to dismiss was applied with Error of Fact as well as Error of Law, based upon information and belief.

MAR erroneously showed (emphasis added):

... several causes of action, including ... a derivative suit on behalf of the Woodington Homeowner's Association, among others. ... Appellant is prohibited from bringing a derivative suit. ...

- F) The Judge erred by ignoring Appellant's request for the Court to dismiss in part, which represents abuse of judicial discretion.**

In MOP2 and in MOP3, Appellant requested that in the event the Court decided to dismiss, then dismissal in part should be considered. However, rather than properly addressing a subset of C1384 claims, the Judge erred with abuse of judicial discretion by dismissing C1384 in its entirety. Excerpts from MOP2 and MOP3 show:

... MTD [Motion to Dismiss] must be considered as a "Motion for Dismissal in Part". Where there are multiple causes of action, as here, as the Court is well aware, a motion for dismissal should not be viewed as an "all or nothing" disposition. The Court perhaps may decide to dismiss one claim, but not to dismiss the entirety of Plaintiff's case against [Defendant] in the execution of, and in the serving of, the interests of justice. ...

- G) The Judge erred by usurping matters that must be determined by a jury, which represents abuse of judicial discretion. Premature dismissal denied Appellant's right to request a jury trial.**

C1384 cited evidence, facts, and questions of law, all of which represent instances where "... reasonable minds might differ ...". When this is true, questions must come before a jury. For the Judge to deny Appellant a right to a jury trial is an abuse of judicial discretion.

... If the question is one **on which reasonable minds might differ**, then it is for the **jury to determine** which of the two permissible views they will take. ...
[from *Holtzscheiter v. Thomson Newspapers, Inc.*, 506 S.E.2d 497, 332 S.C. 502, 507, September 22, 1998]

- H) The Judge erred by not addressing nor hearing pending Motions, dismissing prematurely without issuing Orders to dispose of pending Motions. Such is an Error of Law and also represents abuse of judicial discretion.**

As proven by Attachment IB.4: "Request for Written Orders with Service to Plaintiff", Orders were not issued. A particularly important: "Motion to Reconsider an Order Denying

Plaintiffs' Motion for ADR; or Alternately, Renewal of Motion for ADR" (Attachment IB.14) was never disposed before premature dismissal.

- I) **The Judge erred by granting premature dismissal that precluded requested discovery and ADR, which is an Error of Law and also represents abuse of judicial discretion.**

As proven by Attachment IB.5: "Motion for a Continuance to Postpone a 11/24/2020 Scheduled Hearing to Allow Discovery" (Attachment IB.5), the Judge denied Appellant's right to discovery by granting premature dismissal of C1384. As proven by Attachment IB.6: "Request for Production of Documents from Defendant State Farm Fire and Casualty Company", discovery for RFP was also denied, which is an Error of Law and abuse of judicial discretion.

- J) **The Judge erred by denying Appellant a right to bring a "... preponderance of evidence ...", which is an Error of Law.**

MOP1 stated "... moot and academic as to ... False Light ...", and showed (emphasis added):

1. Complaint contained factual evidence demonstrating misconduct by MTB related to casting Plaintiff in a false light before Woodington Homeowners' Association, Inc. (WHOA) members ... Plaintiff knows of no law, Court rule, nor any precedent which precludes presentation of evidence to form a "preponderance of evidence" for his case. It is therefore moot and academic as to whether or not a "False Light" cause of action exists, because South Carolina (SC) courts have viewed other cases either as claims for defamation or as claims related to breach of privacy.

MAR showed (emphasis added):

... causes of action, including casting the Plaintiff in a false light, ...

- K) **The Judge erred by apparently accepting alleged failure by Appellant as to Conspiracy, which is an Error of Law.**

OGD claimed that Appellant failed to show "... special damages ..." (SPD) as required for a claim of conspiracy. SPD were cited in Appellant's MOP1 (excerpted):

B) Plaintiff's Complaint Alleges Special Damages with Specificity

16. Specific damages suffered as a result of an alleged conspiracy were contained in SUC:

98. Evidence presented ...

18. Plaintiff specifically stated damages to comply with Rule 9(g), SCRPC:

RULE 9 PLEADING SPECIAL MATTERS ...

C) Complaint States Facts Sufficient to State a Claim for Conspiracy

19. Several facts sufficient to show a claim for conspiracy are contained in Complaint; see paragraphs: 48, 54, 79 – 84.

L) The Judge erred regarding aspects related to extortion, which is Error of Law

MOP1 argued various claims related to “extortion”. An entire Section:

D) SC Code of Laws Recognizes an Action by a Citizen / Extortion

with paragraphs 20 – 23 cited SC Code of Law to prove Error of Law:

L1. Prosecution of one's own cause cannot be barred

“... a citizen cannot be barred from prosecution of his own cause: Section 40-5-80 ...” (as found in paragraph 20);

L2. Civil penalties result from extortion

“... extortion ... Section 40-11-110. ... civil penalties; ...” (par. 21);

L3. The Court labeled CPS (extortion) as a civil action

“... it was the judgment of the Court to label Complaint as a civil action, rather than as a criminal action ...” (par. 22);

L4. Jurisdiction for criminal cases

“Magistrates have jurisdiction in criminal cases:

SECTION 22-3-520. Jurisdiction limited to county.

Magistrates shall have and exercise within their respective counties all the powers, authority and jurisdiction in criminal cases herein set forth.

SECTION 22-3-550. Jurisdiction ...” (par. 23).

MAR showed (emphasis added):

... several causes of action, including ... extortion ...

M) The Judge erred by not accepting nor acting upon Appellant's MOPO, which is an Error of Law and also represents abuse of judicial discretion.

M1. Appellant filed objections to a Proposed Order

MOPO (Attachment 1B.9) is a document of eleven (11) pages that cited extensive objections and corrections to a Proposed Order as drafted by Counsel. The Judge ignored Rule 12(b)(6), which is thus an Error of Law. MOPO concluded that dismissal could not be granted:

... until after undisputed facts that are supported by evidence are clearly understood, and content that was cited under Rule 12(f), SCRCF is stricken, or revised.

M2. An official Transcript exists

MAR seems to forget creation of an official Transcript (Exhibit 1B.13) by a certified-Court Reporter. The existing Transcript makes a "flash drive" irrelevant. Various parts of Transcript as stated by Appellant affirm this Brief's content.

MAR showed (emphasis added):

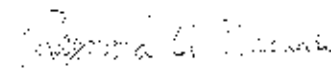
... The Court asked Respondents to provide a proposed Order and Appellant was afforded the opportunity to review and make **objections and corrections**. ... A **flash** drive containing the record in this case is attached.

CONCLUSION

Accordingly, based upon issues raised and upon pleadings, including all exhibits, with proper reference to Court rules, and in the overriding interests of justice stemming from arguments herein, this Brief has shown the Judge erred in Errors of Fact, and as well erred in Errors of Law. The Judge also erred by abusing judicial discretion. The Court can fully appreciate several genuine issues of fact exist, and dismissal should not have been granted in the face of such issues remaining unresolved. Facts pertaining to C1384 were clear – newly-brought issues cannot be dismissed due to COE, thus rendering improper the lower court's decision. The merits of C1384, as supported by factual evidence, substantially outweighed all claims to dismiss.

Sufficient evidence and rationale have been provided to warrant reversal, vacating of the OGD, and to remand with instruction to fully adjudicate Appellant's-newly-brought claims and theories for relief, as well as other questions of both fact and law. It would go against the policy of this Court if errors of law remain standing, and if legalistic-technical arguments were to prevail where, as here, justice requires that C1384 should proceed on the merits.

Dated this 2nd day of March, 2021.



Raymond A. Wedlake, Appellant (*Pro Se*)
703 Creekview Drive
Greenville, SC 29607
864-2654-9262 wedlakera@mail.com

FIGURE BOA.6 - Notice of Appeal 2021-000511

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

May 17 2021

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

Letitia H. Verdin, Circuit Court Judge

RECEIVED

Aug 09 2021

Appellate Case No. 2021-_____
Case No. 2020-CP-23-05996
Case No. 2020-CV-23-10201384

SC Court of Appeals

Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc.,
and on behalf of other-similarly-situated Members of Woodington Homeowners'
Association, Inc., Appellant

v.

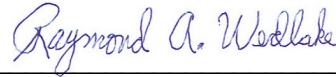
Board of Directors of Woodington Homeowners' Association, Inc., comprised of Mona Craig,
Edward Decker, and Sandra LaCroix at the time of filing; and, McCabe, Trotter & Beverly,
P.C.; and, State Farm Fire and Casualty Company, Respondents

NOTICE OF APPEAL

Pursuant to Rule 203, SCACR, Raymond A. Wedlake appeals the Order (Form 4,
Exhibit NOA.1) of the Honorable Letitia H. Verdin, electronically signed on May 8, 2021.
Appellant received written notice of entry of this Order on May 12, 2021. This Order affirmed
dismissal of Appellant's entire case by a Magistrate's-Court Order of December 28, 2020

(Exhibit NOA.2). Appellant attaches Proof of Service to involved parties. A filing fee of \$150 is remitted by Priority Mail.

May 17, 2021



Raymond A. Wedlake,
703 Creekview Drive,
wedlakera@mail.com

Appellant (*Pro Se*)
Greenville, SC 29607
864-254-9262

Other Counsels of Record:

James Walsh, Esq.
Clarkson, Walsh & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29606
jwalsh@clarksonwalsh.com
Attorney for Board Respondent
864-232-4400

Stephanie Kellahan, Esq.
McCabe, Trotter & Beverly, P.C.
PO Box 212069
Columbia, SC 29221
stephanie.kellahan@mccabetrotter.com
Attorney for McCabe Trotter Respondent
803-724-5000

Nicholas A. Farr, Esq.
Gallivan White & Boyd, P.A.
PO Box 10589
Greenville, SC 29603
nfarr@gwblawfirm.com
Attorney for State Farm Respondent
864-271-9580

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2021-_____
Case No. 2020-CP-23-05996
Case No. 2020-CV-23-10201384

RECEIVED

May 17 2021

SC Court of Appeals

RECEIVED

Aug 09 2021

SC Court of Appeals

Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc.,
and on behalf of other-similarly-situated Members of Woodington Homeowners'
Association, Inc., Appellant

v.

Board of Directors of Woodington Homeowners' Association, Inc., comprised of Mona Craigo,
Edward Decker, and Sandra LaCroix at the time of filing; and, McCabe, Trotter & Beverly,
P.C.; and, State Farm Fire and Casualty Company, Respondents

CERTIFICATE OF SERVICE

It is hereby certified that copies of "Notice of Appeal", along with Exhibit NOA.1 and
Exhibit NOA.2, were served upon three Counsels via electronic mail as follows:

James Walsh, Esq.
Clarkson, Walsh & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29606
jwalsh@clarksonwalsh.com
Attorney for Board Respondent

Stephanie Kellahan, Esq.
McCabe, Trotter & Beverly, P.C.
PO Box 212069
Columbia, SC 29221
stephanie.kellahan@mccabetrotter.com
Attorney for McCabe Trotter Respondent

Nicholas A. Farr, Esq.
Gallivan White & Boyd, P.A.
PO Box 10589
Greenville, SC 29603
nfarr@gwblawfirm.com
Attorney for State Farm Respondent

and also upon the Clerk of Circuit Court:

Clerk of Court
Greenville County Courthouse
305 E North Street
Greenville, SC 29601

via US Priority Mail, Tracking Number: 9405 5036 9930 0386 0482 75

on May 17, 2021.



Raymond A. Wedlake, Appellant (*Pro Se*)
703 Creekview Drive, Greenville, SC 29607
(864) 254-9262 wedlakera@mail.com

FIGURE BOA.7 - Notice of Transcript Receipt on July 9, 2021

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2021-000511
Case No. 2020-CP-23-05996
Case No. 2020-CV-23-10201384

RECEIVED

Aug 09 2021

SC Court of Appeals

Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc.,
and on behalf of all other similarly situated Members of Woodington Homeowners'
Association, Inc.,

Appellant

v.

Board of Directors of Woodington Homeowners' Association, Inc., comprised of Mona Craig,
Edward Decker, and Sandra LaCroix; McCabe, Trotter & Beverly, P.C.; and, State Farm Fire and
Casualty Company,

Respondents

NOTICE OF TRANSCRIPT RECEIPT ON JULY 9, 2021

COMES NOW Appellant Raymond A. Wedlake (Pro Se) , and gives notice the

“Transcript of Record” (Transcript) for 2020-CP-23-05996 was received via US Posted Mail

on July 9, 2021 (see Exhibit NTR.1). Pursuant to Rule 208(a)(1) (excerpted, emphasis added):

RULE 208 INITIAL BRIEFS

(a) Time for Serving and Filing Initial Briefs.

(1) **Brief of Appellant. Within thirty (30) days after receiving the transcript** or, if no transcript is ordered, within thirty (30) days after serving the notice of appeal, appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service.

Appellant plans to file his-initial brief before August 8, 2021. This date marks thirty (30) days after receiving the Transcript.

Dated this 10th day of July, 2021

Raymond A. Wedlake

Raymond A. Wedlake,
703 Creekview Drive,
wedlakera@mail.com

Appellant (*Pro Se*)
Greenville, SC 29607
864-254-9262

**WOODINGTON HOMEOWNERS ASSOCIATION, INC.
1754 WOODRUFF RD, #209
GREENVILLE, SC 29607**

March 13, 2020

RECEIVED

Aug 09 2021

SC Court of Appeals

Dear Homeowner:

The annual Woodington Homeowners Association dues for 2020 will remain at \$250 and are due to be paid by April 15, 2020. This \$250 includes the \$50 approved assessment for the legal bills due to the McCabe law firm. Please submit your payments to:

**Woodington Homeowners Association
1754 Woodruff Rd, #209
Greenville, SC 29607**

If you have a past due balance, that amount appears separately on the invoice.

Sincerely,

**Woodington Homeowners Association, Inc.
woodingtonhoa@gmail.com**

As always, we very much appreciate your support...

WOODINGTON HOMEOWNERS ASSOCIATION, INC.
1754 WOODRUFF RD, #209
GREENVILLE, SC 29607
WOODINGTONHOA@GMAIL.COM

2020 ANNUAL HOMEOWNERS DUES

DUE BY APRIL 15, 2020

INVOICE TO:

WHOA MEMBER Raymond & Nancy Wedlake
703 Creekview DR

Greenville, SC 29607

Billing Details:

2020 Woodington HOA Dues **\$250**

Past Due Amounts

2019

\$150
\$

TOTAL NOW DUE:

\$400.⁰⁰

Please send payment to:

Woodington Homeowners Association, Inc
1754 Woodruff Rd, #209
Greenville, SC 29607

Please contact Mona Craig, 2020 Woodington HOA President, at
woodingtonhoa@gmail.com

EXHIBIT 12 - "Board of Directors" as a Legitimate Party to a Judicial Action is a Proven Fact

BROWN v. BOARD OF DIRECTORS OF ROSE TREE MEDIA SCHOOL DISTRICT
(December 30, 2019) , United States District Court, E.D. Pennsylvania. Civil Action No. 19-836.

JOHNSON v. BOARD OF DIRECTORS OF FOREST LAKES MASTER ASSOCIATION
(December 27, 2019) , Court of Appeals of Kansas. No. 120,145.

MATTER OF PETTUS v. BOARD OF DIRECTORS (December 17, 2019)
Court of Appeals of New York. App. Div. No. M-883, Motion No. 2019-628.

BARNARD v. TIAA BOARD OF DIRECTORS (December 13, 2019)
United States District Court, S.D. New York. No. 19-CV-1074 (RA).

BOARD OF DIRECTORS OF THE MOTION PICTURE INDUSTRY PENSION PLAN
v. TRIO ENTERTAINMENT SERVICES GROUP, LLC (December 12, 2019)
United States District Court, C.D. California, Western Division. Case No. 2:19-cv-05494-JFW-Ex.

HNY CLUB SUITES OWNERS ASSN. INC. EX REL. BOARD OF DIRECTORS
v. VASSOS (December 9, 2019)
Supreme Court, New York County. Docket No. 850086/2019, Motion Seq. No. 001.

BOARD OF DIRECTORS OF THE MOTION PICTURE INDUSTRY PENSION PLAN
v. MICHAEL GLATZE, LLC (October 31, 2019)
United States District Court, C.D. California. Case No. CV 19-5881 FMO (KSx).

HNY CLUB SUITES OWNERS ASSN. INC. EX REL. BOARD OF DIRECTORS v. MPAMBANI
(October 28, 2019) ,
Supreme Court, New York County. Docket No. 850137/2018, Motion Seq.No. 001.

HNY CLUB SUITES OWNERS ASSN. INC. EX REL. BOARD OF DIRECTORS v. FERRER
(October 28, 2019) , Supreme Court, New York County. Docket No. 850084/2019,
Motion Seq. No. 001.

PETTUS v. BOARD OF DIRECTORS, OWNERS 800 GRAND CONCOURSE (September 26,
2019) , Supreme Court, Appellate Term, First Department. Motion No. 570581/19.

GUION v. BONNER HOMELESS TRANSITIONS BOARD OF DIRECTORS (September 18,
2019) , United States District Court, D. Idaho. Case No. 2:18-cv-00186-DCN.

COTTON v. MILWAUKEE AREA TECHNICAL COLLEGE DISTRICT BOARD OF
DIRECTORS (March 8, 2019) , United States Court of Appeals, Seventh Circuit. No. 18-2258.

M.P. EX REL. PETERS v. BOARD OF DIRECTORS OF RAYTOWN CONSOLIDATED SCHOOL DISTRICT NO. 2 (February 21, 2019)
United States District Court, W.D. Missouri, Western Division. No. 4:18-CV-0816-DGK.

BOARD OF DIRECTORS OF WINDSOR OWNERS CORP. v. PLATT (July 10, 2018)
Supreme Court, New York County. Docket No. 155985/2014.

SAD 3 ED. ASS'N v. RSU 3 BD OF DIRECTORS (March 1, 2018)
Supreme Judicial Court of Maine. Docket: Ken-17-75.

BOARD OF DIRECTORS OF WINDSOR OWNERS CORP. v. PLATT (February 2, 2018)
Supreme Court, New York County. Docket No. 155985/14.

RINDAHL v. AVERA MEDICAL GROUP BOARD OF DIRECTORS & ADMINISTRATORS
(November 14, 2017)
United States District Court, D. South Dakota, Southern Division. No. 4:17-CV-04104-RAL.

McCALISTER v. TENNESSEE VALLEY AUTHORITY BOARD OF DIRECTORS
(February 24, 2017) , United States District Court, N.D. Alabama, Northwestern Division.
Case No. 3:14-cv-01569-HGD.

THE BOARD OF DIRECTORS OF RUPPERT YORKVILLE TOWERS CONDOMINIUM v. HAYDEN (February 21, 2017) , Appellate Division of the Supreme Court of New York, First Department. Motion No. M-305, Index No. 153652/15.

BUSTER v. COMPENSATION COMMITTEE OF THE BOARD OF DIRECTORS OF MECHANICS BANK (June 2, 2016)
United States District Court, N.D. California. No. C 16-01146 WHA.

WELENC v. BOARD OF DIRECTORS OF POLISH AND SLAVIC FEDERAL CREDIT UNION
(March 11, 2016) , Appellate Division of the Supreme Court of New York, Second Department.
Index No. 12933/13, Motion No. 2015-10708, M107951.

DUSMAN v. BOARD OF DIRECTORS OF CHAMBERSBURG AREA SCHOOL DIST.
(March 1, 2016) , Supreme Court of Pennsylvania. Nos. 665, 666 MAL (2015).

U.S. v. BOARD OF DIRECTORS OF TRUCKEE-CARSON IRRIGATION DISTRICT
(January 25, 2016) , United States District Court, D. Nevada. No. 3:95-CV-00757-HDM.

BD. OF DIRECTORS OF ROUGH RIDERS v. SIGNATURE (December 20, 2013)
United States District Court, E.D. New York. No. CV 13-565(LDW)(ETB).

BOARD OF DIRECTORS OF CAMERON GROVE CONDOMINIUM II, ET AL.
v. STATE OF MARYLAND COMM'N ON HUMAN RIGHTS (August 20, 2012)
Court of Appeals of Maryland. Pet. Docket No. 163.

LANEY v. HOSPITAL BOARD OF DIRECTORS OF LEE COUNTY (December 14, 2010)
United States District Court, M.D. Florida, Fort Myers Division.
Case No. 2:09-cv-678-FtM-29SPC.

BOARD OF DIRECTORS OF TRUCKEE-CARSON IRRIGATION DISTRICT v. U.S.
(November 29, 2010) , Supreme Court of United States. No. 10-396.

GREEN v. BOARD OF DIRECTORS OF PARK CLIFF UNIT OWNERS ASS'N (May 25, 2006)
Court of Appeals of Georgia. No. A06A0365.

LaSALLE NAT. TRUST v. BOARD OF DIRECTORS OF 1100 LAKE SHORE DRIVE
CONDOMINIUM (March 20, 1997) , Appellate Court of Illinois, First District,
Fourth Division. No. 1-95-4064.

SHAFFER v. BOARD OF SCHOOL DIRECTORS, ETC. (December 13, 1982)
United States Court of Appeals, Third Circuit. No. 81-2880.

MILLIKAN v. BOARD OF DIRECTORS (May 22, 1978)
The Court of Appeals of Washington, Division One. No. 5097-1.

BARNES v. BD. OF DIRECTORS, MT. ANTHONY U. H. SCH. DIST. (July 8, 1976)
United States District Court, D. Vermont. Civ. A. No. 74-237.

TRUDELL v. BOARD OF DIRECTORS OF HAZELMERE SCHOOL DIST. 60 (June 21, 1972)
Supreme Court of Washington, En Banc. No. 42421.

HARE v. BOARD OF DIRECTORS, ETC. (October 15, 1957) ,
Supreme Court of Iowa. No. 49243.

Source: www.leagle.com/leaglesearch?page=....&exact=board of directors

Due by Friday, November 9th

EXHIBIT 13

BALLOT #1 [Majority Vote Needed to Pass (34 of 66)]

The Association shall indemnify the 2017 Board Members (Ben Acord, William Craigo, Denis Esteve, and Brian James), the named Defendants in *Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc. (Plaintiff) vs. Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of Woodington Homeowners' Association, Inc. (Defendants)*, as well as any former Board members, current Board members, or future Board members named as Defendants in any such action, whether criminal, civil, administrative, or otherwise, where their presence in such lawsuit is due to their capacity as members of the Board.

☐ FOR

☐ AGAINST

SIGNATURE OF MEMBER: _____

PRINT NAME OF MEMBER: _____

PROPERTY ADDRESS: _____

DATE: _____

* Pursuant to Article XVII (3): "Ballots of Members not returned by the specified return date shall be voted by the Board. The Board's vote for non-returned ballots shall be clearly specified on ballots at the time they are delivered to Members"*

**** THE BOARD'S VOTE OF "FOR" SHALL BE CAST IN THE EVENT THIS BALLOT IS NOT RETURNED BY FRIDAY, NOVEMBER 9TH****

BALLOT #3 – [75% of Members Needed to Pass (50 of 66)]

The following Amendment the By-Laws shall be immediately adopted and incorporated into the current By-Laws:

Any Member of the Association filing a legal action, in any form, whether individually or derivatively, against the Association, its Board of Directors, or any Director(s) individually, without showing the support of at least 15% of the Members of the Association by signed petition or affidavit, shall be liable for the legal costs and fees incurred by the named Board Members, the Board, or the Association, unless the member of the Association bringing such action prevails.

☐ **FOR**

☐ **AGAINST**

SIGNATURE OF MEMBER: _____

PRINT NAME OF MEMBER: _____

PROPERTY ADDRESS: _____

DATE: _____

* Pursuant to Article XVII (3): "Ballots of Members not returned by the specified return date shall be voted by the Board. The Board's vote for non-returned ballots shall be clearly specified on ballots at the time they are delivered to Members"*

**** THE BOARD'S VOTE OF "FOR" SHALL BE CAST IN THE EVENT THIS BALLOT IS NOT RETURNED BY FRIDAY, NOVEMBER 9TH****

EXHIBIT 15

703 Creekview Drive
Greenville, SC 29607
February 7, 2019

Woodington Homeowners' Association, Inc. cc: Mr. Scott Bashor
16 Southfield Drive 105 Woodside Crossing
Greenville, SC 29607 Greenville, SC 29607

[Via Priority Mail]

cc: Grant H. Gibson, Esq.
G. Gibson & Associates, LLC
1200 Woodruff Road A-3
Greenville, SC 29607

[Courtesy e-mail to Board]

Subject: Demand for Board to CEASE AND DESIST from paying McCabe

Woodington Board:

Given there is a new member on the Board, please be reminded of a Board's fiduciary duties, which as we all agree, includes abiding by the By-Laws and assuring a Board acts in the best interests of Homeowners. In that regard, it is essential the Board refrain from unapproved disbursements of WHOA funds. Please accept this demand notice that the 2019 Board of Directors **CEASE AND DESIST** from making any future payments to McCabe, Trotter, and Beverly, P.C.(McCabe)! In addition to accepting this notice, please be informed immediate legal action is forthcoming to be sure the Board makes no more disbursements of WHOA funds to McCabe.

The Board has been fully informed by several prior letters of the ill-advised, premature, and the factually-illegal nature of payments to McCabe. **Emphasis** is placed on the **breach** of the By-Law provision - \$1,500 max ceiling for expenditures without Member approval! May I make clear recent ballots were improper? Valid legal arguments can be made that ballots do **NOT** bind anyone who abstained, or voted against, the proposals!

In October 5, 2018, letter to the Board, the Board was informed:

'... Mr. Grote needs to be informed they will **not be paid by WHOA** for any "service" to their clients **which are the 2017 Defendants**. ... **McCabe acted adversely against a best interest for WHOA** on behalf of its clients. Please inform McCabe that **they are finished** with being attorneys "of record" for my Appeal.'

Another letter to Members of October 18, 2018 made these points:

' 3) was improperly billed to WHOA by the defense attorney, since WHOA was **NOT** his client, in **VIOLATION** of his professional ethics and the South Carolina Lawyer's Oath ...

Given the appeal is still pending, shouldn't a decision on indemnification wait until after a final judgment? Indemnification only applies if the party is "successful". That's not the case at this time

since the Court has not made a final decision as to who the successful party is. What if the Court ends up deciding Defendants have not been successful, and decides against them? If the law firm has already been paid money, it will NEVER be returned to WHOA! The Board is "jumping the gun"!

The attorney representing the 2017 Board violated the "South Carolina Lawyer's Oath" by improperly billing WHOA, who was not his client ... why should any Member pay any part of a legal bill that was never approved by Members, when it was covertly run up by the 2017 Board? ...'

In a letter to Members (which included the Board) of November 2, 2018, the Board was told:

'... Board, who should be abstaining from voting as Proxy for non-returned ballots, continue to ignore "protections for Members that were built into our By-Laws"! The By-Laws do NOT ALLOW A BOARD TO SPEND more than \$1500 WITHOUT MEMBER APPROVAL, which was never obtained by the 2017 Board in running up an immense legal bill!

* a "Legal Fees" budgeted-line item was \$1300 for 2017 ...

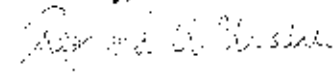
... [payment to McCabe] actions would be more than improper, they would be unlawful! ... force any Member TO PAY, against their wishes, a bill that DOES NOT BELONG TO WHOA, ...'

In a November 5, 2018 letter, the Board was further informed of these points:

'... the Board has absolutely no legal right ... to "accept" more legal expenses on behalf of Defendants that do not belong to WHOA. Thirdly, as required by the By-Laws, the Board must receive by vote at a duly held meeting (or by ballot), Member approval to spend more than \$1500 for a non-budgeted legal expense. ...'

May I ask that you consider this notice carefully? I truly hope you will confirm your willingness to cease and desist from future payments to McCabe as requested? To avoid this issue from becoming a matter for the courts, it is essential that I hear back from you before February 13, 2019. Thank you.

Sincerely,



Raymond A. Wedlake 864-254-9262

wedlakera@mail.com

EXHIBIT 16

703 Creekview Drive
Greenville, SC 29607
February 17, 2019

Woodington Homeowners' Association, Inc. cc: Mr. Scott Bashor
16 Southfield Drive 105 Woodside Crossing
Greenville, SC 29607 Greenville, SC 29607

[Courtesy e-mail to Board]

Subject: Please Comply with the Law - Indemnification Requirements

Woodington Board:

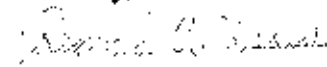
As stated in a Board message, a first-so-called "indemnification payment" of \$6600 was paid to McCabe, Trotter, and Beverly, P.C. (McCabe). This payment represents a **VIOLATION** of South Carolina law as found in the "Nonprofit Corporation Act of 1994 (NPCA)" (relevant excerpts of pertinent NPCA Sections are appended). Please recognize the Board must comply with the NPCA in order to make indemnification payments lawfully. The law was not followed, and yet a first indemnification payment was made! Please accept this notice that if the Board does **NOT COMPLY** with **the law**, legal action against the Board will be considered. Please verify the Board's intent to comply with the law **before February 24, 2019**.

As was summarized in my handout given to Members at the Annual Meeting, the Board must produce **WRITTEN AFFIRMATION** as required by NPCA. Since my Appeal against the 2017 Board is still pending, a prior indemnification payment represents paying "Advances for expenses", and thus NPCA Section 33-31-853 applies. This Section states requirements which must be met before such "advances for expenses" can be done, 853(a) [emphasis added]:

- (1) the director furnishes the corporation a **written affirmation** of his **good faith belief** that he has **met the standards of conduct ...**
- (2) the director furnishes the corporation a **written undertaking ... to repay the advance** if it is **ultimately determined** that the director **did not meet the standard of conduct ...**

Please be sure to read all applicable Sections of NPCA and plan to comply with the law before any future indemnification payments are made! If the the law is not heeded and the Board does [not] comply with the law, then the Board will not only be in violation of the NPCA, but will also have breached your fiduciary duty! Both of these violations will be addressed.

Sincerely,



Raymond A. Wedlake 864-254-9262
wedlakera@gmail.com

APPENDIX

SECTION 33#31#851. Authority to indemnify.

(a) Except as provided in subsection (d), a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if the individual:

- (1) conducted himself in good faith; and
- (2) reasonably believed:

(i) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

(ii) in all other cases, that his conduct was at least not opposed to its best interests; and

(3) in the case of a criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection (a)(2)(ii).

(c) The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director under this section:

(1) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(2) in connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in his official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

SECTION 33#31#853. Advances for expenses.

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(1) the director furnishes the corporation a written affirmation of his good faith belief that he has met the standards of conduct described in Section 33#31#851;

(2) the director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this chapter.

(b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section must be made in the manner specified in Section 33#31#855.

SECTION 33#31#855. Determination and authorization of indemnification.

(a) A corporation may not indemnify a director under Section 33#31#851 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in Section 33#31#851.

(b) The determination must be made:

(1) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) if a quorum cannot be obtained under item (1), by majority vote of a committee duly designated by the board of directors, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding;

(3) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in item (1) or (2); or

(ii) if a quorum of the board cannot be obtained under item (1) and a committee cannot be designated under item (2), selected by majority vote of the full board, in which selection directors who are parties may participate; or

(4) by the members of a mutual benefit corporation.

Directors who are at the time parties to the proceeding may not vote on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses must be made by those entitled under subsection (b)(3) to select counsel.

(d) A director of a public benefit corporation may not be indemnified until twenty days after the effective date of written notice to the Attorney General of the proposed indemnification.

EXHIBIT 17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2019-CP-23-01501
	)	
Raymond A. Wedlake, as a Member of the	)	
Woodington Homeowners' Association,	)	
Inc.	)	
	)	
	)	AFFIDAVIT OF
Plaintiff,	)	CHRISTOPHER EDWARDS
	)	
v.	)	
	)	
Scott Bashor, William CRAIGO, Christopher	)	
Edwards, Denis Esteve and Charles Koshis	)	
in their capacity as Members of the current	)	
Board of Directors of Woodington	)	
Homeowners' Association, Inc.	)	
	)	
and	)	
	)	
Doe Entities 1-10, and John & Jane Does	)	
1-10	)	
Defendants.	)	

PERSONALLY APPEARED before me Christopher Edwards who first being duly sworn deposes and states as follows:

1. I am currently a resident of Greenville County, South Carolina, and served on the Woodington Homeowners' Association Board ("Board") in the capacity of President from April of 2018 through April 15, 2019.

2. I lived in the Woodington community and was Woodington Homeowners' Association ("WHOA") member for 10 years and 8 months (August of 2008 until April of 2019). My family and I had anticipated moving out of the community in the next couple years, but we accelerated that process due to the unnecessary stress and aggravation brought about by the ongoing and continuous lawsuits filed by the plaintiff, Raymond Wedlake.

3. I am a named defendant in this case in my capacity as a former board member, and I am advised that I may have relevant, substantive testimony in this case and will most likely be called as witnesses at trial.

4. In April 2018, the Woodington Homeowners Association ("WHOA"), elected its 2018 Board, in which Charles Koshis, Denis Esteve, William Craigo, Mike Keels and myself were duly elected.

5. Plaintiff had previously sued the 2017 WHOA Board in a case titled *Raymond A. Wedlake, individually and derivatively, on behalf of all Members of The Woodington Homeowners' Association, Inc., 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., and, Association Management Group SC, Inc., C.A. No.: 2017-CP-23-06301*. It is my understanding that this suit was for a declaratory judgment as it pertained to the interpretation of the WHOA bylaws. Plaintiff also sought nominal damages and attorney's fees. The WHOA board retained the services of the law firm of McCabe, Trotter & Beverly, P.C. to represent them in that action. The WHOA Board in that action is still being represented by the law firm of McCabe, Trotter & Beverly, P.C. in the pending appeal of that action.

6. On July 13, 2018, the 2018 WHOA Board received a legal bill from McCabe, Trotter and Beverly, P.C. in the amount of \$53,684.50 for legal services rendered in the defense of plaintiff's lawsuit against the 2017 WHOA Board. This bill was subsequently reduced to \$33,000.00

7. On August 21, 2018, the Special Meeting was held, at which I was present, to update all members on events affecting the Association, including the pending lawsuits brought against the WHOA Board by the plaintiff. Mr. Wedlake was present at this meeting.

8. On October 11, 2018, the WHOA Board sent a mailing to all members of the WHOA which included a proposed referendum pertaining to the indemnification of the WHOA Board for legal fees incurred defending against plaintiff's first lawsuit, and a proposed "payment plan," which included two temporary WHOA members' dues increases of \$50.00 and a one-time assessment of \$100.00.

9. On October 30, 2018, a Special Meeting was held, at which I was present, to discuss current events, detail the ballots and their purpose, and answer any questions WHOA members has as it related to the Ballots.

10. November 9, 2018 was the due date for the ballots that were sent out October 11, 2018. Forty One (41) total ballots were returned. :

- Ballot #1 (Indemnification) – PASSED
 - 53 FOR (29 returned and 24 Board Proxies)
 - 12 Against
- Ballot #2 (Payment Plan) – PASSED
 - 56 FOR (32 returned and 24 Board Proxies)
 - 9 Against

11. On December 6, 2018, a Special Meeting was held, in which I was present, in which the ballot results were provided to all WHOA members.

12. On January 11, 2019, the WHOA Board sent a letter out to all WHOA members which detailed the ballot results and advised of the annual meeting scheduled for January 24, 2019.

13. On January 24, 2019, the Annual Meeting of the WHOA was held, at which I was present. The annual WHOA budget was presented in detail by the Treasurer, Denis Esteve. The budget included line items matching the additional funds to be collected by the approved

Payment Plan and corresponding payments of Legal Fees. The Budget was passed by verbal vote of those in attendance. It is my understanding that the plaintiff, Raymond Wedlake was the only WHOA member present who voted against the proposed budget.

14. Throughout this entire process, the WHOA Board has acted in accordance to Article 17, Section 3 of the WHOA bylaws, its Covenants and the South Carolina Non-Profit Corporation Act in obtaining approval from the majority of the WHOA members for the proposals for indemnification and a structured repayment plan of the legal fees incurred in defending against plaintiff's lawsuit.

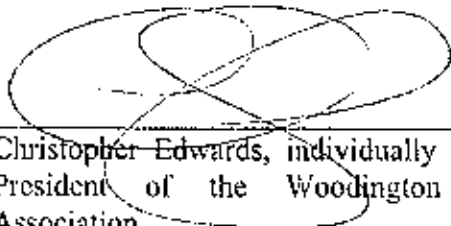
15. It is my understanding that Article 17, Section 3 of the WHOA bylaws have been in place since 2001, when they were approved by the members of the WHOA, and subsequently adopted by the WHOA Board following its approval. At the time these bylaws were approved and subsequently adopted by the WHOA, the plaintiff, Raymond Wedlake, was a member of the WHOA Board in the position of Secretary.

16. It is also my understanding that the plaintiff, Raymond Wedlake, as Secretary, and as a member of the WHOA Board in 2001, helped draft Article 17, Section 3 of the WHOA bylaws, the same bylaw which he now seeks to invalidate by his filing of this lawsuit.

17. As the former President of the WHOA Board, I believe that the Board's actions were reasonable and in the best interest of the Association. The Board's actions were done in accordance with its bylaws, Covenants and South Carolina Non-Profit Corporation Act, and in no way has the Board acted in a grossly negligent manner in representing the Association at any

time during the course of the various past and current lawsuits brought by the plaintiff against different incarnations of the WHOA Board.

FURTHER THE AFFIANT SAYETH NOT.


Christopher Edwards, individually and as Former
President of the Woodington Homeowners
Association

SWORN TO AND SUBSCRIBED before
me this 1 day of February, 2020.


Notary Public For South Carolina
My Commission Expires: 1/5/22





Department
of the
Treasury
Internal
Revenue
Service

Publication 557
(Rev. January 2020)

Cat. No. 46573C

Tax-Exempt Status for Your Organization



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Contents

What's New	2
Reminders	2
Introduction	2
Chapter 1. Application, Approval, and Appeal Procedures	2
Application Procedures	2
Forms Required	2
Required Information and Documents	4
Miscellaneous Procedures	3
Determination Letters	2
Effective Date of Exemption	2
Revocation of Exemption	2
Appeal Procedures	2
Independent Office of Appeals Consideration	2
Administrative Remedies	7
Appeal to Courts	7
Group Exemption Letter	2
Central Organization	2
Application Procedure	2
Keeping the Group Exemption Letter in Force	2
Events Causing Loss of Group Exemption	2
Chapter 2. Filing Requirements and Required Disclosures	2
Annual Information Returns	10
Unrelated Business Income Tax Return	12
Employment Tax Returns	12
Political Organization Income Tax Return	12
Reporting Requirements for a Political Organization	14
Donee Information Return	13
Information Provided to Donors	13
Report of Cash Received	13
Public Inspection of Exemption Applications, Annual Returns, and Political Organization Reporting Forms	15
Required Disclosures	20
Solicitation of Nondeductible Contributions	20
Sales of Information or Services Available Free from Government	20
Dues Used for Lobbying or Political Activities	20
Miscellaneous Rules	21
Organizational Changes and Exempt Status	21
Modify or Obtain an NTEE Code	21
Chapter 3. Section 501(c)(3) Organizations	22
Contributions to 501(c)(3) Organizations	22
Application for Recognition of Exemption	25
Articles of Organization	25

Organization Reference Chart

Section of 1986 Code	Description of organization	General nature of activities	Application Form ¹	Annual return required to be filed	Contributions allowable
501(c)(1)	Corporations Organized under Act of Congress (including Federal Credit Unions)	Instrumentalities of the United States	No Form	None	Yes, if made for exclusively public purposes
501(c)(2)	Title Holding Corporation For Exempt Organization	Holding title to property of an exempt organization and distributing net income to it	1024	990 ² or 990-EZ ³	No ³
501(c)(3)	Religious, Educational, Charitable, Scientific, Literary, Testing for Public Safety, to Foster National or International Amateur Sports Competition, or Prevention of Cruelty to Children or Animals Organizations	Activities of nature implied by description of class of organization	1023 ¹⁶ , 1023-EZ 990 ² or 990-EZ ³ , or 990-PF		Yes, generally
501(c)(4)	Civic Leagues, Social Welfare Organizations; and Local Associations of Employees	Promotion of community welfare; charitable, educational, or recreational	Must provide notice on Form 8976; may also submit Form 1024-A	990 ² or 990-EZ ³	No, generally ^{3, 4}
501(c)(5)	Labor, Agricultural, and Horticultural Organizations	Educational or instructive, the purpose being to improve conditions of work, and to improve products and/or efficiency	1024	990 ² or 990-EZ ³	No ³
501(c)(6)	Business Leagues, Chambers of Commerce, Real Estate Boards, etc.	Improvement of business conditions of one or more lines of business	1024	990 ² or 990-EZ ³	No ³
501(c)(7)	Social and Recreational Clubs	Pleasure, recreation, social activities	1024	990 ² or 990-EZ ³	No ³
501(c)(8)	Fraternal Beneficiary Societies and Associations	Providing for payment of life, sickness, accident or other benefits to members within a lodge system	1024	990 ² or 990-EZ ³	Yes, if for certain Sec. 501(c)(3) purposes
501(c)(9)	Voluntary Employees Beneficiary Associations	Employee association providing for payment of life, sickness, accident, or other benefits to members	1024	990 ² or 990-EZ ³	No ³
501(c)(10)	Domestic Fraternal Societies and Associations	Earnings devoted to charitable, fraternal, and other specified purposes within a domestic lodge system. No benefits to members	1024	990 ² or 990-EZ ³	Yes, if for certain Sec. 501(c)(3) purposes
501(c)(11)	Teachers' Retirement Fund Associations	Teachers' association for payment of retirement benefits	Letter ⁷	990 ² or 990-EZ ³	No ³
501(c)(12)	Benevolent Life Insurance Associations, Mutual Ditch or Irrigation Companies, Mutual or Cooperative Telephone Companies, and Like Organizations	Activities of a mutual or cooperative nature	1024	990 ² or 990-EZ ³	No ³
501(c)(13)	Cemetery Companies	Burials and incidental activities	1024	990 ² or 990-EZ ³	Yes, generally
501(c)(14)	State-Chartered Credit Unions, Mutual Reserve Funds	Loans to members	Letter ⁷	990 ² or 990-EZ ³	No ³
501(c)(15)	Mutual Insurance Companies or Associations	Providing insurance to members substantially at cost	1024	990 ² or 990-EZ ³	No ³
501(c)(16)	Cooperative Organizations to Finance Crop Operations	Financing crop operations in conjunction with activities of a marketing or purchasing association	Form 1120-C, Letter ⁷	990 ² or 990-EZ ³	No ³
501(c)(17)	Supplemental Unemployment Benefit Trusts	Provides for payment of supplemental unemployment compensation benefits	1024	990 ² or 990-EZ ³	No ³
501(c)(18)	Employee Funded Pension Trust (created before June 25, 1959)	Payment of benefits under a pension plan funded by employees	Letter ⁷	990 ² or 990-EZ ³	No ³
501(c)(19)	Post or Organization of Past or Present Members of the Armed Forces	Activities implied by nature of organization	1024	990 ² or 990-EZ ³	No, generally ⁴
501(c)(21)	Black Lung Benefit Trusts	Funded by coal mine operators to satisfy their liability for disability or death due to black lung diseases	Letter ⁷	990-BL	No ⁵

Section of 1986 Code	Description of organization	General nature of activities	Application Form ¹	Annual return required to be filed	Contributions allowable
501(c)(22)	Withdrawal Liability Payment Fund	To provide funds to meet the liability of employers withdrawing from a multi-employer pension fund	Letter ⁷	990 ² or 990-EZ ³	No ⁴
501(c)(23)	Veterans' Organization (created before 1980)	To provide insurance and other benefits to veterans	Letter ⁷	990 ² or 990-EZ ³	No, generally ⁵
501(c)(25)	Title Holding Corporations or Trusts with Multiple Parent Corporations	Holding title and paying over income from real property to 35 or fewer parents or beneficiaries	1024	990 ² or 990-EZ ³	No
501(c)(26)	State-Sponsored Organization Providing Health Coverage for High-Risk Individuals	Provides health care coverage to high-risk individuals	Letter ⁷	990 ² or 990-EZ ³	No
501(c)(27)	State-Sponsored Workers' Compensation Reinsurance Organization	Reimburses members for losses under workers' compensation acts	Letter ⁷	990 ² or 990-EZ ³	No
501(c)(28)	National Railroad Retirement Investment Trust	Manages and invests the assets of the Railroad Retirement Account	No Form	990 ¹²	No ¹²
501(c)(29)	CO-OP health insurance issuers	A qualified health insurance issuer which has received a loan or grant under the CO-OP program	Letter and Form 8718 ¹⁵	990 ²	No ¹⁴
501(d)	Religious and Apostolic Associations	Regular business activities; Communal religious community	No Form	1065 ¹³	No ⁴
501(e)	Cooperative Hospital Service Organizations	Performs cooperative services for hospitals	1023	990 ² or 990-EZ ³	Yes
501(f)	Cooperative Service Organizations of Operating Educational Organizations	Performs collective investment services for educational organizations	1023	990 ² or 990-EZ ³	Yes
501(k)	Child Care Organizations	Provides care for children	1023	990 ² or 990-EZ ³	Yes
501(n)	Charitable Risk Pools	Pools certain insurance risks of sec. 501(c)(3) organizations	1023	990 ² or 990-EZ ³	Yes
501(q)	Credit Counseling Organization	Credit counseling services	1023	990 ¹⁶	No
521(a)	Farmers' Cooperative Associations	Cooperative marketing and purchasing for agricultural procedures	1028	1120-C	No
527	Political organizations	A party, committee, fund, association, etc., that directly or indirectly accepts contributions or makes expenditures for political campaigns	8871	1120-POL ¹⁷ 990 ² or 990-EZ ³	No

¹ Most 501(c) organizations, other than those described in sections 501(c)(3) (exceptions apply), (9), and (17), may, but are not required to, submit an application for recognition of tax exempt status from the IRS. These organizations may self-declare their tax exempt status by operating within the requirements of the applicable code section and filing the required annual returns or notices.

² For exceptions to the filing requirement, see chapter 2 and the form instructions. Note: For annual tax periods beginning after 2006, most tax-exempt organizations, other than churches, are required to file an annual Form 990, 990-EZ, or 990-PF with the IRS or to submit an annual electronic notice, Form 990-N (e-Postcard), to the IRS. Tax-exempt organizations failing to file an annual return or submit an annual notice as required for 3 consecutive years will automatically lose their tax-exempt status. See form instructions as to which 990 series, and other series, forms, after the Taxpayer First Act, are required to be filed electronically.

³ An organization exempt under a subsection of section 501 other than 501(c)(3) can establish a charitable fund, contributions to which are deductible. Such a fund must itself meet the requirements of section 501(c)(3) and the related notice requirements of section 508(a).

⁴ Contributions to volunteer fire companies and similar organizations are deductible, but only if made for exclusively public purposes.

⁵ Deductible as a business expense to the extent allowed by section 192.

⁶ Deductible as a business expense to the extent allowed by section 194A.

⁷ Application is by letter to the address shown on Form 8718. A copy of the organizing document should be attached and the letter should be signed by an officer.

⁸ Contributions to these organizations are deductible only if 90% or more of the organization's members are war veterans.

⁹ For limits on the use of Form 990-EZ, see chapter 2 and the general instructions for Form 990-EZ (or Form 990).

¹⁰ Although the organization files a partnership return, all distributions are deemed dividends. The members aren't entitled to pass-through treatment of the organization's income or expenses.

¹¹ Form 1120-POL is required only if the organization has taxable income as defined in section 527(c).

¹² Only required to annually file so much of the Form 990 that relates to the names and addresses of the officers, directors, trustees, and key employees, and their titles, compensation, and hours devoted to their positions (Part VII of Form 990), and to complete item 1 in the Heading of Form 990 to confirm its tax-exempt status under section 501(c)(28).

¹³ See section 501(q) if the organization provides credit counseling services and seeks recognition of exemption under section 501(c)(4). Use Form 1024-A if applying for recognition under section 501(c)(4).

¹⁴ See section 501(c)(29) for details.

¹⁵ See Rev. Proc. 2015-17, sec. 4.01, 2015-7 I.R.B. 599, for details.

¹⁶ As of January 31, 2020, Forms 1023 will be required to be filed electronically. See Rev. Proc. 2020-5, as amended by Rev. Proc. 2020-8, and irs.gov, for instructions and more information.

90504

EXHIBIT 19

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

AUG 08 2019

SC Court of Appeals

Charles B. Simmons, Jr., Master In Equity

Appellate Case No. 2018-001209
Common Pleas Case No. 2017-CP-23-6301

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

v.

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

RESPONDENTS' MOTION TO DISMISS AND SUPPORTING MEMORANDUM

Ely O. Grote
McCabe, Trotter & Beverly, P.C.
4500 Fort Jackson Blvd., Suite 250 (29209)
P.O. Box 212069, Columbia, SC 29221
Phone: (803) 724-5000 Fax: (803) 724-5001
Email: ely.grote@mccabetrotter.com
Attorney for Respondents

The Respondents, Benjamin Acord, William Craigo, Denis Esteve, and Brian James, respectfully move the Court for an order dismissing the appeal filed by Appellant on the grounds that this appeal and this action are now moot; and alternatively, if this appeal is not dismissed in its entirety, for dismissal of Respondents Benjamin Acord, William Craigo, Denis Esteve, and Brian James.

The parties have already filed their Final Briefs. In an effort to avoid unnecessary duplication, Respondents would crave reference to the contents of their Brief, including the background, factual recitations, and analysis of the issues in this action and this appeal set forth therein. Respondents hereby incorporate their Final Brief herein by reference. Nonetheless, Respondents would reiterate the following background for ease of reference.

Appellant, 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)¹. On October 5, 2017, Appellant filed this lawsuit, primarily relating to 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). Prior to trial, Appellants 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:*

¹ This is also admitted by the allegations of Appellant's Complaint (R. p. 22).

- 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). 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). Appellant was the Plaintiff, and at the close of Appellant's case, the Honorable Charles B. Simmons, Jr. granted involuntary nonsuit in favor of Respondents pursuant to Rule 41(b), SCRPC, and an Order of Judgment was filed on May 29, 2018. (R. pp. 7-17). Appellant has appealed the Order of Judgment filed on May 29, 2018. With respect to Appellant's requests for declaratory relief identified in the Stipulation of Issues for Trial above, this appeal appears to only involve the trial court's rulings concerning those declarations requested in items 1(b), 1(d), 1(e), and 1(f), as Appellant does not appear to contest the trial court's findings in the Order of Judgment as to items 1(a) and 1(c).

At the time of the filing of Appellant/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. (Affidavits of Brian James, Benjamin Acord, William Craigo, and Denis Esteve – attached hereto as Exhibits A, B, C, and D). 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. (*Id.*) However, since the time of trial, the

composition of the Board of Directors of the Association has changed. (Id.). At present, none of the Respondents are continuing to serve as directors or officers of the Association. (Id.).

"The court does not concern itself with moot or speculative questions." Sloan v. Greenville Cnty., 380 S.C. 528, 535, 670 S.E.2d 653, 667 (Ct.App.2009). "Moot appeals differ from unripe appeals in that moot appeals result when intervening events render a case nonjusticiable." Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001). "An appellate court will not pass judgment on moot and academic questions; it will not adjudicate a matter when no actual controversy capable of specific relief exists." Sloan, 380 S.C. at 535, 670 S.E.2d at 667. "A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy." Id. "Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief." Id.

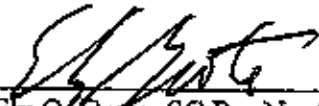
In addition to any other mootness, ripeness, and/or justiciability issues previously existing (as found in the Order of Judgment and as addressed in Respondents' brief), this case and this appeal are now also moot and further nonjusticiable in light of the post-trial intervening event of the turnover in the Board of Directors of the Association. Specifically, Respondents assert that this appeal is now also moot and nonjusticiable² because the four (4) Respondents, individually named in their capacity as the current board of directors, no longer represent the Association's managerial authority. Proceeding with an appeal of the Order of Judgment on the merits of Appellant's claims would thus be ineffectual in resolving any alleged controversy, if there be any. In this matter, Appellant seeks declaratory relief in the form of judicial construction and interpretation of certain bylaws provisions. (R. pp. 178-179). When Appellant initiated this action, the individual Respondents comprised the entire board of directors, and thus

² The legal standard for a justiciable controversy is set forth in Respondents' final brief at pages 44-45.

possessed the managerial authority of the Association. This action was instituted against Respondents in their capacity as the current Board of Directors of the Association. Notably, Woodington Homeowners' Association, Inc., the corporate entity itself, was never made a party to this proceeding. Because none of the Respondents are currently serving as directors or officers of the Association, the Respondents no longer individually or collectively possess the managerial authority of the Association or the decision making capacity of the board of directors for the Association. Likewise, since all of the Respondents are no longer serving as directors or officers, they no longer serve in any corporate capacity. As such, they no longer possess a material interest in the matters alleged by Appellant/Plaintiff, and 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 that Appellant continues to seek, and any declaration, if rendered, would be merely advisory in nature. 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. Therefore, this case and the issues raised in the appeal are now also moot and nonjusticiable due to the post-trial turnover of the board of directors, in addition to any other previously existing mootness, ripeness, and/or justiciability issues.

Based on all of the foregoing, Respondents assert that this case and this appeal are now moot and nonjusticiable, and this appeal should be dismissed. Alternatively, if this appeal is not dismissed in its entirety, at a minimum, Respondents Benjamin Acord, William Craigo, Denis Esteve, and Brian James should be dismissed.

Respectfully submitted,



Ely Q. Grote, SC Bar No. 75379
MCCABE, TROTTER & BEVERLY, P.C.
4500 Fort Jackson Blvd., Suite 250 (29209)
P.O. Box 212069, Columbia, SC 29221
Phone: (803) 724-5000 Fax: (803) 724-5001
Email: ely.grote@mccabetrotter.com
ATTORNEY FOR RESPONDENTS

August 6, 2019
Columbia, South Carolina



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master In Equity

Appellate Case No. 2018-001209
Common Pleas Case No. 2017-CP-23-6301

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

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.

AFFIDAVIT OF BRIAN JAMES

Respondents' Motion to Dismiss
and Supporting Memorandum
Exhibit A

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

PERSONALLY APPEARED before me, Brian James, who after being sworn, deposes and says that:

1. The facts stated herein are true and are based on my own personal knowledge. Further, I am of the age of majority and am competent to testify as to the matters stated herein.
2. I was elected to serve as one of the Directors for Woodington Homeowners' Association, Inc. at an annual meeting held on January 10, 2017.
3. At the time of the filing of Appellant/Plaintiff's Complaint in this action, the Board of Directors for Woodington Homeowners' Association, Inc. consisted solely of the four Respondents, Brian James, William Craigo, Denis Esteve, and Benjamin Acord. 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 Woodington Homeowners' Association, Inc. However, since the time of trial, the composition of the Board of Directors has changed. I did not run for re-election and am no longer a director or officer for Woodington Homeowners' Association, Inc. At this time, none of the four (4) Respondents are serving as directors or officers for Woodington Homeowners' Association, Inc.

FURTHER AFFIANT SAYETH NOT.

Brian James
Brian James

Sworn to and subscribed before me
this 15 day of July, 2019.

Michelle Armitage
Notary Public for South Carolina
My Commission Expires: 6/8/2020





THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master In Equity

Appellate Case No. 2018-001209
Common Pleas Case No. 2017-CP-23-6301

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

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.

AFFIDAVIT OF WILLIAM CRAIGO

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

PERSONALLY APPEARED before me, William Craigo, who after being sworn, deposes and says that:

1. The facts stated herein are true and are based on my own personal knowledge. Further, I am of the age of majority and am competent to testify as to the matters stated herein.
2. I was elected to serve as one of the Directors for Woodington Homeowners' Association, Inc. at an annual meeting held on January 10, 2017.
3. At the time of the filing of Appellant/Plaintiff's Complaint in this action, the Board of Directors for Woodington Homeowners' Association, Inc. consisted solely of the four Respondents, Brian James, William Craigo, Denis Esteve, and Benjamin Acord. 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 Woodington Homeowners' Association, Inc. However, since the time of trial, the composition of the Board of Directors has changed. Brian James and Benjamin Acord did not run for re-election and are no longer Directors for Woodington Homeowners' Association, Inc. While I was re-elected after the time of trial, I have resigned my position on the Board of Directors. Consequently, I am no longer serving as a director or officer for Woodington Homeowners' Association, Inc. At this time, none of the four (4) Respondents are serving as directors or officers for Woodington Homeowners' Association, Inc.

FURTHER AFFIANT SAYETH NOT.

William Craigo
William Craigo

Sworn to and subscribed before me
this 23 day of July, 2019.

[Signature]
Notary Public for South Carolina
My Commission Expires: 12/14/2026





THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master In Equity

Appellate Case No. 2018-001209
Common Pleas Case No. 2017-CP-23-6301

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

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.

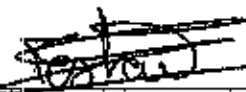
AFFIDAVIT OF DENIS ESTEVE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

PERSONALLY APPEARED before me, Denis Esteve, who after being sworn, deposes and says that:

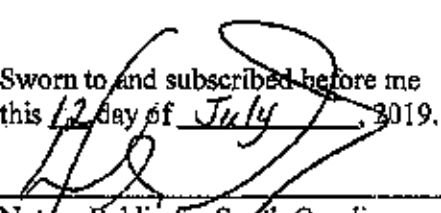
1. The facts stated herein are true and are based on my own personal knowledge. Further, I am of the age of majority and am competent to testify as to the matters stated herein.
2. I was elected to serve as one of the Directors for Woodington Homeowners' Association, Inc. at an annual meeting held on January 10, 2017.
3. At the time of the filing of Appellant/Plaintiff's Complaint in this action, the Board of Directors for Woodington Homeowners' Association, Inc. consisted solely of the four Respondents, Brian James, William Craigo, Denis Esteve, and Benjamin Acord. 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 Woodington Homeowners' Association, Inc. However, since the time of trial, the composition of the Board of Directors has changed. Brian James and Benjamin Acord did not run for re-election and are no longer Directors for Woodington Homeowners' Association, Inc. While I was re-elected after the time of trial, I recently moved out of the Woodington Subdivision and resigned my position on the Board of Directors. Consequently, I am no longer serving as a director or officer for Woodington Homeowners' Association, Inc. At this time, none of the four (4) Respondents are serving as directors or officers for Woodington Homeowners' Association, Inc.

FURTHER AFFIANT SAYETH NOT.



Denis Esteve

Sworn to and subscribed before me
this 12 day of July, 2019.



Notary Public for South Carolina
My Commission Expires: 30 July 2019





THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master In Equity

Appellate Case No. 2018-001209
Common Pleas Case No. 2017-CP-23-6301

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

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.

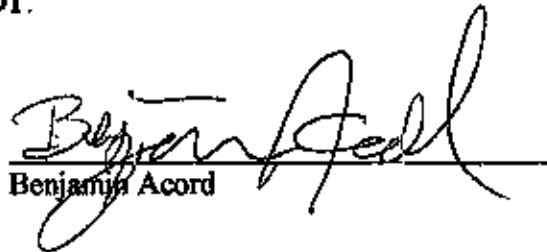
AFFIDAVIT OF BENJAMIN ACORD

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

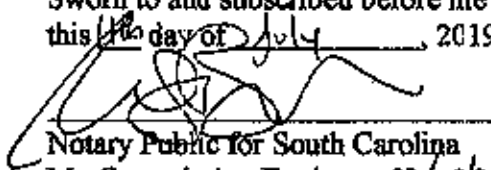
PERSONALLY APPEARED before me, Benjamin Acord, who after being sworn, deposes and says that:

1. The facts stated herein are true and are based on my own personal knowledge. Further, I am of the age of majority and am competent to testify as to the matters stated herein.
2. I was elected to serve as one of the Directors for Woodington Homeowners' Association, Inc. at an annual meeting held on January 10, 2017.
3. At the time of the filing of Appellant/Plaintiff's Complaint in this action, the Board of Directors for Woodington Homeowners' Association, Inc. consisted solely of the four Respondents, Brian James, William Craig, Denis Esteve, and Benjamin Acord. 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 Woodington Homeowners' Association, Inc. However, since the time of trial, the composition of the Board of Directors has changed. I did not run for re-election and am no longer a director or officer for Woodington Homeowners' Association, Inc. At this time, none of the four (4) Respondents are serving as directors or officers for Woodington Homeowners' Association, Inc.

FURTHER AFFIANT SAYETH NOT.


Benjamin Acord

Sworn to and subscribed before me
this 16 day of July, 2019.


Notary Public for South Carolina
My Commission Expires: 02/07/2022

MEAGAN BAUMGARNER
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES 02/07/22

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master In Equity

Appellate Case No. 2018-001209
Common Pleas Case No. 2017-CP-23-6301

RECEIVED
AUG 08 2019
SC Court of Appeals

Raymond A. Wedlake, individually and
derivative'y, on behalf of all Members of
Woodington Homeowners' Association, Inc. Appellant,

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.

PROOF OF SERVICE

I, Ely O. Grote, certify that I have served, or caused to be served, Respondents' Motion to Dismiss and Supporting Memorandum, on counsel for Appellant, Grant H. Gibson, by depositing one copy of the same in the United States mail, postage prepaid, addressed as follows:

Grant H. Gibson, Esq.
G. Gibson & Associates, LLC
1200 Woodruff Road, Suite A-3
Greenville, South Carolina 29607
atty@ggibsonassociates.com


Ely O. Grote
McCabe, Trotter & Beverly, P.C.
4500 Fort Jackson Blvd., Suite 250 (29209)
P.O. Box 212069, Columbia, SC 29221
Phone: (803) 724-5000 Fax: (803) 724-5001
Email: ely.grote@mccabetrotter.com
Attorney for Respondents

August 6, 2019; Columbia, SC

Physical Address:
4500 Fort Jackson Blvd., Suite 250
Columbia, South Carolina 29209

Mailing Address:
Post Office Box 212069
Columbia, SC 29221

Locations in:
Mount Pleasant, SC
Myrtle Beach, SC



MCCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

Ely O. Grote
Shareholder

Ely.Grote@mccabetrotter.com
Direct: (803) 724-5018

www.mccabetrotter.com
Phone: (803) 724-5000
Fax: (803) 724-5001

Licensed to practice in South Carolina

August 6, 2019

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street (29201)
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
AUG 08 2019
SC Court of Appeals

Re: Raymond A. Wedlake v. Benjamin Acord
Appellate Case No. 2018-001209
MTB File No.: 017402.00009

Dear Ms. Kitchings:

Enclosed, you will find the original and seven copies of Respondents' Motion to Dismiss and Supporting Memorandum for filing in the above-captioned matter. Also enclosed is my firm's check in the amount of \$50.00 for associated filing fee. Please have a member of your staff return one file-stamped copy to me in the envelope provided herewith.

Should you have questions or concerns, please do not hesitate to let me know.

Respectfully,

Ely O. Grote

EOG/bdp
Enclosures

cc: Grant H. Gibson, Esq. (via U.S. Mail and email, w/ enclosures)

McCabe, Trotter & Beverly, PC.
PO Box 212099
Columbia, SC 29221

RECEIVED

AUG 08 2019
SC Court of Appeals



The Honorable Amy Abben Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street (29201)
Post Office Box 11639
Columbia, South Carolina 29211

The South Carolina Court of Appeals

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

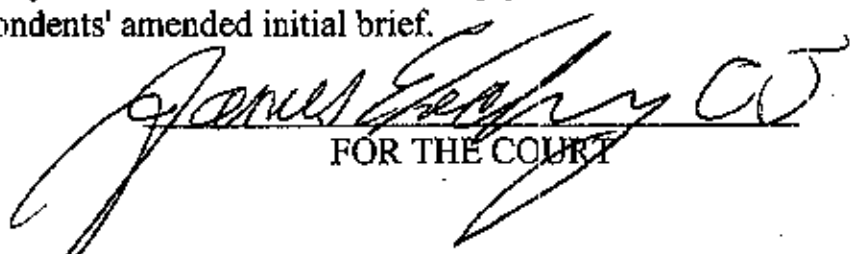
v.

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.

Appellate Case No. 2018-001209

ORDER

Respondents' motion to dismiss this appeal is denied at this time. Respondents, however, may amend their initial brief to address the issue of mootness within thirty days of the date of this order. If Respondents' serve and file an amended initial brief, Appellant may serve and file an amended reply brief within fifteen days of service of Respondents' amended initial brief.


FOR THE COURT

Columbia, South Carolina

cc:

Grant Henry Gibson, Esquire
Ely Owen Grote, Esquire

FILED

November 8, 2019

EXHIBIT 21

Year 2019

Year 2020

-Income-	Actual Cost	* Budget	* Difference	Projected Cost
HOA Dues	\$13,200	\$13,200	\$0	\$13,200
Temporary Due Increase	\$8,700	\$9,900	\$1,200	\$3,300
TOTAL:	\$21,900	\$23,100	\$1,600	\$19,200
-Administrative-				
Legal Fees	\$13,200	\$19,800	\$6,600	\$13,200
Insurance	\$1,130	\$1,500	\$370	\$3,300
Management Services	\$0	\$0	\$0	\$19,200
Misc.	\$21	\$50	\$29	
ADM Fees	\$734.38	\$800	\$65.62	\$500
TOTAL:	\$15,085.38	\$22,150	\$7064.62	\$8,450
-Landscape-				
Landscape Contract	\$3,300	\$3,300	\$0	\$3,300
Landscaper repairs	\$0	\$800	\$800	\$500
Other	\$0	\$0	\$0	\$0
TOTAL:	\$3,300	\$4,100	\$800	\$3,800
-Maintenance & Repair-				
General Maintenance	\$84.78	\$200	\$115.22	\$200
Other	\$0	\$0	\$0	\$0
TOTAL:	\$84.78	\$200	\$115.22	\$200
-Utilities-				
Electricity	\$1708.62	\$1,800	\$91.38	\$1,800
Water & Sewer	\$125.02	\$200	\$74.98	\$200
TOTAL:	\$1833.64	\$2,000	\$166.36	\$2,000

pay McCabe, only

*Potential Additional Legal Fees as of This Date:
2017 Appeal: \$63,000
2018 Case: \$30,000

Account Balance EOY: \$10,584.03

6600 Jan 3
8954 left
2384 Escrow

EXHIBIT 22

Model Code of Ethics for Community Association Board Member

This model code of ethics is not meant to address every potential ethical dilemma encountered by a community association board member, but is offered as a basic framework that can be modified and adopted by any common-interest community.

Board members should:

- Strive at all times to serve the best interests of the association as a whole regardless of their personal interests.
- Use sound judgment to make the best possible business decisions for the association, taking into consideration all available information, circumstances and resources.
- Act within the boundaries of their authority as defined by law and the governing documents of the association.
- Provide opportunities for residents to comment on decisions facing the association.
- Perform their duties without bias for or against any individual or group of owners or non-owner residents.
- Disclose personal or professional relationships with any company or individual who has or is seeking to have a business relationship with the association.
- Conduct open, fair and well-publicized elections.
- Always speak with one voice, supporting all duly-adopted board decisions even if the board member was in the minority regarding actions that may not have obtained unanimous consent.

Board members should not:

- Reveal confidential information provided by contractors or share information with those bidding for association contracts unless specifically authorized by the board.
- Make unauthorized promises to a contractor or bidder.
- Advocate or support any action or activity that violates a law or regulatory requirement.
- Use their positions or decision-making authority for personal gain or to seek advantage over another owner or non-owner resident.
- Spend unauthorized association funds for their own personal use or benefit.
- Accept any gifts—directly or indirectly—from owners, residents, contractors or suppliers.
- Misrepresent known facts in any issue involving association business.
- Divulge personal information about any association owner, resident or employee that was obtained in the performance of board duties.
- Make personal attacks on colleagues, staff or residents.
- Harass, threaten or attempt through any means to control or instill fear in any board member, owner, resident, employee or contractor.
- Reveal to any owner, resident or other third party the discussions, decisions and comments made at any meeting of the board properly closed or held in executive session.

Center for

Visit www.caionline.org; write cai-info@caionline.org;
call (888) 224-4321 (M-F, 9-6:30 ET)

Association
Volunteers

EXHIBIT 23

From: "Ray Wedlake" <wedlakera@mail.com>
To: woodingtonhoa@gmail.com
Subject: RE: Please Agree to Avoid More Legal Fees
Date: Sat, 8 Feb 2020 21:37:09

Woodington Board:

Thank you for a reply to my message of 02 Feb. Confusion is noted. Please correct if I misunderstand. Please explain if you think I am wrong.

The term "Board" herein denotes the collective entity of Mona Craig, Edward Decker, and Sandra LaCroix.

With good faith on my part to dismiss my Court cases, and with intent to save WHOA Members from more legal fees, a reply from "woodingtonhoa@gmail.com" was not on point. The reply made no attempt to address the issue to save Member from more legal fees.

My request of 02 Feb did **NOT**:

- a) claim Board is a party to any lawsuit;
- b) claim individual Board members are a party to any lawsuit;
- c) ask Board to speak for any other party;
- d) ask Board to communicate with regard to legal cases;
- e) refer to attorneys involved with case parties.

My request of 02 Feb **DID**:

- a) ask Board to sign a proposed agreement, where signers were: Mona Craig, Edward Decker, Sandra LaCroix, Raymond Wedlake;
- b) ask for a simple "Yes" or "No" answer for would you sign an agreement before 04 Feb (this was ignored by Board);
- c) sign the agreement before 09 Feb.

At/after the Annual Meeting of 30 Jan:

- a) Mona Craig, Edward Decker, and Sandra LaCroix were elected to the 2020 Board of Directors
- b) Board have a fiduciary duty to act in a best interest for WHOA Members - that is: to avoid more-unnecessary-legal fees
- c) Board are the **ONLY** governing entity (nobody else)
- d) Board must assume responsibility for WHOA

Board violates their duty if they try to shrug off duties and powers owned by the Board upon others.

In future replies from "woodingtonhoax@gmail.com", whoever replies should plan to include a **SIGNATURE LINE** showing any (or all) of the following:

- a) The Woodington Board
- b) Mona Craigo, Board [President [or other]]
- c) Edward Decker, Board [Treasurer [or other]]
- d) Sandra LaCroix, Board [Secretary [or other]]
- e) Based upon advice from [law firm or attorney]

where if not "a)", then additional clarification would be appreciated. I would actually prefer to hear individual opinions, as long as such opinion identifies (an) owner(s).

Please invite me to a special Board meeting, if that might help to facilitate understanding by everyone. As stated previously, time sensitivity is extreme - I can no longer wait and delay needed-Court-case decisions.

Thank you.

Cheers wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Never let failure get to your heart !!
Stop organized crime. Re-elect no one !

EXHIBIT 24

From: "Ray Wedlake" <wedlakera@mail.com>
To: woodingtonhoa@gmail.com
Subject: Your Fees ; 2019-CP-23-00269
Date: Fri, 28 Feb 2020 16:41:58

Woodington Board:

Please plan a meeting to meet with me to discuss to whom legal fees belong. Do they belong to WHOA? If so, are you authorizing payment from WHOA funds of additional legal fees? As I think all have agreed, you can't do that without Member approval for more than \$1500, since no legal fees are contained in the Budget passed at the Special Meeting (except for McCabe, Trotter, and Beverly).

Please note that Ms. O'Brian wants an answer by 03 March. So, an immediate meeting is required.

If you will not meet with me, is Mr. Gibson (who was a former, licensed Mediator in South Caroline) an alternative? As you are aware, Mr. Gibson does not represent me relative to Case 2019-CP-23-00269.

Please let me hear ASAP! Thank you.

Cheers wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Never let failure get to your heart !!
Stop organized crime. Re-elect no one !

EXHIBIT 25

From: "Ray Wedlake" <wedlakera@mail.com>
To: woodingtonhoa@gmail.com
Subject: Please Provide Special Meeting Information
Date: Sat, 29 Feb 2020 08:37:09

Woodington Board:

Would you be so kind, please, to correct and add to my list (Appendix) of Members who attended the Special Meeting on 26 Feb 2020, and give feedback to me? A statement of 12 proxies was made. I would like a list of which Members gave proxies for this meeting. Please inform me how I can obtain copies of these 12 proxies.

Thank you.

Cheers wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
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Stop organized crime. Re-elect no one !

----- Appendix -----

Special Meeting 26 Feb 2020 - Members Attended

.... [REDACTED]

proxies - 2 of 12

.... [REDACTED]

EXHIBIT 26

From: "Ray Wedlake" <wedlakera@mail.com>
To: "Woodington HOA" <woodingtonhoa@gmail.com>
Subject: Re: Your Fees ; 2019-CP-23-00269
Date: Sun, 1 Mar 2020 09:45:15

Dear Mrs. Craig and Woodington Board:

How shameful that "the Board" has, once again, opened the legal-fees floodgates, without even so much as making any effort or taking the time to try to understand, or to meet with me for this purpose, as I requested more than once!

At this time, you must be sure that no attorney nor law firm "runs up their bill" without your PRIOR APPROVAL! Please be sure to forward to me all such approvals that you grant to anyone regarding authorizations to disburse WHOA funds for legal fees.

My understanding is that both Mr. Koshis (at the Annual Meeting) and the 2020 Board (at the Special Meeting) acknowledge that \$1500 is a By-Laws limit for legal fees. Please be aware you are fast approaching this limit. Kindly tell me when, and how, the Board intends to seek Member approval for more than \$1500 additional-legal fees. I believe it was improper for the Board not to have put the legal-fees issue on the last-Special-Meeting agenda (as I had requested), and not to allow "open discussion" of this issue at that meeting, particularly when the Chairperson violated "Rules of Order" by not having discussion on motions, before calling for votes.

I'd like to receive confirmation from Mr. Decker and from Mrs. LaCroix that opening the floodgates for additional-legal fees is more than a "Mona Craig" decision. Would other Board members kindly verify your concurrence with Mrs. Craig? With or without reply indicating verification before Thursday, March 5, 2020, I will be composing another letter to Members, to make them aware of recent "Board" decisions.

Thank you.

Cheers wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Never let failure get to your heart !!
Stop organized crime. Re-elect no one !

EXHIBIT 27

From: "Ray Wedlake" <wedlakera@mail.com>
To: emily@campbelteague.com
Cc: woodingtonhoa@gmail.com
Subject: RE: Mediation - First Requirement is Negotiation

09 March 2020

Dear Ms. O'Brian:

Thank you for your suggestion that the Board may be interested in mediation. This seems incongruous with their recent: (paraphrase) "We will not meet with you", stance.

May I hope your clients disclosed to you what I asked them to do? I asked them to first negotiate. Negotiation is a first requirement to define issues that remain in dispute. To mediate without mutual consent about which issues are important, and disputed, would be a waste of everyone's time. For example, I think we all agree that the Board cannot authorize legal fees in excess of \$1500 without Member approval. If this is agreed, then this issue would not be an important issue for mediation. Still, issues to mediate must be defined by mutual consent.

Without negotiation and a list of important issues to mediate, why should I pay for the entire mediation cost? Should your clients decide, with me, about what are the important issues for mediation, then I will agree to pay for mediation costs, up to a \$900 limit.

I also asked the Board to agree to arbitrate, in the event of mediation "failure". Without such additional agreement on the part of your clients, I do not believe that spending time with mediation would be productive. Final resolution of disputed issues is what is important for the benefit of WHOA. Game playing, posturing, and other non-productive use of time, without intent to resolve basic-disputed issues, will be wasted effort.

Would you be so kind, please, to have your clients give feedback, so we may all agree to a "going forward" plan? Thank you.

Cheers wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
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Stop organized crime. Re-elect no one !

EXHIBIT 28

From: "Ray Wedlake" <wedlakera@mail.com>
To: woodingtonhoa@gmail.com
Subject: Fw: Duties of Homeowners Association Directors
Date: Wed, 18 Mar 2020 08:13:34

Woodington Board:

Please be informed on an opinion from an HOA Industry Expert, as forwarded. Prior Boards have ignored such sage advice.

Please note particularly: "... Examples of cases where a director breaches his or her duty of care might include mismanagement of association funds ..."

Cheers wedlakera@mail.com
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GO ORANGE - Syracuse University ORANGE !!
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Stop organized crime. Re-elect no one !

----- Forwarded Message -----

Sent: Tuesday, March 17, 2020 at 6:58 PM
From: "HOA Member Services" <info@hoamemberservices.com>
To: wedlakera@mail.com
Subject: Duties of Homeowners Association Directors

HOA Featured Article Posting: Board of Directors

Duties of Homeowners Association Directors

Greetings from HOA Member Services!

A popular and informative article regarding HOA Director Responsibilities is available for review on our website. To view the article and related information, follow this link:

Duties of Homeowners Association Directors

Copyright © 2020 HOA Member Services, All rights reserved.

You are receiving this email because you are a customer or opted to receive promotional email from us.

Our mailing address is:
HOA Member Services
23679 Calabasas Road #355
Calabasas, Ca 91302

EXHIBIT 29

RE: Mediation - First Requirement is Negotiation
emily@campbellleague.com
woodingtonhoa@gmail.com

March 23, 2020

Dear Ms. O'Brian:

Thank you for your reply (Reply) of March 18 ("Original Message" below). While I appreciate keeping in communication, I note Reply is basically of reiteration of a previous reply, giving your-ground rules related to mediation. Unfortunately, Reply neither answered questions raised, nor addressed several important points. These points are reiterated, again, below (as related to: "Included Message").

As a review, prior to, and then again on February 13, 2020, I asked the Board to consider signing a proposed agreement, which was designed to lead to my dismissal of open cases (two cases now on Appeal due to wrongful granting of Summary Judgments), associated with the Board simply agreeing to work together. This proposal stated:

The intent of Agreement is to save WHOA and its members
(Members), from financial liability caused by legal fees.

Simply, the proposal asked the Board to act properly per their fiduciary duty to WHOA and its Members.

THE BOARD DID NOT TAKE ANY GOOD-FAITH ACTION ON THIS PROPOSAL TO WORK TOGETHER! Please reply with an answer to this threshold question:

Will the Board consider signing a proposal to work together?

Obviously, specific content related to "working together" for any proposal will need to be mutually agreed upon. If the Board will not sign, will they **agree to mediate** the issue of their **refusal to sign**?

Important points have not been addressed and questions need to be answered. Please plan to reply with answers that need to be given before I will be inclined to discuss further about mediation. I see as required, before mediation can be considered, feedback on all of these five things:

1. A **FIRST REQUIREMENT** is **NEGOTIATION**!
Will the Board agree to negotiate?
2. Will the Board agree that the By-Laws require Member approval before the Board can authorize disbursement of legal fees in excess of \$1500?

3. Will the Board agree that a list of issues must be defined, with mutual consent, before mediation can occur?
4. Will the Board agree to arbitrate, in the event of mediation "failure"?
5. May we all agree to a "going forward" plan?

Thank you.

Cheers wedlakera@mail.com
Support "wilderness" ~ conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Never let failure get to your heart !!
Stop organized crime. Re-elect no one !

EXHIBIT 30

From: "Ray Wedlake" <wedlakera@mail.com>
To: woodingtonhoa@gmail.com
Subject: RE: Need to Meet
Date: Wed, 1 Apr 2020 08:39:47

April 01, 2020

Dear Mrs. Craigo and Woodington Board:

Thank you for a 31 March reply to my suggestion that a meeting is needed.

However, yes, the Board received my letter of March 23 [File: rw0323eob-myreqsrev2.pdf]. Perhaps you forgot? This letter asked for questions to be answered. Still to date, no answers have been received.

Recently I received notice from the Board about "... please pay ...". This needs discussion in a meeting. With suspicion of what the Board is about, I request: "... to be heard at a meeting of the Board", pursuant to By-Laws Article XIII. If the Board will not meet, then I will request a "hearing" pursuant to By-Laws Article XI, Section 4.

Will you plan to comply with the By-Laws? Your direct reply to answer this question is requested. Thank you.

Cheers wedlakera@mail.com
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GO ORANGE - Syracuse University ORANGE !!
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Stop organized crime. Re-elect no one !

EXHIBIT 31

From: "Ray Wedlake" <wedlakera@mail.com>
To: "Woodington HOA" <woodingtonhoa@gmail.com>
Bcc: atty@ggibsonassociates.com
Subject: Re: Need to Meet
Date: Wed, 8 Apr 2020 21:23:43

Woodington Board:

Thank you. This is wonderful, that the Board will abide by the By-Laws.

However, having the experience with prior Boards, is this a "talk the talk" (meaningless) statement, or is this a "walk the walk" promise to action? If you intend to "walk the walk" you must get Member approval **BEFORE** extensive legal fees are incurred. Please tell me when, and how, such approval will be sought by the Board. If you will not be transparent, and answer, then let's face it: your statement is nothing more than talk the talk!

Please be so kind as not to reply with: "What legal fees". You may recall the 2017 Board did this at the 2018 Annual Meeting, saying in the meeting: "There are no legal fees". Then, several months later, they disclosed almost \$54,000 in legal fees. You know the rest of this story. You engaged your law firm. There are legal fees. Please disclose to me how much your firm will be billing you, whether or not to date they have sent an invoice.

Please expect a more complete reply at some later date. I have some pressing deadlines to tend to at this time.

Thank you again.

Cheers wedlakera@mail.com
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EXHIBIT 32

703 Creekview Drive

Greenville, SC 29607

April 15, 2020

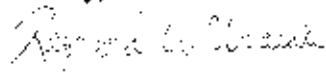
Subject: Payment for Dues of \$200 is Enclosed

Woodington Board:

Please accept my payment for \$200 dues for 2020. As I explained to the Board several times to date, no homeowner within WHOA has any obligation to pay an unlawful assessment. The "Covenants" do not grant authority, nor power, to a Board to assess for legal fees, where these fees were also unlawfully incurred.

Thank you for stating in a cover letter to the Invoice for "2020 Annual Homeowners Dues" that a \$250 amount: "... This \$250 includes the \$50 approved assessment for the legal bills ...", that is: dues were \$200. As I have also made known to the Board, votes to "approve" indemnification payments, as well as to "approve" a payment plan, did not "PASS" with approval from a majority of Member votes. The 2018 Board used votes under their control to vote as Proxy for non-returned-Member ballots, in order to claim approval, which is specifically stated as unlawful under the "South Carolina Nonprofit Corporation Act of 1994".

Sincerely,



Raymond A. Wedlake 864-254-9262
wedlakera@gmail.com

Enc.

EXHIBIT 33

703 Creekview Drive
Greenville, SC 29607
April 17, 2020

Subject: Board Has Not Answered Questions, nor Taken Requested Actions

Woodington Board:

This letter is additional content related to a Board e-mail sent 04/17/20, where this file was attached to that e-mail.

Lack of response to questions, and inaction, by the Board represent what I term a: "problem attitude". What a shame this attitude exists! It will not lead to resolution of disputed issues: particularly the Board's continued alleged-unlawful assessments upon Members, and incurring additional legal fees. An Appendix lists more. Without reply to this letter before April 29, 2020, with substantive answers to unanswered questions, I may be forced to file in Court against the Board.

Did we not agree, as your law firm is also informed, that the By-Laws (to which the Board verbally claimed do apply) require Member approval for legal fees more than \$1500?

THIS IS A QUESTION TO WHICH NO ANSWER WAS GIVEN!

Neither did the Board acknowledge, reply nor comment to 02/13: "Please Agree to Avoid More Legal Fees", specifically the proposed-draft "Agreement". Neither did the Board acknowledge, reply nor comment to: "Please Be Informed" of 02/13, relative to a proposed-draft complaint. Will I be forced to file this complaint due to the Board's-problem attitude?

Mediation without negotiation to define topics upon which mediation will occur would be meaningless. Please be aware I will not be "bullied" by your law firm, and acquiesce to their demands for: "only these mediators". Will you accept "only Mr. Gibson" as our mediator? My prerequisites for mediation are:

- > a mutually-agreed-to-timed agenda, listing items/times to mediate, which is signed prior to mediation
- > a prior-to-mediation-signed-signed "Agreement", to be used as a working document during mediation. It would form the basis for a post-mediation-signed Agreement.

Of course, both of above documents require us to work together, in order to facilitate mediation. Naturally, without working together to create a mutually-acceptable Agreement, I have no

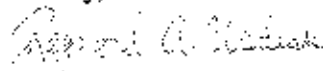
expectations that the proposal will be viewed positively by the Board. A proposed-draft Agreement is attached.

We need to work together to allow mediation to happen. When can we agree to a "going-forward plan" ? Further, will the Board agree to arbitrate if mediation results in failure to agree?

THESE ARE QUESTIONS TO WHICH NO ANSWERS WERE GIVEN!

File: < agreement-mediation-proposal041720 > was also attached to the e-mail

Sincerely,



Raymond A. Wedlake 864-254-9262
wedlakera@mail.com

Appendix

2020 mndd

0202 Avoid More Legal Fees

0207 Not Responsible

0208 Refused Correspondence

0210 No Replies

0210 Not Responsible

0213 Agreement "When can we work together?"

0213 Draft Complaint

"... draft complaint is attached for your review and comments"

0216 Special Meeting Agenda

0401 Meet Per Bylaws

0410 Payment Plan

EXHIBIT 34

703 Creekview Drive
Greenville, SC 29607
April 24, 2020

Subject: By-Laws Revisions and Amendments - Invalid

Woodington Board:

It has become clear that By-Laws revisions and amendments are invalid. A requisite majority vote by Members was not met for any revision nor amendment. The Board's-own attorneys highlight this issue (Appendix 1); as of this date we have learned:

1. Member approval is a defined term in the "Nonprofit Corporation Act" (NPCA);
2. Related to a "Conflict of Interest" transaction, the Board cannot exercise votes over which the Board has control (per NPCA); thus, November 2018 ballots and By-laws amendments did **NOT PASS, SINCE A MAJORITY OF MEMBERS DID NOT APPROVE!**;
3. By-Laws may not contain provisions that are "inconsistent with law" (NPCA), and where in conflict, therefore NPCA controls;
4. The Covenants control when By-Laws are in conflict;
5. The Covenants do not give authority, nor power, to a Board to assess Members to pay legal fees (particularly those incurred in violation of the By-Laws \$1500 limit)!

Consequently, no By-Laws revision is valid under law, after an original signing of By-Laws (where I believe Mona Craig is a signer of original By-Laws). Can the Board supply Rev 0 and 1 to me? Please verify for yourselves and confirm to me that a majority of Members did not vote to approve any of By-Laws Revs 1, 2, nor 3 (see Appx 2). Particularly, Rev 3 is invalid. This means that since William Craig served for a consecutive-two years on the Board during 2018 and 2019, that Mona Craig is not eligible to be on the 2020 Board. Another Board member is required to have the NPCA-required minimum of three. Too, per original By-Laws, **FIVE** Board members are "normal".

Thus, I ask the Board to have a 2020 election to supply a Board of 5 Members. Alternatively, I ask the Board to recognize, per original By-Laws, that both [REDACTED] and myself were elected to the 2020 Board. We four (with Decker and LaCroix) on the Board will seek to fill the vacancy for a fifth Director of the Board, if no election will be planned.

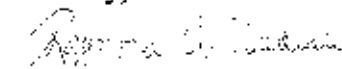
Most probably these issues will need to be brought to Court, since the "current Board" will simply ignore them. To date, the Board has not acknowledged, commented, nor replied with affirmative action, nor with desire to work together, for:

1. 02/01 Agreement Proposal - under which I would dismiss cases
2. 02/02 Avoid More Legal Fees +03/01
3. 02/13 Draft of Thoughts for Court Complaint
4. 04/01 True (not lip service) compliance with By-Laws
5. 04/08 Need to work together
6. 04/17 Problem attitude; Agree to mediation topics; Pre-mediation agreement

So reluctantly, I guess I will need to "See You In Court"! Please reply affirmatively **before April 28, 2020**, that the Board will work together to elect a 5-member Board, address items 1 - 6,

and to make my judicial action unnecessary, as well as to avoid more legal fees. Thank you.

Sincerely,



Raymond A. Wedlake wedlakeraf@mail.com 864-254-9262

APPENDIX 1

... Plaintiff's contention that the defendants were in breach of their fiduciary duty by approving the indemnification and payment plan initiatives based on Bylaws that plaintiff himself approved and implemented 19 years ago, is misguided. (Order, 03/13/20, p. 8: B. par. 2)

Notes: Like many attorneys are guilty of misdirection, as above is misguided. The Covenants do not give authority nor power to a Board to assess Members for legal fees, regardless of an alleged claim of ballots which "Passed". Similarly, a Board may not use votes it controls to claim "Passed" for the two initiatives cited. Thus, breach of fiduciary duty is clear, and unequivocal. Plus: "... that plaintiff himself approved and implemented 19 years ago ...", is **COMPLETELY FALSE!** As Appendix 2, By-Laws Rev 2 is dated 2005 (15 years ago), where Plaintiff did not "... himself approve ...", being but one who signed from a total of five signers. In his service on WHOA Boards, Plaintiff often represented minority opinions.

APPENDIX 2

Revision History - Signed and Dated Versions of Covenants / By-Laws

Covenants for Woodington Subdivision

<u>Date</u>	<u>Revision</u>	<u>Authors Who Signed</u>	<u>Comments</u>
19 Sep 1989	x	Tanner Road Properties	Signing of: "Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision", by Croft, Cherham, Wilson, and Westbury

By-Laws of Woodington Homeowners Association, Inc.

<u>Date</u>	<u>Revision</u>	<u>Those Who Signed</u>	<u>Comments</u>
?? ?? ??	x	Craigo, ... ??	Original Issue of By-Laws
?? ?? ??	1	??	By-Laws First Revision
15 Jun 2005	2	Esteve, Craft, Tucker, Wedlake, Thompson	By-Laws Second Revision Board terms limited to two years
15 Aug 2012	3	Lynch, Vonderbecke, LaCroix (Richard)	By-Laws Third Revision Board terms extended to five years

Note: By-Laws Rev 3 was falsified by the 2018 Board, who changed the signature block to show themselves, as entered for the "Official Version" with the Register of Deeds

27 Dec 2018	3	Edwards, Koshis, Esteve, Keels, Craigo	By-Laws Third Revision Register of Deeds Official Version

EXHIBIT 35

From: "Ray Wedlake" <wedlakera@mail.com>
To: woodingtonhoa@gmail.com
Subject: Question to Board ? Transparency Position Statement ?
Date: Fri, 1 May 2020 10:10:02

01 May 2020

Woodington Board:

A long-recognized postulate for Boards, as stated by several HOA-Industry Experts, is a Board must be "Transparent". This means both:

- a Board must communicate to Members on a regular basis;
- a Board must be open to contacts from Members.

Would you be so kind, please, to explain why one Board member wants to remain isolated from knowing about WHOA issues, particularly those which require a reply from the Board, or require action from the Board? I would understand this attitude as reflecting a "lack of transparency" on the part of the Board.

To clarify, one Board member:

- returns my posted-Member+Board-business mail unopened, and marked: "Return to Sender"
- in what seems very rude to me, in response to a Private Message sent via NextDoor.com, which said merely: "Please be informed of a post ...", responded: "... do not private message me again."

In my mind, these actions also reflect lack of transparency. Is this the Board's position?

Thanks in advance for clarifying the Board's position regarding transparency.

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EXHIBIT 36

RE: Response to April 17, 2020 & April 24, 2020 Documents to WHOA
woodingtonhoa@gmail.com

May 1, 2020

Dear Mrs. Craig and Woodington Board:

Thank you for a response of April 28, 2020, to my messages of April 17 and 24, 2020. Based on your reply, it appears that my April 24 message was overlooked. In general, I believe the fact of the matter is this Board would be derelict in it's duty Members, because of refusal to meet and negotiate on any topic(s), mediate, and arbitrate (if necessary), upon an agreed-set of issues.

So, please accept discussion below relative to what appears to be misunderstanding of law as stated by the Board's statements (BS), as explained by my comments (RW).

BS: "... your contention that we are improperly paying legal fees ..."

RW: The "Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision" (Covenants) do not give the Board any power, nor authority, to assess WHOA Members for legal fees. As stated by By-Laws Article II:

The purpose of the said proposed Corporation is to provide for an association for the betterment of the property and homeowners of Woodington Subdivision, Greenville County, South Carolina.

Imposing damage to Members by assessments for legal fees is contrary to WHOA's purpose. As the Board also knows per By-Laws Article XVII:

Section 2: In the case of any conflict between the "Covenants"
(Reference 1) and these By-Laws, the "Covenants" shall control.

The Covenants Article V shows the SINGLE, ONLY power the Board has to assess is related to money expended on a LOT, which certainly does not include assessment for legal fees:

(4) In the event the Homeowners Association's Board of Directors and Officers shall deem it necessary to expend any sum of money for the maintenance and upkeep of any improved or unimproved lot, the Board shall be empowered to levy a special assessment applicable to that lot, but only in an amount equal to any sum or sums which had to be expended for that purpose. ...

Consequently, the action to assess Members for legal fees is IMPROPER, since Covenants do not give this power, nor authority, to the Board. Additionally, where By-Law provisions conflict with the Covenants: **"... THE COVENANTS SHALL CONTROL."**

It should, now, be clear that **improper payments are occurring!**

BS: "... We have no authority to insert ourselves into those cases."

RW: If the Board would agree to meet and discuss current issues, then it certainly can do so, since the Board has authority as the governing body for WHOA. Making proper decisions for actions taken, and for disbursement of WHOA funds, since election of the 2020 Board are owned by the 2020 Board. A claim of: "... no authority to insert ...", is utter nonsense and cannot in anyone's stretch of imagination apply to the continuing operation of WHOA, that is: actions and expenditures, which are happening under the 2020 Board's watch. The 2020 Board is responsible, and will be held responsible, for its own conduct.

BS: "We will not be signing your Agreement as presented on April 17, 2020."

RW: It was carefully explained to the Board that "mediation in a vacuum" would be meaningless. How will the Board help to facilitate mediation, if you will not agree to anything? It is essential that we decide on the issues for mediation, and then apply mediation. First, can we confer on what those issues are? Can we agree on a set of issues to discuss?

BS: "... Mediation session, the parameters outlined by the attorney still stand."

RW: Prior correspondence made it clear that I will not be bullied into submission by "the attorney", who has no standing to act for, in place of, nor in the stead of, the Board. Again, how will the Board help to facilitate mediation?

BS: "... we are operating under Bylaws Version 3 which were approved by the Woodington Homeowners' Association July 22, 2012 (Amendment Added ..."

RW: Prior correspondence made it clear that no By-Laws revision can lawfully be considered as valid. Quotes from the "South Carolina Nonprofit Corporation Act of 1994" (NPCA = the law) were presented to the Board, showing that **MEMBERS DID NOT APPROVE** any By-Laws revision, nor amendment. The Board counted votes cast under their control to vote to claim: "approval", which is **specifically unlawful** under NPCA Section 831(f). Therefore, **only the original**-By-Laws version is **lawful**. The Board **cannot lawfully** operate under By-Laws Version 3.

The NPCA prohibits the By-Laws from containing provisions that are inconsistent with law, where the By-Laws provision: "... Ballots of Members not returned by the specified return date shall be voted by the Board ...", is inconsistent with law, and thus cannot be contained in the By-Laws:

SECTION 33-31-206. Bylaws.

(a) The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.

(b) The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

More particularly, the NPCA **specifically** says the Board may **NOT** count votes cast or voted under their control to claim Member approval (emphasis added):

SECTION 33-31-831. Director conflict of interest.

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. ...

(c) A transaction in which a director of a mutual benefit corporation has

a conflict of interest may be approved if:

(1) ...

(2) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

(f) For purposes of subsection (c)(2), a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection (d)(1), may **NOT** be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (c)(2). ...

and thus per 831(f), Board votes: "... may **NOT** be counted ..." to claim Member approval.

BS: "The current Bylaws, Article V, Section 1 States: 'No more than one (1) representative of any single distinct membership may serve ...', and Bylaws, Article V, Section 2 States: ... When a Board Member has served for five (5) consecutive terms ...

RW: The Board's references to By-Laws Article 5, Sections 1 and 2 are irrelevant, immaterial, and totally unrelated to any-disputed aspect of law, where By-Laws Rev 3 cannot be cited since it was **NOT** approved by Members. So, only the original By-Laws are valid, which restrict Board terms to 2 years. Both of these references are classic examples, like attorney's do, of misdirection and obfuscation.

BS: "... The three nominees receiving the highest vote totals will be elected director ..."

RW: Operating under By-Laws Revision 3 is unlawful, as explained above. Because only the original By-Laws are valid, 5 directors which included myself and [REDACTED] were elected to the Board at the last Annual Meeting. Please inform both myself and [REDACTED] about the next-planned Board meeting. At that meeting, we will move to remove Mrs. Craigo from the 2020 Board, because original By-Laws state a 2-year term for Directors, which has been expired by Mr. Craigo's presence on the Board for the past two years.

Previous correspondence also asked the Board to hold an election to fill the vacancy that exists, since Mrs. Craigo is not eligible to be part of a 2020 Board.

Thank you.

Cheers wedlakera@mail.com
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EXHIBIT 37

703 Creekview Drive
Greenville, SC 29607
May 10, 2020

Subject: Request for Information Relative to Legal Fees

Woodington Board:

Please provide to me all information pertaining to status of legal fees of which the Board is aware. Please also ask law firms who very likely have, or will, bill WHOA for fees to give a current-billable-hours-pending status, and to show their billing rate (dollars/hour), and plan to convey this information to me. In a recent brief chat, it appeared to me the Board is unaware of legal-fees status?

Please plan to give prior approval for legal fees on a per instance, and per hour basis, and make it plain to your law firm (and all legal advisers), that no fees will be paid by the Board except for those where prior approval was given. Experience has shown that law firms do not inform a Board of accumulated-exorbitant-legal fees. Indeed, the 2017 Board came to the 2018 Annual Meeting saying: "... no legal fees; what legal fees? ...", to then later be "surprised" by an invoice for nearly \$54,000! With current billable rates of \$300/hour to \$500/hour by law firms, \$1500 covers a mere 3.75 hours at \$400/hour. May I hope this is known to the Board, and the Board appreciates your law firm very likely will bill for hours far in excess of 3.75 hours?

In previous correspondence, I made the Board aware of what I believe to be a "problem attitude" exhibited by the Board. On Saturday, May 9, 2020, I was appalled to hear this wrongful attitude emphatically confirmed by the Board. This happened as I retrieved posted mail from my mailbox, in a brief chat with Board President Mona Craig as she and her husband walked past my house. Please see as appended.

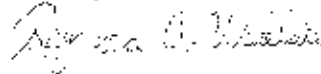
I was appalled at the President's utter disregard for her duty as a Board member. None of the Board have any right to act in their own, personal interest (nor with an interest towards their "buddies"), to the detriment of a "best interest" of WHOA and its Members. The Board's fiduciary duty requires action to act to protect Members from additional legal fees, and other damaging imposition of financial obligations. The Board's stated position of: "... we hope they [law firm] run up their bill a lot more ...", cannot possibly be viewed as complying with the Board's fiduciary duty, nor as a best interest for WHOA!

As was also explained to the Board, the Covenants do not allow the Board to assess Members for legal fees. The Covenants do not allow the Board to increase dues for "unnecessary" expenditures, such as to pay a law firm for legal fees. This is particularly true when no "legal services" were provided to WHOA.

As a WHOA Member who has "paid for service" from the Board as manifested by submission of my dues, I expect the Board to act in my interest, and in the interest of similarly-situated-other Members, to protect the Association from unnecessary fees, and expenditures. May I ask the Board to confirm this aspect of your fiduciary duty? Please provide feedback on this very important question.

Thank you.

Sincerely,



Raymond A. Wedlake 864-254-9262
wedlakera@mail.com

APPENDIX

Brief chat between Mona Craig + Jody Craig (MJC), and

Ray Wedlake (RAW) on May 9, 2020 [in recollected paraphrase]

RAW: [retrieving mail at his mailbox, and waving a letter from the Boards' law firm] Your law firm continues to run up their legal bill.

MJC: You need to shut your mouth. We hope they run up their bill a lot more!

RAW: I live here; you are walking by my lot. I think we agreed that the Board cannot exceed \$1500 without Member approval.

MJC: We have no invoices nor fees for more than \$1500.

RAW: I think your law firm has spent far more than \$1500 in billable hours.

MJC: Prove it!

RAW: They certainly will bill for far more than \$1500.

MJC: Not so, you need to prove it! [f word] you!

RAW: [returning the "compliment"] No, [f word] you!

EXHIBIT 38

703 Creekview Drive
Greenville, SC 29607
May 17, 2020

Subject: Thank You, but Your Reply is Deficient;
Woodington Homeowners' Association, Inc. (WHOA)

Dear Mrs. Craig and Woodington Board:

Thank you for a reply of May 14, 2020. That reply was deficient in that it did not answer questions posed to the Board, nor provide requested information. Much information was requested; little was provided. No answers were given to other important questions.

The Board has not answered to date, from my letter of May 1, 2020, this very important question:

- > "How will the Board help to facilitate mediation, if you will not agree to anything?" nor these questions:
- > "First, can we confer on what those issues are?"
- > Can we agree on a set of issues to discuss?" [for mediation]

At this time, it should be very clear to the Board that many questions may be resolved with the help of an **impartial** Mediator! (That is, NOT your law firm's proposed mediators.)

Please recall the Board did not answer these questions found in my letter of May 2, 2020:

- > "May I hope the Board will act in a proper, "transparent" manner by supplying the simple, requested information below?
- > * who is serving on the Architectural Committee (AC)?
- > * who is serving on a By-Laws Review Committee (BLRC)?
- > * what plans does the Board have to fill the recent vacancy on the Board? On what date will the vacancy will be filled? Please provide a timetable for all steps.
- > Minutes & Related - ... Is there any reason not to post online, such as in Woodington "Documents" at NextDoor.com?
- > Committees - ... Is there even one, single WHOA Member who does not think current By-Laws are seriously deficient?
- > Vacancy - ... Is it correct understanding the 2018 Board agreed this is a required duty?

From my letter of May 10, 2020, the Board has not answered these questions:

- > "In a recent brief chat, it appeared to me the Board is unaware of legal-fees status?
- > ... \$1500 covers a mere 3.75 hours at \$400/hour. May I hope this is known to the Board, and the Board appreciates your law firm very likely will bill for hours far in excess of 3.75 hours?
- > ... protect the Association from unnecessary fees, and expenditures. May I ask the Board to confirm this aspect of your fiduciary duty?"

NO, results from the one-February-2019 ballot were NOT 65 Members in favor, and 1 Member Opposed. The Board did not provide results as requested in my letter of May 2, 2020:

- 1) Number of ballots returned
- 2) Number of Member votes "For"
- 3) Number of Member votes "Against"
- 4) Number of Board proxy votes "For"
- 5) A list of those Members who voted

Once again, the Board counted votes for which it had control, applying a By-Laws provision which is "... inconsistent with law ..." and therefore is unlawful, to cast "For" votes as Proxy representing Members who did not return their ballots. Several times previously, the Board was informed that reliance on this By-Laws Rev 3 provision, where Rev 3 itself is also **UNLAWFUL** because it was NOT approved by Members, is **SPECIFICALLY UNLAWFUL** under the "South Carolina Nonprofit Corporation Act of 1994" (NPCA), Section 33-31-831(f). Further, the Board does not possess a single-proxy authorization, as **required by law**, as related to this ballot.

Regarding what the Board terms: "Sign Ordinance", please explain under what authority that the Board decided to "pause" such restriction? As I understand the Covenants, this is an action that must be taken by the "Architectural Committee" (AC), where the Board has an option to review recommendations given to it from the AC. Did the AC make such a "pause" recommendation to the Board? The Board did not inform me, as asked, about who serves on the AC. When will I be appointed to the AC, as was previously asked?

May I ask the Board to realize no attorney, who is not a Member, has any interest to improve WHOA, and to bring benefits to its Members, like I do? May I suggest to the Board that your mindset to: "... continue to seek guidance from our attorney ...", is counter to what a prudent person, in like situation, would do? An attorney's interest is to prolong conflict, and to defer resolution as long as possible, in order to maximize income to their firm and thus to themselves. The Board being swayed by "guidance" to such mindset does not represent a best interest for WHOA, nor is it necessary when mediation is available, and has been suggested repeatedly by me.

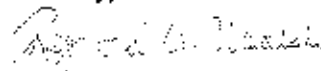
As I pointed out to the Board, President Mona Craigo is not eligible to serve on the 2020 Board. Consequently, a vacancy on the Board exists. This is because By-Laws Rev 3, and all By-Laws revisions and amendments after the original set of By-Laws, were **NOT APPROVED BY MEMBERS**, and are thus **UNLAWFUL**. Please satisfy yourselves that this is true by reviewing, and also supplying to me, By-Laws-Rev3-ballot results:

- 1) Number of ballots returned
- 2) Number of Member votes "For"
- 3) Number of Member votes "Against"
- 4) Number of Board proxy votes "For"
- 5) A list of those Members who voted

where you will find a **MAJORITY OF MEMBERS DID NOT APPROVE** this revision. When will the Board be scheduling an election to restore a legitimately-elected-5-member Board, per the lawful-original By-Laws?

At this time, I can **scarcely believe** that the Board **truly** thinks its actions are lawful under the NPCA, and under the Covenants. This lack of genuineness, honesty, and decency by the Board does **not** reflect a **GOOD FAITH** interest for WHOA, nor towards a Member of our Association, nor can such actions/inaction by the Board be viewed as anything other than **GROSS NEGLIGENCE** under the law.

Sincerely,



Raymond A. Wedlake 864-254-9262
wedlakera@mail.com

EXHIBIT 39

703 Creekview Drive
Greenville, SC 29607
May 18, 2020

Subject: Please Disclose Your Authorization for Appeal-Legal Fees -
Woodington Homeowners' Association, Inc. (WHOA)

Woodington Board:

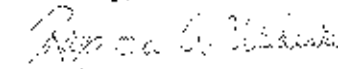
Please confirm by disclosure to me that the Board gave authority to your law firm to bill WHOA for legal fees associated with an Appeal.

As you may be aware for Case 2019-CP-23-00269, an Appeal requesting vacating the Order granting Summary Judgment was filed (2020-000438). Initial Brief of Appellant was filed, but to date, a Brief by Respondents has not been filed. Work associated with this document is likely to cost upwards of ten-thousand dollars.

As I think we agreed, the Board may not authorize expenditure of WHOA funds, in excess of \$1500, without prior approval from Members. No such approval was sought to date, so please confirm if authority was given by the Board for your law firm to bill for Appeal-legal fees. It would be a direct violation of the By-Laws, if the Board gave such authority. If no authority was given, the Board will be duty bound to reject any invoice presented to WHOA for Appeal-legal fees.

Thank you.

Sincerely,



Raymond A. Wedlake 864-254-9262
wedlakera@mail.com

EXHIBIT 40

RE: Woodington Letter 091816 [as excerpted]
rtinsley@amgworld.com
drogers@amgworld.com, joel.deason@mccabetrotter.com

Dear Ms. Tinsley:

Thank you for forwarding a Woodington Sep 12, 2016 letter from WHOA members who continue to pretend to represent the 2016 Woodington Board of Directors ("Board"). Please send me a list of names with mailing addresses to whom this letter was sent. Thanks in advance!

I believe that you know as well as I know that these "2016 Board Pretenders (BP)" were not elected in 2016, as required by our "BY-LAWS OF WOODINGTON HOMEOWNERS ASSOCIATION, INC." (By-Laws). ...

To AMG's legal "muscle", please be informed nothing has been done by me, a legitimate active, dues-paying-in-good-standing member of WHOA that is inconsistent with, or contrary to, our By-Laws. So, kindly do not waste your time trying to threaten me, and bully me, with "the (il)legalities" of any action taken by me. As you may recall, this did not work in a previous difference-of-opinion dispute, and threatening/bullying will not work, now. May you be informed very few "Dissolve" ballots have been returned; WHOA will not be dissolved at this time.

Please note my changed e-mail address. Thanks in advance for your reply!

Cheers wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
Stop organized crime. Re-elect no one !

EXHIBIT 41

Physical Address:

140 Stoneridge Drive, Suite 650
Columbia, South Carolina 29210

Mailing Address:

Post Office Box 212089
Columbia, SC 29221



J. Ryan Oates

Associate

Email: joates@member.woha.com

Website: www.woha.com

www.woha.com

Phone: (803) 724-5000

Fax: (803) 724-5001

September 20, 2016

To: Members of Woodington Homeowners' Association, Inc.

From: J. Ryan Oates, Attorney for Woodington Homeowners' Association, Inc.

RE: NOTICE OF INVALID VOTE PROPOSAL BY ASSOCIATION MEMBER
MTB File No.: 17-02.7

Dear Member:

My firm represents the Woodington Homeowners' Association, Inc. (the "Association") in connection with the above-captioned matter. It has been brought to the attention of the Association's Board of Directors (the "Board") that Association Members may have received communication regarding a proposed vote by confidential electronic ballot to dissolve the Association from an individual Association member. The Board has requested that I write you in order to clarify questions and concerns you, as an Association Member, may have about the validity of this vote. Not only is the information contained in the individual's correspondence incorrect and defamatory, but moreover, the member does not possess the authority to initiate such an action. Please be aware that any outcome of this alleged vote would be rendered invalid under South Carolina law.

The individual does not possess the requisite authority to propose such an action without a meeting. As a Nonprofit Corporation organized under the laws of the State of South Carolina, the Association is subject to the provisions of the South Carolina Nonprofit Corporation Act, which is codified in Chapter 31 of Title 33 of the Code of Laws for South Carolina, as amended 1976. The member in question does not serve as a Director and the member is not an agent authorized to act on behalf of the Association. The Association, through the Board, may deliver a written or electronic ballot without a meeting, S.C. Code Ann. § 33-31-708(a). Before an individual member who is not a Director may initiate action without a meeting, that individual member must first obtain the written consent of eighty percent (80%) of members holding at least eighty percent (80%) of voting power, S.C. Code Ann. § 33-31-704(a). The individual member has failed to meet this prerequisite to take action without a meeting.

Furthermore, a "confidential electronic vote" method is invalid under the Association's Bylaws. Article XVIII of the Association's Bylaws clearly limits any vote pertaining to the

dissolution to "written assent signed by not less than 75% of the Members." In order to initiate the dissolution of the Association, a written instrument must be produced. A confidential electronic ballot does not meet this standard.

Therefore, in the case where an individual member seeks to initiate action without meeting, the individual must produce two (2) separate written instruments. The individual member must first produce an instrument containing the written consent of eighty percent (80%) of Members holding at least eighty percent (80%) of voting power to initiate such an action without meeting. Only then is that individual member authorized to take action without meeting, and must subsequently produce a written instrument with the "written assent signed by not less than 75% of the Members."

In conclusion, please do not be alarmed in the event that you have received such a communication from an individual member concerning a vote by confidential electronic ballot; any outcome of this purported vote is invalid under South Carolina law. The Association, by and through counsel, has attempted to contact this member to cease and desist this unwarranted action. It is the Association's hope that no further action is required. However, should the member fail to cease and desist this conduct, the Association will have no choice but to seek all remedies at law and equity available to it. Should you have any questions or would like to discuss this matter further, please do not hesitate to contact me.

With kind regards, I am,

Sincerely,



J. Ryan Oates

cc: Woodington Homeowners' Association, Inc. Board of Directors
Rea Finsley, Community Manager, Association Management Group

EXHIBIT 42 -- Reply to McCabe's Defamatory Letter

RE: Notice of Invalid Vote Proposal by Association Member 092516

wedlakera@mail.com

Bcc: [REDACTED], rtinsley@amgworld.com, ryan.oates@mccabetrotter.com

Private Messages at woodington.nextdoor.com

Woodington Homeowners Members:

May all Members realize that "AMG Legal Eagles (LE)" are nothing more than "hired guns" who get paid by doing their master's (AMG) bidding. My "Vote Proposal" was not a "legal proceeding" which comes under, nor that is governed by, "laws of South Carolina".

May all WHOA Members welcome any LE to volunteer at no cost to provide a suggested amendment to our By-Laws regarding "Article XVIII - Dissolution". My vote proposal was in no way contrary to the current Article XVIII.

So, please review the truth as shown below by "Statement S:" from a LE's recent letter, as clarified per "Fact F:".

S: "... Members may have received communication regarding a proposed vote by confidential electronic ballot to dissolve the Association ..."

F: All Members received a paper ballot with the question: "dissolve", which they were directed to sign and return to a private third party to be sure individual confidentiality was maintained.

S: "... Not only is the information contained in the individual's correspondence incorrect ..."

F: No incorrect information, per our By-Laws, was contained in my correspondence.

S: "... the Member does not possess the authority to initiate such an action ..."

F: There is no mention of "authority" in our By-Laws "ARTICLE XVIII - DISSOLUTION". Plus, a vote to discern Member's thoughts and desires does not, and did not, initiate any "legal action" to which South Carolina laws apply.

S: "... Member has failed to meet this prerequisite to take action ..."

F: No action has been taken to begin dissolution.

S: "... "confidential electronic vote" method is invalid under the Association's By-Laws."

F: No electronic vote was proposed, nor done.

S: "... In order to initiate the dissolution ..."

F: No initiation of dissolution was attempted, nor is any future attempt to do this justifiable per results of the balloted question.

S: "... has attempted to contact this Member to cease and desist this unwarranted action. ..."

F: No "unwarranted action" is currently active, nor is any action pending at this time, nor will any action be taken relative to dissolution in any near future.

WHOA Members should clearly discern in their own minds if this sort of conduct by (Board, AMG, LE) is what they want in our Association. Now, per another private letter from a LE addressed to me, I am to be "muted" :

S: "... the Board has authorized this office to seek any and all remedies at law and equity to bring your behavior into compliance ... and seek reimbursement of its attorney's fees and costs of enforcement from you directly. Again, you are instructed to cease and desist from all such communication. ..."

This suggestion is a violation of my US Constitutional right to "Freedom of Speech" !

Cheers wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
Stop organized crime. Re-elect no one !

EXHIBIT 43

MEDIATION SETTLEMENT AGREEMENT AND RELEASE

Raymond A. Wedlake vs. Kristine Lynch et al

CIVIL ACTION 2018-CP-23-03758

This mediation-settlement agreement and release ("Agreement") is entered into effective this 11th day of June, 2019 pursuant to the South Carolina Alternative Dispute Resolution Rules (ADR).

AGREEMENT OF PARTIES

In consideration for the agreement of Defendant Kristine Lynch and Defendant Dawn Vonderbecke, and Plaintiff Raymond A. Wedlake, Plaintiff Raymond A. Wedlake agrees to dismiss this lawsuit with prejudice, including any claim by Plaintiff for monetary damages. In turn the parties acknowledge and agree:

1) That with regard to the communications of Defendants to Members of the Woodington Homeowners' Association, Inc. ("WHOA"), specifically the September 12, 2016 and September 20, 2016 letters sent out to Members; (i) Defendants relied upon the legal expertise and advice of the law firm of McCabe, Troten, and Beverly, P.C. (McCabe) with regard to the September 12, 2016 and September 20, 2016 letters and (ii) Defendants understand that Mr. Wedlake felt disparaged and defamed by said letters and (iii) that Defendants did not intend to disparage or defame Mr. Wedlake and do not believe they did disparage and defame him; and the parties further agree;

2) to work together in the future, as members in good standing of the WHOA, and in a spirit of mutual cooperation and respect for one another for the benefit of the WHOA and its members; and, the parties further agree;

3) that nothing in this agreement constitutes an admission of fault and/or liability on the part of Plaintiff or Defendants

4) that in reporting the results of the mediation that resulted in this settlement agreement, the parties' comments are limited to report the following facts, and only the following: (1) a mediation occurred; (2) a settlement was reached on the defined terms as stated in Paragraphs 1, 2 and 3 herein;

MUTUAL RELEASE

4) Parties release one another of any and all claims brought or which could have been brought, known or unknown, arising out of or relating to the subject matter of this lawsuit and the case is to be dismissed with prejudice.

5) Parties are each responsible for their own costs, expenses and attorneys' fees.

6) Attorneys for Defendants to draft Stipulation of Dismissal of this matter with prejudice and counsel for the parties to sign on or before June 14, 2019 and Defendant's counsel to file same with the Court no later than June 17, 2019.

7) This agreement may be signed in counterparts and each such counterpart shall be deemed a part of an original document. Additionally, receipt of a signature by facsimile or email shall be deemed an original.

Kristine Lynch, Defendant
In Her Individual Capacity


Raymond A. Wedlake, Plaintiff

Dawn Vonderbecke, Defendant
In Her Individual Capacity

Grant H. Gibson, Esq., Plaintiff Attorney

Michael Murphy, Esq., Defendant Attorney

State Farm Representative
By: Tina Benson


Robert Hasseld, Esq., Mediator

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2018-CP-23-03758
	)	
Raymond A. Wedlake, as a Member of the	)	
Woodington Homeowners' Association, Inc.	)	
	)	
Plaintiff,	)	STIPULATION OF DISMISSAL
	)	
v.	)	
	)	
Kristine Lynch and Dawn Vonderbecke and	)	
John Does & Jane Does numbers 1-10 and Doe	)	
Legal Entities numbers 1-10,	)	
	)	
Defendant.	)	
	)	

The undersigned, as counsel for the Plaintiff and Defendants, hereby stipulate pursuant to Rule 41 of the South Carolina Rules of Civil Procedure that the Complaint of the Plaintiff is hereby dismissed with prejudice and is forever ended, and is henceforth *res judicata* with respect to named Defendants, Kristine Lynch and Dawn Vonderbecke.

Attorneys For Plaintiff:

<u>s/Grant H. Gibson</u>	Date: June 18, 2019
Grant H. Gibson, Esq. (SC Bar No.: 9269)	
G. Gibson and Associates, LLC	
1200 Woodruff Rd. A-3	
Greenville, SC 29607	
(864) 630-7471	
(866) 667-2509 fax	
Attorney for Plaintiff	

Attorneys For Defendants Kristine Lynch and Dawn Vonderbecke:

<u>s/James P. Walsh</u>	Date: June 18, 2019
James P. Walsh, Esq. (SC Bar No.: 15180)	
Michael J. Murphy, Esq. (SC Bar No.: 103084)	
Clarkson, Walsh & Coulter, P.A.	
P. O. Box 6728	
Greenville, SC 29606	
(864) 232-4400	
(864) 235-4399 fax	
jwalsh@clarkwalsh.com	
www.clarkwalsh.com	

EXHIBIT 44

703 Creekview Drive
Greenville, SC 29607
September 09, 2019

J. Ryan Oates, Esq.
McCabe, Trotter, and Beverly, P.C.
PO Box 212069 Columbia, SC 29221
ryan.oates@mccabebrotter.com

Subject: Please Apologize for, and Retract, Your Letter of September 20, 2016

- Woodington Homeowners' Association, Inc. (WHOA)

Dear Mr. Oates:

On September 20, 2016 you sent a letter ("Letter") to homeowners of WHOA that I found very objectionable. Thus, I ask you to apologize to me for your defamatory and libelous Letter. Should you elect not to take any action, please be informed I will plan to seek any and all remedies at law and equity to bring your behavior into compliance with ethical and normal standards expected from an "Officer of the Law".

Please be informed a mediated settlement, as attached, was reached in my Case 2018-CP-23-03758. My letter presumes you are aware of, or can access, other cited documents in the Public Index. The case was dismissed with prejudice ("Stipulation of Dismissal", June 18, 2019) being "forever ended", and after dismissal Mr. Grant Gibson, Esq., is no longer the attorney of record.

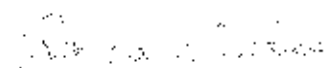
In the settlement, it was made clear by Defendants Lynch and Vonderbecke:

"... 1) That with regard to the communications of Defendants to Members of the Woodington Homeowners' Association, Inc. ("WHOA), specifically the September 12, 2016 and September 20, 2016 [authored by J. Ryan Oates] letters sent out to Members, (i) Defendants relied upon the legal expertise and advice of the law firm of McCabe, Trotter, and Beverly, P.C. ..." That is, Defendants did not direct you to act as their agent and to send out your Letter. Thus, apparently it was your own initiative (or your Firm's initiative) that was exercised as associated with the decision to send your Letter (Exhibit 9, July 14, 2018). Therefore, you and your Firm are the responsible parties who are guilty of such unethical and unlawful statements, which you published to third parties.

I ask for your apology and that you immediately retract all the non-factual statements your Letter contained. These are highlighted as found in my reply of September 25, 2016 (Exhibit 10, July 14, 2018).

May I expect your initial reply before September 19, 2019? Thank you.

Sincerely,



Raymond A. Wedlake 864-254-9262
wedlakem@gmail.com

File: < mediation-settle03758+release061119.pdf >

EXHIBIT 45

703 Creekview Drive
Greenville, SC 29607
November 26, 2019

D. Ryan McCabe, Esq.
McCabe, Trotter, and Beverly, P.C.
PO Box 212069
Columbia, SC 29221

Subject: Agree to Binding Mediation ?
- Woodington Homeowners' Association, Inc. (WHOA)

Dear Mr. McCabe:

Please recall my e-mail of November 15, 2019, which reiterated my letter to you of November 4, where I reiterated again:

“However, I simply asked for an apology from Mr. Oates, whose communication was **NOT** sent to his clients, but rather was sent to WHOA members, which was defamatory and painted me in a false light to third parties. ”

My letter of November 4 asked:

“At this time, might I also make clear a welcome for a representative from your office to participate in mediation or arbitration to resolve this matter?”

May we, please, agree to binding mediation to resolve this dispute pursuant to Rule 1(b), SCRADR? Should you not reply before December 6, 2019, or reply negatively, as time allows I will proceed with all necessary actions, including **public disclosure**, of what I believe is misconduct of your firm, to seek all measures at law and equity to bring your firm into compliance with reasonable standards of ethical conduct, and adherence to the “South Carolina Lawyer’s Oath”.

Thank you.

Sincerely,

Raymond A. Wedlake 864-2554-9262
wedlakera@mail.com

EXHIBIT 46

Columbia, South Carolina

October 22, 2003

Lawyer's Oath

I do solemnly swear (or affirm) that:

I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been appointed, and that I will, to the best of my ability, discharge those duties and will preserve, protect and defend the Constitution of this State and of the United States;

I will maintain the respect and courtesy due to courts of justice, judicial officers, and those who assist them;

To my clients, I pledge faithfulness, competence, diligence, good judgment and prompt communication;

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

I will not pursue or maintain any suit or proceeding which appears to me to be unjust nor maintain any defenses except those I believe to be honestly debatable under the law of the land, but this obligation shall not prevent me from defending a person charged with a crime;

I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor and the principles of professionalism, and will never seek to mislead an opposing party, the judge or jury by a false statement of fact or law;

I will respect and preserve inviolate the confidences of my clients, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval;

I will maintain the dignity of the legal system and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will assist the defenseless or oppressed by ensuring that justice is available to all citizens and will not delay any person's cause for profit or malice;

[So help me God.]

ATTACHMENT IB.2 - Opposition to Motion to Dismiss, MTB

STATE OF SOUTH CAROLINA	)	
	)	2020-CV-23-10201384
COUNTY OF GREENVILLE	)	
	)	CIVIL CASE NUMBER
Raymond A. Wedlake, as a Member of	)	
Woodington Homeowners' Association, Inc.	)	
and on behalf of other-similarly-situated Members	)	IN THE MAGISTRATE'S COURT
of Woodington Homeowners' Association, Inc.	)	
	)	
PLAINTIFFS	)	
VS.	)	MEMORANDUM IN OPPOSITION
	)	
Board of Directors of Woodington Homeowners'	)	TO
Association, Inc., comprised of Mona Craigo,	)	
Edward Decker, and Sandra LaCroix at the time	)	DEFENDANT MCCABE TROTTER &
of filing	)	
AND	)	BEVERLY, PC'S MOTION TO DISMISS
McCabe, Trotter & Beverly, P.C.	)	
	)	
DEFENDANTS	)	

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*) and brings this "Memorandum in Opposition ..." (MOP) to Defendant's "... Motion to Dismiss". Vagueness and ambiguity by Defendant as related to make "... more certain ..." and to "... strike certain portions of the Complaint ..." must be disregarded since specificity is required, but is lacking. Plaintiff contends that all claimed grounds for dismissal are unfounded.

STANDARD FOR REVIEW OF MOTION TO DISMISS

The standard based upon Rule 12(b)(6), SCRPC indicates that only in the absence of "... facts sufficient ..." can this rule be applied. Plaintiff's complaint (Complaint) cited a "Supplement to Complaint" (SUC) in paragraph 2 (p. 2), where SUC stated Facts in paragraphs 28 – 86 (pp. 19 – 44). Facts pertinent to McCabe, Trotter & Beverly, PC (MTB) were stated in paragraphs: 44b, 44c, 48, 49-56, 79-86. All these Facts from a set of evidence more than sufficient to constitute a cause of action. Rule 12(b)(6) shows:

RULE 12 DEFENSES AND OBJECTIONS ...

(b) How Presented. Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(6) failure to state facts sufficient to constitute a cause of action, ...

STANDARD FOR REVIEW OF MOTION TO DISMISS IN FEDERAL COURT

The standard for analysis of a Motion to Dismiss in Federal Court is set forth in *Erickson v.*

Pardus, 127 S. Ct. 2197, 167 L.Ed.2d 1081, 551 U.S. 89, 75 BNA USLW 3643 (2007) (*Erickson*).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Specific facts are not necessary; the statement need only " 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests.' " *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)). In [551 U.S. 94] addition, when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint. *Bell Atlantic Corp.*, *supra*, at 555 – 556, 127 S.Ct. 1955 (citing *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 508, n. 1, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002); *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989); *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974)). *Erickson v. Pardus*, 127 S. Ct. 2197, 167 L.Ed.2d 1081, 551 U.S. 89, 75 BNA USLW 3643 (2007)

The Court must take a liberal view of the pleadings, especially, as here, where the petitioner is

Pro Se. As the Court also stated in *Erickson*:

The Court of Appeals' departure from the liberal pleading standards set forth by Rule 8(a)(2) is even more pronounced in this particular case because petitioner has been proceeding, from the litigation's outset, without counsel. A document filed *pro se* is "to be liberally construed," *Estelle*, 429 U.S., at 106, 97 S.Ct. 285, and "a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," *ibid.* (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice"). *Erickson v. Pardus*, 127 S. Ct. 2197, 167 L.Ed.2d 1081, 551 U.S. 89, 75 BNA USLW 3643 (2007)" *Ibid*

ARGUMENTS
CASTING PLAINTIFF IN A FALSE LIGHT

1. Complaint contained factual evidence demonstrating misconduct by MTB related to casting Plaintiff in a false light before Woodington Homeowners' Association, Inc. (WHOA) members (Members), which also included Members serving as the Board of Directors (Board); see Complaint paragraphs 26, 79 – 86, 98, with its Exhibits 9, 40 - 46. Plaintiff knows of no law, Court rule, nor any precedent which precludes presentation of evidence to form a "preponderance of evidence" for his case. It is therefore moot and academic as to whether or not a "False Light" cause of action exists, because South Carolina (SC) courts have viewed other cases either as claims for defamation or as claims related to breach of privacy.

STATUTE OF LIMITATIONS DOES NOT BAR PLAINTIFF'S COMPLAINT

2. Plaintiff's claims against Defendant were brought within two years of learning that MTB was the root cause of their own actions, and not merely acting as an agent as directed by the Board. Previously stated in Complaint, where Exhibits 43 and 44 are pertinent, was:

85. The Statute of Limitations for an action against McCabe cannot be in effect until two years after Plaintiff learned that McCabe "acted on your own initiative", which became known to Plaintiff in a mediated settlement (Exhibit 43) of Case 2018-CP-23-03758 on June 18, 2019 (Affidavit), where Plaintiff's letter to J. Ryan Oates, Esq., of September 9, 2019 (Exhibit 44) which received no reply, in part showed: ...

3. Defendant's intent to twist Plaintiff's claim of "... false light ..." into "... defamation ..." in order to apply a time-period limit pursuant to S.C. Code §15-3-550:

SECTION 15-3-550. Two years.

Within two years:

- (1) an action for libel, slander, or false imprisonment; and
- (2) an action upon a statute for a forfeiture or penalty to the State.

must be recognized as not applicable to Plaintiff's claims. Neither Complaint nor SUC state on its face any "... defamatory statement was made ...":

80. On September 18, 2016 (Exhibit 40) after notice was given by Plaintiff to McCabe that WHOA would not be dissolved, McCabe nonetheless sent out a letter to all Members, dated September 20, 2016 (Exhibit 41), where Plaintiff contends an obvious-letter intent was to paint Plaintiff in a false light (Affidavit); Plaintiff's message showed ...

4. Plaintiff cites precedents which give authority to his position (emphasis added):

"Summary judgment [or dismissal] is appropriate when a plaintiff does not commence an action within the applicable statute of limitations." *McMaster*, 411 S.C. at 143, 767 S.E.2d at 453. Pursuant to section 15-3-530(1) of the South Carolina Code (2005), "[a]n action for breach of contract must be commenced within three years." *Prince*, 390 S.C. at 169, 700 S.E.2d at 282. **"The discovery rule applies to breach of contract actions."** *Id.* "Pursuant to the discovery rule, a breach of contract action accrues not on the date of the breach, but rather on the date the aggrieved party either discovered the breach, or could or [429 S.C. 528] should have discovered the breach through the exercise of reasonable diligence." *Maher v. Tietex Corp.*, 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998). "If there is conflicting evidence as to whether a claimant knew or should have known he or she had a cause of action, the question is one for the jury." *Garner v. Houck*, 312 S.C. 481, 485, 435 S.E.2d 847, 849 (1993).

Kagan v. Simchon, Opinion No. 5713, 429 S.C. 516 (2020),
839 S.E.2d 106; Court of Appeals of SC, February 12, 2020.

5. An Appeal 2018-001209 is still pending, where Plaintiff fully expects reversal from dismissal of Case 2017-CP-23-06301 which was granted based upon "... involuntary nonsuit ...". Such reversal upon Appeal will annul any "Statute of Limitations" for "... one year after reversal" :

SECTION 15-3-90. Effect of reversal of judgment.

If an action shall be commenced within the time prescribed therefor and a judgment therein be reversed on appeal the plaintiff or, if he die and the cause of action survive, his heirs or representative may commence a new action within one year after the reversal.

The original Case "06301" is the case from which legal fees in question were incurred.

6. There is "... evidence to prevent the bar of the statute of limitations", since
"... part payment ..." on MTB's invoice is the prevailing status:

SECTION 15-3-130. Suits on causes saved from bar of statute by part payment or written acknowledgment.

All actions upon causes of action which would be barred by the statute of limitations but for part payment or a written acknowledgment shall be brought on the original cause of action and the part payment or written acknowledgment shall be evidence to prevent the bar of the statute of limitations.

7. The Court is bound by precedent to interpret statutory language by "... their plain and ordinary meaning without resorting to subtle or forced construction" :

See *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 231, 612 S.E.2d 719, 723 (Ct. App. 2005) ("When the terms of a statute are clear, the court must apply those terms according to their literal meaning."); *id.* at 231, 612 S.E.2d at 724 ("The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction.").

CONSPIRACY TO EXTORT CORPORATE FUNDS

A) Plaintiff's Claims Related to Invoicing and Payment of Legal Fees to MTB are NOT Barred by Collateral Estoppel

8. Since no decisions from any previous actions are known to Plaintiff, and Defendant admits Collateral Estoppel: "... prevents a party from relitigating an issue that was decided in a previous action ...", then a claim of "relitigating" is false. No judgments exist from the referenced case: 2019-CP-23-01501, other than a wrongful granting of Summary Judgment against Plaintiff; see Appeal 2020-000506, where Plaintiff's Brief cites many error of law associated with such granting. This Appeal is pending at this time. Plaintiff believes reversal of Summary Judgment will be forthcoming from the Appellate Court, which will result in a decision favorable to Plaintiff. However, no decision exists at this time.

9. Collateral estoppel does not apply since Plaintiff did not know about existence of a cause of action against MTB until long after Case 2018-CP-23-03758 was brought, and only as a result of settlement, as resulted after Mediation.

10. Defendant's contention of "... same theory ..." is ridiculous, as the caption of 01501 cited the Board with associated Board "Breach of Duty", showing:

Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc., **Plaintiff**

vs.

Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve, and Charles Koshis in their capacity as Members of the current Board of Directors of Woodington Homeowners' Association, Inc.

BREACH OF COVENANTS, AND BREACH OF FIDUCIARY DUTY

where Defendant, themselves, admit that "... MTB was not a named party to Case 2019-CP-23-01501."

11. Plaintiff thanks Defendant for admission of: "... In Case 2019-CP-23-01501 Plaintiff laid out almost identical facts ...", which thus must result in annulment of Summary Judgment, where Plaintiff's "Memorandum in Opposition to Defendants' Motion for Summary Judgment" (Exhibit 9 as attached to SUC), filed in the Public Index on February 24, 2020 showed:

THERE ARE GENUINE ISSUES OF MATERIAL FACT

2. The Board makes the bare statement that they did not breach their fiduciary duty, which is wholly inadequate, and goes to the essence which is a question of fact – Plaintiff's Complaint filed on March 23, 2019 was substantiated by specific statements of violations as supported by Exhibits and Affidavit.

12. Plaintiff made it a matter of Record in the Public Index (2020-000506: "Supplemental Record On Appeal", pp. 4 and 5, Exhibit: "Appellant Objected to the Proposed Order (PO), but was not Given Time to Respond"), where this Exhibit showed:

The Proposed O[r]der contains content which is:

- > irrelevant and definitely inappropriate for a court's order
- > neither accurate nor germane to the issues presented, and therefore should be stricken
- > unnecessary and incomplete in any event, and therefore should be stricken
- > not reflective of a judicial viewpoint nor proper judicial objectivity
- > not reflective of the fact that there were multiple disputes of material fact
- > presenting and raising questions of material fact
- > conclusionary as in a trial setting, which is not appropriate for a finding of summary judgment

> in dispute by Plaintiff, who presented well-articulated argument based upon statute, yet his argument was not addressed at the Hearing, nor is it noted in this proposed order

The PO was used as a "soapbox" as drafted by Counsel, fabricated based upon matter not aired in Court, but thereafter was simply signed without change by the Judge. Indeed, a full set of comments made by Court (emphasis added for the only substantive comments) were limited to:

THE COURT: Okay. Your turn, Mr. Wedlake.

THE COURT: Mr. Wedlake, did you file it with the clerk's office?

THE COURT: There you go. Okay.

THE COURT: Point for you.

THE COURT: Mr. Wedlake, if you file it, it's part of the court record. Okay? So your motion is unnecessary. Go ahead.

THE COURT: We're not here to argue some other case, Mr. Wedlake. Let's get ---

THE COURT: --- to the points ---

THE COURT: Mr. Wedlake, ---

THE COURT: Mr. Wedlake, don't interrupt me. I won't interrupt you, so don't interrupt me. Okay? We're not going to argue the other case. Respond to this motion for summary judgment. Thank you.

THE COURT: What are those acts of negligence?

THE COURT: - Okay.

THE COURT: No, I don't.

THE COURT: All right.

THE COURT: Okay. There haven't been any motion for Rule 11 sanctions or anything like that? [answered by Counsel: No, no Rule 11 ...]

THE COURT: Okay.

THE COURT: Okay.

THE COURT: Briefly.

THE COURT: So if I understand you correctly that these attorney's fees -- these attorney's fees that were incurred to defend your lawsuits, you're saying it's your position that the board should have just rolled over and let you win your lawsuits. I'm not asking for a response.

[the Judge denied Plaintiff an opportunity to respond]

I would suggest -- you're a very studious individual. And I think I've told you before that we welcome pro se litigants. But we hold them to the same standards as we do attorneys. And I suggest that you review Rule 11 with respect to sanctions for pleadings or lawsuits that are -- have no valid basis or merit.

THE COURT: Thank you.

THE COURT: That is standard operating procedure.

THE COURT: Please do. Okay. Thank you.

(Transcript of Record, February 27, 2020, 2020-CP-23-01501)

This set of Court comments, limited in substance as shown, fully contradicts erroneous-Order content as cited by Defendant:

- “[P]laintiff has failed to establish that the Board did not receive a majority of votes needed to pass the payment plan proposal . . .” (Order, p. 7.)
- “[The board members] were not in violation of the South Carolina Non-Profit Act as it pertains to the approval for the proposed ballots for indemnification and payment of legal fees.” (Order, p. 9.).

13. A **non-factual contention** that the Order in Case 2019-CP-23-01501 “... unequivocally found that membership of WHOA voted to indemnify the individual defendants from Case 2017-CP-23-6301 ...” was **proven false** as shown by Exhibit 13 as filed with SUC which showed on its face:

Due by Friday, November 9th

EXHIBIT 13

BALLOT #1 [Majority Vote Needed to Pass (34 of 66)]

The Association shall indemnify the 2017 Board Members ...

as **further proven false** by Complaint par. 43, and Exhibit 17 - an Affidavit attesting to **only 29 “FOR” votes cast by Members** – short of the required 34 - which showed (emphasis added, where NPCA denotes the “South Carolina Nonprofit Corporation Act of 1994”):

43. A majority (34) of Member votes did not approve Ballot 1 nor Ballot 2, where in violation of the NPCA Section 33-31-831(f), the Board used assumed-Proxy votes to erroneously contend “PASSED”, where **only 29 Member-votes were counted “FOR”** on Ballot 1, ... as seen in Paragraph 10 of: “Affidavit of Christopher Edwards” (Exhibit 17, p. 3, par. 10), filed in the Greenville-County-Circuit-Court-Public Index on May 21, 2019, which shows:

10. November 9, 2018 was the due date for the ballots that were sent out October 11, 2018. Forty One (41) total ballots were returned. :

- Ballot #1 (Indemnification) – PASSED
 - 53 **FOR** (29 returned and 24 Board Proxies)
 - 12 Against

14. A **non-factual contention** that the Order in Case 2019-CP-23-01501 "... further held the membership voted to pay the legal fee invoice submitted by MTB through a payment plan. ..." was similarly **proven false** as shown by Exhibit 5 as filed with SUC which showed on its face:

Due by Friday, November 9th

EXHIBIT 5

BALLOT #2 [Majority Vote Needed to Pass (34 of 66)]

Should Ballot 1 pass, the proposed payment plan shall be utilized to pay ...

as **further proven false** by Complaint par. 43, and Exhibit 17 - an Affidavit attesting to **only 32 "FOR" votes cast by Members** – short of the required 34 - which showed (emphasis added):

43. A majority (34) of Member votes did not approve Ballot 1 nor Ballot 2, where in violation of the NPCA Section 33-31-831(f), the Board used assumed-Proxy votes to **erroneously contend "PASSED"**, where **only ... 32 Member-votes were counted "FOR"** on Ballot 2, as seen in Paragraph 10 of: "Affidavit of Christopher Edwards" (Exhibit 17, p. 3, par. 10), filed in the Greenville-County-Circuit-Court-Public Index on May 21, 2019, which shows:

10. November 9, 2018 was the due date for the ballots that were sent out October 11, 2018. Forty One (41) total ballots were returned. :

- Ballot #2 (Payment Plan) – PASSED
 - 56 FOR (32 returned and 24 Board Proxies)
 - 9 Against

15. No non-factual contentions should lead to dismissal of Plaintiff's claims related to invoicing and payment of legal fees for Case 2017-CP-23-06301.

B) Plaintiff's Complaint Alleges Special Damages with Specificity

16. Specific damages suffered as a result of an alleged conspiracy were contained in SUC:

98. Evidence presented show through its written and verbal statements, as attested to in the Affidavit and as set forth in Exhibits, McCabe intentionally disparaged Plaintiff in verbal and written communications to Members, in a concerted effort to disparage and undermine the reputation of Plaintiff in the Community. Through such a actions, McCabe was successful in exerting serious damage to Plaintiff's previously excellent reputation, resulting in his being shunned and treated with disrespect by many Members. McCabe's painting Plaintiff in a false light undermined his efforts to become a member of the WHOA-Board of Directors in all subsequent years after 2016. This Court must find McCabe's actions did misrepresent true facts, and thereby confirm that

McCabe did paint Plaintiff in a false light before Members, which has caused irreparable damage to Plaintiff's reputation.

17. In violation of their "Lawyer's Oath" (Exhibit 46 to SUC), Defendant seeks to mislead by saying: "... in this case the damages sought by Plaintiff, a refund of legal fees allegedly paid in violation of the WHOA's covenants ...", where factually such refund was rather sought to accrue to the benefit of WHOA – not to accrue to Plaintiff's benefit; shown in SUC was:

D. Plaintiff prays for the Court to issue an Order with directives for McCabe:
D1. to pay back \$7493 to WHOA Board;

18. Plaintiff specifically stated damages to comply with Rule 9(g), SCRCP:

RULE 9 PLEADING SPECIAL MATTERS

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

C) Complaint States Facts Sufficient to State a Claim for Conspiracy

19. Several facts sufficient to show a claim for conspiracy are contained in Complaint; see paragraphs: 48, 54, 79 – 84.

D) SC Code of Laws Recognizes an Action by a Citizen / Extortion

20. Pursuant to SC Code of Laws, a citizen cannot be barred from prosecution of his own cause:

SECTION 40-5-80. Citizen may prosecute or defend own cause.

This chapter may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires.

21. All of extortion, as well as embezzlement, obtaining money under false pretenses, conspiracy to defraud or other like offense, are noted in SC Code of Laws:

SECTION 40-11-110. ... civil penalties; ...

(A) The board may impose disciplinary action authorized by this chapter upon a licensee, certificate holder, or other entity or individual if the board finds any of these conditions:

(7) conviction ... of the offense of forgery, **embezzlement, obtaining money under false pretenses, theft, extortion, or conspiracy to defraud or other like offense** regardless of whether an appeal has been sought;

22. Plaintiff's case was plainly captioned showing "Extort", and it was the judgment of the Court to label Complaint as a civil action, rather than as a criminal action against MTB, where the caption shows (emphasis added):

Breach of Contract by the Board; Plus **CONSPIRACY** by McCABE to **EXTORT** Corporate Funds, and Casting Plaintiff in a False Light

23. Magistrates have jurisdiction in criminal cases:

SECTION 22-3-520. Jurisdiction limited to county.

Magistrates shall have and exercise within their respective counties all the powers, authority and jurisdiction in criminal cases herein set forth.

SECTION 22-3-550. Jurisdiction over minor offenses; ...

(A) Magistrates have jurisdiction of all offenses which may be subject to the penalties of a fine or forfeiture not exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both. In addition, a magistrate may order restitution in an amount not to exceed the civil jurisdictional amount provided in Section 22-3-10(2). In determining the amount of restitution, the judge shall determine and itemize the actual amount of damage or loss in the order. In addition, the judge may set an appropriate payment schedule.

E) Doctrine of Attorney Immunity Does Not Apply to Plaintiff's Claims

24. Pleadings made clear that the corporate entity: WHOA, was never a client of MTB:

24a) Complaint showed:

3. I believe, because of information herein, that I am entitled to and do request a judgment for \$7493 against McCabe, who conspired with the 2018 Board, and later-year Boards, to extort payments from WHOA who was not their client. ...

SUC also showed (below "Case" refers to 2017-CP-23-06301):

Plaintiff comes before this Court as a *Pro-Se* party, citing Defendant McCabe, Trotter, and Beverly, P.C. (McCabe) for unethical and alleged-unlawful billing, directing their invoice (Exhibit 1) to Woodington Homeowners' Association, Inc. (WHOA), who was not a client of McCabe. ... McCabe did not render legal services to WHOA, and therefore WHOA has no obligation to pay what Plaintiff contends is an illegitimate bill.

27. Plaintiff cites McCabe for unethical and unlawful billing of WHOA, who was not their client in Case, which is currently pending Appeal (2018-001209), ... with subsequent alleged-unlawful imposition of such invoice for Fees assessed against Members, coupled with alleged-unlawful disbursement of WHOA funds by the Board to McCabe.

55. Plaintiff sought Nominal Damages of \$1 in Case, where McCabe's-alleged extortion is about a ratio of 50000:1 in damages that have been billed to WHOA, who was not their client in Case based on information and belief, and where no Court Order gave McCabe the privilege to bill a party who was not their client.

92. McCabe admitted that WHOA was not their client, and WHOA by McCabe's own admissions was "... never a party ...", but yet violated their "South Carolina Lawyer's Oath" (Exhibit 46) ... by sending an invoice to WHOA, to whom they provided no legal services as related to their defense of 2017-Board-members in Case. ...

24b) MTB, themselves, admitted that "... WHOA was never a party ...", and therefore extorted funds from a party who was not their client, as shown in SUC:

51. Additionally, in their "Respondents' Motion to Dismiss and Supporting Memorandum" (Exhibit 19) filed with the Court of Appeals on August 8, 2019 (2018-001209), McCabe themselves admit: "... WHOA ... was never made a party ...", with this fact as stated on Page 6 (emphasis added):

This action was instituted against Respondents in their capacity as the current Board of Directors of the Association. Notably, Woodington Homeowners' Association, Inc., the corporate entity itself, **was never made a party to this proceeding.** ...

Respondents' Motion to Dismiss was **DENIED** by Order filed November 8, 2019 (Exhibit 20).

25. Therefore, MTB is liable to Members for damages suffered.

F) Plaintiff's Complaint Requests Relief Not Authorized by South Carolina Law.

26. Plaintiff contends, opposing Defendant's claims to the contrary, that MTB is "... lawfully obligated to pay back to WHOA Board ...". Defendant contends "... S.C. Code § 33-31-833(b)(2) is inapplicable to the case at hand ...", due to an unrelated definition of "distribution". Defendant is confused between "distribution", and the plainly stated: "... unlawful distributions", to which the cited § 33-31-833(b)(2) applies (emphasis added):

SECTION 33-31-833. Liability for unlawful distributions.

(a) Unless a director complies with the applicable standards for conduct described in Section 33-31-830, a director who votes for or assents to a distribution made in violation of this chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

(b) A director held liable for an **unlawful distribution** under subsection (a) is entitled to contribution:

(2) **from each person who received an unlawful distribution** for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter.

Emphasized text in (2) says "... each person ..." without additional restriction, giving clear and plain-legislative intent that **unlawful distributions** must be paid back by all those who received them.

G) Complaint Showed Proven Standing to Bring a Derivative Suit

27. Complaint showed: "**FIGURE 1 - Six Member Statements Denying Defendants as Proxy, November 9, 2018 Ballots**", which proved at least six Members (about 10% of 65 other Members) support a basic argument by Plaintiff, thereby justifying Plaintiff's-case caption showing: "... and on behalf of other-similarly-situated Members ...". If other Members support Plaintiff, he has Standing to bring a Derivative suit. Defendant makes a false and unsupported claim: "... Plaintiff does not fairly and adequately represent the members of WHOA ...", since Complaint proved otherwise as found herein:

... as **further proven false** by Complaint par. 43, and Exhibit 17 - an Affidavit attesting to **only 29 "FOR" votes cast by Members** – short of the required 34 - which showed (emphasis added):

43. A majority (34) of Member votes did not approve Ballot 1 nor Ballot 2, where in violation of the NPCA Section 33-31-831(f), the Board used assumed-Proxy votes to **erroneously contend "PASSED"** ...

Defendant did not, and cannot show, any evidence which proves anything other than a **minority** of Members who support the Board, or who support MTB's claims. Consequently, Plaintiff represents the **majority** of Members, with Complaint showing proven Standing to bring a Derivative suit.

28. Neither of Defendant's claims in 28a nor 28b, give legally-valid rationale to lead to dismissal:

28a) A pending-class-action lawsuit brought by two-other Members is unrelated, irrelevant, and academic as applied to Plaintiff's derivative suit. However, a "... Complaint as a Third-Party Plaintiff ..." and a "Counterclaim" were filed against this-pending lawsuit. False claims in this-pending suit will lead to denial of "Certification", which has not been attempted to date, based upon information and belief. Plaintiff asked for Affidavits from named Plaintiffs, which do not exist to date. These Plaintiff's will not have interest to fully prosecute their case, based upon information and belief. Plaintiff also contends a law-firm was the party who brought this case, in violation of statute:

SECTION 40-5-350. Soliciting legal business unlawful.

It is unlawful for a person or his agent, employee, or anyone acting on his behalf to:

(1) solicit or procure through solicitation, either directly or indirectly, legal business; or

(2) solicit or procure through solicitation a retainer, written or oral, or an agreement authorizing an attorney to perform or render legal services.

A person who violates a provision of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

28b) Similarly, a "... 2019 The Greenville News published a story outlining Mr. Wedlake's harassment of his neighbors ..." is non-factual and unsupported by any substantive evidence, and hence is unrelated, irrelevant, and academic.

29. Defendant must be specific, which was not done nor supported by evidence, in claims to: "strike the exhibits to Plaintiff's Complaint ...", and must be specific for: "... require Plaintiff to make a more definite statement to clarify the exact nature of the claims asserted". Regardless, this claim does not support dismissal.

30. Plaintiff states that documented evidence is admissible because it is relevant, material, and competent. Defendant must bring specific proof to the contrary for evidence to be inadmissible. In

counter argument, Defendant tries to invalidate admissibility of "duplicates" contrary to "Rules of Evidence", SCRE, with no question being raised as to authenticity. Defendant makes no claims that documented evidence was hearsay, nor did they cite violations of SCRE, which show (as excerpted, emphasis added):

RULE 104 PRELIMINARY QUESTIONS

(a) Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or **the admissibility of evidence shall be determined by the court**, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the **court shall admit it** upon, or subject to, the introduction of **evidence sufficient to support a finding of the fulfillment of the condition.**

RULE 401 DEFINITION OF "RELEVANT EVIDENCE"

"Relevant evidence" means **evidence having any tendency to make the existence of any fact** that is of consequence to the determination of the action **more probable or less probable than it would be without the evidence.**

RULE 402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE ...

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. ...

RULE 1001 DEFINITIONS

For purposes of this article the following definitions are applicable:

(1) Writings and Recordings. **"Writings" and "recordings" consist of letters, words, sounds, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.**

(4) Duplicate. A **"duplicate"** is a **counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.**

RULE 1003 ADMISSIBILITY OF DUPLICATES

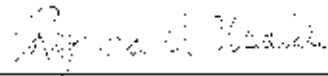
A duplicate is **admissible to the same extent as an original** unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

31. As to: "... which claims are being asserted individually versus derivatively ...", such is irrelevant, unrelated to, and academic, towards this Court serving the interests of justice.

32. Complaint listed causes of action being asserted against Defendant; see Complaint paragraphs 91, 92, 93, and 98.

THEREFORE as based upon the foregoing a conclusion other than **DENY** is not apparent as applied to Defendant's "... Motion to Dismiss". Consequently, Plaintiff's case plus additionally his claim for "... false light ...", should continue. This MOP may be further supported by a memorandum of law.

Dated this 11th day of September, 2020.


Raymond A. Wedlake, Plaintiff (*Pro Se*)
703 Creekview Drive, Greenville, SC 29607
864-254-9262 wedlakera@gmail.com

Rule 14, SCRMC:

RULE 14 AMENDMENT OF COMPLAINTS, ...

The court shall be lenient in the allowance of changes or amendments to complaints, answers, and counterclaims, and in granting continuances ...

The Board of Directors (Board) of Woodington Homeowners' Association, Inc. (WHOA) are noted as a first Defendant, as the caption of this case. Plaintiff cites Defendant SF for "Breach of Contract" (BOC) also, where evidence shows what Plaintiff believes to be misconduct on the part of SF, in addition to their BOC.

PREAMBLE AND REVIEW

1. By reference, Plaintiff includes his original "Complaint Breach of Contract by the Board; Plus Conspiracy by McCabe to Extort Corporate Funds, and Casting Plaintiff in a False Light", along with its "Supplement to Complaint" (Complaint Plus Supplement, CPS), along with its supporting Exhibits and Affidavit, in their entirety. Consequently, this FAC is like an addendum to CPS.

2. In review, CPS cited aspects of why WHOA exists, where its purpose is "... the betterment ... of homeowners ...", as stated in By-Laws:

ARTICLE II - PURPOSE

This Association does not contemplate pecuniary gain or profit to the Members thereof, and the purpose of the Association, as provided in the Certificate of incorporation, is as follows: "The purpose of the said proposed Corporation is to provide for an association for the betterment of the property and homeowners of Woodington Subdivision, Greenville County, South Carolina."

Comments related to "betterment" are spelled out in CPS paragraphs 5, 13, and 60, and as contained herein, where many Board actions, and inaction, contradict this basic purpose under which WHOA, via its Board, are obliged to operate.

3. New evidence brought shows SF to be acting in BOC to provide "coverage" to allow the Board to enjoy "insured" legal services supplied by Clarkson, Walsh & Coulter, P.A. (CWC). In Plaintiff's case, "... no monetary damages ..." are claimed against the Board (who is a "WHOA insured party") under the insurance contract (ICO). Herein as amended, a former claim for \$1 against the Board in CPS is changed to \$0 (zero), to clarify what Plaintiff believes is misconduct by SF in their contention that \$1 constitutes "damages". The ICO gives no leeway for SF to exercise an "option" allowing SF to provide coverage to pay a law firm, when "... no monetary damages ..." exist. Plaintiff waives as applied against the Board any and all monetary damages, which therefore verifies "... no monetary damages ..." exist, and consequently SF must cease and desist from paying CWC to represent the Board in Plaintiff's case.

FACTS BREACH OF CONTRACT BY SF

4. On August 10, 2020, Plaintiff sent a letter to Michael Tipsord, Esq., CEO of SF, informing them that paying CWC represents a BOC. To date, other than a brief phone conversation where SF denied BOC, and where Plaintiff asked for a response in writing, no reply was received. The letter showed (excerpted, emphasis added):

... I allege as **related to an insurance contract** that is involved, **SF's payments represent a "Breach of Contract" (BOC).**
... By providing "coverage" in this instance, **SF is enabling legal malpractice!**
... Please be advised that no response ... may very well **elicit a BOC suit against SF.** (Exhibit A "Alleged Breach of Contract by State Farm Enabling Legal Malpractice")

5. SF to date has ignored Plaintiff's letter of October 1, 2018 (Exhibit B - "Improper Claim Filed, Please Correct Your Records"), and continues to accept claims with Plaintiff listed

as "Claimant", based upon information and belief. SF also did not, nor did CWC, reply to provide requested information about filed claims, where excerpts from Exhibit B show:

Please take notice that Claim 40-1711-G27 was an improperly filed claim because it listed me as "Claimant". I did not file this claim; I did not ask for this claim to be filed; I gave no permission for this claim to be filed listing me as Claimant; ... please correct your records to amend 40-1711-G27 to remove me as Claimant! ...

Please accept this request for information for both claims, about:

- 1) claim statements
- 2) parties cited – particularly who is/are (the) Claimant(s)
- 3) statement of response(s) from State Farm
- 4) current status

where for response and status, please include rationale explaining why. ...

May I expect your reply to this letter confirming proper, affirmative action and supplying requested information before October 8, 2018?
(Exhibit B)

6. Plaintiff's case as related to damages is little different from the situation described in a letter to SF of May 10, 2019. Without monetary damages, SF has no duty to provide coverage and are in BOC if coverage is provided. Excerpts from Exhibit C "State Farm has no duty to provide any coverage" show:

It is my understanding upon a lack of monetary damages being sought, that State Farm **HAS NO DUTY** (as Appendix 1) to provide any coverage, as related to my case.

----- Appendix 1 -----

State Farm letter to Benjamin Acord of November 6, 2017

[excerpts; emphasis added]

Under the CMP-4814 Directors & Officers Liability endorsement, the **COMPLAINT IS NOT SEEKING SUMS** that the insured would be legally obligated to pay. ... therefore, **STATE FARM HAS NO DUTY** to defend. ... the **EXCLUSIONS ... NON - MONETARY RELIEF** will apply.

----- Appendix 2 -----

State Farm letter to WHOA of October 30, 2018

[excerpts; emphasis added]

The D&O Liability coverage of the **POLICY REQUIRES** there to be a wrongful act and **MONETARY DAMAGES** resulting from the wrongful act. There are no such damages ... (Exhibit C)

7. SF is contractually bound by the ICO not to supply "coverage" to the Board, and not to pay CWC, where excerpts from the ICO (Exhibit D – "Directors and Officers Liability") confirm SF's "... endorsement does not apply ...", further confirmed by "... No other obligation or liability to pay ... is covered unless explicitly provided for under Section II - Supplementary Payments ...". Both of these also confirm statements as Appendix 1 and Appendix 2, above, where the ICO shows (excerpted, emphasis added):

1. The following coverage is added to **SECTION II - LIABILITY:**
DIRECTORS AND OFFICERS LIABILITY

a. When a Limit Of insurance is shown in the Declarations for Directors And Officers Liability, **we will pay** those sums that the **insured becomes legally obligated to pay as damages** because of a "wrongful act" to which this endorsement applies.

... However, we will have no duty to defend the insured against any "suit" seeking damages to which this endorsement does not apply. ...

No other obligation or liability to pay sums or perform acts or services **is covered unless explicitly provided for under Section II - Supplementary Payments.** (Exhibit D)

8. The ICO contains a specific exclusion, which places SF in BOC in the event that coverage continues to be provided via payments to CWC, where the ICO shows (excerpted, emphasis added):

Section II - Exclusions

This coverage provided under Directors And Officers Liability **does not apply to:**

b. Actual Knowledge Or Intent

"Wrongful act" by an insured with **actual knowledge of its wrongful nature or with intent to cause injury or damage.** (Exhibit D)

because Plaintiff made it plain to the Board their actions are unlawful so they are aware of a wrongful nature, where additionally they intend to cause injury or damage to Plaintiff as retribution against his lawsuit, based upon information and belief.

9. The ICO contains a specific exclusion, which places SF in BOC in the event that coverage continues to be provided via payments to CWC, where the ICO shows (excerpted, emphasis added):

Section II - Exclusions

This coverage provided under Directors And Officers Liability does not apply to:

g. Personal Profit Or Advantage

Damages arising out of any transaction of the insured from which the insured will gain any personal profit or advantage, which is not shared equitably by the members of the organization. (Exhibit D)

because the insured gains a personal advantage by having a "freely supplied" law firm, contrasted against Plaintiff being a *Pro Se* party, who obviously as a member of the organization is not sharing equitably.

10. The ICO contains a specific exclusion, which places SF in BOC in the event that coverage continues to be provided via payments to CWC, where the ICO shows (excerpted, emphasis added):

Section II - Exclusions

This coverage provided under Directors And Officers Liability does not apply to:

i. Non-Monetary Relief

Any costs incurred to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief. (Exhibit D)

because Plaintiff modified this FAC to seek non-monetary relief, exclusively.

LACK OF GOOD FAITH BY THE BOARD

11. Under law, a Board must act with good faith, where to review, CPS showed (excerpted, emphasis added):

37. Plaintiff alleges that the Board breached their duty to Members, including the "Duty of Care" and the "Duty of Loyalty", by not acting in

good faith, and indeed their misconduct was knowing and intentional, nor did they act with the care an ordinarily-prudent person would exercise, nor in a manner reasonably believed to be in the best interests of the corporation, ... pursuant to NPCA [South Carolina Nonprofit Corporation Act of 1994] Section 33-31-830 where excerpts show:

SECTION 33-31-830. General standards for directors.

(a) A director shall discharge his duties as a director, including his duties as a member of a committee:

- (1) in good faith;**
- (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and**
- (3) in a manner the director reasonably believes to be in the best interests of the corporation.**

12. On January 31, 2020, Plaintiff asked the Board "... to verify my list of Members who attended the [annual] meeting is correct? ...". With lack of good faith, no response to date was given. Thus, the fact that "... a majority of Members did not attend ..." is apparently confirmed by the Board (Exhibit E).

13. On February 2, 2020, Plaintiff contacted the Board and suggested:

... which contains a settlement proposal, whose intent is to **AVOID MORE LEGAL FEES** being incurred by WHOA ...
... would you be so kind, please, to affirm that you will sign the agreement ... therefore to **AVOID MORE LEGAL FEES?**
(Exhibit F)

With lack of good faith, the Board would neither sign the proposal, nor to negotiate any aspect of the proposal.

14. On February 8, 2020, Plaintiff again asked the Board "Please Agree to Avoid More Legal Fees":

With good faith on my part to dismiss my Court cases, and with intent to save WHOA Members from more legal fees, a reply from "woodingtonhoa@gmail.com" was not on point. The reply made no attempt to address the issue to save Member from more legal fees
(Exhibit G)

With lack of good faith, the Board made no attempt to address the issue.

15. On February 10, 2020, Plaintiff again asked the Board "... save WHOA Members from more legal fees ...", and asked to be invited to a Board meeting (excerpted, emphasis added):

... The TRUTH: the 2020 BOARD MUST ACT in order to save WHOA Members from more legal fees. I did not ask the Board: "... to make decisions in those lawsuits ...". I asked the Board to act to save WHOA Members from more legal fees!

... Only the 2020 Board can act to produce savings - NOBODY ELSE CAN!

Review of 8 Feb will also show I asked:

" Please invite me to a special Board meeting, if that might help to facilitate understanding by everyone. ... " (Exhibit H)

With lack of good faith, the Board made no attempt to act, nor to invite me to a special Board meeting.

16. On February 14, 2020, Plaintiff asked the Board to answer questions about legal fees:

Would you be so kind, please, to tell me if the Board authorized these additional legal fees? Or, is this being done by non-Board members without Board permission? Or, is this be[ing] done by non-Board members behind the Board's back?

... unless the Board authorized these additional legal fees, they are not owned by WHOA, and must be rejected if/when Campbell Teague may bill WHOA for these fees. (Exhibit I)

With lack of good faith, the Board gave no feedback.

17. On March 9, 2020, Plaintiff suggested reasonable prerequisites that would enhance mediation, and asked '... may all agree to a "going forward" plan? ...' :

... I asked them to first negotiate. Negotiation is a first requirement to define issues that remain in dispute. To mediate without mutual consent about which issues are important, and disputed, would be a waste of everyone's time. ... Still, issues to mediate must be defined by mutual consent.

... Final resolution of disputed issues is what is important for the benefit of WHOA. Game playing, posturing, and other non-productive use of time, without intent to resolve basic-disputed issues, will be wasted effort.

Would you be so kind, please, to have your clients give feedback, so we may all agree to a "going forward" plan? Thank you. (Exhibit J)

With lack of good faith, the Board would not comment to help facilitate mediation, nor to participate to form an agreement for a going forward plan, and gave no feedback.

18. On June 4, 2020, Plaintiff reminded members of the Architectural Committee (AC) that WHOA is a "Post No Signs" neighborhood, and reiterated a request from October 2018 for the AC to define "what is a sign" :

... As you should be fully aware as an AC member, we are a:
"Post No Signs" neighborhood.

For years I have asked the AC to define: "What is a sign?". To date, the Board will not appoint me to the AC ... Consequently, there are several "signs" that have been displayed in various lots against the "Post No Signs" directive.

... Will the AC respond to my request to define: "What is a sign?".
Thank you. (Exhibit K)

With lack of good faith and with breach of their contractual duty under the "Covenants", the Board has made no attempt to rid the WHOA community of illegally posted signs, nor has the AC made attempt, with neither party responding to my original-2018 request to define what is a sign, where Covenants: Exhibit 2 as attached to CPS, showed (emphasis added):

ARTICLE VI: MISCELLANEOUS

(1) **No signs shall be permitted** on any lots **except** that a **single sign** offering the **property for sale** may be placed on such lot providing such sign is approved by the Architectural Committee.

19. On July 29, 2020, Plaintiff cited to the Board that only one document, filed with the "Office of the Register of Deeds" (ROD) from a list the Board provided, qualifies as a governing document, and suggested to the Board that a new, clean and complete, revision of the By-Laws is required, which necessitates a "By-Laws Review Committee" be formed:

At this time, if the Board does not understand why none of these are Governing Documents, please ask me to clarify, and I will do so at some future time. A new, complete, and updated revision of the By-Laws is

sorely needed, which should be viewed as a required action by the Board. An "Office" file containing a By-Laws "official version" would help to facilitate this action. (Exhibit L)

With lack of good faith, and contrary to Plaintiff's claim of alleged-unlawful filing of non-governing documents with ROD, the Board has done nothing to rectify the situation by removing all but governing documents from ROD files. Neither did the Board appoint a necessary committee as required by the By-Laws (CPS Exhibit 3, Article XIV Committees).

20. On August 10, 2020, Plaintiff made known to the Board several "... calls for action ..." which were listed in a summary section:

Several calls for action by the Board are below, which are in summary:

1. to create a new revision of By-Laws:
... key issues are missing entirely, such as Mandatory Alternative Dispute Resolution (ADR) being required prior to a Member bringing a judicial action.
2. to remove "Architectural Guidelines" and ... other ... from Register of Deed's file;
3. to find ballot results as requested [ballot of Feb 22, 2019];
4. to acquire affidavits from those-involved-and-responsible-former-Board members;
5. to fill Board vacancies, as required by the By-Laws. (Exhibit M)

With lack of good faith, the Board has not responded to calls for actions, nor given any indication they would be willing to act as requested.

21. On August 21, 2020, a Board member posted a sign which is not a "For Sale" sign, with a contention that the posted display is "... not a sign ...". This sign displays and states a socio-political viewpoint, advertising a belief apparently held by the poster. Neither the AC nor the Board have proffered a definition giving "what is a sign", to date. No AC documentation showing approval for posting was provided, as requested:

... a Board Member posted a sign ... This sign reads:
"BE KIND BE BRAVE".

The Board said you would comply with the By-Laws, but do not - another action in breach of contract. Is there contention [about] that we are a "Post NO Signs" neighborhood? In the event that it exists, please send me AC documentation showing approval for this sign ...

I once again request for the Board to order all signs to be removed ... (Exhibit N)

With lack of good faith, the Board has not responded, and to date the sign is still displayed.

22. On August 29, 2020, Plaintiff contended that Board actions/inaction are based upon personal interests, and do not reflect a **Best Interest** for WHOA:

Thank you for your reply of August 24, 2020. As with all of your replies, the Board refuses to recognize a "... best interest for WHOA ...", but rather sticks to a story line reflecting your "... personal interest ...". Indeed, the Board's story line is inaccurate, often **untruthful**, and sometimes **unlawful**.

... Lawfully under the NPCA, the Board **CANNOT CAST 48 VOTES "FOR"**, and then thereafter claim "65 in favor". Such **UN** lawful action by the Board represents a **Breach of Contract** ! (Exhibit O)

With lack of good faith, the Board remains committed to allegedly-unlawful claims related to "PASS" for all recent ballots, based upon information and belief. Evidence has proven that a majority of Member votes did **not** approve any recent ballot.

23. On September 24, 2020, Plaintiff informed the Board that their "Motion to Dismiss" was denied, and this could mean tens-of-thousands-of dollars in additional legal fees. The Board was asked to "... Please Attempt to **Mitigate Damages** per Your Fiduciary Duty to WHOA ...":

... These fees do not, and cannot, belong to WHOA.

The Board needs to take action to attempt to **"Mitigate Damages"** that may otherwise occur to WHOA.

Experience has shown that the Board will try to impose financial liability upon WHOA Members, as related to legal fees. Such gross negligence by the Board manifests the Board's **"Breach of Contract"**, and

is also a "Breach of Fiduciary Duty" of both the "Duty of Care" and "Duty of Loyalty" to WHOA and its Members. ... (Exhibit P)

With lack of good faith, no reply from the Board was received.

24. On September 25, 2020, Plaintiff asked the Board to recall 13 of his attempts to mitigate damages that may accrue to WHOA, highlighting again a need to mediate:

Please recall a selected 13 of my previous attempts to "Mitigate Damages" that were proposed, but which have been ignored. Inaction by the Board in this regard is a breach of your contractual duty, as well as a breach of your fiduciary duty to WHOA and to its Members. ...

Of these, many are still without answers but all of these are still "on the table" for the Board to consider, particularly **MEDIATION!** But, the Board continues to breach your contractual duty to act as the governing body of WHOA, and to breach your fiduciary duty to act to protect WHOA and to protect its Members from legal fees, in particular!

With lack of good faith, no reply from the Board was received.

CAUSES OF ACTIONS - AMENDED FOR DEFENDANT STATE FARM

25. Allegations in preceding paragraphs related to SF are incorporated as if repeated verbatim herein.

26. SF has violated provisions and exclusions found in the ICO, and all such actions contrary to their ICO with WHOA, which is a matter of record, leave SF in BOC.

27. BOC by SF, who is contractually obligated to comply with the ICO, is an actionable status upon which this Court can grant requested relief.

28. By providing "coverage" to the Board in this instance, contrary to contractual obligations as found in the ICO which prohibit coverage, SF is enabling legal malpractice on the part of CWC, based upon information and belief.

29. Plaintiff's FAC takes away "monetary damages", and thus SF is contractually bound by the ICO not to provide coverage to the Board, and thus not to continue to pay CWC.

PRAYER FOR RELIEF - AMENDED

Plaintiff reiterates and affirms all prayers for relief: A – F found in CPS, where however, the amount of "Nominal Damages" needs to be amended to zero dollars in "E" :

E. That this Court award Plaintiff and six-other-known-similarly-situated Members

Nominal Damages of \$0 = zero dollars;

In addition, Plaintiff requests addition of amended prayers as below:

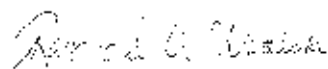
G. Plaintiff prays for the Court to find in favor of Plaintiff against SF, giving Declaratory Judgment for Breach of Contract;

H. Plaintiff prays for the Court to issue an Order with directives for SF :

H1. to request return to SF of all payments made to CWC for Plaintiff's case;

H2. pursuant to the ICO that SF is contractually bound not to provide "coverage" to the Board because no monetary damages are sought in Plaintiff's case.

Dated this 28th day of September, 2020.



Raymond A. Wedlake, Plaintiff (Pro Se)
703 Creekview Drive, Greenville, SC 29607
864-254-9262 wedlakera@mail.com

EXHIBIT A - Alleged Breach of Contract by State Farm Enabling Legal Malpractice

703 Creekview Drive
Greenville, SC 29607
August 10, 2020

Michael L. Tipsord, Esq, CEO
State Farm Fire and Casualty Company
One State Farm Plaza
Bloomington, Illinois 61710

cc: Mr. Allan R. Landon - Former Chairman of the Board
Bank of Hawaii Corp.
111 S. King Street
Honolulu, HI 96813

Dear Sir:

As CEO you are the guardian of your shareholders' investments. I want to advise you that a law firm is wasting some of those assets, by passing on its legal bills to State Farm (SF) for "legal services" related to my judicial action which seeks **one dollar, only - \$ 1 !** I allege as related to an insurance contract that is involved, SF's payments represent a "Breach of Contract" (BOC).

Do you really accept claims to cover a Homeowners' Association Board for matters where a "damages" amount involved is truly nominal (\$1)? Should you accept such claims? An artful attorney can run a **\$1 lawsuit** up into **tens of thousands of dollars** by avoiding the merits, and focusing on discovery and motion practice. By providing "coverage" in this instance, SF is enabling legal malpractice!

Of course you know these things, since you have been commended for legal expertise as stated by Garrett Parker in his web article:

"10 Things You Didn't Know About State Farm CEO Michael Tipsord"
10. Law degree
... It sure helps that Tipsord is a JD and knows the ins and outs of the court system. All those years studying the law surely has paid off, and it also makes sense given that he serves as board member for the American Bar Association as well. ... [moneyinc.com/state-farm-ceo-michael-tipsord/#]

As such, please review Exhibit 1 – my letter to SF of May 10, 2019, which showed:

It is my understanding upon a lack of monetary damages being sought, that State Farm **HAS NO DUTY** (as Appendix 1) to provide any coverage, as related to my case.

with its Appendix 2 showing, to which SF admitted (full text of letter from SF per Exhibit 2):

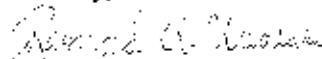
The D&O Liability coverage of the **POLICY REQUIRES** there to be a wrongful act and **MONETARY DAMAGES** resulting from the wrongful act. There are no such damages ... Mr. Wedlake filed an Affidavit expressly stating that he is **NOT SEEKING ANY MONETARY DAMAGES** ...

May I trust you will accept and review this letter with it factual content? I hope you will have facts investigated internally, before simply referring my letter to the law firm that has the most to gain from prolonging litigation {in this case: Clarkson, Walsh & Coulter, P.A. (CWC)}. Kindly accept my claims of BOC by SF, and **make an independent evaluation** as to factual validity, before **abrogating responsible action** which is needed from SF. I believe you will conclude there has been misconduct on the part of CWC to enable their firm to receive "insurance coverage" from SF, **where in truth** any payments being made to CWC as a result of my judicial actions brought against the Board of Directors of Woodington Homeowners' Association, Inc., represent a BOC on the part of SF.

Additionally, I believe I am in position to be able to file a "Slander/Libel" claim against SF; see Exhibit 3. SF has ignored my-Exhibit-3 request, and continues to ignore it. SF acts contrary to my request for SF to **refrain from** accepting claims, where some unknown entity has **listed me** as "Claimant". However, no disclosure of recent claims has been made to me. I am dismayed that nobody at CWC will provide "claim statements" (and other information as shown in Exhibit 3). This results in **nothing being disclosed** to me, which is another example of misconduct on the part of CWC! Why is SF dealing with, and maintaining a relationship with, a law firm that I have found and believe to be disreputable?

May I expect an affirmative response from SF, with proper **direction given** to CWC to observe the existing contract, and thus to **cease and desist** from representation of clients due to cited BOC? At the least, SF should tell CWC **no further "coverage" payments** will be made. Please be advised that no response, a negative response, or a "... referred to CWC ..." response, may very well elicit a BOC suit against SF.

Sincerely,



Raymond A. Wedlake 864-254-9262
wedlakern@mail.com

EXHIBIT B - Improper Claim Filed, Please Correct Your Records

Raymond A. Wedlake
703 Creekview Drive
Greenville, SC 29607
October 1, 2018

Addressees: See Distribution List (below)

Subject: State Farm Insurance Claims – **Improper Claim Filed, Please Correct Your Records**

Ref - Insured: Woodington Homeowners' Association, Inc. (WHOA)
Policy Number: 99-BH-4620-8
Claim Number: 40-1711-G27 (filed as related to 2017CP2306301)
Claim Number: 40-4977-K76 (filed as related to 2018CP2303758)

Gentlepersons:

Please take notice that Claim 40-1711-G27 was an improperly filed claim because it listed me as "Claimant". I did not file this claim; I did not ask for this claim to be filed; I gave no permission for this claim to be filed listing me as Claimant; I was never informed by State Farm, nor by anyone, that this claim was filed listing me as Claimant. Therefore, please correct your records to amend 40-1711-G27 to remove me as Claimant!

Similarly, I am unaware if I was cited as Claimant in Claim 40-4977-K76. If so, this is also a breach of protocol on the part of State Farm for all the same reasons listed above.

Please accept this request for information for both claims, about:

- 1) claim statements
- 2) parties cited – particularly who is/are (the) Claimant(s)
- 3) statement of response(s) from State Farm
- 4) current status

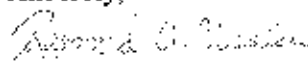
where for response and status, please include rationale explaining why. For example, my understanding about 40-1711-G27 is that denial was due to: "no coverage for Declaratory Judgment cases".

I am the Plaintiff in two Circuit Court Cases brought against Members of WHOA as **individual members of a 2017 Board, or simply as individuals**. Note particularly neither case was brought against WHOA. In both cases, WHOA is listed with me as a co-Plaintiff! Indeed, in **neither** case is WHOA cited as a Defendant! If it is State Farm's position that I may not bring lawsuits against individual Members of WHOA, without me being listed as "Claimant" against "the insured" (WHOA), then please accept my statement that your position is totally improper, and incorrect!

May I expect your reply to this letter confirming proper, affirmative action and supplying requested information before October 8, 2018?

Thank you.

Sincerely,



Raymond A. Wedlake 864-254-9262
wedlakera@mail.com

Distribution List

State Farm Claims
PO Box 106169
Atlanta, GA 30348

(via Priority Mail)

Grant H. Gibson, Esq.
G. Gibson & Associates, LLC
1200 Woodruff Road Bldg. A-3
Greenville, SC 29607
atty@ggibsonassociates.com

(via Priority Mail)

Ely O. Grote, Esq.
McCabe, Trotter & Beverly, P.C.
4500 Fort Jackson Boulevard Suite 250
Columbia, SC 29209

(via Priority Mail)

James P. Walsh, Esq.
Clarkson | Walsh | Coulter
PO Box 6728
Greenville, SC 29606

(via Priority Mail)

Woodington Homeowners' Association, Inc.
cndesteve@gmail.com
cwedwards2018@gmail.com
woodingtonhoa@gmail.com
woodingtonvp@gmail.com

(courtesy e-mail, only)

EXHIBIT C - State Farm has no duty to provide any coverage

703 Creekview Drive
Greenville, SC 29607
May 10, 2019

State Farm Claims
PO Box 106169
Atlanta, GA 30348

(via Priority Mail)

Ms. Aimee Rowe, Claim Specialist
State Farm Fire and Casualty Company
844-458-4300 Ext. 6103587371
E-mail: statefarmfireclaims@statefarm.com

Subject: Woodington Homeowners' Association, Inc. Policy Number 99-BH-4620-8

Dear Ms. Rowe:

Please be informed about a pending change to my case: 2018-CP-23-03758, which is being defended by Clarkson Walsh & Coulter, P.A., James P. Walsh, Esq. for defamation (slander) by two individual defendants. We clarified to Mr. Walsh that we will stipulate to "\$1 Nominal Damages". Since Mr. Walsh was only recently informed, and may not have made this known to State Farm, I wanted you to be aware.

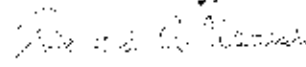
It is my understanding upon a lack of monetary damages being sought, that State Farm **HAS NO DUTY** (as Appendix 1) to provide any coverage, as related to my case.

Therefore per the proposed stipulation, I presume that State Farm will not provide "coverage" due to lack of monetary damages (as Appendix 2). Would you be so kind, please, to inform me this will be true?

May I assume State Farm joins in a desire to settle? We are willing to stipulate to \$1 in damages, as part of such settlement.

Thank you for an immediate reply, but certainly a reply before May 16, 2019, is requested.

Sincerely,



Raymond A. Wedlake 864-254-9262
wedlakera@mail.com

----- Appendix 1 -----

State Farm letter to Benjamin Acord of November 6, 2017
[excerpts; emphasis added]

Under the CMP-4814 Directors & Officers Liability endorsement, the **COMPLAINT IS NOT SEEKING SUMS** that the insured would be legally obligated to pay. The only reference to damages is in the prayer where plaintiff **SEEKS NOMINAL DAMAGES** and attorney's fees if covered by insurance. This is **NOT SUFFICIENT TO TRIGGER COVERAGE** under the policy; therefore, **STATE FARM HAS NO DUTY** to defend. The allegations also do not meet the definition of a wrongful act and the **EXCLUSIONS** for actual knowledge or intent and **NON - MONETARY RELIEF** will apply.

----- Appendix 2 ----- [full text appears as Exhibit 2]

State Farm letter to WHOA of October 30, 2018
[excerpts; emphasis added]

The D&O Liability coverage of the **POLICY REQUIRES** there to be a wrongful act and **MONETARY DAMAGES** resulting from the wrongful act. There are no such damages ... Mr. Wedlake filed an Affidavit expressly stating that he is **NOT SEEKING ANY MONETARY DAMAGES** ...

EXHIBIT D - DIRECTORS AND OFFICERS LIABILITY

CMP-4814
Page 1 of 3

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CMP-4814 DIRECTORS AND OFFICERS LIABILITY

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

1. The following coverage is added to **SECTION II — LIABILITY**:

DIRECTORS AND OFFICERS LIABILITY

- a. When a Limit Of Insurance is shown in the Declarations for Directors And Officers Liability, we will pay those sums that the insured becomes legally obligated to pay as damages because of a "wrongful act" to which this endorsement applies.

We will have the right and duty to defend the insured, by counsel of our choice, against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages to which this endorsement does not apply. We may at our discretion, investigate any incident and settle any claim or "suit" with or without the insured's consent, for any reason and at any time. But:

- (1) The most we will pay for damages is limited as described in **SECTION II — DIRECTORS AND OFFICERS LIABILITY LIMITS OF INSURANCE**; and

- (2) Our right and duty to defend end when we have used up that amount in the payment of judgments or settlements for a "wrongful act".

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **Section II — Supplementary Payments**.

- b. This insurance applies to a "wrongful act" only if the "wrongful act" takes place:

- (1) During the policy period and a claim is made in writing or "suit" filed and brought no later than one year from the end of the policy period; or

- (2) Prior to the policy period where:

- (a) There is no other insurance which:

- I. Is valid and collectible; or

- II. Would be valid and collectible but for the exhaustion of the limits of insurance;

- (b) No insured listed under **SECTION II — WHO IS AN INSURED** and no "employee" authorized by you to give or receive notice of a "wrongful act", had prior knowledge or could reasonably have foreseen any circumstances which might result in a claim or "suit"; and

- (c) A claim is made in writing or "suit" filed and brought during the policy period.

- c. All damage involving a single "wrongful act" or a series of related "wrongful acts", caused by one or more persons, is considered one "wrongful act".

2. With respect to coverage provided under **Directors And Officers Liability**, all exclusions under **Section II — Exclusions** are replaced with the following:

Section II — Exclusions

This coverage provided under **Directors And Officers Liability** does not apply to:

- a. **Criminal Acts**

Dishonest, fraudulent, criminal or malicious act, including fines and penalties resulting from these acts.

- b. **Actual Knowledge Or Intent**

"Wrongful act" by an insured with actual knowledge of its wrongful nature or with intent to cause injury or damage.

- c. **Bodily Injury, Property Damage Or Personal Or Advertising Injury**

"Bodily injury", "property damage" or "personal or advertising injury" liability.

- d. **Profit Or Advantage From Securities**

Any profit, remuneration or advantage, resulting from the purchase or sale of any securities, including an accounting of these.

e. Salaries Or Compensations

Salaries, compensations, bonuses or other remuneration, of employees, directors, officers, "managers" or trustees.

f. Insurance Policy and Claims

Any failure or omission to effect, maintain, or procure any insurance policy or bond, including any failure or omission to report a loss or obtain proper amounts, forms, conditions or provisions on any insurance policy or bond.

g. Personal Profit Or Advantage

Damages arising out of any transaction of the Insured from which the Insured will gain any personal profit or advantage, which is not shared equitably by the members of the organization.

h. Civil Right Violations

Violations of any federal or state civil rights law or local ordinance, including but not limited to discrimination on account of race, religion, disability, sex or age.

i. Non-Monetary Relief

Any costs incurred to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief.

j. Fines Or Penalties

Any civil or criminal fines or penalties imposed by law or taxes.

k. ERISA

Any obligation of the Insured under the Employees' Retirement Income Security Act (ERISA) and any amendments thereto or any similar federal, state or local statute.

l. Pollution, "Fungi" Or Bacteria

"Pollutants", "fungi", bacteria, wet or dry rot or nuclear reaction or the cost or expense to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize "pollutants", "fungi", bacteria, wet or dry rot or nuclear reaction.

m. Construction Operations

Damage caused by or resulting from operations (including construction, design, survey and engineering services) performed by or on behalf of the declarant, builder, sponsor, developer, promoter, engineer or architect at any premises insured under this policy.

n. Rights Against Builder

Any failure or inability of any insured to enforce your rights against the declarant, builder, sponsor, developer, promoter, engineer or architect at any premises insured under this policy.

o. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

p. Employment-Related Practices

(1) Damages to:

(a) A person arising out of any:

- I. Refusal to employ that person;
- II. Termination of that person's employment; or
- III. Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, malicious prosecution, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or

(b) The spouse, child, parent, brother or sister of that person as a consequence of Paragraph (a) above.

(2) This exclusion applies:

(a) Whether the insured may be liable as an employer or in any other capacity;

(b) To any obligation to share damages with or repay someone else who must pay damages because of the injury; or

(c) Whether the injury causing event described in Paragraph (1)(a) above occurs before employment, during employment or after employment of that person.

q. Other Organizations

Any "wrongful act" committed or allegedly committed by any insured serving in any position or capacity in any organization or association other than the Named Insured even if the Named Insured directed or requested that insured to serve in such other position or capacity.

r. Supervision Of Contractors

Any "wrongful act" in the selection or direct or indirect supervision of any contractor or subcontractor liable or alleged to be liable for any defect in construction at any premises insured under this policy.

s. Budgeting

Any act or failure to budget, reserve, conduct reserve studies or account for the cost to upkeep, maintain or address deficiencies or repairs regarding any premises insured under this policy.

3. With respect to coverage provided under Directors And Officers Liability, SECTION II — WHO IS AN INSURED is replaced by the following:

The unqualified word insured means only the following:

- a. Any of your directors, officers, "managers" or trustees, collectively and individually, which form your administrative body provided that each individual:

- (1) Is duly elected or appointed to serve on the managing body of the organization; and
- (2) Acts within the scope of their duties as a director, officer, "manager" or trustee on your behalf;

However if the declarant, builder, sponsor, developer, promoter, engineer or architect is also a director, officer, "manager" or trustee, the declarant, builder, sponsor, developer, promoter, engineer or architect is an insured, but only with respect to their liability arising solely out of his or her capacity as a director, officer, "manager" or trustee.

- b. The Named Insured shown in the Declarations with respect to liability because of "wrongful acts" committed by an insured.
- c. Any of your members or renters, but only with respect to their liability for your activities or activities they perform on your behalf as a member of a committee appointed by the administrative or managing body.
- d. Any lawful spouse of any person identified in Paragraph a.(1) or a.(2) above, but only in respect to liability arising solely out of his or her capacity as a spouse where such liability seeks damages from the marital property, community property, jointly held property or property transferred from any

person identified in Paragraph a.(1) or a.(2) above. The spouse is not an insured for any "wrongful act" of any person in Paragraph a.(1) or a.(2) above.

- e. No person or organization, including those listed in Paragraphs a. through d. above, is an insured with respect to "wrongful acts":

- (1) For which that person or organization may be liable in their capacity as a declarant, builder, sponsor, developer, promoter, engineer or architect; or
- (2) While acting within the scope of their duties for a declarant, builder, sponsor, developer, promoter, engineer or architect.

4. With respect to coverage provided under Directors And Officers Liability, SECTION II — LIMITS OF INSURANCE is replaced by the following:

SECTION II — DIRECTORS AND OFFICERS LIABILITY LIMITS OF INSURANCE

- a. The Limits Of Insurance for Directors And Officers Liability, shown in the Declarations, and the rules below, fix the most we will pay regardless of the number of:

- (1) Insureds;
- (2) Premises insured;
- (3) Claims made or "suits" brought; or
- (4) Persons or organizations making claims or bringing "suits".

- b. The most we will pay for damages because of any one "wrongful act" is the Directors And Officers Liability Limit shown in the Declarations.

The most we will pay for the sum of all damages because of all "wrongful acts" during the policy period is the Directors And Officers Aggregate Limit shown in the Declarations.

5. With respect to coverage provided under Directors And Officers Liability, the following definition is added to SECTION II — DEFINITIONS:

"Wrongful act" means any actual or alleged error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted or allegedly committed or attempted by an insured arising solely out of his or her capacity as director, officer, "manager" or trustee relating to the operations of your organization.

All other policy provisions apply.

EXHIBIT E

From: "Ray Wedlake" <wedlakera@mail.com>
To: bashor@bellsouth.net, woodingtonhoa@gmail.com, woodingtonvp@gmail.com
Subject: List of Members Attending Annual Meeting
Date: Fri, 31 Jan 2020 14:40:23

Woodington Board 2019:

Would you be so kind, please, to verify my list of Members who attended the meeting is correct? A copy of the official sign-in sheet would suffice. I think I understood a majority of Members did not attend? Did I hear number of proxies correctly?

33 Attended 12 Proxies

Thank you.

Cheers wedlakera@mail.com
Support "wilderness" - conserve nature !
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Never let failure get to your heart !!
Stop organized crime. Re-elect no one !

----- Appendix -----

LastName	FirstName(s)	Address
Unknown	?	"... are you going to pay all legal fees ..."

[All listed names are REDACTED]

EXHIBIT F - Proposed Settlement to Avoid More Legal Fees

From: "Ray Wedlake" <wedlakera@mail.com>
To: woodingtonhoa@gmail.com
Subject: Please Agree to Avoid More Legal Fees
Date: Sun, 2 Feb 2020 07:43:40

Woodington Board:

On February 3, 2020, all the Board should receive Priority Mail which contains a settlement proposal, whose intent is to **AVOID MORE LEGAL FEES** being incurred by WHOA, that the Board will try to force WHOA Members to pay.

Before noon on February 4, 2020, would you be so kind, please, to affirm that you will sign the agreement before February 9, 2020, to allow me to dismiss my Circuit Court cases, and therefore to **AVOID MORE LEGAL FEES ?**

A simple **"Yes"** or **"No"** answer is needed before noon on Tuesday. If the Board does not reply, or replies: "No, we won't try to save Members from **MORE LEGAL FEES**", then I will be filing additional motions with the Court, where the Board must accept responsibility for the unfortunate result of **MORE LEGAL FEES** accumulating.

Since my suspicion is that **no** Board member has composed, and sent, replies from: "woodingtonhoa@gmail.com", please be sure that a reply contains the name or names of those Board members who (electronically) signed the reply.

Thank you.

Cheers wedlakera@mail.com
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Proposed Agreement to Save WHOA Members from Legal Fees

This agreement (Agreement) between the 2020 Board of Directors (Board) of Woodington Homeowners' Association, Inc. (WHOA), comprised of Mona Craigo, Edward Decker, and Sandra LaCroix, and WHOA member Raymond A. Wedlake (collectively: Parties) is entered into this 17th day of February, 2020 pursuant to the South Carolina Alternative Dispute Resolution (ADR) Rules. The intent of Agreement is to save WHOA and its members (Members), from financial liability caused by legal fees. Herein, references to two Civil-Action Cases: 2019-CP-23-00269 and 2019-CP-23-01501, is denoted by "Cases".

AGREEMENT OF PARTIES

In consideration for the signed agreement of Parties to avoid additional legal fees, Mr. Wedlake agrees to seek to dismiss both lawsuits with prejudice. In turn the Parties acknowledge and agree:

1. claims by a Party against opposing Parties for monetary damages, costs, expenses and attorneys' fees will be dropped, with each Party remaining responsible for their own-monetary obligations;
2. to work together in the future in a spirit of mutual cooperation and respect for one another for the benefit of WHOA Members, with specific intent not to incur legal fees for which the Board will intend to assess against Members, to require all Members to pay;
3. that nothing in this agreement constitutes an admission of fault and or liability on the part of any Party;
4. that Parties promise to negotiate with one another within ten days after the signing of this Agreement, with intent to resolve disputed issues as found in Complaints for Cases;
5. that Parties recognize negotiations shall end on or before March 14, 2020;
6. that Parties promise to mediate within 10 days after negotiating, should negotiations fail to result in mutually-agreeable resolutions;

7. that Parties recognize mediation shall occur, if necessary, on or before April 11, 2020;
and, the Parties further agree:

8. to arbitrate within 10 days after mediation, should mediation fail to result in mutually-agreeable resolutions, where all Parties agree that Arbitration will be final and binding, and waive the right of subsequent Court Trial, Jury Trial, and any and all rights to Appeal, where such annulling of rights is done for the benefit of avoiding legal-fees liability for WHOA, specifically to spare its Members from legal-fees liability.

MUTUAL RELEASE AND DISMISSAL OF CASES

9. Parties release one another from any and all claims brought or which could have been brought, known or unknown, arising out of or relating to the subject matter of Cases, and Cases are to be dismissed with prejudice, where no future-judicial actions as related to Cases will be brought again by any Party, unless this Agreement is violated by any Party, or by a subsequent-future Board;

8. Parties release one another from any and all liability for damages, costs, expenses and attorneys' fees;

9. After signatures are affixed to this Agreement, Mr. Wedlake will seek to file a "Stipulation of Dismissal" with the Court for Cases no later than February 24, 2020.

Dated this 17th day of February, 2020.

Mona Craigo

Edward Decker

Sandra LaCroix

Raymond A. Wedlake

EXHIBIT G - RE: Please Agree to Avoid More Legal Fees

From: "Ray Wedlake" <wedlakera@mail.com>
To: woodingtonhoa@gmail.com
Subject: RE: Please Agree to Avoid More Legal Fees
Date: Sat, 8 Feb 2020 21:37:09

Woodington Board:

Thank you for a reply to my message of 02 Feb. Confusion is noted. Please correct if I misunderstand. Please explain if you think I am wrong.

The term "Board" herein denotes the collective entity of Mona Craigo, Edward Decker, and Sandra LaCroix.

With good faith on my part to dismiss my Court cases, and with intent to save WHOA Members from more legal fees, a reply from "woodingtonhoa@gmail.com" was not on point. The reply made no attempt to address the issue to save Member from more legal fees.

My request of 02 Feb did NOT:

- a) claim Board is a party to any lawsuit;
- b) claim individual Board members are a party to any lawsuit;
- c) ask Board to speak for any other party;
- d) ask Board to communicate with regard to legal cases;
- e) refer to attorneys involved with case parties.

My request of 02 Feb DID:

- a) ask Board to sign a proposed agreement, where signers were: Mona Craigo, Edward Decker, Sandra LaCroix, Raymond Wedlake;
- b) ask for a simple "Yes" or "No" answer for would you sign an agreement before 04 Feb (this was ignored by Board);
- c) [state] sign the agreement before 09 Feb.

At/after the Annual Meeting of 30 Jan:

- a) Mona Craigo, Edward Decker, and Sandra LaCroix were elected to the 2020 Board of Directors
- b) Board have a fiduciary duty to act in a best interest for WHOA Members - that is: to avoid more-unnecessary-legal fees
- c) Board are the ONLY governing entity (nobody else)
- d) Board must assume responsibility for WHOA

Board violates their duty if they try to shrug off duties and powers owned by the Board upon others.

In future replies from "woodingtonhoar@gmail.com", whoever replies should plan to include a **SIGNATURE LINE** showing any (or all) of the following:

- a) The Woodington Board
- b) Mona Craig, Board [President [or other]]
- c) Edward Decker, Board [Treasurer [or other]]
- d) Sandra LaCroix, Board [Secretary [or other]]
- e) Based upon advice from [law firm or attorney]

where if not "a)", then additional clarification would be appreciated. I would actually prefer to hear individual opinions, as long as such opinion identifies (an) owner(s).

Please invite me to a special Board meeting, if that might help to facilitate understanding by everyone. As stated previously, time sensitivity is extreme - I can no longer wait and delay needed-Court-case decisions.

Thank you.

Cheers wedlakera@mail.com
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EXHIBIT H - 2020 Board must act in order to save WHOA Members from more legal fees

From: "Ray Wedlake" <wedlakera@mail.com>
To: woodingtonhoa@gmail.com
Subject: RE: Please Agree to Avoid More Legal Fees
Date: Mon, 10 Feb 2020 16:30:36

Woodington Board:

Thank you for a reply to my message of 10 Feb, which I assume came from Board-Member Mrs. Craigo. Confusion on the part of Mrs. Craigo is still noted. Please review my note dated: 8 Feb 2020 21:37:09, which is appended.

Due to confusion still prevailing, I now ask for Mr. Decker and Mrs. LaCroix to reply directly to me to verify you both understand that Mrs. Craigo's statements are misleading. The TRUTH: the 2020 BOARD MUST ACT in order to save WHOA Members from more legal fees. I did not ask the Board: "... to make decisions in those lawsuits ...". I asked the Board to act to save WHOA Members from more legal fees!

After review, and reading this note, all Board members should be aware that nothing stated by Mrs. Craigo is applicable, nor true, regarding the question: "Will the 2020 Board act to save WHOA Members from more legal fees?". Only the 2020 Board can act to produce savings - NOBODY ELSE CAN!

Review of 8 Feb will also show I asked:

" Please invite me to a special Board meeting, if that might help to facilitate understanding by everyone. As stated previously, time sensitivity is extreme ... "

Also noted, the "Original Message" (below) shows:

Chris Edwards <woodingtonhoa@gmail.com>

Mr. Edwards no longer resides in our community, nor is he a WHOA Member. Please explain.

Thank you.

Cheers wedlakera@mail.com
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EXHIBIT I - Did Board authorize these legal fees ?

From: "Ray Wedlake" <wedlakera@mail.com>
To: woodingtonhoa@gmail.com
Subject: FW: Re: Courtesy Copy of Recent Filing
Date: Fri, 14 Feb 2020 21:27:22

Woodington Board:

Would you be so kind, please, to tell me if the Board authorized these additional legal fees? Or, is this being done by non-Board members without Board permission? Or, is this be done by non-Board members behind the Board's back?

Unless the Board authorized these as legitimate and necessary WHOA "expenses", they better not be paid by the current Board, since only the current Board has authority to act as the governing body of WHOA. Only the current Board can authorize disbursement of WHOA funds.

Please recall this relates to 2019-CP-23-00269, whose caption shows Defendants as:

"Christopher Edwards, Charles Koshis, Denis Esteve, Michael Keels, and William Craigo in their capacity as Board of Directors of Woodington Homeowners' Association, Inc."

Since none of listed Defendants have capacity, nor standing, as the "Board of Directors" at this time, the current Board must quash all such activity, and quash these additional legal fees. That is, unless the Board authorized these additional legal fees, they are not owned by WHOA, and must be rejected if/when Campbell Teague may bill WHOA for these fees.

Please let me know ASAP ! Thank you.

Cheers wedlakera@mail.com
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EXHIBIT J - Mediation - First Requirement is Negotiation

From: "Ray Wedlake" <wedlakera@mail.com>
To: emily@campbellteague.com
Cc: woodingtonhoa@gmail.com
Subject: RE: Mediation - First Requirement is Negotiation

09 March 2020

Dear Ms. O'Brian:

Thank you for your suggestion that the Board may be interested in mediation. This seems incongruous with their recent: (paraphrase) "We will not meet with you", stance.

May I hope your clients disclosed to you what I asked them to do? I asked them to first negotiate. Negotiation is a first requirement to define issues that remain in dispute. To mediate without mutual consent about which issues are important, and disputed, would be a waste of everyone's time. For example, I think we all agree that the Board cannot authorize legal fees in excess of \$1500 without Member approval. If this is agreed, then this issue would not be an important issue for mediation. Still, issues to mediate must be defined by mutual consent.

Without negotiation and a list of important issues to mediate, why should I pay for the entire mediation cost? Should your clients decide, with me, about what are the important issues for mediation, then I will agree to pay for mediation costs, up to a \$900 limit.

I also asked the Board to agree to arbitrate, in the event of mediation "failure". Without such additional agreement on the part of your clients, I do not believe that spending time with mediation would be productive. Final resolution of disputed issues is what is important for the benefit of WHOA. Game playing, posturing, and other non-productive use of time, without intent to resolve basic-disputed issues, will be wasted effort.

Would you be so kind, please, to have your clients give feedback, so we may all agree to a "going forward" plan? Thank you.

Cheers wedlakera@mail.com
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EXHIBIT K - we are a: "Post No Signs" neighborhood / Define what is a "Sign"

From: Ray Wedlake <wedlakera@mail.com>
To: bashor@bellsouth.net
Cc: woodingtonhoa@gmail.com
Subject: Sign to Remove from 7 Woodington Drive
Date: Thu, 4 Jun 2020 22:31:57

Dear Mr. Bashor:

As a member of the Architectural Committee (AC),
please remove a sign posted at 7 Woodington Drive.
As you should be fully aware as an AC member, we are
a: "Post No Signs" neighborhood.

Today, I happened to see Mr. Dale Fuller doing yard work.
I stopped briefly to talk, and verified that Mr. Fuller is
aware that he cannot have a sign displayed on his lot. However,
Mr. Fuller said: "It's not my sign, it's the Church's sign".
Further, Mr. Fuller would not comply with my request to remove
the sign in his yard, saying: "I have not been notified to
remove it". This was not my impression of a recent statement
from the Board, which was: "... signs for the high school
seniors have now been removed. ...". Further, Mr. Fuller's
"Church sign" has always been illegally displayed.

For years I have asked the AC to define: "What is a sign?".
To date, the Board will not appoint me to the AC to help
facilitate a proper definition. The AC has not responded
to my request. Consequently, there are several "signs"
that have been displayed in various lots against the
"Post No Signs" directive.

Please reply to tell me when the sign at 7 Woodington
will be removed. Will the AC respond to my request to
define: "What is a sign?". Thank you.

Cheers wedlakera@mail.com
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EXHIBIT L - Governing Documents / Need for a By-Laws Review Committee

703 Creekview Drive
Greenville, SC 29607
July 29, 2020

Woodington Homeowners' Association, Inc.
18 Southfield Drive
Greenville, SC 29607

Subject: RE: Governing Documents of Woodington Homeowners' Association, Inc. (WHOA)

Woodington Board:

Thank you for your message of July 28, 2020, which had five-attached files that were filed with the "Register of Deeds" in Greenville County by a prior-year Board.

Yes, on May 2, 2020, I asked the Board to supply information, as seen in the "Included Message", below. But no, I did not ask the Board for Register-of-Deeds documents. Rather, I asked for an entire list of information, where one such request was:

- * has the Board created an "Office" file containing a By-Laws "official version", and if so, can it be provided to me

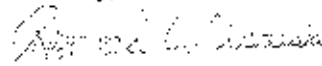
This and other requests for information originated way back on May 6, 2019, but no replies have ever been received, nor has any information ever been provided.

The Board who filed these documents with Register of Deeds, with the claim that each is a "Governing Document", filed them in violation of law. Only one document filed with Register of Deeds is a **Governing Document**! As was explained to the Board in previous correspondence, the only Register-of-Deeds document that is a legitimate Governing Document is the "Covenants" (CCRs); none of any other document qualifies to be considered a Governing Document:

WHOA Bylaws Amendment 1.PDF	[not a Governing Document]
WHOA Bylaws Amendment 2.PDF	[not a Governing Document]
WHOA Architectural Guidelines.PDF	[not a Governing Document]
WHOA BylawsR3.PDF	[not a Governing Document]

At this time, if the Board does not understand why none of these are Governing Documents, please ask me to clarify, and I will do so at some future time. A new, complete, and updated revision of the By-Laws is sorely needed, which should be viewed as a required action by the Board. An "Office" file containing a By-Laws "official version" would help to facilitate this action.

Sincerely,



Raymond A. Wedlake
864-254-9262 wedlakera@mail.com

EXHIBIT M - Calls for Board action have been ignored

703 Creekview Drive
Greenville, SC 29607
August 10, 2020

Board of Directors of WHOA
18 Southfield Drive
Greenville, SC 29607

Subject: Your Latest, but Insufficient Response
- Woodington Homeowners' Association, Inc. (WHOA)
Woodington Board:

Thank you for your response of August 4, to my email of July 29, 2020. Your itemized responses to certain questions raised is appreciated. However, more substantive issues relate to lack of action by the Board.

SUMMARY

Several **calls for action by the Board** are below, which are in summary:

1. to create a new revision of By-Laws:
You state the current ones have been in place since 2012 and are adequate for "our small community". May I point out that a former President, as well as the law firm of McCabe, Trotter & Beverly, P.C., both acknowledged that changes to By-Laws were needed. To date key issues are missing entirely, such as **Mandatory Alternative Dispute Resolution (ADR)** being required prior to a Member bringing a judicial action.
2. to remove "Architectural Guidelines" and ... other ... from Register of Deed's file;
3. to find ballot results as requested [ballot of Feb 22, 2019];
4. to acquire affidavits from those-involved-and-responsible-former-Board members;
5. to fill Board vacancies, as required by the By-Laws.

DISCUSSION

From my perspective, your response of August 4 lacks accuracy, includes misstatements, and lacks truthfulness in several instances. I find the continued attitude of "misdirect and obfuscate" from the Board to be contrary to proper action required from the Board for both: "Duty of Care" and "Duty of Loyalty", which is due to every WHOA member (Member). I find the same theme from the Board of "take a hike" prevails – as one example: no "Minutes" as requested have been provided.

The Board continues to ignore that fact that a "By-Laws Review Committee" (BLRC) is a required committee at this time, in violation of the By-Laws (emphasis added):

ARTICLE XIV - COMMITTEES

The Board of Directors **shall appoint those committees** as deemed appropriate in carrying out its purpose. Each year, committees may be

appointed for one year. In a year where the Board does not appoint an "Architectural Review Committee", or **does not appoint other committees whose services may be required, all Directors of the Board shall be recognized as serving on these committees.**

The Board continues to shirk its duty to act as a BLRC, since no committee was appointed.

So, please review as your Board reply (BR), contrasted by my comments (RW), as follows.

BR: 1) ... No, we do not have the Bylaws in a Microsoft Office format, only PDF. ... our WHOA Bylaws have been in place since August 2012. We feel they are still sufficient to guide our small neighborhood.

RW: I have an "Office" file (my laptop runs "Ubuntu LINUX", and I use "Libre Office" software) which has been checked extensively against the version filed with the Register of Deeds (ROD). As stated in my July 29 letter, no, the filed version is not a "Governing Document" – it was never approved by Members. Plus, no, this By-Laws Rev 3 of August 2012 was a third revision of By-Laws, where only the original, unrevised By-Laws was created legally under the Covenants, and only that initial version is a valid Governing Document! I believe it is continued "Breach of Contract", as well as "Breach of Duty" by the Board to espouse a position that any By-Laws exists that "... are still sufficient ...". Too, all revisions of By-Laws are illegal documents, since none were lawfully "approved by Members". I **hereby call for action by the Board to create a new revision of By-Laws**, by acting as a BLRC (which is the Board at this time) to submit for Member approval, to make WHOA By-Laws legitimate, as opposed to the current state of non-Member-approved-illegal By-Laws, which have been proven to be insufficient for WHOA.

BR: 2) ... Homeowners' Association Act, Section 27-30-120, Item 4, refers to the documents sent to you as 'Governing Documents', thus these were referenced as such ...

RW: No, HOA Act, does not cite "Architectural Guidelines" as a 'Governing Document'.
SECTION 27-30-120. Definitions.

As used in this article:

- (4) "Governing documents" means declaration, master deeds, or bylaws, or any amendments to the declaration, master deeds, or bylaws.

As was documented in my July 29 letter, what you claim is not true:

... none of any other document qualifies to be considered a Governing Document:

WHOA Bylaws Amendment 1.PDF	[not a Governing Document]
WHOA Bylaws Amendment 2.PDF	[not a Governing Document]
WHOA Architectural Guidelines.PDF	[not a Governing Document]
WHOA BylawsR3.PDF	[not a Governing Document]

Thus, I **hereby call for action by the Board to remove "Architectural Guidelines"** from ROD's file, as well as to remove other documents which were never approved by

Members, and thus were improperly and illegally filed with ROD.

BR: 3) On May 2, 2020, you requested results from the ballots with a due date of Feb 22, 2019. This answer was provided on May 14, 2020 email. We have no further detail. Once the voting results have been tallied and reported to Members, there is no requirement to keep the paper ballots. Going forward, if you need this level of detail, please ask for the detail right away (ie: when you return your Ballot).

RW: All of this reply is misdirection, with incorrect dates being quoted. Shortly after the ballot-due date of February 22, 2019, ON MARCH 9, 2019 I asked for detailed-ballot results:

- 1) Number of ballots returned
- 2) Number of Member votes "For"
- 3) Number of Member votes "Against"
- 4) Number of Board proxy votes "For"
- 5) A list of those Members who voted

(see the "Exhibit" contained in my July 29 letter). The claim that: "We have no further detail", needs to be addressed and remedied. I hereby call for action by the Board to find ballot results as requested. Destruction of Corporate Records is a violation of Board duty under the "South Carolina Nonprofit Corporation Act of 1994" (NPCA), which shows (emphasis added):

SECTION 33-31-842. Standards of conduct for officers.

(a) An officer with discretionary authority **shall discharge his duties** under that authority:

- (1) in **good faith**;
- (2) with the **care an ordinarily prudent person in a like position would exercise under similar circumstances**; and
- (3) in a manner the officer reasonably **believes to be in the best interests of the corporation, and its members**, if any.

I feel certain that several former-Board members know of this information. Should further claims of "no detail" and/or "no results" be forthcoming from those who certainly know, then I hereby call for action by the Board to acquire affidavits from those-involved-and-responsible-former-Board members stating all these things:

1. Paper ballots were discarded
2. no other records were kept
3. no electronic records were produced nor saved
4. they have no knowledge to answer any of the five requests

Needless to say, such affidavits will confirm an outrageous breach of duty by the Board, **IF INDEED** records of these ballots were (most probably intentionally) destroyed, in order to hide the truth: that Members did not approve, from ever coming to light.

BR: 4) From your Appendix of May 6, 2019 and added to recent your Correspondence:

* Board Meetings are held a minimum of quarterly, Three Board Meetings have been held in 2020, The remaining meeting has not yet been scheduled.

RW: The Board has not informed me about any Board meetings, where additionally the Board has breached your fiduciary duty by not meeting "as required" to address legitimate WHOA business, and to provide feedback to me, which elicited my being forced to file Case 2020-CV-23-10201384.

BR: [4) From your ...]

* As before, Minutes are available to any Member upon request (after the meeting has been held, and the Minutes completed).

RW: Minutes were requested, but none have been provided. It is a breach of your fiduciary duty to contend that artificial, additional requirements apply before Minutes will be given to me.

BR: [4) From your ...]

* Architectural Committee... Responded 6/3/2020

RW: No substantive response has been received. In my contact to the Architectural Committee (AC) (cc to Board) of June 4, 2020, I asked for feedback from the AC – where this was after the Board had claimed the AC was appointed:

Subject: Sign to Remove from 7 Woodington Drive

Dear Mr. Bashor:

As a member of the Architectural Committee (AC), please remove a sign posted at 7 Woodington Drive. As you should be fully aware as an AC member, we are a: "Post No Signs" neighborhood.

... Further, Mr. Fuller's "Church sign" has always been illegally displayed.

For years I have asked the AC to define: "What is a sign?". To date, the Board will not appoint me to the AC to help facilitate a proper definition. The AC has not responded to my request. Consequently, there are several "signs" that have been displayed in various lots against the "Post No Signs" directive. [in violation of the Covenants]

Please reply to tell me when the sign at 7 Woodington will be removed. Will the AC respond to my request to define: "What is a sign?". Thank you.

but feedback was not received to date from the AC, nor from the Board.

BR: [4) From your ...]

* Board Vacancy: Responded 5/14/2020

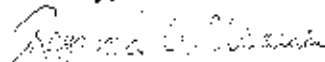
RW: An insufficient response was made, where the Board stated:

We are a 3-member Board, duly elected, and have no vacancy at this time.

Since the only legitimate, original By-Laws require a 5-member Board, where By-Laws Rev 3 similarly contain the requirement for 5-member Board, 2 vacancies exist. By-Laws (and all revisions) require the Board to fill vacancies. The Board's continued allegations that an Amendment "PASSED" to reduce the number of Board members to 3 has been shown to be false, under the NPCA. Thus, I hereby call for action by the Board to fill vacancies, as required by the By-Laws!

Particularly relative to a required "BLRC", the Board has been remiss and breached your duty by not appointing one, and by not acting as a BLRC, as required by the By-Laws. Will the Board act per my calls, or will "take a hike" still prevail?

Sincerely,



Raymond A. Wedlake 864-254-9262

wedlakera@mail.com

EXHIBIT N - A Board member posts an illegal sign

From: Ray Wedlake <wedlakera@mail.com>
To: woodingtonhoa@gmail.com
Subject: Please Remove a Sign from a Board Member's Lot
Date: Fri, 21 Aug 2020 22:12:06

Woodington Board:

No response was received from the Architectural Committee (AC), nor from the Board, regarding my previous "Remove Sign" request. Now, a Board Member posted a sign in her front yard, not facing the street, but rather facing directly to my front yard. This sign reads: "BE KIND BE BRAVE".

The Board said you would comply with the By-Laws, but do not - another action in breach of contract. Is there contention that we are a "Post NO Signs" neighborhood? In the event that it exists, please send me AC documentation showing approval for this sign and the grounds on which a decision was made to approve it.

I once again request for the Board to order all signs to be removed from our neighborhood. Will the Board comply with the By-Laws, like you said you would?

File: <sign-bekind-[redacted]082120.jpg >

Cheers wedlakera@mail.com
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EXHIBIT Q - Board replies do not reflect a Best Interest for WHOA

703 Creekview Drive
Greenville, SC 29607
August 29, 2020

Subject: Your Replies Do Not Reflect a Best Interest for
Woodington Homeowners' Association, Inc. (WHOA)
Woodington Board:

Thank you for your reply of August 24, 2020. As with all of your replies, the Board refuses to recognize a "... best interest for WHOA ...", but rather sticks to a story line reflecting your "... personal interest ...". Indeed, the Board's story line is inaccurate, often **untruthful**, and sometimes **unlawful**.

Please review, once again, my comments (RW:) to what the Board says (BS:)

BS: 1) Bylaws needing revision: Two Bylaws Amendments were added.

RW: Since an original set of By-Laws, which are the only legal-valid version, **NO** amendments were approved by a majority of WHOA-member (Member) votes. Hence legitimately, then, **NO** amendments were added.

BS: 2) Remove Architectural Guidelines from Register of Deeds: The Architectural Guidelines reference the Covenants on file with Register of Deeds. We don't see a need to remove them.

RW: **NO**, the "... Covenants ..." do not declare "Architectural Guidelines" (AG) as a governing document. Factually, no mention is made of AG within the Covenants. Only references to an "Architectural Committee" are contained in the Covenants. There is a need to remove AG from Register-of-Deeds files because AG are **NOT** a governing document.

BS: 3) Ballots from February 2019: When a vote is taken by ballot outside of a meeting, a quorum of ballots must be returned. Our Quorum is 17. There were 18 ballots returned. This number exceeds the Quorum requirements. The votes were: 17 In Favor, 1 Against. With 48 votes cast by the Board (as clearly stated on the Ballot), the final number is 65 in favor of the Bylaws Amendment, and 1 against the Bylaws Amendment. The results were reported multiple times to the WHOA membership.

RW: There is no basis in law, the Covenants, nor in the By-Laws for any of these BS claims. The ballot process for WHOA is **NOT** related to "quorum". Quorum is irrelevant and academic as related to a ballot. A ballot goes to every Member; quorum does not apply. This proposed-February-2019 Ballot – dropping the number of directors from 5 to a minimum of 3, clearly showed on its face:

Due by Friday, February 22nd

BALLOT - [75% of Members Needed to Pass (50 of 66)]

WITH ONLY 18 BALLOTS RETURNED, FIFTY MEMBERS DID NOT VOTE TO APPROVE THIS BALLOT! The law as reflected by the "South Carolina Nonprofit Corporation Act of 1994" (NPCA) has been quoted to the Board several times. Lawfully under the NPCA, the Board **CANNOT CAST 48 VOTES** "FOR", and then thereafter claim "65 in favor". Such **UN** lawful action by the Board represents a **Breach of Contract!**

BS: 4) Board Vacancies: Previously responded. No change.

RW: The February 2019 Ballot (minimum of 3 directors) was **NOT** approved by Members, and therefore with only 3 directors, then 2 vacancies exist. The Board is required to fill vacancies - as required by the By-Laws - a change is needed.

BS: 5) Sign Complaints: The Architectural Committee is reviewing your sign complaints. To be clear, there is a difference between a sign and other yard decorations.

RW: On October 11, 2018 I asked the Architectural Committee (AC) to define: "What is a sign?". Regardless of a contention whether an item posted is a sign, or is not a sign, anything posted **MUST HAVE AC APPROVAL BEFORE** it can be posted. I asked for such-AC documentation showing approval for signs that are posted in the neighborhood. **NONE** was provided. I asked for signs to be removed. Have any been removed?

BS: 6) Homeowners Dues/Assessments: ... Covenants and Bylaws are clear that dues and assessments are valid for necessary neighborhood expenses. We also feel that paying for legal expenses when faced with legal actions are a necessary expense. ...

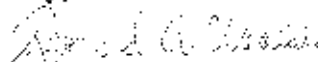
RW: The Covenants are clear that "assessments" for legal fees are **NOT** a necessary expense. The Covenants are clear that a Board assessing Members for legal fees, which were not approved by Members prior to fees being incurred, is an **UN** lawful action by the Board. In all my cases, a **MERE \$1** was claimed for "nominal damages". No reasonably-prudent person, in a like situation, would incur **TENS OF THOUSANDS OF DOLLARS** in legal fees to offset a potential of **\$1** in damages. No reasonably-prudent person in a like situation could possibly, by any stretch of imagination, claim such Breach-of-Contract actions by the Board constitute a "necessary expense".

BS: 7) Meeting Minutes: The Minutes for the 2020 Annual Meeting and the Special Meeting are appended below: ...

RW: Thank you for two sets of Minutes provided. However, I desire and ask again for minutes from all meetings, particularly from Board meetings that were held in **secret**, to which Members were neither informed nor invited, and from all other meetings that may have happened, about which I was not informed. Please provide to me **ALL MINUTES**.

Thank you.

Sincerely,



Raymond A. Wedlake

864-254-9262 wedlakera@mail.com

Exhibit P - Please Attempt to Mitigate Damages per Your Fiduciary Duty to WHOA

703 Creekview Drive
Greenville, SC 29607
September 24, 2020

Board of Directors of WHOA
18 Southfield Drive
Greenville, SC 29607

cc: Distribution List

Subject: Appeal Dismissal **DENIED** – Legal Fees – Please Attempt to **Mitigate Damages** per Your Fiduciary Duty to Woodington Homeowners' Association, Inc. (WHOA)

Woodington Board:

Please be informed that a "Motion to Dismiss" was **DENIED** for Appeal 2020-000438, related to 2019-CP-23-00269. Consequently, the law firm involved with this Appeal must now prepare an Initial Brief. Very likely, legal fees associated with Brief preparation will total tens-of-thousands of dollars. These fees do not, and cannot, belong to WHOA.

The Board needs to take action to attempt to "**Mitigate Damages**" that may otherwise occur to WHOA.

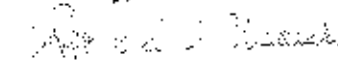
This notice represents my intent, and proven attempt, to act to mitigate damages. Therefore, as has been **erroneously claimed** in the past, no party can truthfully bring any claim before a Court that I made **no** attempt to **mitigate damages**.

Experience has shown that the Board will try to impose financial liability upon WHOA Members, as related to legal fees. Such gross negligence by the Board manifests the Board's "Breach of Contract", and is also a "Breach of Fiduciary Duty" of both the "Duty of Care" and "Duty of Loyalty" to WHOA and its Members. Should damages occur to WHOA related to Appeal-legal fees, failure by the Board to attempt to mitigate damages will be seen, and must be seen, as the **sole responsibility of the Board**.

Please recall I asked the Board to provide to me any invoices for "legal services" received by WHOA. To date, none have been provided.

I request your responses: a) affirming receipt of this notice, and b) your understanding that the Board's failure to act is unlawful (in the event that no attempt will be taken to mitigate damages). Please plan to reply before October 5, 2020. Thank you.

Sincerely,



Raymond A. Wedlake
864-254-9262 wedlakera@mail.com

Enc. [Order denying Motion to Dismiss]

EXHIBIT Q - Many Attempts to Mitigate Damages Were Ignored by the Board

703 Creekview Drive
Greenville, SC 29607
September 25, 2020

Board of Directors of WHOA
18 Southfield Drive
Greenville, SC 29607

cc: Distribution List

Subject: Many Attempts to **Mitigate Damages** Were Proposed but Were Ignored by the Board
of Woodington Homeowners' Association, Inc. (WHOA)
Woodington Board:

As you may recall, Appeal 2020-000438 (2019-CP-23-00269) was filed after an unlawful granting of Summary Judgment. Granting was based upon two-primary premises, both of which represent "Errors of Law": A) ... wrong party ... ; and, B) ... immune from suit The fact that my Appeal was accepted and a "Motion to Dismiss" was denied gives credence to a probable reversal by the Court of Appeals, annulling the unlawful granting of Summary Judgment.

Please recall a selected 13 of my previous attempts to "**Mitigate Damages**" that were proposed, but which have been ignored. Inaction by the Board in this regard is a breach of your contractual duty, as well as a breach of your fiduciary duty to WHOA and to its Members. Date in 2020 is denoted below in a format of mmdd:

1. 0201 Proposed settlement agreement
2. 0202 Avoid more legal fees
3. 0210 2020 Board must act to save Members from more legal fees
4. 0213 RE: Please Agree to Avoid More Legal Fees
5. 0214 Did Board authorize these legal fees
6. 0228 Please reply ASAP for who is the party responsible to pay legal fees
7. 0301 Member approval is needed for more than \$1500 legal fees
8. 0309 Questions to answer for mediation
9. 0401 Need to discuss "please pay"; Will the Board comply with By-Laws?
10. 0408 Need to work together
11. 0417 Answer mediation questions; take lawful actions
12. 0510 Board must use its authority and be responsible
13. 0518 Please disclose if authority for Appeal-legal fees was given to your law firm

Of these, many are still without answers but all of these are still "on the table" for the Board to consider, particularly **MEDIATION**! But, the Board continues to breach your contractual duty to act as the governing body of WHOA, and to breach your fiduciary duty to act to protect WHOA and to protect its Members from legal fees, in particular!

I request your responses: a) affirming receipt of this letter, and b) your understanding that the Board's failure to act is unlawful. Please plan to reply before October 5, 2020. Thank you.

Sincerely,



Raymond A. Wedlake
864-254-9262 wedlakera@mail.com

ATTACHMENT IB.4 - Request for Written Orders with Service to Plaintiff

703 Creekview Drive
Greenville, SC 29607
October 5, 2020

The Honorable Judge Laura Saunders
Fairview/Austin Summary Court
205 N. Maple Street Suite 4
Simpsonville, SC 29581

RE: 2020-CV-23-10201384

Subject: Request for Written Orders with Service to Plaintiff

Dear Honorable Judge Saunders:

Please accept this request for: a) written Orders giving disposition for outstanding motions; and, b) verification that the Court is aware of related documents. To date, I am not aware that any Orders were issued related to 2020-CV-23-10201384, where I am a Plaintiff. No Orders have been served to me. May I hope that all Orders will contain legal rationale, and explanations of reasoning leading to judgment, rather than merely containing brief statements of grant or deny?

My requests are made pursuant to a "Magistrate's Summons" (Exhibit 1) of September 29, 2020, which informed me about a bench trial scheduled for November 24, 2020. Without prior disposition of pending motions, I can not know how to prepare properly for such trial. My case cited six-similarly-situated Plaintiffs, and I also need to bring additional evidence to the Court, but gathering such evidence will require "Discovery", which often takes a very long time.

Confusion is noted in Exhibit 1. Two defendants: "Board ..." and "McCabe ..." are seen. However, on September 28, 2020, I personally hand delivered a copy of an "Amendment to Complaint" (Exhibit 2) which showed:

2. addition of a third Defendant: State Farm Fire and Casualty Company

This third defendant is not shown in Exhibit 1. I am not informed that Exhibit 2, which cited an attached "First Amended Complaint" was not accepted by the Court.

My "ADR" motion is particularly relevant to be disposed before trial. The Appendix lists other pending motions, with associated documents of which I hope the Court is aware. Thank you for attention to my requests.

Sincerely,

Raymond A. Wedlake, Plaintiff (*Pro Se*)
703 Creekview Drive, Greenville, SC 29607
864-254-9262 Raymond.Wedlake@gmail.com

FILED
CLERK OF COURT
JAN 10 2021
JAN 10 2021
JAN 10 2021

APPENDIX

MTB denotes Defendant: "McCabe, Trotter & Beverly, P.C."

<u>Date</u>	<u>Item</u>
Jul 13	Plaintiff's motion requesting scheduling of ADR
Aug 24	MTB's return in opposition to ADR
Sep 21	Plaintiff's memorandum in support of ADR
Aug 7	Plaintiff's motion for preliminary injunction
Aug 24	MTB's return in opposition to preliminary injunction
Sep 22	Plaintiff's memorandum in support of preliminary injunction
Aug 24	MTB's motion to dismiss
Sep 11	Plaintiff's memorandum in opposition of MTB's motion to dismiss
Sep 28	Plaintiff's "First Amended Complaint"

EXHIBIT 1
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Raymond Wedlake
703 Creekview Drive
Greenville, SC 29607

MAGISTRATE SUMMONS

You are hereby summoned to be and appear personally in the

Fairview/Austin Summary Court
205 North Maple Street, Suite 4
Simpsonville, SC

on November 24, 2020 at 10:00 AM to serve as a party in a Bench Trial in the case of:

RE: Raymond A Wedlake

Vs Board of Directors Woodington
Homeowners
Association
McCabe, Trotter And Heverly, P.C.

PLAINTIFF(S)

DEFENDANT(S)

Civil Case Number: 2020CV2310201384, Summons & Complaint.

HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN
SUCH CASE MADE AND PROVIDED.

Dean Ford / pm
JUDGE

Fairview/Austin Summary Court
205 North Maple Street, Suite 4
Simpsonville, SC 29681
Phone: (864) 963-3457
Fax:

September 29, 2020

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Raymond A. Wedlake, *et. al.*

Plaintiff(s)

vs.

Board of Directors of Woodington Homeowners'
Association, Inc., *et. al.*

Defendants

2020-CV-23-10201384

CIVIL CASE NUMBER

IN THE MAGISTRATES'S COURT

AMENDMENT TO COMPLAINT

To the Court and to the Defendants:

Since filing the original Complaint against the Defendants, I have become aware of certain facts that existed at the time of the original filing but which were not known to me. As a result I now wish to amend the original Complaint to include the following facts, allegations and issues as follows:

1. as included in the attached "First Amended Complaint ..."

2. addition of a third Defendant: State Farm Fire and Casualty Company

I request the Court include these allegations and issues in my action against the Defendants and to note a "Certificate of Service" for copies of the attached "First Amended Complaint ..." and its Exhibits A – Q, served to all Defendants.

As a result of this Amended Complaint, I request the Court grant to me a judgment against the "Board of Directors ..." Defendant in the amount of \$0 = zero dollars, and without any costs, such that monetary damages against the Board Defendant do not exist. For "McCabe" Defendant, no changes from the initial Complaint are desired. For "State Farm" Defendant, no monetary damages are sought, but a Declaratory Judgment citing Breach of Contract by State Farm, and other relief, are desired.

Dated this 28th day of September, 2020

Raymond A. Wedlake, Plaintiff (*Pro Se*)
703 Creekview Drive, Greenville, SC 29607
864-254-9262 wedlakera@mail.com

ATTACHMENT IB.5 - Motion for a Continuance ... to Allow Discovery

STATE OF SOUTH CAROLINA	)	2020-CV-23-10201384
	)	
COUNTY OF GREENVILLE	)	<u>CIVIL CASE NUMBER</u>
	)	
Raymond A. Wedlake, as a Member of	)	IN THE MAGISTRATE'S COURT
Woodington Homeowners' Association, Inc.	)	
and on behalf of other-similarly-situated Members	)	
of Woodington Homeowners' Association, Inc.	)	MOTION FOR A CONTINUANCE
PLAINTIFFS	)	
VS.	)	TO POSTPONE A 11/24/2020
	)	
Board of Directors of Woodington Homeowners'	)	SCHEDULED HEARING
Association, Inc., comprised of Mona Craigo,	)	
Edward Decker, and Sandra LaCroix at the time	)	TO ALLOW DISCOVERY
of filing	)	
AND	)	
McCabe, Trotter & Beverly, P.C.	)	
AND	)	
State Farm Fire and Casualty Company	)	[HEARING REQUESTED]
DEFENDANTS	)	

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*) and pursuant Rule 14, SCRMC, does respectfully request a continuance to postpone a Hearing scheduled for 11/24/2020, by bringing this "Motion for a Continuance ... to Allow Discovery ..." (MFC), stating as below. Rule 14 shows (excerpted, emphasis added):

RULE 14 ... CONTINUANCES
The court shall be lenient ... in granting continuances of trials for good cause shown when necessary to serve the ends of justice. ...

ARGUMENT

1. Plaintiff respectfully requests the Court to recall his "Motion Requesting a Conference Which Might Promote Settlement; and Motion for Continuance Before Trial" as dated 10/13/2020, which showed:

TIME FOR DISCOVERY IS DESIRED

10. Plaintiff cites a need for “Discovery”, and thereby requests a minimum of a 90-day continuance of the Bench Trial scheduled for November 24, 2020:

10a) Experience has shown the Court process to produce, and to serve subpoenas requesting depositions from Members is lengthy and time consuming;

10b) Additionally, Plaintiff suspects that Counsel will move to “quash subpoenas”, to deny Plaintiff his right to gather evidence via discovery, based upon information and belief. With discovery, Plaintiff can prove to the Court the validity of his Complaint, but thereby adding some-indefinite period of time;

10c) Experience has shown that Members will ignore Court subpoenas asking for their witness via deposition. So, additional time will be required for the Court to assess if “Contempt of Court” applies to those Members who will not comply with Plaintiff’s request for their evidence via deposition;

10d) relative to Defendant SF, Plaintiff needs time to discover knowledge of SF’s actions, specifically statements of insurance claims that SF accepted. To date in other judicial actions, CWC has acted with disregard to Plaintiff’s requests to provide insurance-claim information, and Plaintiff fully expects CWC’s intent to “... hide evidence ...” will continue, based upon information and belief;

All such experiences indicate some **indefinite period of time** will be required before a trial that will “... serve the ends of justice ...” can proceed. Plaintiff requests for the Court to realize that in the event of such experiences, they comprise a set of “... unusual circumstances ...”, such that very likely additional continuances will be needed (contrary to Rule 14, SCRMC: “... no party shall be allowed more than one continuance in any case ...”).

2. Plaintiff needs additional time to finalize, serve, receive response to, and determine adequacy of responses, to the attached “Requests for Admissions” (Exhibits MC.1 – MC.3) pursuant to Rule 26(a), SCRCP, which shows (excerpted, emphasis added):

RULE 26 GENERAL PROVISIONS GOVERNING DISCOVERY

(a) **Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions. ...**

Such Requests for Admissions are designed to not only facilitate the ends of justice, but also to relieve the burden on the Court by having various issues disposed of prior to any hearing or trial.

3. Plaintiff believes that all Defendants may have evidence that they will claim is relevant to the case that will be uncovered via such Requests for Admissions. Such evidence is critical for Plaintiff to receive prior to presentation to the Court. Plaintiff objects to withholding of evidence that Defendants intend to bring to the scheduled-11/24/2020 Hearing. Much of such evidence will fall under Rule 12(f), SCRCR, and thereby should be stricken, where this Rule shows (excerpted, emphasis added):

RULE 12 DEFENSES AND OBJECTIONS ...

(f) **Motion to Strike. Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.**

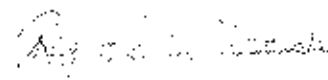
CONCLUSION

THEREFORE, based upon content found herein, Plaintiff prays for this MFC to be **GRANTED** to allow discovery per responses from these RFA, as well as other-subsequent discovery which may become needed, and:

A) for the Court to make known to all Defendants that withholding evidence, with intent to present it at a hearing or at trial, is an improper practice that this Court will not condone; and

B) that the Court grant a minimum of a 90-day continuance, to to commence upon the enter of an Order granting this MFC.

Dated this 30th day of October, 2020.



Raymond A. Wedlake, Plaintiff (*Pro Se*)
703 Creekview Drive, Greenville, SC 29607
864-254-9262 wedlakera@mail.com

EXHIBIT MC.1 - Requests for Admissions from Board Defendant

STATE OF SOUTH CAROLINA	)	2020-CV-23-10201384
	)	
COUNTY OF GREENVILLE	)	CIVIL CASE NUMBER
	)	
Raymond A. Wedlake, as a Member of	)	IN THE MAGISTRATE'S COURT
Woodington Homeowners' Association, Inc.	)	
and on behalf of other-similarly-situated Members	)	
of Woodington Homeowners' Association, Inc.	)	PLAINTIFF'S
PLAINTIFFS	)	
VS.	)	REQUESTS
	)	
Board of Directors of Woodington Homeowners'	)	FOR
Association, Inc., comprised of Mona Craigo,	)	
Edward Decker, and Sandra LaCroix at the time	)	ADMISSIONS
of filing	)	
AND	)	FROM THE
McCabe, Trotter & Beverly, P.C.	)	
AND	)	BOARD OF DIRECTORS
State Farm Fire and Casualty Company	)	
DEFENDANTS	)	

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*) and brings several
"Requests for Admissions" (RFA) pursuant to Rule 26(a), SCRCp, which shows
(excerpted, emphasis added):

RULE 26 GENERAL PROVISIONS GOVERNING DISCOVERY
(a) Discovery Methods. **Parties may obtain discovery by one or more**
of the following methods: depositions upon oral examination or written
questions; written interrogatories; production of documents or things
or permission to enter upon land or other property, for inspection
and other purposes; physical and mental examinations; and
requests for admissions. ...

REQUESTS FOR ADMISSIONS

Plaintiff hereby requests pursuant to Rule 26(a), SCRCp, for Defendant: Board of Directors
of Woodington Homeowners' Association, Inc., within the generic-30-day-time period for
responsive pleadings, for the purposes of this action only, to admit to the following:

1. that forty-six (46) exhibits were attached to Plaintiff's Complaint and its-self-contained "Supplement to Complaint", as dated 06/10/2020;
2. that sixteen (16) exhibits were attached to Plaintiff's "First Amended Complaint", as dated 09/28/2020;
3. that these sixty-two (62) exhibits contain content that is evidentiary in nature;
4. that these 62 exhibits support Plaintiff's Complaint, its Supplement, and his First Amended Complaint;
5. that they have presented no specific evidence to the Court which cites any exhibit as containing evidence that is "in dispute";
6. that they have presented no counter evidence that was filed in support of their statement of "Denied" in their "Answer";
7. that they have presented no counter evidence that was filed with evidentiary support for their "Motion to Dismiss ...";
8. that for Appeals: 2018-001209, 2020-000438, and 2020-000506, no judgments exist;
9. that without a final judgment that exists for any of three Appeals, then claims of "... already litigated ..." are not accurate;
10. that exhibits they filed prove nothing as related to evidentiary support for their "Motion to Dismiss ...", given that no Appeal judgment exists.

Dated this 30th day of October, 2020.



Raymond A. Wedlake, Plaintiff (*Pro Se*)
703 Creekview Drive, Greenville, SC 29607
864-254-9262 wedlakera@mail.com

EXHIBIT MC.2 - Requests for Admissions from MTB Defendant

STATE OF SOUTH CAROLINA	)	2020-CV-23-10201384
	)	
COUNTY OF GREENVILLE	)	CIVIL CASE NUMBER
	)	
Raymond A. Wedlake, as a Member of	)	IN THE MAGISTRATE'S COURT
Woodington Homeowners' Association, Inc.	)	
and on behalf of other-similarly-situated Members	)	
of Woodington Homeowners' Association, Inc.	)	PLAINTIFF'S
PLAINTIFFS	)	
VS.	)	REQUESTS
	)	
Board of Directors of Woodington Homeowners'	)	FOR
Association, Inc., comprised of Mona Craigo,	)	
Edward Decker, and Sandra LaCroix at the time	)	ADMISSIONS
of filing	)	
AND	)	FROM
McCabe, Trotter & Beverly, P.C.	)	
AND	)	MCCABE, TROTTER & BEVERLY,
State Farm Fire and Casualty Company	)	
DEFENDANTS	)	P.C.

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*) and brings several
"Requests for Admissions" (RFA) pursuant to Rule 26(a), SCRCP, which shows
(excerpted, emphasis added):

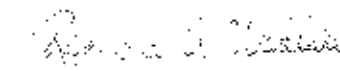
RULE 26 GENERAL PROVISIONS GOVERNING DISCOVERY
(a) Discovery Methods. **Parties may obtain discovery by one or more**
of the following methods: depositions upon oral examination or written
questions; written interrogatories; production of documents or things
or permission to enter upon land or other property, for inspection
and other purposes; physical and mental examinations; and
requests for admissions. ...

REQUESTS FOR ADMISSIONS

Plaintiff hereby requests pursuant to Rule 26(a), SCRCP, for Defendant: McCabe, Trotter &
Beverly, P.C. (MTB), within the generic-30-day-time period for responsive pleadings, for the
purposes of this action only, to admit to the following:

1. that forty-six (46) exhibits were attached to Plaintiff's Complaint and its-self-contained "Supplement to Complaint", as dated 06/10/2020;
2. that sixteen (16) exhibits were attached to Plaintiff's "First Amended Complaint", as dated 09/28/2020;
3. that these sixty-two (62) exhibits contain content that is evidentiary in nature;
4. that these 62 exhibits support Plaintiff's Complaint, its Supplement, and his First Amended Complaint;
5. that they have presented no specific evidence to the Court which cites any exhibit as containing evidence that is "in dispute";
6. that they have presented no counter evidence that was filed in support of their statement of "Denied" in their "Answer";
7. that they have presented no counter evidence that was filed with evidentiary support for their "Motion to Dismiss ...";
8. that for Appeals: 2018-001209, 2020-000438, and 2020-000506, no judgments exist;
9. that without a final judgment that exists for any of three Appeals, then claims of "... already litigated ..." are not accurate;

Dated this 30th day of October, 2020.



Raymond A. Wedlake, Plaintiff (*Pro Se*)
703 Creekview Drive, Greenville, SC 29607
864-254-9262 wedlakera@mail.com

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Raymond A. Wedlake, as a Member of)
Woodington Homeowners' Association, Inc.)

703 Creekview Drive)

Greenville, SC 29607)

864-254-9262 wedlakera@mail.com)

and on behalf of other-similarly-situated Members)
of Woodington Homeowners' Association, Inc.)

PLAINTIFFS)

VS.)

Board of Directors of Woodington Homeowners')
Association, Inc., comprised of Mona Craigo,)
Edward Decker, and Sandra LaCroix at the time)
of filing)

18 Southfield Drive)

Greenville, SC 29607)

864-346-7352 woodingtonhoa@gmail.com)

AND)

McCabe, Trotter & Beverly, P.C.)

P.O. Box 212069)

Columbia, SC 29221)

803-724-5000 ryan.mccabe@mccabetrotter.com)

DEFENDANTS)

CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

VERIFICATION OF COMPLAINT

RECEIVED

Aug 09 2021

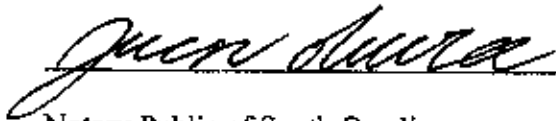
SC Court of Appeals

VERIFICATION OF COMPLAINT

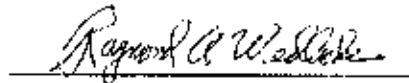
I, Raymond A. Wedlake, appearing first before the Notary Public, state that I am the Plaintiff in this matter. I have read the attached Complaint and know or believe the contents and allegations are true to the best of my knowledge, except for those matters stated which are alleged on information and belief.

Sworn to before me this

10th day of June, 2020.



Notary Public of South Carolina



Raymond A. Wedlake, Plaintiff *Pro Se*

My Commission expires: 07/09/2029



FIGURE 1 - Six Member Statements Denying Defendants as Proxy, November 9, 2018 Ballots

(upon request, non-redacted statements will be supplied to the Court as confidential documents)

Statement "Version B" - No, ballots were not returned

Pertaining to Two Ballots of November 9, 2018:

Ballot 1: "The Association shall indemnify the 2017 Board Members ..."

Ballot 2: "... the proposed payment plan shall be utilized to pay ..."

1. Were you a Member of Woodington Homeowners' Association, Inc., at the time of November 2018 ballots, representing the voting unit at [REDACTED] Creekview Drive?

Please circle: Yes or No

2. Did you return your voted Ballot 1 and Ballot 2 before the deadline of November 9, 2018?

Please circle: Yes or No

3. Do you affirm that you did not return Ballot 1 nor Ballot 2 before the deadline of November 9, 2018?

Please circle: Yes or No

4. Did you intend for your non-returned ballots to be counted by the Board as "FOR" votes?

Please circle: Yes or No *DID NOT INTEND TO BE COUNTED EITHER WAY*

5. Did you convey signed authority relative to these ballots for the Board to vote as your Proxy?

Please circle: Yes or No *I did not sign anything*

6. Do you affirm that your foregoing testimony is true and correct to the best of your recollection and knowledge?

Please circle: Yes or No

[REDACTED]

[REDACTED] Creekview Drive

12/11/18
Date Signed

Statement "Version B" - No, ballots were not returned

Pertaining to Three Ballots of November 9, 2018:

Ballot 1: "The Association shall indemnify the 2017 Board Members ..."

Ballot 2: "... the proposed payment plan shall be utilized to pay ..."

Ballot 3: "... Member ... shall be liable for the legal costs and fees ..."

1. Were you a Member of Woodington Homeowners' Association, Inc., at the time of November 2018 ballots, representing the voting unit at  Claire Lane?

Yes

2. Did you return your voted ballots before the deadline of November 9, 2018?

No

3. Do you affirm that you did not return ballots before the deadline of November 9, 2018?

Yes

4. Did you intend for your non-returned ballots to be counted by the Board as "FOR" votes?

No

5. Did you convey signed authority relative to these ballots for the Board to vote as your Proxy?

No

6. Do you affirm that your foregoing testimony is true and correct to the best of your recollection and knowledge?

Yes

[]

 Claire Lane

 as transcribed by RAW

12/28/2019

Date Signed

■ Claire Lane
Greenville SC 29607
December 28, 2019

Raymond Wedlake
703 Creechew Drive
Greenville SC 29607

Mr. Wedlake:

This letter is in regards to your recent notice of deposition dated on December 18, 2019. Neither of your statement versions properly reflect our views on the matter, and as mentioned in your letter as an option, I am writing this to you in lieu of deposition.

My wife and I were members of Woodington Homeowners' Association at the time of the November 2018 ballots. We did not return our voting ballots at all. We are both young professionals and have no time nor interest in neighborhood politics. We were aware that the board would vote on our behalf based on their ballot letter and are completely indifferent on how they would vote on our behalf. We are also indifferent on how the board spends their money. Once we pay our fees and dues to the Woodington Homeowners' Association it then becomes their money to do with as they see fit.

Again, we have no interest in neighborhood politics or votes whatsoever and just want to be left alone.

Sincerely,

■

EXHIBIT 1 - Version A

Civil Action No.: 2019-CP-23-00269

Statement of [REDACTED] in lieu of Deposition

1. I was a Member of Woodington Homeowners' Association, Inc., at the time of November 2018 ballots, and represented the voting unit at [REDACTED] Southfield Drive.
2. I did not return any of Ballot 1, Ballot 2, nor Ballot 3 before the deadline of November 9, 2018.
3. I did not intend for my non-returned ballots to be counted by the Board as "FOR" votes.
4. I did not convey authority relative to these ballots for the Board to vote as my Proxy.

The foregoing Statement is true and correct to the best of my recollection and knowledge.

Signature: [REDACTED]

Date: 12-10-2019

EXHIBIT 1 - Version A

Civil Action No.: 2019-CP-23-00269

Statement of [REDACTED] in lieu of Deposition

1. I was a Member of Woodington Homeowners' Association, Inc., at the time of November 2018 ballots, and represented the voting unit at [REDACTED] Kristen Way.
2. I did not return any of Ballot 1, Ballot 2, nor Ballot 3 before the deadline of November 9, 2018.
3. I did not intend for my non-returned ballots to be counted by the Board as "FOR" votes.
4. I did not convey authority relative to these ballots for the Board to vote as my Proxy.

The foregoing Statement is true and correct to the best of my recollection and knowledge.

Signature: [REDACTED]

Date: 10/03/19

Statement "Version B" - No ballots were not returned

Pertaining to Two Ballots of November 9, 2018:

Ballot 1: "The Association shall indemnify the 2017 Board Members ..." (Exhibit 2)

Ballot 2: "... the proposed payment plan shall be utilized to pay ..." (Exhibit 2)

1. Were you a Member of Woodington Homeowners' Association, Inc., at the time of November 2018 ballots, representing the voting unit at [REDACTED] Woodside Crossing?

Please circle: ☒ Yes or ☐ No

2. Did you return your voted Ballot 1 and Ballot 2 before the deadline of November 9, 2018?

Please circle: Yes or ☒ No

3. Do you affirm that you did not return Ballot 1 nor Ballot 2 before the deadline of November 9, 2018?

Please circle: ☒ Yes or ☐ No

4. Did you intend for your non-returned ballots to be counted by the Board as "FOR" votes?

Please circle: Yes or ☒ No

5. Did you convey signed authority relative to these ballots for the Board to vote as your Proxy?

Please circle: Yes or ☒ No

6. Do you affirm that your foregoing testimony is true and correct to the best of your recollection and knowledge?

Please circle: ☒ Yes or ☐ No



[REDACTED] Woodside Crossing, Greenville SC 29607

Received 12/02/2019

EXHIBIT 1 - Version A

Civil Action No.: 2019-CP-23-00269

Statement of [REDACTED] in lieu of Deposition

1. I was a Member of Woodington Homeowners' Association, Inc., at the time of November 2018 ballots, and represented the voting unit at [REDACTED] Southfield Drive.
2. I did not return any of Ballot 1, Ballot 2, nor Ballot 3 before the deadline of November 9, 2018.
3. I did not intend for my non-returned ballots to be counted by the Board as "FOR" votes.
4. I did not convey authority relative to these ballots for the Board to vote as my Proxy.

The foregoing Statement is true and correct to the best of my recollection and knowledge.

Signature

[REDACTED]

Date:

10/4/19

FIGURE 2

703 Creekview Drive
Greenville, SC 29607
May 2, 2020

Subject: Request for Information - Please Act Showing Good Faith

Woodington Board:

Please provide to me, as has been previously requested (Exhibit), results from the ballot with a due date of February 22, 2019. Other requested information is itemized as listed in the Appendix.

May the Board be reminded of lawful requirements as found in the "South Carolina NonProfit Corporation Act of 1994" (NPCA). Please note particularly the law requires all these things: **GOOD FAITH, DUTY OF CARE, BEST INTERESTS:**

SECTION 33-31-830. General standards for directors.

(a) A director shall discharge his duties as a director, including his duties as a member of a committee:

- (1) in good faith;
- (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) in a manner the director reasonably believes to be in the best interests of the corporation.

With full knowledge of a possibility for litigation to obtain simple information, the Board is asked to exercise all three cited items (in bold, above), that the law requires. Withholding of simple, requested information cannot be viewed as good faith, nor care of a prudent person, nor as representing the best interests of WHOA.

Regardless of other "gobblygook" found in the NPCA, the law provides to me a right to information, and also provides power to a court to compel production of corporate records :

SECTION 33-31-1602. Inspection of records by members.

(d) This section does not affect:

- (1) the right of a member to inspect records ... or, if the member is in litigation with the corporation, to the same extent as any other litigant; or
- (2) the power of a court, independently of this chapter, to compel the production of corporate records for examination.

Additionally, please recall a Board makes themselves ineligible for indemnification when conduct, under the law, does not comply with **GOOD FAITH** and **BEST INTERESTS:**

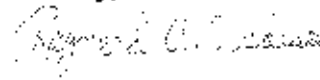
SECTION 33-31-851. Authority to indemnify.

(a) Except as provided in subsection (d), a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if the individual:

- (1) conducted himself in good faith; and
- (2) reasonably believed:
 - (i) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; ...

Kindly provide requested information. I believe **GOOD FAITH** demands, as the law requires, information to be provided. Thank you.

Sincerely,



Raymond A. Wedlake 864-254-9262
wedlakera@mail.com

EXHIBIT

Results from Ballot of 22 Feb 2019 030919

cndesteve@gmail.com, cwedwards2018@gmail.com, woodingtonhoag@gmail.com, woodingtonvp@gmail.com

Woodington Board:

Thank you for a letter informing me of cancellation of the March 11, 2019, Special Meeting, which was received on March 9, 2019.

Since there will be no meeting, please convey to me results from the ballot which had a return date of February 22, 2019. Kindly provide this information:

- 1) Number of ballots returned
- 2) Number of Member votes "For"
- 3) Number of Member votes "Against"
- 4) Number of Board proxy votes "For"
- 5) A list of those Members who voted

Kindly provide this requested information **before March 15, 2019.**

Thank you.

Cheers wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

APPENDIX

Simple, Requested Information which was not Supplied

May 6, 2019

Woodington Board:

As a Member of WHOA, this request is made for member-related information, much of which was requested from prior Boards, but no information was provided. May I hope the Board will act in a proper, "transparent" manner by supplying the simple, requested information below? Kindly plan to provide your replies before May 16, 2019.

Please provide all this information, or supply answers to these questions:

- * a schedule of planned Board meetings
- * confirmation of your commitment to publish agendas 3 days before all scheduled meetings
- * an explanation of how meeting minutes will be made known to Members
- * when will a new, official WHOA address be filed with the South Carolina Secretary of State? (the "16 Southfield" address is no longer valid)
- * has the Board created an "Office" file containing a By-Laws "official version", and if so, can it be provided to me?
- * who is serving on the Architectural Committee (AC)?
- * who is serving on a By-Laws Review Committee (BLRC)?
- * what plans does the Board have to fill the recent vacancy on the Board? On what date will the vacancy will be filled? Please provide a timetable for all steps.

All past Board members should already be aware of these issues:

- Open Meetings - I hope that all meetings will be open to Members, as has been explained to the Board via several opinions from HOA Industry Experts.
- Minutes & Related - I also hope schedules, agendas, and minutes will be posted at some URL. Is there any reason not to post online, such as in Woodington "Documents" at NextDoor.com?
- Committees - Please recall I requested appointment to the AC before the last Annual Meeting. Unresolved questions posed to the 2018 AC were never acted upon by the 2018 AC, nor by the 2018 Board. Is there even one, single WHOA Member who does not think current By-Laws are seriously deficient? A BLRC is an absolute requirement for WHOA!
- Vacancy - Please recall the Board has a duty to fill a vacancy. Is it correct understanding the 2018 Board agreed this is a required duty?

Please also inform me about any significant actions which the Board may have in mind. I also request the Board keep me, and all Members, informed about things that "come up", since I suspect others also share a desire to know. Thanks in advance!

Cheers wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

EXHIBIT 1



McCABE, TROTTER & BEVERLY PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

Invoice as of 7/13/2018
Invoice no 69210

Woodington Homeowners' Association, Inc.
Chris Edwards
16 Southfield Dr.
Greenville, SC 29607

017402.00009: Raymond Wedlake v. Woodington Homeowners' Association, Inc., et al.

Professional	Hours	Rate	Amount
10/09/2017 E	1.20	175.00	210.00
10/12/2017 E	0.10	175.00	17.50
10/13/2017	0.40	175.00	70.00
10/16/2017	0.20	125.00	25.00
10/25/2017	0.30	175.00	52.50
10/27/2017	1.40	175.00	245.00



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

10/30/2017 EG	.20	175.00	1,085.00
10/31/2017 EG	0.10	175.00	17.50
11/01/2017 EG	0.50	175.00	87.50
11/02/2017 EG	2.40	175.00	420.00
11/03/2017 EG	4.60	175.00	805.00
11/05/2017 EG	2.10	175.00	367.50
11/06/2017 DP	0.50	125.00	62.50



McCamp, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

11/06/2017 EG	.70	175.00	997.50
11/06/2017 JD	0.20	175.00	35.00
11/07/2017 EG	0.30	175.00	52.50
11/07/2017 RM	0.80	275.00	220.00
11/08/2017 EG	0.20	175.00	35.00
11/09/2017 DP	0.50	125.00	62.50



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

11/09/2017 EG	2.20	175.00	385.00
11/10/2017 DP	0.20	125.00	25.00
11/10/2017 EG	2.70	175.00	472.50
11/13/2017 EG	0.10	175.00	17.50
11/14/2017 EG	2.10	175.00	367.50
11/15/2017 VC	0.10	125.00	12.50
11/16/2017 EG	0.70	175.00	122.50

McCabe, Trotter & Beverly, PC
 COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

11/20/2017 EG

70 175.00 122.50

11/22/2017 EG

10 175.00 210.00

11/27/2017 EG

10 175.00 560.00

11/27/2017 JD

1.20 175.00 35.00

11/28/2017 DP

1.10 125.00 137.50



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

11/28/2017 EG

4.10 175.00 717.50

11/29/2017 EG

3.70 175.00 647.50

11/30/2017 EG

0.50 175.00 87.50

12/01/2017 EG

3.20 175.00 560.00

12/04/2017 DP

0.10 125.00 12.50



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATIONS AND CONSTRUCTION LAW

12/04/2017 B

6.80 175.00 1,190.00

12/05/2017 B

2.70 175.00 472.50



McClure, Thomas A. Attorney PC

FILED 1/20/17

12/07/2017 B

5.40 175.00 945.00

12/08/2017 B

1.30 175.00 227.50

12/10/2017 EC

0.40 175.00 70.00

12/11/2017 DF

0.20 125.00 25.00



McGraw, Hiller & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

12/11/2017 EG

4.40 175.00 770.00

12/12/2017 EG

2.40 175.00 420.00



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

12/13/2017 BG

.70 175.00 297.50

12/14/2017 BG

.40 175.00 770.00

12/15/2017 BG

1.10 175.00 192.50



MCCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

12/18/2017 EG

7.10 175.00 1,242.50

12/19/2017 DP

0.30 125.00 37.50

12/19/2017 EG

2.40 175.00 420.00

12/20/2017 DP

0.20 125.00 25.00

12/21/2017 EG

0.40 175.00 70.00

12/22/2017 DP

0.10 125.00 12.50



MCCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATOR AND CONSTRUCTION LAW

12/27/2017 EG	90	175.00	332.50
12/28/2017 EG	90	175.00	1,207.50
12/29/2017 EG	60	175.00	1,330.00
12/30/2017 EG	10	175.00	892.50

McCabe, Trotter & Beverly, PC
 COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

12/31/2017 EG	.10	175.00	192.50
01/01/2018 EG	.10	175.00	17.50
01/02/2018 DP	.10	125.00	12.50
01/02/2018 EG	.20	175.00	35.00
01/03/2018 EG	.10	175.00	892.50
01/04/2018 EG	2.30	175.00	402.50
01/05/2018 EG	0.20	175.00	35.00
01/08/2018 EG	1.20	175.00	210.00



McCALL, BROTHERS & BEVERLY, PC
COMMUNITY ASSOCIATES AND CONSTRUCTION CO.

01/10/2018 DP	30	125.00	37.50
01/16/2018 EG	80	175.00	140.00
01/11/2018 EG	20	175.00	35.00
01/11/2018 VC	50	125.00	62.50
01/13/2018 EG	50	175.00	87.50
01/15/2018 EG	20	175.00	35.00
01/16/2018 EG	0.40	175.00	70.00
01/17/2018 EG	9.40	175.00	1,295.00
01/18/2018 DP	30	125.00	37.50



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

01/18/2018 EG	2.20	175.00	385.00
01/19/2018 EG	0.40	175.00	70.00
01/22/2018 EG	1.80	175.00	315.00
01/23/2018 EG	0.40	175.00	70.00
01/24/2018 EG	0.20	175.00	35.00
01/26/2018 EG	0.60	175.00	105.00
01/30/2018 EG	0.40	175.00	70.00
01/31/2018 DP	0.20	125.00	25.00
01/31/2018 EG	0.20	175.00	35.00



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

02/06/2018 EG	0.50	175.00	87.50
02/13/2018 EG	.60	175.00	105.00
02/14/2018 EG	.10	175.00	17.50
02/19/2018 EG	0.30	175.00	52.50
02/20/2018 DP	0.40	125.00	50.00
02/20/2018 EG	0.80	175.00	140.00
02/23/2018 EG	.40	175.00	70.00



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

02/26/2018 EG	0.10	175.00	17.50
02/27/2018 DP	0.20	125.00	25.00
02/27/2018 EG	0.30	175.00	52.50
03/01/2018 EG	0.10	175.00	17.50
03/02/2018 EG	0.50	175.00	87.50



McCann, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

03/12/2018 EC

3.80 175.00 665.00

03/13/2018 EC

2.90 175.00 507.50



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

03/14/2018 EC	0.20	175.00	35.00
03/15/2018 EC	1.30	175.00	227.50
03/16/2018 EC	1.80	175.00	315.00
03/19/2018 EC	2.80	175.00	490.00
03/20/2018 EC	0.40	175.00	70.00



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

03/21/2018 BG

1.70 175.00 297.50

03/22/2018 BG

0.30 175.00 52.50

03/26/2018 BG

3.80 175.00 665.00

McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

03/27/2018 BG	4.10	175.00	717.50
03/28/2018 BG	1.70	175.00	297.50
03/29/2018 DP	0.30	125.00	37.50
03/29/2018 BG	4.30	175.00	752.50



McCaffrey, Brooker & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

03/30/2018 E	0.90	175.00	157.50
04/02/2018 E	2.10	175.00	367.50
04/03/2018 BG	1.50	175.00	262.50



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

04/04/2018 DP

1.00 125.00 125.00

04/04/2018 EQ

3.70 175.00 647.50



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

04/05/2018 EG

7.00 175.00 1,225.00

04/06/2018 EG

7.30 175.00 1,277.50

04/09/2018 EG

7.20 175.00 1,260.00



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

04/10/2018	0.10	125.00	12.50
04/10/2018	9.10	175.00	1,592.50
04/10/2018	2.20	175.00	385.00
04/11/2018	0.10	125.00	12.50
04/11/2018	7.80	175.00	1,365.00
04/11/2018	0.30	175.00	52.50
04/12/2018	0.40	175.00	70.00
04/13/2018	0.20	125.00	25.00



McCabe, Trotter & Beverly, PC
COMMONWEALTH ASSOCIATION AND CONSTRUCTION LAW

04/13/2018 B

2.90 175.00 507.50

04/13/2018 JD

0.20 175.00 35.00

04/15/2018 EG

3.30 175.00 577.50

04/16/2018 EG

4.70 175.00 822.50



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

04/17/2018 EG	8.30	175.00	1,452.50
04/18/2018 DP	.10	125.00	137.50
04/18/2018 EG	.80	175.00	1,540.00
04/19/2018 DP	2.20	125.00	275.00
04/19/2018 EG	8.60	175.00	1,505.00



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

04/20/2018 EG	3.90	175.00	682.50
04/23/2018 DP	0.10	125.00	12.50
04/23/2018 EG	1.80	175.00	315.00
04/23/2018 JD	0.40	175.00	70.00
04/24/2018 DP	0.10	125.00	12.50
04/24/2018 EG	0.10	175.00	17.50
04/25/2018 EG	0.20	175.00	35.00
04/26/2018 EG	6.60	175.00	1,155.00
04/27/2018 EG	2.90	175.00	507.50
05/02/2018 EG	2.60	175.00	455.00
05/10/2018 EG	2.20	175.00	385.00



McCabe, Trotter & Heverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

05/11/2018 EG	0.10	175.00	17.50
05/14/2018 EG	.90	175.00	857.50
05/15/2018 EG	.80	175.00	840.00
05/16/2018 DP	.30	125.00	37.50
05/16/2018 EG	.10	175.00	17.50
05/22/2018 EG	.80	175.00	315.00
05/24/2018 DP	.10	125.00	12.50
05/24/2018 EG	.50	175.00	87.50
05/30/2018 EG	0.60	175.00	105.00
06/01/2018 JR	0.50	125.00	62.50
06/06/2018 EG	0.30	175.00	52.50
06/19/2018 DP	0.00	125.00	0.00 No Charge

ELECTRONICALLY FILED - 2020 Feb 17 2:59 PM - GREENVILLE COMMON PLAS - CASE#2019CP2301501

06/27/2018	EC	0.10	275.00	27.50
06/28/2018	DE	0.10	125.00	12.50
06/28/2018	EC	0.10	275.00	27.50
06/29/2018	EC	0.20	275.00	55.00
Total:				\$52,860.00

Victoria Cockfield	1.60 hours at \$125.00/hr	200.00
Joel Deason	1.30 hours at \$175.00/hr	227.50
Valerie Giovanoli	2.20 hours at \$175.00/hr	385.00
Ely Grote	287.60 hours at \$175.00/hr	50,330.00
Ely Grote	0.40 hours at \$275.00/hr	110.00
Ryan McCabe	0.80 hours at \$275.00/hr	220.00
Deanne Peele	10.40 hours at \$125.00/hr	1,300.00
John Roberts	0.50 hours at \$125.00/hr	62.50
Hayley Simmons	0.20 hours at \$125.00/hr	25.00

Total hours: 305.00

Expenses	Units	Price	Amount
02/20/2018 POSTAGE.	1.00	2.89	2.89
04/04/2018 POSTAGE.	1.00	0.47	0.47
04/06/2018 POSTAGE.	1.00	20.01	20.01
04/30/2018 POSTAGE.	1.00	0.47	0.47
11/06/2017 E-Filing Fee.	1.00	31.74	31.74
11/06/2017 E-Filing Fee.	1.00	31.74	31.74
11/06/2017 E-Filing Fee.	1.00	31.74	31.74
12/12/2017 Mediation Cost.	1.00	250.00	250.00
12/15/2017 Travel to/from office for: meeting/hearing/mediation.	1.00	103.79	103.79
12/19/2017 E-Filing Fee.	1.00	31.74	31.74
12/19/2017 E-Filing Fee.	1.00	31.74	31.74

P.O. Box 212069
Columbia, South Carolina 29221
803-724-5000

04/12/2018	Travel to/from office for: meeting/hearing/mediation.	1.00	127.53	127.53
04/18/2018	Witness Fee.	1.00	35.90	35.90
04/18/2018	Witness Fee.	1.00	36.12	36.12
04/18/2018	Witness Fee.	1.00	35.90	35.90
04/18/2018	Witness Fee.	1.00	36.12	36.12
04/19/2018	Witness Fee.	1.00	(36.12)	(36.12)
04/19/2018	Witness Fee.	1.00	(36.12)	(36.12)
04/27/2018		1.00	14.59	14.59
05/14/2018	Transcripts.	1.00	74.25	74.25

Sub-total Expenses:	\$824.50

Total Current Billing:	\$53,684.50

Previous Balance Due:	\$0.00

Total Payments:	\$0.00

Total Now Due:	\$53,684.50

Please remit payment in the amount listed above. The Total Now Due reflects the balance due after any available payments have been applied. Such payments include any cost retainer you've paid, any payments made by the property owner, and payments you've previously submitted. If you have any questions please contact Glenda Murphy at glenda.murphy@mccabestrotter.com or 803-724-5000. Thank you!

P.O. Box 212069
Columbia, South Carolina 29221
803-724-5000

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WOODINGTON SUBDIVISION AS SHOWN ON SURVEY ENTITLED WOODINGTON DATED APRIL 4, 1989, AND RECORDED IN THE P.M. OFFICE FOR GREENVILLE COUNTY, SOUTH CAROLINA, IN PLAT BOOK 17-E, AT PAGE 56

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, made this 19th day of SEPTEMBER, 1989, by TANNER ROAD PROPERTIES, a South Carolina General Partnership, hereinafter referred to as Declarant.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of that certain tract of land in the County of Greenville, State of South Carolina, which property is more particularly described as follows:

See Exhibit A attached.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictive covenants and conditions, which are hereby imposed against the property described above for the purpose of protecting the value and desirability of said property and to accomplish the systematic, uniform and harmonious development of said property into a subdivision; that the covenants, conditions and restrictions hereinafter set forth shall run with the real property described above and be binding upon all parties having any right, title to interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof until January 1, 2000 at which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each unless, by vote of two-thirds of the then owners of the lots into which the property described above shall have been developed, the within covenants, conditions and restrictions are changed or amended, in whole or in part. In the event such vote shall take place, the vote shall be cast by the legal title holder of each individual

BOOK 1373 PAGE 913

lot, provided further, for each lot, there shall be only one vote in the event legal title thereto is held jointly or otherwise.

If the undersigned, its successors or assigns, or any owner of any lot, their heirs or assigns, should violate or attempt to violate any of the covenants, conditions and restrictions herein contained, it shall be lawful for any person or persons owning any of the real estate described above to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate same, to either prevent his or them from so doing, or to recover damages for such violations, or, in the event of the failure to secure the necessary approval as set forth in Article IV hereof, to require the removal of any non-approved building or improvement, as appropriate.

Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force

and effect.

ARTICLE I: USES PERMITTED AND PROHIBITED

(1) All lots shall be used exclusively for residential purposes. No structure shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family residential structure not to exceed three stories in height, and a double garage attached or detached for private passenger automobile with door opening facing the front side or rear yard, unless otherwise approved by the architectural committee and which shall have been approved for qualification or workmanship and materials, harmony of external design with main structure and as to location with respect to topography and finished grade elevation.

(2) No tent, shack, garage, barn, storage building or other out-building shall be erected upon any lot without approval from the architectural committee and, if approved, it shall not be used as a residence either temporarily or permanently. No structure of a temporary nature shall be used as a residence and no house trailer, modular home or mobile home shall be placed on any lot either temporarily or permanently. Any boat, camping

BOOK 1373 PAGE 914

trailer, recreational vehicle and/or similar equipment used for the personal enjoyment of a resident of a lot shall at all times be neatly stored and positioned so as to be inconspicuous.

(3) No obnoxious or offensive activity shall be permitted anywhere on the property nor shall anything be done which may become an annoyance, nuisance or menace to the neighborhood. No lot or any part thereof shall be used for any business, commercial or public purpose and no commercial vehicle shall be parked in the subdivision, temporarily or permanently.

(4) No animals shall be kept, maintained or quartered on any lot or tract in this subdivision except that cats, dogs, rabbits, hamsters or caged birds may be kept in reasonable numbers as pets for the pleasure of lot owners so long as said animals do not constitute a nuisance or menace to the neighborhood.

(5) Tall shrubbery or hedges shall be trimmed to reasonable limits where traffic hazards may be created.

ARTICLE II: EASEMENTS

(1) In addition to other easements as are shown on the recorded subdivision plat, a five-foot easement and a ten-foot easement is reserved over and across all side and rear lot lines, respectively, for drainage, utility, cable television, gas, water, power, sewer and telephone installation and maintenance; provided that when more than one lot shall be used as a site for only one residence, the aforesaid five-foot easement and ten-foot easement shall apply only with respect to the exterior lines of such consolidated lot. Declarant specifically reserves the right to grant specific easements to any entity or organization, public or private, to provide any of the utility services listed herein at any time following the date hereof until any specific lot shall be conveyed by Declarant. The right is reserved to authorize the laying and placing of sewer, gas and water pipelines, telephone, cable television, telegraph and electrical light poles on any of the streets and easements shown on the recorded subdivision plat. An easement for the installation and

maintenance of utilities and drainage facilities is reserved over said streets and easements.

ARTICLE III: SET BACK, LOCATION AND SIZE OF IMPROVEMENTS AND OF BUILDING PLOTS

(1) Nothing herein contained shall be construed to prohibit the use of more than one lot or portions of one and more lots as a single residential building site, provided that said lot would otherwise meet the requirement as to size, setback line and directional facing of said building as determined by the Declarant.

(2) No building shall be erected on any lot nearer to the front lot line or nearer to the side street line than the building set back line shown on the recorded plat. Any such building shall face toward the front line of the lot except that buildings to be constructed on corner lots shall face in the direction designated by the architectural committee. No building shall be located nearer to any interior side lot line than the distance, as determined by applicable building codes.

(3) No detached building, other than the one intended to be used as a residence, shall be erected without approval as provided in Article IV and, if approved, shall be placed no nearer to any lot line than the distance as determined by applicable building codes.

(4) No wall, fence or hedge shall be erected across or along the front of any lot and nearer to the front lot line than the building set-back line having a height of more than four feet; however, upon review and approval by the Architectural Committee, placement and height of any wall, fence or hedge may be altered. Chain link fences shall not be constructed on any portion of any lot, without prior approval from the Architectural Committee.

(5) The total area of all driveways shall be paved by plant mix concrete, asphalt or gravel.

(6) No lot shall be re-cut so as to face in any direction other than is shown on the recorded plat nor shall it be re-cut so as to make any building site smaller than is provided for herein.

(7) No one-story, split-level or story-and-a-half residence shall be constructed containing less than 1,850 square feet of heated floor space exclusive of porches, garages and breezeways. No two-story residence shall be erected containing less than 2,000 square feet of heated floor space total, exclusive of porches, garages and breezeways. Exceptions to these limitations may be granted by the architectural committee if in the opinion of the committee the proposed residence would be keeping with the overall concept of the subdivision.

**ARTICLE IV: APPROVAL OF PLANS AND CONSTRUCTION --
ARCHITECTURAL COMMITTEE**

(1) The Architectural Committee shall be composed of the partners of Tanner Road Properties. For the purposes of these restrictions the term Declarant and Architectural Committee may be used interchangeably. In all matters, a majority vote shall govern.

(2) No improvements shall be erected, placed, altered or changed on any lot in this

subdivision until and unless the building plans, specifications, and plot plan showing the proposed type of construction, exterior design, location of residence, walks, drives and fences have been approved in writing by the Architectural Committee as to conformity and harmony of external design and consistency of plan with existing residences on other lots in the subdivision and as to the location of the structure with respect to topography and finished ground elevation.

(3) The Architectural Committee shall have the right to refuse to approve any plans, specifications and/or plot plans, taking into consideration the suitability of the proposed building or other improvement, the materials of which it is to be built, whether or not it is in harmony with the surroundings and the effect it will have on other residences already constructed.

(4) Prior to the commencement of any construction, each owner shall submit to the Architectural Committee, in duplicate, plans and drawings, which shall contain at a minimum:

a) front, rear and side elevations;

BOOK 1373 PAGE 917

b) floor plan;

c) the area of heated floor space;

d) exterior building material to include manufacturer, color and texture;

e) exterior trim color;

f) roofing material and color;

g) site plan (optional);

h) estimated completion dates of all construction and improvements;

i) special treatment required to alleviate problems anticipated due to changes in topography.

The documents and other information required to be submitted shall be delivered or mailed to the Architectural Committee of Tanner Road Properties in care of The Westbury Company, 105 North Spring Street, Greenville, South Carolina 29601. One complete set shall be retained by the Architectural Committee and the second complete set shall be returned to the applicant, with the Architectural Committee's approval or disapproval clearly noted thereon.

(5) In the event that the Architectural Committee fails to approve or disapprove such plans within thirty (30) days after they have been submitted to it, such approval will be automatic. The terms "building" or "improvements" shall be deemed to include the erection, placement or alteration of any wall, fence, driveway or parking area, or any such activity undertaken subsequent to initial construction.

(6) The Architectural Committee is authorized to approve or ratify in the construction or alteration of any building violations of the Set Back, Location and Size of Improvements article of these restrictions if, in the opinion of the Architectural Committee, such shall be necessary to prevent undue hardship.

(9) All construction by any owner shall be performed by a licensed contractor or licensed builder.

BOOK 1373 PAGE 918

(10) Once construction is commenced, each owner shall be responsible for insuring that such work proceeds at an orderly and timely pace, with no work stoppage in excess of 14 consecutive days, acts of God excepted.

(11) After the foundation for new construction has begun on any lot in the subdivision, the owner shall have the work carried on continuously by a licensed builder without unnecessary delay, and shall have 12 months from the time the foundation has begun to complete the residence, landscape the yard, and plant shrubbery.

(12) The Declarant expressly reserves the right to assign any of the duties, powers, functions and approval authority set forth herein to any assignee at Declarant's sole discretion.

ARTICLE V: ASSOCIATION OF OWNERS

(1) Upon the sale of 75% of the lots which are subject to these restrictions, all owners including Declarant, shall organize Woodington Homeowners Association, to be chartered as a non-profit corporation, in accordance with the laws of the State of South Carolina. Every person who is a record owner of a fee or undivided fee interest in any lot which is subject to these covenants shall be a member of the Association. There shall be only one class of membership and such members shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as the owners determine, but in no event shall more than one vote be cast with respect to any lot, and, further, no fractional vote shall be cast with respect to any lot.

(2) The affairs of the Association shall be controlled by a Board of Directors, duly elected by the members.

(3) The Homeowners Association shall be entitled to collect dues, on an annual basis, assessed against each lot in an amount to be determined by the Board of Directors. These dues shall be administered by the officers of the Association and used for the payment of necessary expenses for the operation of the Homeowners

BOOK 1373 PAGE 919

Association and for the maintenance of any vacant and untended lot or unkempt improved lot and for the payment of any common utility expenses and for the maintenance of any property deeded to the Homeowners Association.

(4) In the event the Homeowners Association's Board of Directors and Officers shall deem it necessary to expend any sum of money for the maintenance and upkeep of any improved or unimproved lot, the Board shall be empowered to levy a special assessment applicable to that lot, but only in an amount equal to any sum or sums which had to be expended for that purpose. If any such special assessment, or annual dues payment, is not paid within thirty (30) days of its due date, the amount due shall bear interest from the date of delinquency at the rate of fourteen (14%) percent interest.

(5) The Declarant may delegate and transfer to the Homeowners Association any rights, duties, and powers which Declarant has expressly reserved unto itself in these Covenants and Restrictions.

(6) If any dues or assessments are not paid when due, then such dues or assessments shall become delinquent and shall (together with interest thereon at the rate of Ten (10%)

percent per annum from the due date and the cost of collections as hereinafter provided) become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made. The amount of any such dues or assessments, together with reasonable attorney fees as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment became due. In the case of co-ownership, all such co-owners shall be jointly and severally liable for the entire amount of the dues or assessments. If the assessment or dues are not paid within thirty (30) days after the due date, the Homeowners Association may bring an action at law against the owner or owners personally obligated to pay the same or to foreclose the lien against the

BOOK 1373 PAGE 920

property, and there shall be added to the amount of such assessments or dues, all attorney fees and costs of collection and in the event a judgment is obtained, such judgment shall include prejudgment interest as hereinabove provided together with reasonable attorney fees as may be fixed by the court together with the costs of the action.

(7) The lien of the assessments or dues provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessments or dues; provided, however, that such subordination shall apply only to the assessments or dues which have become due and payable prior to the sale or transfer of such proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments or dues thereafter becoming due, nor from the lien or any such subsequent assessments or dues.

ARTICLE VI: MISCELLANEOUS

(1) No signs shall be permitted on any lots except that a single sign offering the property for sale may be placed on such lot providing such sign is approved by the Architectural Committee.

(2) All residences shall have a standard letter size mailbox which is to be provided by the owner. All boxes and posts shall be in good taste and maintained in a good state of repair at all times.

(3) The removal of any trees in excess of 12" in diameter (dbh) shall require prior approval of the Architectural Committee. No trees may be removed until final building plans have been approved by the Architectural Committee.

(4) The property within this subdivision is hereby declared to be a wildlife sanctuary and all hunting or shooting, is hereby prohibited.

(5) The owner of each lot shall cause written notice to be delivered to Declarant upon the conveyance of any lot by him advising Declarant of the conveyance.

BOOK 1373 PAGE 921

(6) No satellite or television dish shall be constructed or placed on any lot except where type, size, screening and location have been approved by Architectural Committee.

(8) No above ground pool shall be constructed or placed on any lot without approval of the Architectural Committee.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal this the 19

day of September , 1989.

In the presence of:

Thomas D. Croft TANNER ROAD PROPERTIES a South Carolina General Partnership
BY: THE WILSON REAL ESTATE DEVELOPMENT AND MARKETING

COMPANY, INC. (SEAL) General Partner

Kathy Chearham BY: Douglas M. Wilson Douglas M. Wilson Its: President

Thomas D. Croft BY: WESTBURY COMPANY (SEAL) General Partner

Kathy Chearham BY: Rodney A. Westbury Rodney A. Westbury Its: President

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE PROBATE

PERSONALLY appeared the undersigned witness who made oath that (s)he saw the within named Tanner Road Properties, by its duly authorized officers, sign, seal and as its act and deed deliver the within written Declaration of Covenants, Conditions and Restrictions and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

Thomas D. Croft

SWORN to before me this 19 day of September , 1989.

Benobia C. Hall (SEAL) Notary Public for South Carolina My Commission Expires:
3/23/99

BOOK 1373 PAGE 922

EXHIBIT A

All that certain piece, parcel or tract of land in the County of Greenville, State of South Carolina, located on the east side of Tanner Road, containing 27.35 acres as shown on plat prepared by Freeland-Clinkscapes and Assoc. April 3, 1989 recorded Sept. 19, 1989 in plat book 17-E page 56 of the RMC Office for Greenville County, S. C., reference to which plat is made for a more complete description.

This is the same property conveyed to Tanner Road Properties, a South Carolina General Partnership by Ralph H. Graham, Jr. & Josephine Graham by deed dated November 19, 1988 recorded November 23, 1988 in Deed Book 1345 page 263 of the RMC Office for Greenville County, S. C.

EXHIBIT 3

1>BY-LAWS OF WOODINGTON HOMEOWNERS ASSOCIATION, INC.

Revision 3 15 August 2012 - Articles 1 thru 20

ARTICLE 1 - NAME AND LOCATION

The name of the Corporation shall be called "Woodington Homeowners Association, Inc.", hereinafter referred to as the "Association". The principal office of the Corporation shall be located at the home of the current President of the Association, but meetings of Members and directors may be held at such places within the State of South Carolina as may be designated by the Board of Directors.

ARTICLE II - PURPOSE

This Association does not contemplate pecuniary gain or profit to the Members thereof, and the purpose of the Association, as provided in the Certificate of incorporation, is as follows:

"The purpose of the said proposed Corporation is to provide for an association for the betterment of the property and homeowners of Woodington Subdivision, Greenville County, South Carolina."

ARTICLE III - DEFINITIONS

Section 1: "Association" shall mean and refer to Woodington Homeowners Association, Inc., a non-profit Corporation organized and existing under the laws of the State of South Carolina.

Section 2: "Member" shall mean and refer to those persons owning lots or homes in Woodington Subdivision, or their designated representative, providing they pay the initial annual dues of \$175.00, and future dues to be established annually by the Board of Directors as well as any special assessments that may be levied.

Section 3: "Vote" shall mean there will be one (1) vote per lot owned.

ARTICLE IV - MEETINGS OF MEMBERS

Section 1 - ANNUAL MEETINGS: The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular Annual Meeting of the Members shall be at a time, date, and place as designated in advance by the Board.

Section 2 - SPECIAL MEETINGS: Special meetings of the Members may be called at any time by the President of the Board of Directors, or upon written request of one-fourth (1/4) of the Members.

Section 3 - NOTICE OF MEETINGS: A sign posted at the neighborhood entrance shall be sufficient notice for each

meeting of Association Members, to those who normally reside in the neighborhood. Meeting notice shall be given by, or at the direction of the Secretary, or person authorized to call the meeting, at least twenty-one (21) days before such meeting to each Member entitled to vote thereat. For any Member who does not normally reside in the neighborhood, or for any Member who may so petition the Secretary, written notice shall be delivered by US Mail, postage prepaid, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Meeting notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4 - QUORUM: The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one quarter (1/4) of the votes of membership shall constitute a quorum for any action except as otherwise provided in the "Covenants" (Reference 1) of these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5 - PROXIES: At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of this residence.

ARTICLE V - BOARD OF DIRECTORS, SELECTION, AND TERM OF OFFICE

Section 1 - NUMBER: The association shall be governed by a Board of Directors, normally five (5) in number, each of whom shall serve until his or her successor is elected and shall qualify as provided in these By-Laws. No more than one (1) representative of any single distinct membership may serve as a director of the Association at one time.

Section 2 - SELECTION AND TERM OF OFFICE: Annually, the membership shall normally elect five (5) directors from the membership for the term of one (1) year. Each Board Member must be elected every year. When a Board Member has served for five (5) consecutive terms, that person will not be permitted to seek a sixth consecutive term, unless the Board of Directors has been unable to find another eligible Association Member who is willing to serve on the Board. When this is true, the current Board by simple majority vote may waive the five (5) consecutive term limit. Any waiver is valid for only one year. After a Member has been off the Board of Directors for at least one term, that

Member can seek re-election to the Board of Directors with the same rights of any other Member.

Section 3 - REMOVAL: Any director may be removed from the Board, with or without just cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4 - COMPENSATION: No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for actual expenses incurred in the performance of his/her duties.

Section 5 - ACTION TAKEN WITHOUT A MEETING: The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE VI - NOMINATION AND ELECTION OF DIRECTORS

Section 1 - NOMINATION: Nomination for election to the Board of Directors shall be made by the current Board of Directors. At least 90 days prior to the annual meeting, the current Board of Directors will request volunteers to fill expected vacancies on the Board. A notice will be sent to the membership advising them of the open positions and asking for volunteers to fill the positions. An election slate for members of the Board of Directors will be prepared to include incumbent members who are seeking re-election and new candidates. The election slate will be presented to the Members at the annual meeting. Nominations may also be made from the floor at the annual meeting. Such nominations must be made from among the Members who have voting privileges.

Section 2 - ELECTION: Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies may cast one vote for each vacancy on the Board. The person receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VII - MEETINGS OF DIRECTORS

Section 1 - REGULAR MEETINGS: Meetings of the Board of Directors shall be held on call of the President, minimum quarterly.

Section 2 - SPECIAL MEETINGS: Special meetings of the Board of Directors shall be held when called by the

President of the Association, or by any two (2) directors, after not less than three (3) days notice to each director.

Section 3 - Quorum: A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VIII - POWERS AND DUTIES OF BOARD OF DIRECTORS

Section 1 - POWERS: The board of Directors shall have power to:

- Exercise for the Association all powers, duties, and authority vested in or delegated to this association and not reserved to the membership by other provisions of these By-Laws, or the "Covenants" (Reference 1).
- Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.
- Nothing in these By-Laws shall be construed to permit the Board of Directors to borrow or pledge the credit of the Association or sell or transfer all or part of the assets of the Association without the specific approval of a majority of the Members attending and voting at a duly held meeting.
- With the approval of a simple majority vote of the Members, the Board of Directors may enter into a contract with an association management company to assist in carrying out the duties and responsibilities specified below for the Board of Director positions

Section 2 - DUTIES: It shall be the duty of the Board of Directors to:

- Cause to be kept a complete record of all its acts and corporate affairs, and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote.
- Transact, either personally or through a management company, all Association business and make and amend rules and regulations for the use of the Association property.
- Supervise all officers, agents, and employees of the Association, and to see that their duties are properly performed
- Fix, impose and remit penalties for violations of these By-Laws and rules of the Association.
- Select from the Board of Directors a representative to fill the position of President, Vice President, Secretary, Treasurer, and Maintenance director.
- Fill any vacancy in the membership of the Board of Directors to serve until the next annual meeting of active Members at which time a permanent director will be elected by a simple majority vote of the membership.
- The Board of Directors may delegate to a management company the responsibility to select a financial

institution(s) to act as depositories of the funds of the Association and determine the manner of receiving, depositing, and distributing the funds of the Association and the form of checks to be used.

ARTICLE IX - OFFICERS AND THEIR DUTIES

Section 1 - ENUMERATION OF OFFICES: The officers of the Association shall normally be a President, Vice President, Secretary, Treasurer, and Maintenance director, all of whom shall at all times be members of the Board of Directors. In addition, the Association may have such other officers as the Board may from time to time by resolution create. Similarly, the Board may combine one or more offices, for example those of Secretary and Treasurer.

Section 2 - INSTALLATION OF OFFICERS: The installation of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3 - SPECIAL APPOINTMENTS: The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine. The Board may elect members of the community to serve as architectural committee members. These individuals will serve the community by upholding architectural guidelines. The Architectural Committee will report all activity to the Board.

Section 4 - RESIGNATION AND REMOVAL: Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5 - VACANCIES: A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6 - MULTIPLE OFFICES: The Board of Directors may combine one of more offices when necessary due to a lack of eligible Association Members who are willing to serve on the Board. No person shall simultaneously hold more than two offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 7 - DUTIES: The duties of the officers are as follows:

a. **PRESIDENT:** The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; keep the corporate seal, if any, of the Association and affix it on all papers requiring said seal, shall sign all written instruments and shall co-sign all checks and promissory notes except when these functions are to be performed by an association management company. The President shall serve as the Board Liaison with the management company, if a contract is established for this service.

b. **VICE PRESIDENT:** The Vice President shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

c. **SECRETARY:** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; and keep appropriate current records showing the Members of the Association together with their addresses. These responsibilities may be delegated to an association management company. The Secretary shall perform such other duties as required by the Board.

d. **TREASURER:** The Treasurer shall receive and deposit in appropriate bank accounts all moneys of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall co-sign all checks and promissory notes of the Association; and keep proper books of account, except when a management company is under contract to provide these services. When a management company performs these services, the Treasurer shall monitor the receipt and disbursement of moneys by reviewing financial statements provided by the management company. The Treasurer shall prepare an annual budget or review and modify as necessary a budget prepared by an association management company, when used. A Balance Sheet and a Statement of Income and Expenditures shall be prepared by either the Treasurer or a management company for presentation to the membership at its regular annual meeting.

ARTICLE X - EXPENDITURE OF FUNDS

Section 1: The President and Treasurer are empowered to co-sign checks, drafts, or other instruments of payment of money drawn in the name of the Association, however, this function may be performed by a management company

when this service is under contract.

Section 2: The President or Vice President, in the President's absence, is authorized to approve non-budgeted expenditures up to One Hundred Dollars (\$100.00) for any individual project.

Section 3: The Board of Directors, by a majority vote, must approve non-budgeted expenditures up to One Thousand Five Hundred Dollars (\$1,500.00) for any individual project.

Section 4: The non-budgeted expenditure of corporate funds in excess of One Thousand Five Hundred Dollars (\$1,500.00) for any individual project must be approved by a majority vote of the membership at a duly held meeting at which a quorum is present.

ARTICLE XI - MEMBERS

Section 1: An active membership is one in which the holder thereof has purchased a residence in Woodington Subdivision and is current in all dues, including annual and special assessments.

Section 2: Every person who is a record owner of a fee or undivided fee interest in any lot which is subject to the Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision (Reference 1), said covenants recorded in Book 1373 at Pages 912-922 in the office of the Registrar of Deeds for Greenville County, State of South Carolina. When more than one person holds interest in any lot, all such persons shall be Members.

Section 3: The vote for such lot shall be exercised as the owners determine, but in no event shall more than one vote be cast with respect to any lot, and further, no fractional vote shall be cast with respect to any lot.

Section 4: Any Member aggrieved by any disciplinary action by the Board of Directors may appeal to the membership at a special meeting called for such purpose upon a minimum of ten (10) days notice to the Members and at such meeting, a majority of the Members present in person shall be controlling.

Section 5: In voting for Directors, each lot may cast one (1) vote for each vacant seat to be filled without accumulation. Each lot may cast one (1) vote only upon each issue.

ARTICLE XII - DUES AND ASSESSMENTS

Section 1: The annual dues and the budget shall be presented to the membership at its annual meeting. Dues must be paid in full each year before a date which the Board shall specify.

Section 2: The annual dues assessment shall be based upon the residence only.

Section 3: Consistent with the "Covenants" Article V. 5 and V. 6 (Reference 1), if any dues or assessments are not paid within thirty (30) days of its due date, then such dues or assessments shall become delinquent and shall (together with interest thereon at the rate of Ten (10) percent per annum from the due date and the cost of collections as hereinafter provided) become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made. The amount of such dues or assessments, together with interest and reasonable attorney fees as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment became due. In the case of co-ownership, all such co-owners shall be jointly and severally liable for the entire amount of the dues or assessments. If the assessment or dues are not paid within thirty (30) days after the due date, the Homeowners Association may bring an action at law against the owner or owners personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessments or dues, all attorney fees and costs of collection and in the event a judgment is obtained, such judgment shall include prejudgment interest as herein above provided together with reasonable attorney fees as may be fixed by the court together with the costs of the actions. In addition, the Board may impose a \$15.00 late fee. Non-payment of dues and/or special assessments as specified shall bar a Member and his family from voting privileges until such dues or special assessments are paid.

Section 4: Special assessments may be authorized by the Board of Directors and collected as contributions for the specific projects of the Association which were approved by a quorum of the membership of the Association at a duly held meeting. Consistent with the "Covenants" Article V. 4 (Reference 1), in the event the Associations' Board of Directors and Officers shall deem it necessary to expend any sum of money for the maintenance and upkeep of any improved or unimproved lot, the Board shall be empowered to levy a special assessment applicable to that lot, but only in an amount equal to any sum or sums which had to be expended for that purpose. Such special assessments will be maintained in a separate fund from the annual dues.

ARTICLE XIII - SUSPENSION OR REVOCATION OF MEMBERSHIP

Any person against whom an action is taken under this Article shall be given at least ten (10) days advance notice of

the proposed action and shall be provided an opportunity to be heard at a meeting of the Board.

ARTICLE XIV - COMMITTEES

The Board of Directors shall appoint those committees as deemed appropriate in carrying out its purpose. Each year, committees may be appointed for one year. In a year where the Board does not appoint an "Architectural Review Committee", or does not appoint other committees whose services may be required, all Directors of the Board shall be recognized as serving on these committees. (Reference to an "Architectural Review Committee" may be noted as coming from the "Covenants", Reference 1.)

ARTICLE XV - BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The "Covenants" (Reference 1) and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, or at the offices of the Management Association, where copies may be purchased at a reasonable cost.

ARTICLE XVI - CORPORATE SEAL

The Association has a seal, having within its circumference the words: "Woodington Homeowners Association, Inc.". This corporate seal is to be located at the home of the Association President or at the offices of an Association Management Company.

ARTICLE XVII - AMENDMENTS AND VOTING

Section 1: These By-Laws may be amended at a regular or special meeting of the Members, by a vote of 75% of Members of the Association, either in person or by proxy. Additionally, these By-Laws may be amended per the result of vote by ballot; see Section 3.

Section 2: In the case of any conflict between the "Covenants" (Reference 1) and these By-Laws, the "Covenants" shall control.

Section 3: Any and all issues may be resolved per the simple majority result of vote by ballot by all Association Members. The Board Secretary shall deliver a ballot to every Member, with a specified return date determined by the Board. The return date shall be no earlier than twenty-one (21) days from date of delivery. The voting period shall include at least three Saturdays, and three Sundays, where end of the voting period shall be neither Saturday nor Sunday. Ballots of Members not returned by the specified return date shall be voted by the Board. The Board's vote

for non-returned ballots shall be clearly specified on ballots at the time they are delivered to Members.

ARTICLE XVIII - DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than 75% of the Members. Disposition of assets will be recommended by the Board and must be approved in writing and signed by a majority of the Members.

ARTICLE XIX - MISCELLANEOUS

Section 1: The fiscal year of the Association shall begin on the first day of January, and end on the last day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 2: Consistent with the "Covenants" Article VI, (1) (Reference 1), no signs shall be permitted on any lots except that a single sign offering the property for sale or rent may be placed on such lot providing such sign is approved by the Architectural Committee. The Board may also approve one "For Sale" or "For Rent" sign offering a property for sale or for rent to be posted on Association property at the entry to Woodington from Tanner Road. No other "personal signs" are allowed on Association property, except as may be approved by the Board. The Board shall retain the right to remove any sign posted on Association property that is not related to business of, nor in the interest of, all members of the Association.

ARTICLE XX - INDEMNIFICATION

Section 1 - INDEMNIFICATION OF DIRECTORS AND OFFICERS:

a. ELIGIBLE PERSONS: Under the conditions listed in this section, the Association must indemnify certain persons and hold them harmless who are parties to an "eligible proceeding" or are threatened to be parties. The persons eligible for indemnification are:

1. Directors, officers, employees, or agents of the Association; and
2. People requested by the Association to serve as directors, officers, employees, or agents of another Association, partnership, joint venture, trust or other enterprise.

A person is not eligible, however, unless the person is a party to the proceeding because the person had a relationship to the Association described in this paragraph.

b. ELIGIBLE PROCEEDINGS: Eligible persons may be indemnified in any civil, criminal, administrative or investigative proceeding that is threatened, pending, or completed; but the

indemnification rules are not the same if the Association is not a party to the proceeding.

c. WHEN THE ASSOCIATION IS NOT A PARTY: Indemnification is available only if the eligible person acted in a manner that person reasonably believed to be in the best interests of the Association. If it is a criminal prosecution, the eligible person must have no reasonable cause to believe that the conduct was unlawful. A judgment, order, settlement, conviction, or plea of nolo contendere (or the equivalent of any of those) will not alone create a presumption that the person seeking indemnification acted unlawfully or against the Association's best interests.

d. WHEN THE ASSOCIATION IS A PARTY: Indemnification is available only if the eligible person acted in a manner that the person reasonably believed to be in the best interests of the Association. There may be no indemnification if the eligible person is adjudged negligent or liable for misconduct in performing duties to the Association. If a court determines that the person is entitled to indemnity for certain expenses, however, the Association must indemnify that person to the extent the court required.

e. WHEN THE ELIGIBLE PERSON IS SUCCESSFUL: If a suit is brought as an eligible proceeding and the eligible person successfully defends the claim on the merits, the eligible person must be indemnified against expenses (including reasonable attorneys fees) actually and reasonably incurred in connection with the defense.

f. WHEN THE PERSON IS NOT SUCCESSFUL: Unless indemnification is ordered by a court, indemnification may be paid only if the eligible person has met the standards of conduct set forth in this section. If these standards of conduct are met, indemnification must include reasonable defense expenses actually incurred, judgments or fines. A finding of proper conduct may be made:

1. By the Board or majority vote or a quorum consisting of the directors who are not parties to that proceeding;
2. With or without such quorum, if directed by a quorum of disinterested directors, by the Association's independent legal counsel in a written opinion; or
3. By the affirmative vote of a majority of the shares entitled to vote on this issue.

g. PREPAID DEFENSE EXPENSES: The Association may pay an eligible person's expenses in defending an eligible

proceeding before the final disposition of that proceeding if the Board authorized the early payment. However, early payment may not be made unless the eligible person agrees to repay any amounts advanced if it is found that the person is not entitled to be indemnified by the Association.

h. OTHER PROVISIONS AND RESOLUTIONS: Other provisions of these By-Laws or a resolution approved by the affirmative vote of the holders of the majority of the shares entitled to vote on this issue may specify their rights of indemnification. If indemnification is approved at a shareholders' meeting, the notice of that meeting must state that the issue of indemnification will be discussed. The notice must also state whether indemnification will continue for a person who has ceased to be a director, officer, employee or agent and that it will inure to the benefit of the heirs, executors, and administrators of that person.

i. INSURANCE: Even if the Association would not have the power to indemnify a director, officer, employee or agent, the Association may purchase insurance on behalf of a person for liability asserted against that person while acting in an official capacity connected with the Association or a related partnership, joint venture, trust or other enterprise.

j. SPECIAL NOTICE: In some circumstances, notice must be given to shareholders if a person is indemnified. The notice does not apply if amounts are paid under a court order or by an insurance carrier for insurance maintained by the Association. The notice must be sent by first-class mail to each shareholder of record who at that time was entitled to vote for the election of directors. The notice must be sent no later than the next annual meeting of the shareholders, unless that meeting is held within three (3) months from the date of the indemnification payment; in any event, the notice must be sent within fifteen (15) months from the date of the indemnification payment. The notice must list the persons paid, the amounts paid, the nature and statute at the time of the payment of the litigation or threatened litigation.

Section 2 - REIMBURSEMENT: The Association may deduct from its income for income tax purposes, payments to employees in the form of salaries, commissions, bonuses, reimbursements, or deductible employee benefits. If the Internal Revenue Service of the appropriate state taxing authority disallows one of these deductions, the benefited employee must reimburse the Association to the full extent of the disallowance when the disallowance becomes final. The disallowance becomes final when the Association agrees to the disallowance or when it is made final by the Internal Revenue Service, the appropriate taxing authority, or by final judgment of a court of competent jurisdiction.

when no appeal is taken or any longer available. The Association must give reasonable notice to any employee of an attempt to disallow the deduction so that the employee may protect his or her interests. However, a good-faith settlement by the Association of the amount to be disallowed binds the employee, unless the employee requests in writing that additional measures be pursued, agrees to pay the additional costs of those measures (including reasonable attorney's fees), and furnishes security to the Association satisfactory in the opinion of the Board to cover those additional costs and also any potential liability for disallowance. It is the duty of the Board to enforce the repayment. To secure repayment, the Board may withhold payments to the employee until the amount owed is recovered. If the employee sells shares of the Association to the Association at the time when the issue is unresolved or the amount due the Association has not been paid, the price otherwise payable for those shares may be reduced by a reserve to cover that contingency or obligation. The reserve must be paid to the employee or the employee's estate or heirs or it will be retained by the Association when the issue is settled.

IN WITNESS WHEREOF, we, being all of the Directors of Woodington Homeowners Association, Inc., have hereunto set our hands this 22nd day of July, 2012.

Kristine Lynch, President
 Dawn Vonderbecke, Vice-President
 Richard LaCroix, Treasurer
 Dawn Vonderbecke, Secretary
 Vacant, Maintenance

Reference 1: State of South Carolina, County of Greenville, "Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision", recorded in "Book 1373 Page 912" through "Book 1373 Page 922" in the office of the Registrar of Deeds. A survey entitled Woodington and dated April 5, 1989, is recorded in the Registrar of Deeds Office for Greenville County, South Carolina, in Plat Book 17-E at Page 56.

EXHIBIT 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 13 TH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C/A No.: 2017-CP-23-6301
	)	
Raymond A. Wedlake, individually and	)	
derivatively, on behalf of all Members of	)	
the Woodington Homeowners'	)	
Association, Inc.,	)	
	)	
Plaintiff(s),	)	
	)	STIPULATION OF ISSUES FOR TRIAL
v.	)	
	)	
Benjamin Acord, William Craig, Denis	)	
Esteve, and Brian James in their capacity as	)	
the current Board of Directors of the	)	
Woodington Homeowners' Association,	)	
Inc.,	)	
	)	
and,	)	
	)	
Association Management Group SC, Inc.,	)	
	)	
Defendant(s).	)	
	)	

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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.

The e-filer affirmatively states that he has obtained the required consent pursuant to Rule 5 of the E-filing Rules to use the electronic signature of Grant H. Gibson.

/s/ Ely O. Grote
 Ely O. Grote (SC Bar No.: 75379)
 McCabe, Trotter & Beverly, P.C.
 P.O. Box 212069, Columbia, SC 29221
 Telephone: (803) 724-5000
 Email: ely.grote@mccabegibson.com
*Attorneys for Defendants Benjamin Acord,
 William Craigo, Denis Esteve, and Brian
 James*

/s/ Grant H. Gibson
 Grant H. Gibson (SC Bar No.: 9269)
 G. Gibson & Associates, LLC
 1200 Woodruff Rd., A-3
 Greenville, South Carolina 29607
 Telephone: (864) 630-7471
 Email: att_g@gibsonassociates.com
Attorney for Plaintiffs

Columbia, South Carolina
 March 29, 2018

Due by Friday, November 9th

EXHIBIT 5

BALLOT #2 [Majority Vote Needed to Pass (34 of 66)]

Should Ballot 1 pass, the proposed payment plan shall be utilized to pay the current legal bill of \$33,000 (\$500 per lot) associated with the lawsuit (only up to the appeal) in which the 2017 Board Members were named as Defendants. The proposed payment plan is contingent upon no unanticipated expenses to the Association arising during the term of the payment plan. The proposed payment plan is as follows:

- \$500 per lot becomes immediately due and payable, but the following payment plan will be followed, so long as the funds are available:
 - \$6600 to be paid immediately from cash-on-hand.
 - \$50 increase in 2019 dues. Upon collection, \$6600 will be paid.
 - A one-time assessment of \$100 per lot due 5/1/2019. Upon collection, \$6600 will be paid.
 - \$6600 to be paid from cash-on-hand at the end of 2019.
 - \$50 increase in 2020 dues. Upon collection, \$6600 will be paid.
- Upon each payment of \$6600, each Member, currently in compliance with this plan, shall have their obligation to pay satisfied by \$100.
- Failure to pay at any of these times will result in a lien being placed on the individual's property for the full remaining balance.
- The remaining balance shall be collected at closing for any outstanding balances of this payment plan.



FOR



AGAINST

SIGNATURE OF MEMBER:

PRINT NAME OF MEMBER:

PROPERTY ADDRESS:

DATE:

* Pursuant to Article XVII (3): "Ballots of Members not returned by the specified return date shall be voted by the Board. The Board's vote for non-returned ballots shall be clearly specified on ballots at the time they are delivered to Members"*

**** THE BOARD'S VOTE OF "FOR" SHALL BE CAST IN THE EVENT THIS BALLOT IS NOT RETURNED BY FRIDAY, NOVEMBER 9TH****



EXHIBIT 6

ALAN WILSON
ATTORNEY GENERAL

January 3, 2017

The Hon. Mike Sottile
South Carolina House of Representatives
132 Sparrow Drive
Isle of Palms, SC 29451

Dear Representative Sottile:

Attorney General Alan Wilson referred your letter dated July 18, 2016 to the Opinions section for a response. Please find following our understanding of your questions and our response.

Issue (as quoted from your letter):

I am respectfully requesting an opinion from your office on whether your office is permitted to investigate homeowner associations under South Carolina's Nonprofit Corporation Act? Specifically, I am seeking your office's legal opinion as to whether the State's Nonprofit Corporation Act applies to homeowner associations established as non-profit corporations? I also ask, if you find in the affirmative, whether your office may investigate homeowner associations pursuant to Section 33-31-171 of the South Carolina Code of Laws?

Homeowner associations are prevalent throughout South Carolina. The majority of associations operate in a manner that promotes the common interest of its members. However, there are associations that tend to operate in ways that frustrate the intended purpose. The General Assembly created the Study Committee on Homeowners Associations under Part 1B, § 117.135 of the 2015-2016 Appropriation Act. The Committee's charge was to "review information, including, but not limited to, case law, statutes, uniform laws, and other information from South Carolina and other jurisdictions concerning homeowner[] associations." [Citation omitted.] The Study Committee agreed that South Carolina's Nonprofit Corporation Act applies to homeowner associations incorporated under that Act. Section 33-31-171 of the South Carolina Code of Laws provides that:

[t]he Attorney General, or any of his assistants or representatives when authorized by the Attorney General, may make investigations into the organization, conduct, and management of a nonprofit corporation, domestic or foreign, operating in this State. Every such corporation shall permit the Attorney General or any of his authorized assistants or representatives to examine and take copies of all its books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, articles, bylaws, and any and all other

records of any such corporation as often as the Attorney General may deem it necessary to show or tend to show that the corporation has been, or is, engaged in acts or conduct in violation of its charter rights and privileges or in violation of any law of this State.

I ask for your opinion on whether your office may investigate homeowner associations incorporated as nonprofits when warranted?

Law/Analysis:

It is the opinion of this Office that the South Carolina Nonprofit Corporation Act does apply to any homeowners' association organized under that Act, and that S.C. Code Ann. § 33-31-171 (2006) explicitly empowers the South Carolina Attorney General to investigate any such homeowners' association consistent with that Section. In other words, we believe that the Study Committee on Homeowners Associations correctly interpreted Section 33-31-171 as set out in your opinion request. As a practical matter, however, this Office typically does not devote its limited resources, derived from the taxpayer, to investigations of homeowners associations because these associations are particularly well-suited to be carefully governed and vigilantly policed by their members. This opinion will consider each of the two parts of your question in turn.

- 1. I am seeking your office's legal opinion as to whether the State's Nonprofit Corporation Act applies to homeowner associations established as non-profit corporations.**

It is the opinion of this Office that the South Carolina Nonprofit Corporation Act does apply to any homeowners' association in South Carolina which is organized as a nonprofit corporation. We recently noted this applicability in an opinion of this Office dated August 5, 2016 (shortly after you submitted this request). There, we wrote:

South Carolina Jurisprudence states in part:

Restrictive covenants often authorize the creation of a homeowners' association, usually in the form of a not-for-profit corporation, and grant it authority to manage common areas, make regulations, levy assessments, and other similar privileges. Homeowners' associations are contractually limited by the restrictive covenants establishing them.

While homeowners' associations typically have the power to regulate the use of common areas, their regulations cannot prohibit a usage contrary to any restrictions creating easements or rights of use of property in owners.

17 S.C. Jur. *Covenants* § 88 (1993 & Supp. 2005) (footnotes & citations omitted). The South Carolina Nonprofit Corporation Act governs those homeowners' associations which are organized as nonprofit corporations, as described above. See, e.g., *Lovering v. Seabrook Island Property Owners Ass'n*, 289 S.C. 77, 344 S.E.2d 862 (Ct.App. 1986) (applying a section of the Act to a homeowners' association organized as a nonprofit corporation). Under the Act, the bylaws of a nonprofit corporation "may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation." S.C. Code Ann. § 33-31-206(b) (2006). Although neither that code section nor the comments refer to restrictive covenants, such covenants define the scope of authority of the directors of a homeowners' association, just as the articles of incorporation do in other nonprofit corporations. See *Lovering*, 289 S.C. 77, 344 S.E.2d 862 (discussed below).

Op. S.C. Att'y Gen., 2016 WL 4419890 (August 5, 2016) (emphasis added). That opinion later noted that the "[t]he General Assembly subsequently amended the South Carolina Nonprofit Corporation Act to empower homeowners' associations to make [emergency assessments]," as attempted by the nonprofit HOA in *Lovering* prior to the amendment. *Id.* at n.2 (citing S.C. Code Ann. § 33-31-305(15) (2006)). Given that both our courts and the General Assembly have acted on the premise that the Act applied to nonprofit homeowners' associations, we believe that this is a settled question of law in our State.

We stand by the statement and the reasoning in our prior opinion, but faced with the question directly, we take this opportunity to note additional support for applying the Act to HOAs organized as nonprofit corporations. The Act defines a "corporation" for the purposes of that chapter to include a "public benefit, mutual benefit, and religious corporation."¹ S.C. Code Ann. § 33-31-140(7) (2006). This definition is sufficiently broad to encompass not just charitable nonprofits or churches, but also nonprofit corporations that do not serve a charitable purpose. Moreover, the comments to the Act demonstrate that the General Assembly contemplated that the Act generally would apply to nonprofit homeowners' associations. For example, S.C. Code § 33-31-1030 (2006) permits "the articles of only a religious corporation or public benefit corporation" to give a third party veto power over "an amendment to the articles or bylaws." The non-binding South Carolina Reporters' Comments to that Section discussed why mutual benefit corporations were excluded from this Section and noted, in relevant part:

[c]onsideration was given to the fact that similar provisions have caused problems in the mutual benefit corporate area. Real estate developers have given themselves veto powers over homeowner corporations which they set up to manage developments. If the developer goes bankrupt or merely vanishes before he is out

¹ Note that S.C. Code Ann. § 33-31-1708 (2006) excludes from the Act "cooperative nonprofit membership corporations organized under or transacting business pursuant to [other chapters of the Code]," which generally are public utilities.

of the project and relinquishes his rights, there may be substantial confusion as to how the corporation is to act.

S.C. Code Ann. § 33-31-1030 (2006) S.C. reporter cmt. para. 2 (emphasis added).

For these reasons, it is the opinion of this Office that a court would find that the South Carolina Nonprofit Corporation Act does apply to any homeowner association organized under that Act.

2. I also ask, if you find in the affirmative, whether your office may investigate homeowner associations pursuant to Section 33-31-171 of the South Carolina Code of Laws?

As noted in your request letter, S.C. Code Ann. § 33-31-171 (2006) states that "[t]he Attorney General . . . may make investigations into the organization, conduct, and management of a nonprofit corporation, domestic or foreign, operating in this State." Sections 33-31-172 through -174 go on to spell out certain specific procedures for such investigations, and penalties for nonprofits which do not comply with an investigation. Section 33-31-175 provides that these powers are "cumulative of all other laws now in force in this State."

The South Carolina Reporters' Comments to each of these sections note that each "is neither a Model Act provision nor similar to any provision in the South Carolina Business Corporation Act."² It is essentially identical with the former [applicable Section] of the 1976 Code." See, e.g., S.C. Code Ann. § 33-31-171 (2006) S.C. reporter cmt. In other words, the General Assembly here made a deliberate decision to add to the Model Act and to carry over legal provisions that are specific to nonprofit corporations in South Carolina.

As stated in prior opinions of this Office:

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002) (citing *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999).

² For this reason, this opinion should be construed as responding directly to the specific question as presented in your request letter: "whether [the Attorney General] may investigate homeowner associations *incorporated as nonprofits when warranted*" (emphasis added). Because Section 33-31-171 applies specifically to nonprofit corporations, we express no opinion at this time on the power to investigate an HOA organized pursuant to another chapter of the Code. We would reiterate, however, that these particular investigatory powers are "cumulative of all other laws now in force in this State." S.C. Code Ann. § 33-31-175 (2006).

The legislature's intent should be ascertained primarily from the plain language of the statute. *Morgan*, supra. Words must be given their plain and ordinary meaning without resort to subtle or forced construction which limits or expands the statute's operation. *Id.* When construing an undefined statutory term, such term must be interpreted in accordance with its usual and customary meaning. *Id.* When a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and a court has no right to look for or impose another meaning. *City of Camden v. Brassell*, 326 S.C. 556, 486 S.E.2d 492 (Ct. App. 1997). The statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. *Id.*

Op. S.C. Att'y Gen., 2005 WL 1983358 (July 14, 2005).

We believe that a court would find that the language of Section 33-31-171 "is plain and unambiguous, and conveys a clear and definite meaning." ³ See *Brassell*, 326 S.C. 556, 486 S.E.2d 492. It is patent that the General Assembly intended that the Attorney General have the power to investigate any corporation which operates under the nonprofit laws of our State. We are not aware of any exceptions to this investigatory power set out in the Code or established by the courts; therefore, this power would naturally extend to every corporation subject to the South Carolina Nonprofit Corporation Act. As discussed above, homeowners' associations which organize as nonprofit corporations are subject to the Act. Therefore, we believe that a court would find that Section 33-31-171 empowers the South Carolina Attorney General to investigate a nonprofit homeowners' association pursuant to that Section.

Although we are not aware of any reported case which squarely addresses this conclusion, our opinion today is consistent with prior opinions of this Office. For example, a 2013 opinion of this Office responded to a request which posed a variety of questions related to the actions of a specific homeowners' association operating under the Act. We stated there: "[o]ur investigations pursuant to S.C. Code Section 33-31-171 are for violations of a nonprofit's charter or other laws of this State. It appears what you are asking for in this question is an investigation and therefore [it] will be forwarded to the civil section of this Office for review." Op. S.C. Att'y Gen., 2013 WL 3479876 (June 26, 2013).

For these reasons, we believe that Section 33-31-171 unambiguously empowers our Office to investigate any homeowners' association organized under the Nonprofit Corporation Act.

³ As succinctly put by the ancient maxim, "*quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est*" ("when there is no ambiguity in the words, then no interpretation contrary to the actual words is to be adopted."). Co. Litt., 147.

3. We offer one additional note on the practical exercise of the investigatory power of this Office with respect to homeowner associations.

Independent of our legal conclusion, we offer one additional observation to assist your committee in its work. This Office can and does investigate nonprofit corporations pursuant to Section 33-31-171, but we are not aware of any recent case in which one of those nonprofits was a homeowners' association. This is not to say that our Office categorically refuses to investigate any complaint that relates to a homeowners' association. Reports of egregious violations are considered on a case-by-case basis. As a practical matter, however, this Office generally chooses to devote its limited resources, derived from the taxpayer, to investigate other types of nonprofits. When contacted by a constituent regarding an HOA matter, we generally have advised them that such matters are addressed through private litigation. We also note in our responses that this is an area ripe for a legislative fix, and direct constituents to certain bills that have been considered by the General Assembly.

Moreover, any investigation by this Office pursuant to Section 33-31-171 would implicate statutory restrictions on the disclosure of discovered information which likely would frustrate a homeowner bringing the complaint. S.C. Code Ann. § 33-31-173 (2006) provides:

The Attorney General, or his authorized assistants or representatives, may not make public or use any document, copy, or other information derived in the course of an examination authorized by Sections 33-31-170 through 33-31-175, except in a judicial proceeding to which the State is a party or in a suit by the State to revoke the certificate of authority or cause the articles of the corporation to be forfeited or to collect penalties for a violation of the laws of this State or for the information of any officer of this State charged with the enforcement of its laws.

Thus, if this Office were to investigate a homeowners' association and find evidence of wrongdoing that does not rise to the level that justifies the State's involvement in bringing a suit, then it appears that Nonprofit Corporation Act would preclude sharing any of the evidence with the homeowner who submitted the complaint.

We hasten to add that we are mindful of the real and legitimate concerns that constituents may have regarding the conduct of their HOAs, and the cost of pursuing judicial remedies. But because homeowners have both the incentive and the ability to hold their associations accountable, we have not prioritized investigations of these organizations over other organizations which do not have built-in watchdogs. Homeowners' associations are uniquely self-policing among nonprofit corporations, and are capable of robust self-government. Membership in the association often is mandatory for members of a community, and the actions of the association directly impact the daily lives of the members and one of their greatest investments: their homes. While a person might leave a voluntary club or choose not to donate

to a charity which that person believes is acting contrary to their covenants and bylaws, a homeowner has a strong vested interest in monitoring the actions of their association closely, and to actively push back against any improper action. Where homeowners are elected to the boards of associations through a vote by the members, the homeowners are democratically represented, and they retain the power vote in other board members if their interests are not represented. Furthermore, if the association abuses their power so as to overstep the governing covenants and bylaws, then all members generally have the incentive and the ability to discover those abuses, and may resort to the courts for a remedy if the matter cannot be resolved internally. Finally, if board members or agents of the association engage in fraud or other criminal activity, the local solicitor has the jurisdiction to pursue a prosecution, in his or her discretion.

It appears from our research that most (if not all) reported cases in this State related to the internal conduct of homeowners' associations originally were brought either by one of the homeowners or the association itself. For example, consider a pair of reported cases, both involving the Seabrook Island Property Owners Association. First, in 1986, our Court of Appeals decided two combined class action lawsuits "commenced . . . to challenge the validity of a special assessment" in *Lovering v. Seabrook Island Property Owners Ass'n*, 289 S.C. 77, 79, 344 S.E.2d 862, 863 (Cl.App. 1986). In short, the association in *Lovering* needed additional funds to repair two bridges and renourish a beach, and it sought to raise those funds through an emergency assessment on the homeowners. 289 S.C. at 81-82, 344 S.E.2d at 865. A group of homeowners believed that this assessment was not permitted under the restrictive covenants, and pushed back on the association by filing the lawsuits. 289 S.C. at 79-82, 344 S.E.2d at 864-65. Our Court of Appeals agreed with the homeowners, and held that the emergency assessment was prohibited.⁴ 289 S.C. at 83-84, 344 S.E.2d at 866.

The homeowners in *Lovering* were represented by J. Randolph Pelzer. 289 S.C. at 79, 344 S.E.2d at 863. Mr. Pelzer was a member of the community himself, and he discovered in the course of his work on the case that he had been paying assessments on his property that had been not been calculated in compliance with the restrictive covenants and bylaws. *Seabrook Island Property Owners Ass'n v. Pelzer*, 292 S.C. 343, 345-46, 356 S.E.2d 411, 412-13 (Cl.App. 1987). Mr. Pelzer requested a reassessment and refused to pay the incorrectly-calculated assessment, which resulted in the association filing a collection action. *Id.* That case also reached the Court of Appeals, which agreed that the assessment had been calculated incorrectly and reversed the judgment against him for that year's assessment. 292 S.C. at 348, 356 S.E.2d at 414. However, the Court of Appeals affirmed the denial of Mr. Pelzer's counterclaim seeking a refund for overpayments for the seven prior years, holding that:

[t]he annual charges for those years were assessed in good faith. Pelzer had constructive knowledge that the maintenance charges were not being assessed in

⁴ As noted earlier in this opinion, the General Assembly subsequently amended the South Carolina Nonprofit Corporation Act to empower homeowners' associations to make such assessments. See S.C. Code Ann. 33-31-302(15) (2006).

accordance with the restrictive covenants and bylaws. Nevertheless, he acquiesced in the method of assessment and paid the charges. The Association expended the moneys for purposes authorized by the bylaws. Pelzer received the benefit of those expenditures. He cannot now return the benefits or restore the Association to its former position.

Id.

Taken together, this anecdotal chain of events in Seabrook Island exemplifies a pattern of homeowners policing their associations which may not be operating according to their governing documents or applicable law, and where either side may resort to private litigation in the courts when necessary. It appears that this practice is universally common practice both historically in our State and in states across the country. See, e.g., *Forest Land Co. v. Black*, 216 S.C. 255, 262, 57 S.E.2d 420, 424 (1950); *Rawlinson Road Homeowners Ass'n, Inc. v. Jackson*, 395 S.C. 25, 716 S.E.2d 337 (Ct.App. 2011); *Kiekel v. Four Colonies Homes Ass'n*, 38 Kan.App.2d 102, 107 (Kan. Ct. App. 2007); *Estates at Desert Ridge Trails Homeowners' Ass'n v. Vazquez*, 2013-NMCA-051, 300 P.3d 736 (2013). Moreover, it appears from the quoted language in *Pelzer* that the courts of our State expect that homeowners will be vigilant in policing their governing associations. Thus, while the General Assembly has empowered the Attorney General to investigate any nonprofit corporation in South Carolina, homeowners associations typically are composed of members with a vested interest in being "watchdogs" to keep that particular nonprofit accountable in a way that, generally speaking, a charitable nonprofit may not.

For these reasons, our Office historically has devoted our resources to investigating nonprofits which do not have such accountability built in. Given the numerous and varied responsibilities of this Office, we do not anticipate that this practice will change in the near future.

Conclusion:

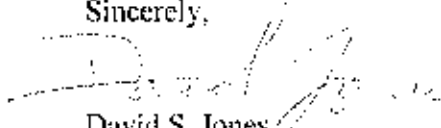
In conclusion, for the reasons set out above, it is the opinion of this Office that a South Carolina court generally would find that the South Carolina Nonprofit Corporation Act does apply to any homeowner association organized under that Act, and that S.C. Code Ann. § 33-31-171 (2006) explicitly empowers the South Carolina Attorney General to investigate any such homeowner association consistent with that Section. As noted above, we believe that the Study Committee on Homeowners Associations correctly interpreted Section 33-31-171 as set out in your opinion request.

We note that this advisory opinion is based only on the current law and the information which you provided to us. This opinion is not an attempt by this Office to establish or comment upon public policy. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would

The Hon. Mike Sottile
Page 9
January 3, 2017

interpret the law in this matter. You may also choose to petition a court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. *See* S.C. Code Ann. § 15-53-20 (2005). If it is later determined that our opinion is erroneous in any way, or if you have any additional questions or issues, please do not hesitate to contact our Office.

Sincerely,



David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

EXHIBIT 7



ALAN WILSON
ATTORNEY GENERAL

August 5, 2016

*Right to rent
single-family
without HOA
Agenda*

The Hon. Stephen L. Goldfinch, Jr.
South Carolina House of Representatives
PO Box 823
Murrells Inlet, SC 29576

Dear Representative Goldfinch:

Attorney General Alan Wilson referred your letter dated May 31, 2016 to the Opinions section for a response. Please find following our understanding of your questions and our response.

Issue (as quoted from your letter):

I respectfully request an Attorney General Opinion on the following questions:

1. Do the covenants and bylaws prevent a homeowner from renting a single-family residential house as a vacation rental without restrictions on the lease/rental period?
2. Do by-laws prevail over covenants?
3. Can a HOA board make changes to the bylaws without a vote by the home owners? Please see document entitled "Romain Retreat Homeowners Association Rules for Use of Common Areas." Is this document valid without an official vote by the homeowners?

A copy of the Romain Homeowners Association Declaration of Covenants, the Bylaws of the Romain Retreat Homeowners Association and the Romain Retreat Homeowners Association Rules for Use of Common Areas are provided as points of review and reference.

Law/Analysis:

By way of background, this Office understands that the Romain Retreat Homeowners Association is a South Carolina nonprofit corporation, incorporated in 1984 and currently in good standing with the South Carolina Secretary of State.¹ Our Office does not have access to and has not reviewed the Articles of Incorporation. It appears that the Declaration of Covenants Conditions and Restrictions which you enclosed was executed on July 14, 1978 and subsequently recorded in the Register of Mesne Conveyances for Charleston County, S.C. in Book U116 at Page 93. It also appears that the Bylaws of Romain Retreat Homeowners Association were executed on or about March 21, 1988 and subsequently filed in the same Register in Book W182

¹ <http://www.sos.sc.gov/index.asp?n=18&p=4&s=18&corporatid=7966> (last viewed August 3, 2016).

at Page 202. Our Office assumes for the sake of this opinion that these documents were properly executed and adopted.

1. Do the covenants and bylaws prevent a homeowner from renting a single-family residential house as a vacation rental without restrictions on the lease/rental period?

We must respectfully decline to answer this question. As you may know, state law does not authorize this Office to issue an opinion on any private matter, or in response to questions which are not public in nature. S.C. Code Ann. § 1-7-90 et. seq. (2005); see *Langford v. McLeod*, 269 S.C. 466 at 473, 238 S.E.2d 161 at 164 (1977) ("The Attorney General has no standing to intervene in grievances not affecting the public interest."). Additionally, answering this question would amount to making a factual determination, which this Office cannot do in a legal opinion. As you may know, "[t]his Office is not a fact-finding entity; investigations and determinations of facts are beyond the scope of an opinion of this Office and are better resolved by a Court." Op. S.C. Att'y Gen., 2011 WL 6959369 (December 21, 2011). We advise you to contact a private attorney to determine the answer to this question.

"private matter"

2. Do by-laws prevail over covenants?

While it is not possible to state an absolute rule in response to this question, it is the opinion of this Office for the reasons set out below that a South Carolina court generally would find that restrictive covenants prevail over bylaws adopted pursuant to those covenants if there is a conflict between them. Our Office is not aware of any precedential South Carolina authority which squarely addresses a conflict between restrictive covenants and a bylaw of a homeowners' association. However, as discussed below, both South Carolina law and authority from other jurisdictions point to restrictive covenants as the constitutional document of a homeowners' association ("HOA") which generally takes precedence over any bylaws adopted pursuant to the covenants in the event of a conflict.

At the outset, it is helpful to understand the relationship between HOAs, restrictive covenants, and bylaws. The Court of Appeals of Kansas aptly and succinctly set out the relationship between bylaws and covenants in the case of *Kiekel v. Four Colonies Homes Ass'n*, stating:

Creating a community association, such as [a homeowners' association], requires a set of documents that generally includes a declaration and bylaws.

The first creating document in a community association is the declaration. . . . For an HOA, the document is generally referred to as the Declaration of Covenants, Conditions, and Restrictions ("CCRs"). The declaration is a document containing the plan of development and the essentials of ownership, the method of

operation, and the rights and responsibilities of the association and the owners within the association. It is a covenant running with the land, recorded in the land records, and binding on every person who becomes a property owner in the project. Hyatt, *Condominium and Homeowner Association Practice: Community Association Law* § 1.06(c) (3d ed. 2000) (hereinafter Community Association Law).

Basically, the declaration is considered the enabling document or the constitution of the association. Generally, any attempt to restrict a property owner's use of the property as authorized in the declaration is considered void and unenforceable. *Community Association Law* § 1.06(e); 8 *Powell on Real Property* § 54A.01(11)(a) (2007).

The second legal document essential to the community association is a set of bylaws, which set forth procedures for the internal government and operation of the association. Generally, fundamental provisions dealing with ownership and property rights are in the declaration; the bylaws typically contain governance and operational provisions, and function in the same capacity as corporate bylaws. *Community Association Law* § 1.06(e).

Kiekel v. Four Colonies Homes Ass'n, 38 Kan.App.2d 102, 107 (Kan. Ct. App. 2007) (emphasis added).

The facts and decision in *Kiekel* are instructive here. In *Kiekel*, the court was tasked with deciding whether certain amended bylaws could greatly curtail the ability of a property owner to lease their property to third parties. 38 Kan.App.2d at 104-06. The court noted that the Declaration of Covenants

neither expressly prohibits nor expressly permits lot owners to rent their property. The Declaration does, however, include three distinct references to lot owners' tenants. In one specific instances, the Declaration defines "resident" to include not only the owners of lots "but also the lessees and tenants of such owners." Strictly construing the Declaration, it does not place any restrictions on owners' rights to rent their property.

38 Kan.App.2d at 108. The trial court erroneously found no conflict between the covenants and the bylaws on the basis that the amended bylaws did not abolish a homeowners' ability to rent his or her property. *Id.* at 106. The Kansas Court of Appeals disagreed, finding a conflict where "[t]he bylaw amendment contained extensive property use restrictions concerning the rental of property . . . which only could be accomplished through an amendment to the Declaration." The

appellate court held that the HOA could not "circumvent the intent of the Declaration, the enabling document, by subsequently amending the Bylaws." *Id.* at 110. *Kiekel*, therefore, stands for the rule that where the bylaws of an HOA purport to restrict the use of property further than contemplated in the covenants, there is a conflict and the covenants will control. *See id.*; accord *Estates at Desert Ridge Trails Homeowners' Ass'n v. Vazquez*, 2013-NMCA-051, 300 P.3d 736 (2013) (citing *Kiekel*) ("If the HOA desired to prevent short-term rentals, this restriction should have been included in the originally filed [covenants], not in the HOA Rules adopted nearly three years later.").

The general relationship between covenants and bylaws described in *Kiekel* is consistent with South Carolina law. South Carolina Jurisprudence states in part:

Restrictive covenants often authorize the creation of a homeowners' association, usually in the form of a not-for-profit corporation, and grant it authority to manage common areas, make regulations, levy assessments, and other similar privileges. Homeowners' associations are contractually limited by the restrictive covenants establishing them.

While homeowners' associations typically have the power to regulate the use of common areas, their regulations cannot prohibit a usage contrary to any restrictions creating easements or rights of use of property in owners.

17 S.C. Jur. *Covenants* § 88 (1993 & Supp. 2005) (footnotes & citations omitted). The South Carolina Nonprofit Corporation Act governs those homeowners' associations which are organized as nonprofit corporations, as described above. *See, e.g., Lovering v. Seabrook Island Property Owners Ass'n*, 289 S.C. 77, 344 S.E.2d 852 (Cl.App. 1986) (applying a section of the Act to a homeowners' association organized as a nonprofit corporation). Under the Act, the bylaws of a nonprofit corporation "may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation." S.C. Code Ann. § 33-31-206(b) (2006). Although neither that code section nor the comments refer to restrictive covenants, such covenants define the scope of authority of the directors of a homeowners' association, just as the articles of incorporation do in other nonprofit corporations. *See Lovering*, 289 S.C. 77, 344 S.E.2d 862 (discussed below).

A long line of South Carolina jurisprudence points to restrictive covenants as the controlling document in determining the authority of a grantor or a homeowners' association to regulate use of property. As early as 1950, the South Carolina Supreme Court held in *Forest Land Co. v. Black* that the power of a grantor to reasonably regulate a common area cannot exceed the authority reserved in the deed to make such rules. *Forest Land Co. v. Black*, 216 S.C. 255, 262, 57 S.E.2d 420, 424 (1950). In *Forest Land Co.*, the Court considered the rights of a lakefront-property owner who was granted the right to boat in the lake, "subject to reasonable rules of the Grantor [Forest Land Co.], which may . . . reasonably restrict the use of certain kinds

of boats or motors and other kinds of craft." *Id.* at 258-59, 57 S.E.2d at 422. The property owner had purchased the property subject to these covenants, and then purchased a motorboat to use on the lake. *Id.* at 258-60, 57 S.E.2d at 422-23. The Forest Land Company then made a rule pursuant to its authority under the reservation in the deed that purported to prohibit the use of motorboats on the lake. *Id.* at 259, 57 S.E.2d at 422. Our Supreme Court held that the rule was invalid because it attempted to eliminate a right which was expressly and unambiguously granted in the deed. *Id.* at 262, 57 S.E.2d at 424. The Court held that while the reservation in the deed permitted the grantor to reasonably regulate the use of the lake, the grantor could not expand the regulations to effectively abolish the right to use it altogether. *Id.*

While the *Forest Lake Co.* decision predates the rise of the modern HOA, it remains good law for the rule that while property rights may be regulated by subsequently-amended rules pursuant to a deed, the rules are constrained by the restrictive covenants in the underlying deed. See 17 S.C. Jur. *Covenants* § 88 n.3 (1993 & Supp. 2005) (citing *Forest Land Co.*). Notably, the *Forest Land Co.* decision used the same reasoning later adopted by the Kansas Court of Appeals in *Kiekel v. Four Colonies Homes Ass'n*, 38 Kan.App.2d 102 (Kan. Ct. App. 2007) (discussed above). 216 S.C. at 262, 57 S.E.2d at 424. In both cases, the fundamental inquiry centered on whether and to what extent a property right could be restricted by subsequent amendments to bylaws or rules contemplated in the enabling document; and in both cases, the decision that the covenants controlled turned on the supremacy of that document. *Id.*; cf. *Kiekel*, 38 Kan.App.2d 102.

Since the rise of the modern homeowners' association, several South Carolina cases have interpreted restrictive covenants as foundational both to granting and to limiting an HOA's power. For example, in *Lovering v. Seabrook Island Property Owners Ass'n*, our Court of Appeals considered whether an HOA could charge an emergency assessment when the covenants and bylaws referred only to annual assessments, and was silent on the issue of emergency assessments. *Lovering v. Seabrook Island Property Owners Ass'n*, 289 S.C. 77, 344 S.E.2d 862 (Ct.App. 1986). The court held there that the emergency assessment exceeded the scope of the HOA's authority, stating:

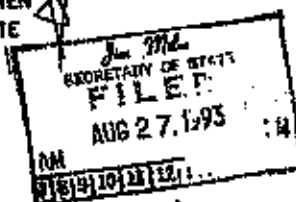
[a] corporation may exercise only those powers which are granted to it by law, by its charter or articles of incorporation, and any by-laws made pursuant thereto. *Lurie v. Arizona Fertilizer & Chemical Co.*, 101 Ariz. 482, 421 P.2d 330 (1966). Acts beyond the scope of a corporation's powers as defined by law or its charter are *ultra vires*. *United States Rubber Products, Inc. v. Town of Batesburg*, 183 S.C. 49, 190 S.E. 120 (1937).

Id. at 82, 344 S.E.2d at 865. The South Carolina Supreme Court affirmed the holding of the Court of Appeals that the emergency assessment was *ultra vires*,² while modifying the decision

² The General Assembly subsequently amended the South Carolina Nonprofit Corporation Act to empower homeowners' associations to make such assessments. See S.C. Code Ann. 33-31-302(15) (2006).

EXHIBIT 8

DECLARATION AND PETITION FOR INCORPORATION
 APPLICATION MUST BE TYPEWRITTEN
 DO NOT FILE IN DUPLICATE



The undersigned declare and petition that:

NAME	STREET ADDRESS AND CITY
David L. Sikkala	700 Creekview Dr., Greenville, SC 29607
Judy Swilley	702 Creekview Dr., Greenville, SC 29607

being one or more of the officers or agents appointed to supervise or manage the affairs of Woodington Homeowners' Association, Inc.

Corporation which has been duly and regularly organized for the purposes hereinafter to be set forth, do affirm and declare that at a meeting of the aforesaid organization, held pursuant to the by-laws or regulations of the said organization, they were authorized and directed to apply for incorporation.

That the said organization holds, or desires to hold, property in common for a Religious, Educational, Social, Fraternal, Charitable or other elementary purpose, or any two or more of said purposes, and is not organized for the purpose of profit or gain to its members, otherwise than in above stated, or for the insurance of life, health, accident or property; and that the three days' notice in the Greenville News

a newspaper published in the County of Greenville

has been given that the aforesaid Corporation would be filed.

The said Declarants and Petitioners further declare and affirm:

FIRST Their names and residences are as above given.
 SECOND The name of the proposed Corporation is Woodington Homeowners' Association, Inc.

THIRD The place at which it proposes to have its headquarters or to be located is 104 Woodside Crossing
Greenville, SC 29607

FOURTH The purpose of the said proposed Corporation is to provide for an association for the betterment of the property and homeowners of Woodington Subdivision, Greenville County, South Carolina.

FIFTH The names and residences of all Managers, Trustees, Directors or other officers, are as follows:

NAMES	TITLE	ADDRESS
Chio Koshis	President	104 Woodside Crossing Greenville, SC 29607
Mark Taylor	Vice President	302 Woodington Drive Greenville, SC 29607
David Sikkala	Treasurer	700 Creekview Dr., Greenville, SC 29607
Judy Swilley	Secretary	702 Creekview Dr., Greenville, SC 29607

SIXTH That they desire to be incorporated to perpetuity (or number of years _____)

Wherefore your petitioners pray that the Secretary of State do issue to the aforesaid

Woodington Homeowners' Association, Inc.

A Certificate of Incorporation, with all rights, powers, privileges and immunities, and subject to all the limitations and disabilities conferred by Title 15, Chapter 31, 1916 Code, and Acts amendatory thereto, to provide for the incorporation of Religious, Educational, Social, Fraternal or Charitable Churches, Lodges, Societies, Associations, or Companies, and for amending the Charters of those already formed and to be formed.

(Sign here)

Judy Swilley

Date _____ 19____

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Raymond A. Wedlake, as a Member of
Woodington Homeowners' Association, Inc.

Plaintiff (Pro Se)

vs.

Scott Bashor, William Craigo, Christopher
Edwards, Denis Esteve, and Charles Koshis,
in their capacity as Members of the current
Board of Directors of
Woodington Homeowners' Association, Inc.

and

Doe Entities 1-10, and John & Jane Does 1-10

Defendants

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Civil Case No. 2019-CP-23-01501

MEMORANDUM IN

OPPOSITION TO DEFENDANTS'

MOTION FOR

SUMMARY JUDGMENT

20 FEB 24 AM 10:54
Paul Wickens@sc-judicial.org

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*), who disputes and questions the genuineness of Defendants' unsubstantiated claims in their "... Motion for Summary Judgment" (Motion) pursuant to Rule 56, SCRPC.

STANDARD THAT IS TO BE APPLIED

1. The Supreme Court of South Carolina reviewed the granting of summary judgment in *Bennett, et. al. v. Carter, et. al.*, Appellate Case No. 2016-000065, under the same standard applied by the trial court under Rule 56(c), SCRPC. *Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010). The trial court shall grant summary judgment if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving

party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Quail Hill, LLC*, 387 S.C. at 235, 692 S.E.2d at 505 (quoting *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006)). Where, as here, the burden is upon Defendants to show a preponderance of evidence warranting summary judgment; "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.* 381 S.C. 326, 330, 673 S.E. 2D 801, 803 (2009).

THERE ARE GENUINE ISSUES OF MATERIAL FACT

2. The Board makes the bare statement that they did not breach their fiduciary duty, which is wholly inadequate, and goes to the essence which is a question of fact – Plaintiff's Complaint filed on March 23, 2019 was substantiated by specifics statements of violations as supported by Exhibits and Affidavit .

3. Plaintiff makes clear that discovery has not been completed and Mediation has not occurred, in violation of ADR 300-day from filing deadline, so Motion is premature.

4. Plaintiff has been forced to bring actions due to continuing improper Board Governance, and has done so wherever feasible by seeking Declaratory Judgments on a *Pro Se* basis to minimize costs, and to simply get Court input; the allegation that such cases are meant to harass is simply erroneous since Plaintiff's purpose is, and has always been, improvement of WHOA and to assure Governance that complies with South Carolina law, and the By-Laws.

5. The Board, by filling up the Court's time with irrelevant assertions, are seeking to avoid the reality that there is merit in Plaintiff's Complaint, which sets forth facts and causes of action supported by such facts.

5a) The Board is in essence trying to try the case itself with statements of history and facts for the court to decide on the merits rather than address Motion;

5b) The Board is arguing the case, not addressing elements required in a motion for summary judgment;

5c) In what they title "LEGAL ARGUMENT", they assert facts in dispute such as that the Board "properly counted" the ballots..." (p. 7 of "Memorandum in Support of Their Motion for Summary Judgment" (MemoSup))

5d) Assertions speak to the core of Plaintiff's complaint that the action by the Board was improper:

5d1. that the by-laws supposedly "approving" the payment of fees was invalid, where Exhibit 1 (p. 2) shows:

Defendants' motion (Motion) must be denied on the basis that the cited By-Laws Amendment is invalid, as clarified below. Assuming arguendo such Amendment may be recognized as valid, several other arguments dictate that Motion must be denied:

A. By-Laws Cannot be Used in the Manner Desired by Defendants Without Specific Granting of Authority Stated in Restrictive Covenants;
Additionally, By-Laws Are Invalid When, as Here, They are Inconsistent With Law;

where additional content of Exhibit 1 starting on p. 3 clarifies:

the Board breached the NPCA Section 33-31-140 by denying the definition "Approved by the members"; they cannot act to : "... vote as Proxy for non-voting Members, and then to claim "Member Approval" to further their own, personal interests for their own personal gain;

5d2. That counting as a vote in favor of such payments of ballots not submitted was improper, and that in fact, the requisite number of members (50) did not cast ballots in favor of making such payments, where only 41 Member-ballots were returned as shown by WHOA Minutes of December 6, 2018 (Exhibit 2):

F. Questions

1. Member - "How many ballots were returned?"

a) 41 total ballots returned.

all involving questions of fact.

6. Plaintiff disputes that the moving party (Board) is entitled to a judgment as a matter of law:

6a) Statements of issues of law as erroneously raised by Defendants are not appropriate for a motion for summary judgment; they should rather be put into a motion to dismiss, and therefore Defendants filed the wrong motion;

6b) Plaintiff respectfully submits filing of a wrong motion accords that the Court should disregard Defendants' Motion.

7. Plaintiff cites the proper standard, that being per the South Carolina Supreme Court, evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the non-moving party (Plaintiff).

8. Plaintiff's Complaint, filed on March 23, 2019 is supported by Affidavits and Exhibits, which presents several genuine issues as to material facts per "Statement of Facts" paragraphs 19 to 46, which show actionable negligence due to breach of fiduciary duty, where a few selected facts are reiterated here:

29. On February 2, 2018, Plaintiff repeated a demand that the legal invoice not be paid since to do so would:

a) be a direct violation of By-Laws-indemnification requirements (Exhibit 4);

- b) be a direct violation of indemnification specifications found in the NPCA (Exhibit 5);
 - c) force an action for breach of covenants and fiduciary duty (Exhibit 6) (Affidavit).
35. Based upon information and belief, Defendants claimed both ballots passed based upon their breach of fiduciary duty by voting "For" as applied to ballots not returned by Members (Affidavit).
42. On February 15, 2019, Plaintiff informed Defendants of a new homeowner, and they were asked to provide Plaintiff with an updated list of WHOA Members, but in direct violation of the NPCA which requires a Board to supply a Member list on request, Defendants continue to breach their duty by ignoring Plaintiff's request (Affidavit, Exhibit 14).
43. Since March 9, 2019, when Defendants were asked to provide results from a ballot of February 22, 2019, they continue to breach their duty to respond to Plaintiff's request for information by ignoring it (Affidavit, Exhibit 15).
44. On March 11, 2019, Defendants received Plaintiff's message which implored them to act in good faith and agree to action to defer this case from being filed:
"Please accept this last-chance notice and reply affirmatively."
but further breached their duty by choosing to ignore it, and did not reply (Affidavit, Exhibit 16).
9. Plaintiff supposes several issues that Defense Counsel (Counsel) is likely to spring upon him, where Counsel apparently intends to withhold such issues until just before the Hearing, to allow no time for Plaintiff to prepare arguments in opposition; these supposed issues are:
- 9a) a lawsuit cannot be brought against a Board of Directors (Board);
 - 9b) a lawsuit must be brought against the Corporate entity: Woodington Homeowners' Association, Inc. (WHOA), itself;
 - 9c) Defendants no longer comprise the Board, and are therefore a "wrong party";
 - 9d) Defendants are incapable of providing requested relief;
 - 9e) the Board of WHOA is "immune from suit" per the "South Carolina Nonprofit Corporation Act of 1994" (NPCA) Section 33-31-834(a);
10. Plaintiff cites his "Motion for Clarification and Requesting a Stay of Hearing for

Defendants' Motion for Summary Judgment", delivered to the Court for filing on February 21, 2020, to be incorporated herein entirely.

A Lawsuit Cannot be Brought Against a Board

11. History shows that many cases, in many Courts, have been brought against the Board of a Corporate entity (Exhibit 3); Plaintiff believes that the Court is fully aware that Defendants in their capacity as a Board represented the responsible, governing body of WHOA.

A Lawsuit Must be Brought Against WHOA

12. Plaintiff is a WHOA member (Member) and for the Court to force Plaintiff to bring a lawsuit against WHOA would be bringing a case against himself, and would lead to "self incrimination" which is prohibited by the Constitution of the United States.

"Wrong Party" - Defendants no longer comprise the Board

13. Wrong Party arguments have specifically been denied by this Court and the COA:

13a) Specific individuals making up a Board is irrelevant under the NPCA:

SECTION 33-31-140. Definitions.

Unless the context otherwise requires;

(3) "Board" or "board of directors" means the individual or individuals vested with overall management of the affairs of the domestic or foreign corporation, irrespective of the name by which the individual or individuals are designated, except that no individual or group of individuals is the board of directors because of powers delegated to that individual or group pursuant to Section 33-31-801(c).

13b) this very same argument was recently denied by the South Carolina Court of Appeals as applied to Appeal 2018-001209:

13c) a "Motion to Dismiss" was denied on January 3, 2019 by this Court:

13d) the NPCA requires a yearly election of a Board, so change of Board membership is a

law-mandated event;

13e) the NPCA recognizes "continuity of a Board" regardless of change of individual Board members.

Defendants are incapable of providing requested relief

14. Under the NPCA, the Board of WHOA is a continuous entity, which maintains the governing authority for WHOA regardless of individual Board members, so the Board is always capable of providing, or helping to facilitate, requested relief; however, the Board will not do so, acting in breach of their fiduciary duty.

The Board of WHOA is "immune from suit"

15. The WHOA Board does not possess immunity from suit:

15a) NPCA Section 33-31-834(a) shows:

... Nothing in this section may be construed to grant immunity to the not-for-profit cooperatives, corporations, associations, or organizations.

15b) NPCA Section 33-31-834(b) clarifies further that a tax-exempt status is required before immunity from suit applies:

(b) Subsection (a) applies to the following:

(1) ...

(2) not-for-profit corporations, associations, and organizations, as recognized in and exempted from taxation under Federal Income Tax Code Section 501(c)(3), (c)(6), or (c)(12).

15c) WHOA does not possess, and can never possess, any of the required-tax-exempt classifications to qualify for "immunity from suit", where Figure 1 from an Officer of the Court as disclosed on October 31, 2019 shows:

... In particular, although the HOA is a nonprofit, and we believe the HOA is eligible to file for tax classification under 501(c)(3), (6), or (12), the HOA has not made the requisite tax filings at this point.

15d) WHOA does not possess, and can never possess, tax-exempt status of 501(c)(3) which is reserved for charitable organizations, where WHOA is a mutual-benefit nonprofit organization; seen in Exhibit 6:

A mutual-benefit corporation can be non-profit or not-for-profit in the United States, but it cannot obtain IRS 501(c)(3) non-profit status as a charitable organization.

An **association would not qualify** if its principal activities consist of securing **benefits** and performing particular **services for members**.

THEREFORE, based upon criteria for granting Summary Judgment, which Defendants have not met, and existence of numerous material facts which have been disputed, Plaintiff prays for denial of Defendants' Motion for Summary Judgment.

Dated this 22nd day of February, 2020.

Respectfully Submitted,

Raymond A. Wedlake

Raymond A. Wedlake, Plaintiff (*Pro Se*)
703 Creekview Drive
Greenville, SC 29607
864-254-9262 wedlakera@mail.com

FIGURE 1 - Counsel's Letter to Judge

Date: Thu, 31 Oct 2019 11:51:48
From: emily@campbellteague.com
To: rstilwellsc@sccourts.org
Cc: Ray Wedlake <wedlakera@mail.com>
Subject: Re: Letter Courtesy-Electronic Copy

Judge Stilwell,

It is my understanding from Mr. Wedlake's letter that he intends to withdraw his concession that Woodington HOA is a nonprofit corporation per SC Code Sec. 33-31-824(b). In the interest of full candor, I have been actively looking into this issue prior to sending over a proposed order, as additional information has come to light post-hearing regarding the HOA's tax classification. In particular, although the HOA is a nonprofit, and we believe the HOA is eligible to file for tax classification under 501(c)(3), (6), or (12), the HOA has not made the requisite tax filings at this point.

However, other cases have discussed immunity under Section 834 as generally for "nonprofits" without referring to the specific Federal Tax Code provisions, and thus, we still believe your ruling is soundly based on both current law and public policy. See, e.g., *Smith v. Dockside Ass'n, Inc.*, 2005 WL 7083482, *4 (S.C. Ct. App. Feb. 28, 2005) ("The General Assembly has provided further protection to directors of nonprofit corporations by enacting South Carolina Code section 33-31-834. That section provides that director of nonprofit organizations are immune from suits arising from the conduct of the affairs of the organization unless the directors' conduct amounts to 'willful, wanton, or gross negligence.'")

Even if Section 834's immunity did not apply, Section 33-31-830(d) provides immunity in this instance. That section states, "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." The section requires, "A director shall discharge his duties as a director, including his duties as a member of a committee: (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner the director reasonably believes to be in the best interest of the corporation." As there is no evidence of actions by individual board members which would violate this provision, the defendants are entitled to immunity under Section 830. This is what the court held in the *Smith* case cited above, while also referencing Section 834's protections. (A courtesy copy of the case is attached.)

We further maintain that there are ample other grounds for granting our motion for summary judgment--namely: (1) that a list of how members confidentially voted is not something a member is entitled to under the NCPA; and (2) the corporation and not the individual Board members is the proper defendant as it is a corporate duty imposed by the statute and resignation from the Board results in the individuals having no authority to provide the requested relief.

At the end of the day, we want to ensure there is no misapprehension of our arguments given what we have learned, and we want to provide the Court all information needed to support the accurate ruling of granting our motion for summary judgment. Please let us know how you would like to proceed on this matter, and if the grounds for the proposed order need to be revised. If further briefing or a rehearing would be of assistance to Your Honor in making this determination, we would certainly be glad to do that as well.

Best,
Emily

Campbell Teague LLC
Emily O'Brian, Esq.
16 W North Greenville SC 29601
864.326.0597

EXHIBIT 1

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	THIRTEENTH JUDICIAL CIRCUIT
Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc.	)	
	)	Civil Case No. 2019-CP-23-00269
Plaintiff (<i>Pro Se</i>)	)	
	)	MEMORANDUM IN OPPOSITION
vs.	)	
	)	TO MOTION FOR AWARD OF
Christopher Edwards, Charles Koshis, Denis Esteve, Michael Keels, and William Craigo in their capacity as Board of Directors of Woodington Homeowners' Association, Inc.	)	COSTS AND FEES AND
	)	SUBSEQUENT DISMISSAL
	)	
Defendants	)	OF COUNTERCLAIMS

COMES NOW, Raymond A. Wedlake (Plaintiff, *Pro Se*), and brings this "Memorandum in Opposition ..." (Memo), as follows.

Brief Background Summary - Nature of the Controversy

As former two-term member of the Board of Directors (Board) of the Woodington Homeowners' Association, Inc. (WHOA) and long-time resident of the Woodington community, Plaintiff seeks to assure proper Board Governance by promoting a platform of: (i) Board transparency, (ii) mandatory ADR, and, (iii) strict adherence to the Governing Documents. Consistent therewith, when Defendants cast ballots for WHOA members (Members) who did not vote on November 9, 2018 ballots, without having signed authorizations to act as Proxy for those Members who did not vote, as related to a massive increase in dues and a special assessment, Plaintiff sought to know: **not how Members voted but simply who actually cast ballots, regardless of how they voted**, as well as other information such as Board-Meeting Minutes.

When refused all such-basic-requested information, rather than sue for breach of fiduciary duty, Plaintiff sought a Declaratory Judgment confirming he was entitled to such information pursuant to the South Carolina Nonprofit Corporation Act of 1994 (NPCA), Title 33, Chapter 31, Section 33-31-1602(d), *et seq* including (d)(2), which states that notwithstanding a list of specific items in the NPCA to which a Member may be entitled, the Court shall retain the power to compel production of corporate records. With disregard towards Plaintiff's motions that remain extant, summary judgment was wrongfully granted against Plaintiff's case, which was done not upon the merits but rather upon other-technical grounds. Defendants also sought summary judgment on their counterclaims which were brought against Plaintiff under the "South Carolina Frivolous Civil Proceedings Sanctions Act", which was denied. The Court noted that allegations of failure to name a right party would normally not be enough for Defendants to prevail in a "frivolous" action, and that Plaintiff's-stated arguments as presented at the Hearing contained several meritorious points.

Overview of Arguments in Opposition

Defendants' motion (Motion) must be denied on the basis that the cited By-Laws Amendment is invalid, as clarified below. Assuming *arguendo* such Amendment may be recognized as valid, several other arguments dictate that Motion must be denied:

- A. By-Laws Cannot be Used in the Manner Desired by Defendants Without Specific Granting of Authority Stated in Restrictive Covenants; Additionally, By-Laws Are Invalid When, as Here, They are Inconsistent With Law;
- B. Denial of Counterclaims Makes Award to Defendants of Costs and Fees Improper;
- C. Rebuttal of Specific Paragraphs of Motion;
- D. Application of the By-Laws Amendment Would Have a Chilling Impact on all

Declaratory Judgment Actions.

Arguments in Opposition

A. By-Laws Cannot be Used in the Manner Desired by Defendants

Without Specific Granting of Authority Stated in Restrictive Covenants;

Additionally, By-Laws Are Invalid When, as Here, They are Inconsistent With Law

1. The NPCA defines "Member Approval" in Section 33-31-140 as the will of a majority of corporation members:

(1) "Approved by the members" or "approval by the members" means approved or ratified by the members entitled to vote on the issue through either:

- (a) the affirmative vote of a majority of the votes of the members ...
- (b) a written ballot or written consent in conformity with this chapter.

This definition does not allow Defendants, as a WHOA Board:

1a) to take the action they took, that is to assume proxies, and to vote as Proxy for non-voting Members, and then to claim "Member Approval" to further their own, personal interests for their own personal gain;

1b) Defendants have no signed "proxy appointment forms" associated with their action to claim "Member approval", as required by the NPCA (emphasis added):

SECTION 33-31-724. Proxies.

(a) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact.

(b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. ...

1c) Defendants are mistaken to impose a Special Assessment upon Members, as associated with a claim of "Member Approval", based upon Defendants' voting for those who did not return ballots of November 9, 2018, since six-Member statements (Figure 1) acquired to date as part of discovery by Plaintiff show these Members' desires were:

1c1) to deny the Board's vote "FOR" associated with their non-returned ballot;

1c2) to deny that the Board may assume to act as Proxy for them;

where upon request, a non-redacted Figure 1 will be supplied to the Court as a confidential document.

1d) Defendants' conduct as to allegations of "Member Approval" is contrary to Section 33-31-202(b)(1-3) of the NPCA:

(b) Unless the articles provide otherwise, no director of the corporation is personally liable for monetary damages for breach of any duty to the corporation or members. However, this provision shall not eliminate or limit the liability of a director:

- (1) for any breach of the director's duty of loyalty to the corporation or its members;
- (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- (3) for any transaction from which a director derived an improper personal benefit ...

and also as found in the NPCA 33-31-851(a)(2):

- (a) ... the individual is or was a director ...
- (2) reasonably believed:
 - (i) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and
 - (ii) in all other cases, that his conduct was at least not opposed to its best interests; ...

since when opposing a Member's desire to bring improvements to WHOA and benefits to its Members, a Board is duty bound to seek to resolve disputes, and not to deny negotiation and/or mediation in order to assuage their own egos, and having an intent to litigate and thus to bring

damage to the corporation -- an attitude and action which certainly do not reflect a corporate-best interest.

2. A Ballot-3-By-Laws Amendment (Exhibit 1) of November 9, 2018, for "Assessment of Legal Fees" did not pass with Member approval, since the required three-quarters (50) of Member votes needed for approval of an amendment were not so voted; only 41 Member-ballots were returned, as shown by WHOA Minutes of December 6, 2018 (Exhibit 2):

F. Questions

1. Member - "How many ballots were returned?"
 - a) 41 total ballots returned.

3. WHOA By-Laws may not be used in a manner inconsistent with South Carolina Code of Laws, as stated by NPCA Section 33-31-206(b):

- (b) The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

where Defendants' actions violate 33-31-206(b), where Plaintiff finds no other provision of the NPCA, nor any provision of statutory law, which gives a Board or which gives Defendants:

3a) any right to impose assessment of attorney fees and/or legal costs and fees upon a Member who seeks to resolve disputed issues, where a Board previously denied all and any negotiation and/or mediation, thereby forcing the Member to seek resolution in a Court of law;

3b) any power to negate a Member's desire to bring improvements to WHOA, and to provide additional benefits to its Members.

4. Defendants violated WHOA Covenants with actions that stand contrary to several South Carolina Attorney General Opinions (AGO), which state that no HOA may use documents which come after the Restrictive Covenants, in this case titled as: "Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision" (Covenants), and thus Defendants

may not grant themselves additional powers not found in, nor authorized by, the Covenants:

4a) particularly, a right to amend the By-Laws in a manner inconsistent with South Carolina statute is not a power granted them per WHOA Covenants;

4b) WHOA Covenants convey only these-limited powers, where no power is granted to Defendants to allow a legal-fees assessment imposed upon a single lot, that was not related to "... the maintenance and upkeep of any improved or unimproved lot ..." (emphasis added):

ARTICLE V: ASSOCIATION OF OWNERS

(3) The Homeowners Association shall be entitled to collect dues, on an annual basis, assessed against each lot in an amount to be determined by the Board of Directors. These dues shall be administered by the officers of the Association and used for the payment of necessary expenses for the operation of the Homeowners Association and for the maintenance of any vacant and untended lot or unkempt improved lot and for the payment of any common utility expenses and for the maintenance of any property deeded to the Homeowners Association.

(4) In the event the Homeowners Association's Board of Directors and Officers shall deem it necessary to expend any sum of money for the maintenance and upkeep of any improved or unimproved lot, the Board shall be empowered to levy a special assessment applicable to that lot, but only in an amount equal to any sum or sums which had to be expended for that purpose. ...

4c) Defendants may not apply By-Laws over WHOA Covenants, since By-Laws may not be used to extend power beyond contractual obligations created by the Covenants, as shown by an AGO to Goldfinch, August 5, 2016 starting of Page 3 (emphasis added):

" ... 2. Do by-laws prevail over covenants?

... court generally would find that restrictive covenants prevail over bylaws adopted pursuant to those covenants if there is a conflict between them. ... both South Carolina law and authority from other jurisdictions point to restrictive covenants as the constitutional document of a homeowners' association ("HOA") which generally takes precedence over any bylaws ...
Keikel v. Four Colonies Homes Ass'n"

and continuing of Page 4:

... appellate court held that the HOA could not "circumvent the intent of the Declaration [Covenants], the enabling document, by subsequently amending the Bylaws." *Id.* At 1 10. *Kiekel*, ...

and ending of Page 5:

Since the rise of the modern homeowners' association, several South Carolina cases have interpreted restrictive covenants as foundational both to granting and to limiting an HOA's power. For example, in *Lovering v. Seabrooke Island Property Owners Ass'n*, our Court of Appeals considered whether an HOA could charge an emergency assessment when the covenants and bylaws referred only to annual assessments, and was silent on the issue of emergency assessments. *Lovering v. Seabrooke Island Property Owners Ass'n*, 289 S.C. 77, 344 S.E.2d 862 (Ct./tpp. 1986). The court held there that the emergency assessment exceeded the scope of the HOA's authority, ...

... The South Carolina Supreme Court affirmed the holding of the Court of Appeals that the emergency assessment was *ultra vires*, ...

4d) Defendants may not: "... change a community charter ..." to serve their own, personal purposes, as stated by an AGO to Davis, January 26, 2016, starting on Page 6 (emphasis added):

... However, it must be remembered that "[a]ll resolutions and by-laws must be conformable and subordinate to the general laws." *King v. Lieon*, 1 80 S.C. 224, 1 85 S.E. 305 (1936). Accordingly, any resolutions are invalid to the extent that they conflict with South Carolina law.

and continuing on Page 7:

A review of South Carolina law shows that covenants are contractual in nature. In *Kinard v. Richardson*, 407 S.C. 247, 754 S.E.2d 888 (Ct. App. 2014), ...

Therefore, covenants, in a sense are contractual in nature and bind the parties thereto in the same manner as would any other contract. ...

Any contract which is contradictory to a statute is invalid. ...

Accordingly, a declarant or board of directors cannot change a community charter [Covenants and/or By-Laws] in any manner

that would not be in compliance with statutory law.

4f) Defendants may not presume case law trumps the NPCA, as stated by an AGO to Davis, January 26, 2016, starting on Page 10:

VII. Does State case law have precedence of or trump the South Carolina Non-Profit Corporation Act?

The duty of a court is to interpret the laws and not to make the laws, which is a function of the legislature.

and in a **CONCLUSION**, summary points are stated on Page 12:

3. Resolutions are invalid to the extent that they conflict with South Carolina law;
4. A declarant or board of directors can not change a community charter [Covenants and/or By-Laws] in any manner that would not be in compliance with statutory law;
7. Since the courts and the legislature have different functions, case law does not have precedence over or trump statutory law, such as the South Carolina Non-Profit Corporation Act; ...

Motion must be denied on the basis:

B. Denial of Counterclaims Makes an Award to Defendants of Costs and Fees Improper

5. As noted in the "Brief Background Summary", in a Hearing of October 28, 2019, the Honorable Judge Robin Stilwell **DENIED** Defendants' motion seeking summary judgment for their Counterclaims, which were sought pursuant to the "South Carolina Frivolous Civil Proceedings Sanctions Act".

6. Judge Stilwell further suggested that Defendants drop their Counterclaims after he denied their "frivolous" claim.

7. As stated in *Baumann v. Long Cove Club owners Ass'n*, 668 S.E.2d 420, 380 S.C. 131 (2008), since WHOA Covenants do not provide for contractual authorization of attorney's fees, any such award would violate the existing WHOA Covenants:

Generally, attorney's fees are not recoverable unless authorized by contract or statute. *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 383, 377 S.E.2d 296, 297 (1989).

Motion must be denied on the basis:

C. Rebuttal of Specific Paragraphs of Motion

Paragraphs from Motion are denoted below by "M1", for example, for paragraph 1.

M1. Pursuant to a vote of the Members of the Woodington Homeowners' Association, an amendment to the Bylaws was recorded on December 27, 2018 in Book 2555 at Page 2943 in the Office of the Register of Deeds of Greenville County (see Exhibit A) which states in relevant part: ...

8. Rebuttal – As covered above in Plaintiff's Memo, since cited amendment to the By-Laws did not receive the required number (50) of Member-approving votes, such recording by Defendants represents an unlawful action; intent to extend contractual obligations via amending the By-Laws, where no such authority to extend was given in the Covenants, is similarly in violation of NPCA Section 33-31-202(b)(3), and such unlawful action most certainly does not represent a corporate-best interest.

M2. Plaintiff filed the above-captioned action on January 17, 2019.

9. Rebuttal – The date of Plaintiff's filing of the above-captioned action is irrelevant because as covered herein by Memo, Covenants give no authority for By-Laws to be later amended for the purpose of imposition of legal fees upon a single Member, nor for any other special assessment that is not related to specific statement in the Covenants, which is contractually limited to:

"... maintenance and upkeep ... shall be empowered to levy a special assessment applicable to that lot, but only in an amount equal to any sum or sums which had to be expended for that purpose."

M3. On November 25, 2019, Defendants' Motion for summary judgment was granted on all of Plaintiff's claims brought in this action. Thus, Plaintiff has not prevailed in the above-captioned action.

10. Rebuttal – As covered herein by Memo, summary judgment was mistakenly based upon errors of law, where Plaintiff documented Defense Counsel's admission of such:

10a) in Plaintiff's: "Motion for a New Hearing on Defendants' Motion for summary judgment and to Extend ADR Deadline", which was filed in the Public Index on November 18, 2019, before the Order was signed on November 25, 2019, where additionally Plaintiff's "New Hearing" motion has not been heard to date, and where no Order for this motion has been issued;

10b) in Plaintiff's: "Motion to Reconsider Order Granting Summary Judgment and Extending ADR Deadline", reiterating such again as filed in the Public Index on December 26, 2019, which similarly has not been heard to date, and where no Order for this motion has been issued.

M4. Pursuant to the December 27, 2018 amendment, Defendants are entitled to all

costs and fees incurred in this action.

11. Rebuttal – Until after a final judgment is rendered, Defendants have no entitlement to any costs nor fees incurred in this action, where as covered herein by Memo, such judgment cannot be based on an invalid-By-Laws amendment that is “inconsistent with law”.

M5. Defendants respectfully request that this Court enter an Order granting Defendants Motion and finding Plaintiff responsible for all costs and fees incurred in this action, a specific statement detailing such amount to be provided to the Court by Affidavit.

12. Rebuttal – for all reasons covered herein by Memo, Motion cannot lawfully be granted.

M6. Subsequent to and contingent upon all costs and fees being awarded in this action, Defendants consent to and respectfully request that this Court dismiss their counterclaims without prejudice, thus closing the above-captioned matter.

13. Rebuttal – Motion stated a not-previously-declared prerequisite to dismissal of their Counterclaims, where in a hearing of December 13, 2019, the Transcript (emphasis added) shows no statement by Counsel of this contingency:

MR. BROGDON: Your Honor, and -- and just briefly, again, we have also filed a Motion for Attorney's Fees in this action, yesterday. That Motion will be heard at a different time. Just wanted to make you aware of it, as well. And we will be willing to dismiss our counterclaims at that Motion for Attorney's Fees hearing as part of the -- as part of the Motion hearing. (Transcript p. 6, ll. 1-7)

where such incomplete and inaccurate “... willing to dismiss ...” was used to mislead the Judge so that the Judge would grant “quash” of subpoena's related to Plaintiff's discovery, which the Judge proceeded to do based on presumption of uncertain-future events (emphasis added):

THE COURT: Mr. Wedlake, depositions are part of our procedural process in a pending lawsuit. There is still an active part of this lawsuit which your opposing counsel has indicated will be dismissed and -- at -- at a Motion hearing. Has it been set?

MR. BROGDON: Your Honor, it has not been set yet, but we intend to -- We have another hearing set for January 14th. We intend to set it -- set it for that same day as well.

THE COURT: Okay. So, January 14th counsel has held out to the Court, as an officer of the Court, that the case is going to be dismissed. There will be no pending claim in this action. (Transcript p. 8, ll. 2 -- 15).

M7. This motion is supported by the South Carolina Rules of Civil Procedure, statutes and case law, and such other supporting memoranda, authority, or attachments as are filed or presented before or at the hearing on this motion.

14. Rebuttal -- Plaintiff craves knowledge of supporting rules, statutes, and case law, since none are known to him and no such filings exist to date; if "dumped on" with a load of previously unseen and undisclosed documents at, or shortly before the January 14 Hearing, Plaintiff must be granted a continuance to be allowed to assimilate and understand any such supporting authority.

Motion must be denied on several other grounds, regardless of non-validity of the By-Laws Amendment which mandates assessment of legal fees for: "... filing a legal action, in any form, ..." (Exhibit 1):

**D. Application of the By-Laws Amendment Would Have a
Chilling Impact on all Declaratory Judgment Actions**

Even assuming arguendo that other arguments may be discounted, consistent with the South Carolina "Uniform Declaratory Judgments Act", and the legislative history thereof, coupled with interpretive case-law, the Court must recognize the expediency and value of Declaratory Judgment (DJ) actions.

15. The Court's denial to date to recognize the DJ statement of Plaintiff's original case will chill and discourage individuals from bringing DJ actions, which are highly favored by the law, and also per commentary and cases; the "Uniform Declaratory Judgments Act" shows:

15a) Section 15-53-20. Courts of record may declare rights, status and other legal relations.

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

15b) SECTION 15-53-40. Construction of contract before or after breach.

A contract may be construed either before or after there has been a breach thereof.

15c) SECTION 15-53-60. Enumeration is no restriction on general powers.

The enumeration in Sections 15-53-30 to 15-53-50 does not limit or restrict the exercise of the general powers conferred in Section 15-53-20 in any proceeding when declaratory relief is sought in which a judgment or decree will terminate the controversy or remove an uncertainty.

15d) SECTION 15-53-130. Chapter shall be construed liberally.

This chapter is declared to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. It is to be liberally construed and administered.

16. The Court did not dismiss Plaintiff's DJ based upon its merits, but rather granted summary judgment to Defendants based upon two, other, legal-technical reasons:

1. immunity from suit, and
2. wrong party,

where both reasons represent errors of law:

16a) indeed Defense Counsel acknowledged the "immunity" argument was based upon faulty facts provided to the court concerning the correct-tax status of WHOA;

16b) Judge Stilwell himself denied a "wrong party" argument in Case 2017-CP-23-06301;

16c) the South Carolina Court of Appeals denied a "wrong party" argument in Appeal 2018-001209 (appeal from 2017-CP-23-06301).

17. The Court of Appeals of South Carolina said as related to *Pond Place Partners, Inc., et. al. v. Poole et. al.*, 351 S.C. 1567 S.E.2d 881 (S.C. App. 2002):

Poole filed the underlying action attempting to invalidate the amendments to the covenants pursuant to the Uniform [351 S.C. 16] Declaratory Judgments Act.

"The Declaratory Judgment Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationships." *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (citing *Williams Furniture Corp. v. Southern Coatings & Chemical Co.*, 216 S.C. 1, 56 S.E.2d 576 (1949)); S.C.Code Ann. § 15-53-130 (1977).

"To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy." *Graham*, 319 S.C. at 71, 459 S.E.2d at 845 (citing *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985)).

"A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party." *Graham*, at 71, 459 S.E.2d at 845 (citing *Power v. McNair*, 255 S.C. 150, 177 S.E.2d 551 (1970)).

This requirement is satisfied by "[a]ny person interested under a deed . . . written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a . . . contract or franchise may have determined any question of construction or validity arising under the instrument, . . . contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." S.C.Code Ann. § 15-53-30 (1977); see also Rule 57, SCRPC. *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1567 S.E.2d 881 (S.C. App. 2002) "

18. A basic definition helps clarify the role of DJ, as found per:

https://en.wikipedia.org/wiki/Declaratory_judgment

A **declaratory judgment**, also called a **declaration**, is the legal determination of a court that resolves legal uncertainty for the litigants. It is a form of legally binding preventive adjudication^[1] by which a party involved in an actual or possible legal matter can ask a court to conclusively rule on and affirm the rights, duties, or obligations of one or more parties in a civil dispute (subject to any appeal).^[2] The declaratory judgment is generally considered a statutory remedy and not an equitable remedy in the United States,^[3] and is thus not subject to equitable requirements, ...

A declaratory judgment ... can provide legal certainty to each party in a matter when this could resolve or assist in a disagreement. Often an early resolution of legal rights will resolve some or all of the other issues in a matter.

A declaratory judgment is typically requested ... or when a party or parties believe that their rights under law and/or contract might conflict; ...

THEREFORE, based on submission of pleadings and for the reasons and arguments submitted herein, as well as those which may be submitted at any Hearing on Motion, Plaintiff prays that Motion be **DENIED**.

Dated this 8th day of January, 2020.

Raymond A. Wedlake

Raymond A. Wedlake - Plaintiff *Pro Se*
703 Creekview Drive
Greenville, SC 29607
(864) 254-9262 wedlakera@mail.com

EXHIBIT 2

Woodington Homeowners Association, Inc.
Special Meeting

Meeting Minutes
December 6, 2018

Board Members Present:

- Chris Edwards President
- Chip Koshis, Vice President
- Mike Keels, Secretary
- Denis Esteve, Treasurer
- Jody Craigo, Maintenance

Quorum Present: Yes

The meeting was called to order at 6: 36 PM by the President at Five Forks Library – Simpsonville, SC.

- I. Call to Order
- II. Introductory Remarks
- III. Update since 10/30 Meeting
 - A. Litigation has continued to move forward
 - B. New Complaint filed with Department of Consumer Affairs
 1. Email received from Raymond Wedlake.
 2. Complaint was read.
 - C. Two Board members met with Grant Gibson and Jim Carpenter, attorneys for Raymond Wedlake.
 1. Seeking resolution on issues important to Association.
 2. Meeting was positive, small step forward.
- IV. Ballots
 - A. Board made decision to ballot issues in order to determine where the community stands on Issues.
 - B. South Carolina Non-Profit Act – "Immune from Suit"
 - C. Bill for the Appeal is estimated at \$5000 currently and could rise to \$15k to \$20k by the end.
 - D. Results of Ballots – 65 units in good standing
 1. Ballot 1 (Indemnification) passed - 53 For and 12 Against
 2. Ballot 2 (Payment Plan) passed- 56 For and 9 Against
 3. Ballot 3 (Amendment to By-Laws) passed – 62 For and 3 Against

E. Plan Moving Forward

1. Board will act as Association has voted.
2. First payment on legal bill will be made in the near future
3. Annual Meeting to be held in January
 - a) Unable to find a date that works at Library
 - b) Board will find date after this meeting.
 - c) Anyone with intention to run for Board needs to state their intention to the Board

F. Questions

1. Member -- "How many ballots were returned?"
 - a) 41 total ballots returned.
 - b) Discussion about how members voted and the by-laws allowing for the Board to cast those votes not returned.
2. Member asked if Board had thought about filing bankruptcy or when Board would know it has reached that point.
 - a) Board has discussed it as an option should the pattern continue.
 - b) Not there yet, because we are in a strong financial position.
3. Further Member discussion about current events and moving forward.
4. Reminder about Annual Meeting at date TBD.

V. Adjournment (Motion to End the Meeting)

Meeting Adjourned.

Mike Keels, Secretary

Date

Chris Edwards, President

Date

EXHIBIT 9 - ⁶³ "Board of Directors" as a Legitimate Party to a Judicial Action is a Proven Fact

BROWN v. BOARD OF DIRECTORS OF ROSE TREE MEDIA SCHOOL DISTRICT
(December 30, 2019) , United States District Court, E.D. Pennsylvania. Civil Action No. 19-836.

JOHNSON v. BOARD OF DIRECTORS OF FOREST LAKES MASTER ASSOCIATION
(December 27, 2019) , Court of Appeals of Kansas. No. 120,145.

MATTER OF PETTUS v. BOARD OF DIRECTORS (December 17, 2019)
Court of Appeals of New York. App. Div. No. M-883, Motion No. 2019-628.

BARNARD v. TIAA BOARD OF DIRECTORS (December 13, 2019)
United States District Court, S.D. New York. No. 19-CV-1074 (RA).

BOARD OF DIRECTORS OF THE MOTION PICTURE INDUSTRY PENSION PLAN
v. TRIO ENTERTAINMENT SERVICES GROUP, LLC (December 12, 2019)
United States District Court, C.D. California, Western Division. Case No. 2:19-cv-05494-JFW-Ex.

HNY CLUB SUITES OWNERS ASSN. INC. EX REL. BOARD OF DIRECTORS
v. VASSOS (December 9, 2019)
Supreme Court, New York County. Docket No. 850086/2019, Motion Seq. No. 001.

BOARD OF DIRECTORS OF THE MOTION PICTURE INDUSTRY PENSION PLAN
v. MICHAEL GLATZE, LLC (October 31, 2019)
United States District Court, C.D. California. Case No. CV 19-5881 FMO (KSx).

HNY CLUB SUITES OWNERS ASSN. INC. EX REL. BOARD OF DIRECTORS v. MPAMBANI
(October 28, 2019) ,
Supreme Court, New York County. Docket No. 850137/2018, Motion Seq.No. 001.

HNY CLUB SUITES OWNERS ASSN. INC. EX REL. BOARD OF DIRECTORS v. FERRER
(October 28, 2019) , Supreme Court, New York County. Docket No. 850084/2019,
Motion Seq. No. 001.

PETTUS v. BOARD OF DIRECTORS, OWNERS 800 GRAND CONCOURSE (September 26,
2019) , Supreme Court, Appellate Term, First Department. Motion No. 570581/19.

GUION v. BONNER HOMELESS TRANSITIONS BOARD OF DIRECTORS (September 18,
2019) , United States District Court, D. Idaho. Case No. 2:18-cv-00186-DCN.

COTTON v. MILWAUKEE AREA TECHNICAL COLLEGE DISTRICT BOARD OF
DIRECTORS (March 8, 2019) , United States Court of Appeals, Seventh Circuit. No. 18-2258.

M.F. EX REL. PETERS v. BOARD OF DIRECTORS OF RAYTOWN CONSOLIDATED SCHOOL DISTRICT NO. 2 (February 21, 2019)
United States District Court, W.D. Missouri, Western Division. No. 4:18-CV-0816-DGK.

BOARD OF DIRECTORS OF WINDSOR OWNERS CORP. v. PLATT (July 10, 2018)
Supreme Court, New York County. Docket No. 155985/2014.

SAD 3 ED. ASS'N v. RSU 3 BD OF DIRECTORS (March 1, 2018)
Supreme Judicial Court of Maine. Docket: Ken-17-75.

BOARD OF DIRECTORS OF WINDSOR OWNERS CORP. v. PLATT (February 2, 2018)
Supreme Court, New York County. Docket No. 155985/14.

RINDAHL v. AVERA MEDICAL GROUP BOARD OF DIRECTORS & ADMINISTRATORS
(November 14, 2017)
United States District Court, D. South Dakota, Southern Division. No. 4:17-CV-04104-RAL.

McCALISTER v. TENNESSEE VALLEY AUTHORITY BOARD OF DIRECTORS
(February 24, 2017), United States District Court, N.D. Alabama, Northwestern Division.
Case No. 3:14-cv-01569-HGD.

THE BOARD OF DIRECTORS OF RUPPERT YORKVILLE TOWERS CONDOMINIUM v. HAYDEN (February 21, 2017), Appellate Division of the Supreme Court of New York, First Department. Motion No. M-305, Index No. 153652/15.

BUSTER v. COMPENSATION COMMITTEE OF THE BOARD OF DIRECTORS OF MECHANICS BANK (June 2, 2016)
United States District Court, N.D. California. No. C 16-01146 WHA.

WELENC v. BOARD OF DIRECTORS OF POLISH AND SLAVIC FEDERAL CREDIT UNION
(March 11, 2016), Appellate Division of the Supreme Court of New York, Second Department.
Index No. 12933/13, Motion No. 2015-10708, M107951.

DUSMAN v. BOARD OF DIRECTORS OF CHAMBERSBURG AREA SCHOOL DIST.
(March 1, 2016), Supreme Court of Pennsylvania. Nos. 665, 666 MAL (2015).

U.S. v. BOARD OF DIRECTORS OF TRUCKEE-CARSON IRRIGATION DISTRICT
(January 25, 2016), United States District Court, D. Nevada. No. 3:95-CV-00757-HDM.

BD. OF DIRECTORS OF ROUGH RIDERS v. SIGNATURE (December 20, 2013)
United States District Court, E.D. New York. No. CV 13-565(LDW)(ETB).

BOARD OF DIRECTORS OF CAMERON GROVE CONDOMINIUM II, ET AL.
v. STATE OF MARYLAND COMM'N ON HUMAN RIGHTS (August 20, 2012)
Court of Appeals of Maryland. Pet. Docket No. 163.

LANEY v. HOSPITAL BOARD OF DIRECTORS OF LEE COUNTY (December 14, 2010)
United States District Court, M.D. Florida, Fort Myers Division.
Case No. 2:09-cv-678-FtM-29SPC.

BOARD OF DIRECTORS OF TRUCKEE-CARSON IRRIGATION DISTRICT v. U.S.
(November 29, 2010) , Supreme Court of United States. No. 10-396.

GREEN v. BOARD OF DIRECTORS OF PARK CLIFF UNIT OWNERS ASS'N (May 25, 2006)
Court of Appeals of Georgia. No. A06A0365.

LaSALLE NAT. TRUST v. BOARD OF DIRECTORS OF 1100 LAKE SHORE DRIVE
CONDOMINIUM (March 20, 1997) , Appellate Court of Illinois, First District,
Fourth Division. No. 1-95-4064.

SHAFFER v. BOARD OF SCHOOL DIRECTORS, ETC. (December 13, 1982)
United States Court of Appeals, Third Circuit. No. 81-2880.

MILLIKAN v. BOARD OF DIRECTORS (May 22, 1978)
The Court of Appeals of Washington, Division One. No. 5097-1.

BARNES v. BD. OF DIRECTORS, MT. ANTHONY U. H. SCH. DIST. (July 8, 1976)
United States District Court, D. Vermont. Civ. A. No. 74-237.

TRUDELL v. BOARD OF DIRECTORS OF HAZELMERE SCHOOL DIST. 60 (June 21, 1972)
Supreme Court of Washington, En Banc. No. 42421.

HARE v. BOARD OF DIRECTORS, ETC. (October 15, 1957) ,
Supreme Court of Iowa. No. 49243.

Source: www.leagle.com/leaglesearch?page=....&exact=board of directors

EXHIBIT 6 - WHOA Can Not, and Does Not, Qualify for Requisite Tax Exemptions

Source: en.wikipedia.org/wiki/Mutual-benefit_nonprofit_corporation

[excerpted, emphasis added]

A mutual-benefit nonprofit corporation membership corporation or membership corporation is a type of nonprofit corporation in the US, similar to other mutual benefit organizations found in some of common law nations, chartered by government with a mandate to serve the mutual benefit of its members.

A mutual-benefit corporation can be non-profit or not-for-profit in the United States, but it cannot obtain IRS 501(c)(3) non-profit status as a charitable organization.[1] It is distinct in U.S. law from public-benefit nonprofit corporations, and religious corporations. **Mutual benefit corporations** must still file tax returns and **pay income tax** because they are **not formed** for a purpose that is meant to **benefit the general public** (unlike public-benefit nonprofit corporations) but rather to **provide an association of people with a common benefit**. Due to its private purpose, a mutual benefit corporation pays the same taxes as a regular for-profit corporation (C corporation tax rates). However, the IRS still allows for tax exemptions for certain types of mutual-benefit nonprofits (501(c)(6)).

Mutual benefit corporations are formed for **common gain** purposes such as providing insurance for members (many insurance companies still have "mutual" in their names, though many have since adopted other corporate forms), establishing a community financial institution, **managing common property**, or promoting the social or economic welfare of member individuals or organizations (for example through trade groups, professional organizations or business districts). Some mutual water companies are organized as mutual benefit corporations; an electric membership corporation is another example.

Source: [en.wikipedia.org/wiki/501\(c\)_organization#501\(c\)\(3\)](http://en.wikipedia.org/wiki/501(c)_organization#501(c)(3)) [excerpted, emphasis added]

A 501(c) organization is a nonprofit organization in the federal law of the United States according to Section 501(c) and is one of over 29 types of nonprofit organizations exempt from some federal income taxes. ...

Types

According to the IRS Publication 557, in the Organization Reference Chart section, the following is an exact list of 501(c) organization types and their corresponding descriptions.[1][a]

501(c)(3) – Religious, Educational, Charitable, Scientific, Literary, Testing for Public Safety, to Foster National or International Amateur Sports Competition, or Prevention of Cruelty to Children or Animals Organizations

501(c)(12) – Benevolent Life Insurance Associations, Mutual Ditch or Irrigation Companies, Mutual or Cooperative Telephone Companies, etc.

General compliance

Under Section 511, a 501(c) organization is subject to tax on its "unrelated business income", whether or not the organization actually makes a profit, ...

Tax exemption does not excuse an organization from maintaining proper records and filing any required annual or special-purpose tax returns, ...

Main article: 501(c)(3) organization

501(c)(3) tax-exemptions apply to entities that are organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes; or for testing for public safety, to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals. The 501(c)(3) exemption also applies for any unincorporated community chest, fund, cooperating association, or foundation that is organized and operated exclusively for those purposes.[19][20] ...

A 501(c)(6) organization is a business league, a chamber of commerce like the U.S. Chamber of Commerce, a real estate board, a board of trade, a professional football league or an organization like the Edison Electric Institute and the Security Industry Association, that are not organized for profit and no part of the net earnings goes to the benefit of any private shareholder or individual.[76]

Qualifications for exemption

A business league may qualify if it is an association of persons having a common business interest, whose purpose is to promote the common business interest and whose activities improve business conditions rather than actually conduct the business itself.[77] ...

An association would not qualify if its principal activities consist of securing benefits and performing particular services for members. [80]

An association that promotes the common interests of certain hobbyists would not qualify because the Internal Revenue Service does not consider hobbies to be activities conducted as businesses.[81]

Source: [ballotpedia.org/501\(c\)\(12\)](http://ballotpedia.org/501(c)(12))

501(c)(12) is an Internal Revenue Service (IRS) tax exemption status that applies to "benevolent life insurance associations of a purely local character and like organizations, mutual ditch or irrigation companies and like organizations [and] mutual or cooperative telephone companies and like organizations." [1]

Though several exceptions exist, 501(c)(12) entities must generally meet certain criteria. The organizations must apply their revenue to existing liabilities and any remaining funds must be remitted to members or applied toward future expenses. In addition, revenue must satisfy the 85 percent requirement, which stipulates that 85 percent of the organization's income must come directly from the membership. Moreover, these organizations must operate for the benefit of all members to access services roughly at cost. Since 501(c)(12) organizations are built on what the IRS calls a mutual or cooperative basis, the members themselves must also have the ability to select management and recoup assets should the organization disband. [1]

Examples

American Municipal Power Inc.
North Carolina Electric Membership Corporation
American Municipal Power Inc.
Dairyland Power Cooperative
East Kentucky Power Cooperative Inc.
Buckeye Power Inc.[3]

EXHIBIT 10

Woodington Homeowners Association, Inc.
Special Meeting

Meeting Minutes
December 6, 2018

Board Members Present:

- Chris Edwards President
- Chip Koshis, Vice President
- Mike Keels, Secretary
- Denis Esteve, Treasurer
- Jody Craigo, Maintenance

Quorum Present: Yes

The meeting was called to order at 6:36 PM by the President at Five Forks Library – Simpsonville, SC.

- I. Call to Order
- II. Introductory Remarks
- III. Update since 10/30 Meeting
 - A. Litigation has continued to move forward
 - B. New Complaint filed with Department of Consumer Affairs
 1. Email received from Raymond Wedlake.
 2. Complaint was read.
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 1. Seeking resolution on Issues Important to Association.
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 1. Ballot 1 (Indemnification) passed - 53 For and 12 Against
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Woodington Homeowners Association, Inc.
Special Meeting

Meeting Minutes
December 6, 2018

E. Plan Moving Forward

1. Board will act as Association has voted.
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 - a) Unable to find a date that works at Library
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F. Questions

1. Member – "How many ballots were returned?"
 - a) 41 total ballots returned.
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2. Member asked if Board had thought about filing bankruptcy or when Board would know it has reached that point.
 - a) Board has discussed it as an option should the pattern continue.
 - b) Not there yet, because we are in a strong financial position.
3. Further Member discussion about current events and moving forward.
4. Reminder about Annual Meeting at date TBD.

V. Adjournment (Motion to End the Meeting)

Meeting Adjourned.

Mike Keels, Secretary

Date

Chris Edwards, President

Date

Aug 09 2021

SC Court of Appeals

EXHIBIT MC.3 - Requests for Admissions from State Farm Defendant

STATE OF SOUTH CAROLINA	)	2020-CV-23-10201384
	)	
COUNTY OF GREENVILLE	)	CIVIL CASE NUMBER
	)	
Raymond A. Wedlake, as a Member of	)	IN THE MAGISTRATE'S COURT
Woodington Homeowners' Association, Inc.	)	
and on behalf of other-similarly-situated Members	)	
of Woodington Homeowners' Association, Inc.	)	PLAINTIFF'S
PLAINTIFFS	)	
VS.	)	REQUESTS FOR ADMISSIONS
	)	
Board of Directors of Woodington Homeowners'	)	FROM
Association, Inc., comprised of Mona Craigo,	)	
Edward Decker, and Sandra LaCroix at the time	)	STATE FARM
of filing	)	
AND	)	FIRE AND CASUALTY COMPANY
McCabe, Trotter & Beverly, P.C.	)	
AND	)	
State Farm Fire and Casualty Company	)	
DEFENDANTS	)	

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*) and brings several
 "Requests for Admissions" (RFA) pursuant to Rule 26(a), SCRPC, which shows
 (excerpted, emphasis added):

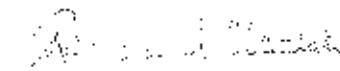
RULE 26 GENERAL PROVISIONS GOVERNING DISCOVERY
 (a) Discovery Methods. Parties may obtain discovery by one or more
 of the following methods: depositions upon oral examination or written
 questions; written interrogatories; production of documents or things
 or permission to enter upon land or other property, for inspection
 and other purposes; physical and mental examinations; and
 requests for admissions. ...

REQUESTS FOR ADMISSIONS

Plaintiff hereby requests pursuant to Rule 26(a), SCRPC, for Defendant: State Farm Fire
 and Casualty Company (SF), within the generic-30-day-time period for responsive pleadings, for
 the purposes of this action only, to admit to the following:

1. that forty-six (46) exhibits were attached to Plaintiff's Complaint and its-self-contained "Supplement to Complaint", as dated 06/10/2020;
2. that sixteen (16) exhibits were attached to Plaintiff's "First Amended Complaint", as dated 09/28/2020;
3. that these sixty-two (62) exhibits contain content that is evidentiary in nature;
4. that these 62 exhibits support Plaintiff's Complaint, its Supplement, and his First Amended Complaint;
5. that they have presented no specific evidence to the Court which cites any exhibit as containing evidence that is "in dispute";
6. that they have presented no counter evidence that was filed in support of any pleading submitted to the Court;
7. that they have presented no counter evidence that was filed with evidentiary support for their "Motion to Dismiss ...";
8. that the existing Insurance Contract (IC) states nothing to allow SF to lawfully "... provide the HOA Board with a defense in this action under a reservation of rights." ;
9. that the existing IC states nothing that "... triggers coverage under the State Farm policy." .
10. that Plaintiffs each pay a part of SF's insurance premium via their HOA dues;
11. that Plaintiffs have an interest, and standing to demand, that SF must adhere to the IC.

Dated this 30th day of October, 2020.



Raymond A. Wedlake, Plaintiff (*Pro Se*)
703 Creekview Drive, Greenville, SC 29607
864-254-9262 wedlakera@mail.com

ATTACHMENT IB.6 - Discovery not Allowed - RFP from State Farm

STATE OF SOUTH CAROLINA	)	<u>2020-CV-23-10201384</u>
	)	CIVIL CASE NUMBER
COUNTY OF GREENVILLE	)	
	)	
Raymond A. Wedlake, as a Member of	)	
Woodington Homeowners' Association, Inc.	)	IN THE MAGISTRATE'S COURT
and on behalf of other-similarly-situated Members	)	
of Woodington Homeowners' Association, Inc.	)	
PLAINTIFFS	)	
vs.	)	REQUEST FOR
Board of Directors of Woodington Homeowners'	)	
Association, Inc., comprised of Mona Craig,	)	PRODUCTION OF DOCUMENTS
Edward Decker, and Sandra LaCroix	)	
at the time of filing	)	FROM DEFENDANT
and	)	
McCabe, Trotter & Beverly, P.C.	)	STATE FARM FIRE AND
and	)	
State Farm Fire and Casualty Company	)	CASUALTY COMPANY
DEFENDANTS	)	

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*) and brings this 'Request for Production of Documents from "State Farm Fire and Casualty Company" Defendant', pursuant to Rule 15(a), SCRMC (excerpted, emphasis added), and Rule 34(a), SCRCP(excerpted, emphasis added):

RULE 15 EXCHANGE OF INFORMATION BETWEEN PARTIES ..

(a) Recognizing the unique nature of the court's jurisdiction and the need for a speedy determination of actions filed in the court, the prompt voluntary **exchange of information and documents by parties** prior to trial is **encouraged**, but in no event shall the court require such exchange.

RULE 34 PRODUCTION OF DOCUMENTS ...

(a) Scope. **Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents, or electronically stored information (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; ...**

and hereby requests that Defendant respond and furnish genuine and complete copies of the following communications, documents, and materials to Plaintiff as soon as practicable after service of this request, but no later than 30 days after receipt of these requests.

DEFINITIONS

A. The term "Defendant" refers to "State Farm Fire and Casualty Company", their affiliates, agents, assigns, or any other-pertinent-corporate division or subdivision, and any-independent agent or anyone acting on behalf of Defendant, now or in the past, as represented in the instant Case 2020-CV-23-10201384 (C1384), by the law firm of Gallivan, White & Boyd P.A., Nicholas A. Farr, Esq.

B. "Person" means and includes, without limiting the generality of its meaning, any natural person or third party; corporate or business entity; firm; partnership; association; group; governmental body, agency, or subdivision; committee; commission; or other organization or entity.

C. The terms "related to" and "concerning" include referring to, alluding to, responding to, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, reflecting, analyzing, constituting, or in any way relevant to the specified subject within the meaning of Rule 26, SCRPC.

D. "Communication" shall include without limitation, and is also not limited to, any statements or transmission or acquisition of information from whatever source, including other third parties, via: notes, letters, texts, sketches, photos, e-mail, memoranda, **documents**, recordings (audios/videos), or other reproductions of materials and subject matter reflecting pertinent information or evidence, regardless of whether audio, visual, written, digital, or oral communication, as may be related in any way to cited lawsuits.

E. As used here, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used and vice versa. The male gender form of a pronoun shall also include the female gender form of the pronoun. The use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb so used.

F. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

G. "Each," "any," and "all" are both singular and plural.

REQUESTS FOR PRODUCTION

Privilege Log

This request seeks production of all non-privileged communications regarding any claim filed, including any communications provided in support thereof, as well as Defendant's response(s) thereto. Although Plaintiffs are not seeking documents which are protected by a recognized privilege, Defendant is requested to list any documents which may be responsive to this request, with sufficient detail on a separate **privilege log**, such that a determination about whether the claim of privilege may apply can be reviewed.

REQUEST NO. 1:

Provide any and all communications related to Defendant's Claim: 40F6976W2 related to C1384, which may include but is not limited to those of possible witnesses, including parties to this action, where written, oral, summarized or reproduced in any manner whatsoever.

REQUEST NO. 2:

Provide any and all communications related to Defendant's Claims: 40-4977-K76 (2018CP2303758) and 40-1711-G27 (2017CP2306301), which may include but is not limited to those of possible witnesses, including parties to this action, where written, oral, summarized or reproduced in any manner whatsoever.

REQUEST NO. 3:

Provide any and all communications related to Defendant's Claims, whose numbers or identifications are not known, related to Cases: 2020CP2301458 and 2019CP2301501, which may include but is not limited to those of possible witnesses, including parties to this action, where written, oral, summarized or reproduced in any manner whatsoever.

REQUEST NO. 4:

Provide any and all communications reflecting any damages incurred by, or accrued to, Defendant as a result of any of claim or claims made related to Plaintiff.

REQUEST NO. 5:

Provide any and all communications reflecting payments made by Defendant to the Board, or to involved parties or any person, as a result of any of claim or claims made related to Plaintiff.

REQUEST NO. 6:

Provide all and any communications made by Defendant concerning the allegations raised against them in Plaintiff's Complaint.

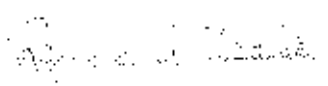
REQUEST NO. 7:

Provide any and all communications:

7a) provided to and/or relied upon by each and every person, expert or consultant this Defendant intends to call as an expert witness at trial, in preparation of his or her opinion or testimony, or

7b) that embody, reflect, refer to or summarize reports or memoranda prepared for this Defendant by any person this Defendant expects to call as an expert witness.

Dated this 5th day of November, 2020.


Raymond A. Wedlake, Plaintiff (*Pro Se*)
703 Creekview Drive, Greenville, SC 29607
864-254-9262 wedlakera@mail.com

ATTACHMENT IB.7 - Opposition to Motion to Dismiss - Board

STATE OF SOUTH CAROLINA	)	2020-CV-23-10201384
	)	
COUNTY OF GREENVILLE	)	<u>CIVIL CASE NUMBER</u>
	)	
Raymond A. Wedlake, as a Member of	)	IN THE MAGISTRATE'S COURT
Woodington Homeowners' Association, Inc.,	)	
and on behalf of other-similarly-situated Members	)	
of Woodington Homeowners' Association, Inc.	)	MEMORANDUM IN OPPOSITION
PLAINTIFFS	)	
VS.	)	TO
Board of Directors of Woodington Homeowners'	)	
Association, Inc., comprised of Mona Craigo,	)	DEFENDANTS' BOARD OF
Edward Decker, and Sandra LaCroix at the time	)	DIRECTORS OF WOODINGTON
of filing,	)	HOMEOWNERS' ASSOCIATION,
AND	)	INC., COMPRISED OF MONA
McCabe, Trotter & Beverly, P.C.	)	CRAIGO, EDWARD DECKER AND
AND	)	SANDRA LACROIX MOTION TO
State Farm Fire and Casualty Company	)	DISMISS PLAINTIFF'S COMPLAINT
DEFENDANTS	)	

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*) and brings this "Memorandum in Opposition to Defendants' Board of Directors of Woodington Homeowners' Association, Inc., ... Motion to Dismiss Plaintiff's Complaint" (MTD).¹

It is clear from precedents, as established by the Appellate Courts of South Carolina, and as supported by facts of this Case, that all claimed grounds for dismissal are unfounded. Further, MTD must be considered as a "Motion for Dismissal in Part". Where there are multiple causes of action, as here, as the Court is well aware, a motion for dismissal should not be viewed as an "all or nothing" disposition. The Court perhaps may decide to dismiss one claim, but not to dismiss the entirety of Plaintiff's case in the execution of, and in the serving of, interests of justice. Plaintiff has cited lawful requirements to which the Board of Directors (Board) of

¹ Vagueness and ambiguity by Defendant as related to make "... more certain ..." and to "... strike certain portions of the Complaint ..." must be disregarded since specificity is required, but is lacking.

Woodington Homeowners' Association, Inc. (WHOA), has not complied. Plaintiff has brought evidence showing unlawful actions by the Board which have been perpetrated upon Plaintiffs. Clearly there are genuine issues of material fact in dispute. Thus, consistent with enunciated policy of Appellate Courts, it is essential that merits of Plaintiff's case be heard. The merits, as supported by evidence, substantially outweigh all claims to dismiss.

STANDARD FOR REVIEW OF MOTION TO DISMISS

The standard based upon Rule 12(b)(6), SCRCP indicates that only in the absence of "... facts sufficient ..." can this rule be applied. Plaintiff's complaint (Complaint) cited a "Supplement to Complaint" (SUC) in paragraph 2 (p. 2), where SUC stated Facts in paragraphs 28 – 86 (pp. 19 – 44). All these Facts form a set of evidence more than sufficient to constitute a cause of action. Rule 12(b)(6) shows (excerpted, emphasis added):

RULE 12 DEFENSES AND OBJECTIONS ...

(b) How Presented. Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(6) failure to state facts sufficient to constitute a cause of action, ...

Based upon Rule 12(b)(1), SCRCP, Defendant's imagine an immaterial and irrelevant claim of "... jurisdiction ...", apparently related to "collateral estoppel" (discussed below). Jurisdiction of this Court applies per Complaint paragraph 1, which showed proof of all requirements for jurisdiction (Exhibit OP.1). Rule 12(b)(1) shows (excerpted, emphasis added):

RULE 12 DEFENSES AND OBJECTIONS ...

(b) How Presented. ...

(1) lack of jurisdiction over the subject matter, ...

STANDARD FOR REVIEW OF MOTION TO DISMISS IN FEDERAL COURT

The standard for analysis of a Motion to Dismiss in Federal Court is set forth in *Erickson v. Pardus*, 127 S. Ct. 2197, 167 L.Ed.2d 1081, 551 U.S. 89, 75 BNA USLW 3643 (2007) (*Erickson*).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Specific facts are not necessary; the statement need only " 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests.' " *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)). In [551 U.S. 94] addition, when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint. *Bell Atlantic Corp.*, *supra*, at 555 – 556, 127 S.Ct. 1955 (citing *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 508, n. 1, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002); *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989); *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974)). *Erickson v. Pardus*, 127 S. Ct. 2197, 167 L.Ed.2d 1081, 551 U.S. 89, 75 BNA USLW 3643 (2007)

The Court must take a liberal view of the pleadings, especially, as here, where the petitioner is *Pro Se*. As the Court also stated in *Erickson*:

The Court of Appeals' departure from the liberal pleading standards set forth by Rule 8(a)(2) is even more pronounced in this particular case because petitioner has been proceeding, from the litigation's outset, without counsel. A document filed *pro se* is "to be liberally construed," *Estelle*, 429 U.S., at 106, 97 S.Ct. 285, and "a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," *ibid.* (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice"). *Erickson v. Pardus*, 127 S. Ct. 2197, 167 L.Ed.2d 1081, 551 U.S. 89, 75 BNA USLW 3643 (2007)" *Ibid*

In the event that the Court may interpret MTD as translated into a motion for Summary Judgment, since Plaintiff requested a "... full and fair opportunity to complete discovery ..."

via "Motion for a Continuance to Postpone a 11/24/2020 Scheduled Hearing to Allow Discovery" dated 10/30/2020, it is Plaintiff's understanding that (excerpted, emphasis added):

Further, "[s]ummary judgment is a drastic remedy and **must not be granted until the opposing party has had a full and fair opportunity to complete discovery.**" *Dawkins v. Fields*, 354 S.C. 58, 69 (S.C., 2003)

and

Summary judgment is not appropriate where further inquiry into the facts is desirable to clarify application of the law. *Evening Post Publ'g Co. v. Berkeley County Sch. Dist.*, 392 S.C. 76, 82 (S.C., 2011)

Per the Supreme Court of South Carolina, Summary Judgment is "Premature" when (excerpted, emphasis added):

"Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Watson v. Southern Ry. Co.*, 420 F. Supp. 483, 486 (D.S.C. 1975); see also *Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E. (2d) 728, 729 (1986) ("an extreme remedy to be cautiously invoked"). This means, among other things, that **summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.** 10A Wright & Miller, *Federal Practice and Procedure* § 2741, p. 543 (1983); 6 Moore's *Federal Practice* ¶ 56.02[6], p. 56-39 (2d ed. 1990); see, e.g., *First Chicago Int'l v. United Exchange Co.*, 836 F. (2d) 1375 (D.C. Cir.1988); *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 756 F. (2d) 230 (2d Cir.1985); *Tyler v. City of Enterprise*, 521 So. (2d) 951 (Ala. 1988); *Gangadean v. Leumi Fin. Corp.*, 13 Ariz. App. 534, 478 P. (2d) 532 (1970); *Commercial Bank of Kendall v. Heiman*, 322 So. (2d) 564 (Fla. Dist. Ct. App. 1975); *Board of Education v. Van Buren & Firestone, Architects, Inc.*, 165 W. Va. 140, 267 S.E. (2d) 440 (1980); cf. Rule 56(f), S.C.R.C.P.[4]

[as cited from: *Baughman, et al. v. American Telephone and Telegraph Company, et al.*, 410 S.E.2d 537, 306 S.C. 101 (1991), Supreme Court of South Carolina.]

ARGUMENTS

MTD'S CLAIMS ARE ERRONEOUS AND/OR REFLECT MISINFORMATION

1. Defendant admits in MTD that previous cases "... are currently pending appeal." No final Order giving judgment exists for any appealed case. Defendant erroneously cites a settled

case “03758” that is immaterial and irrelevant to MTD. To clarify by showing case captions, three-appealed cases are:

- 1a) 2017-CP-23-06301: Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc., Plaintiff(s), vs. ... Board of Directors of the Woodington Homeowners' Association, Inc., ... Defendants ... “Complaint[,] Declaratory Judgment and Injunctive Relief” (Appeal 2018-001209, from involuntary nonsuit; this is the original case from which legal fees of McCabe, Trotter & Beverly, P.C. (MTB) were billed to WHOA);
- 1b) 2019-CP-23-00269: Raymond A. Wedlake, as a Member of the Woodington Homeowners' Association, Inc., Plaintiff (Pro Se), vs. ... Board of Directors of Woodington Homeowners' Association, Inc., Defendants ... “Verified Complaint for Declaratory Judgment and Injunctive Relief (non-Jury)” (Appeal 2020-000438, from Summary Judgment);
- 1c) 2019-CP-23-01501 (C1501): Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc., Plaintiff (Pro Se), vs. ... Board of Directors of Woodington Homeowners' Association, Inc., ... Defendants ... “Verified Complaint for Breach of Covenants, and Breach of Fiduciary Duty” (Appeal 2020-000506, from Summary Judgment);

where the settled, unrelated case that should not have been referenced by MTD was:

- 1d) 2018-CP-23-03758: Raymond A. Wedlake, as a Member of the Woodington Homeowners' Association, Inc., Plaintiff, vs. Kristine Lynch and Dawn Vonderbecke, and John Does & Jane Does numbers 1-10 and Doe Legal Entities numbers 1-10,

Defendants ... "Verified Complaint[,] Defamation (Slander and Libel)" (settled, unrelated).

2. Plaintiff fully expects reversal from dismissal of all-three appealed cases. Under South Carolina (SC) law, a new action may be commenced within up to "... one year after reversal", so "... cannot bring ..." is shown to be false under South Carolina (SC) Code of Laws (excerpted, emphasis added): :

SECTION 15-3-90. Effect of reversal of judgment.

If an action shall be commenced within the time prescribed therefor and a judgment therein be reversed on appeal the plaintiff or, if he die and the cause of action survive, his heirs or representative may commence a new action within one year after the reversal.

3. Plaintiff's lawsuits to date that relate to the Board are based upon questions of law as supported by genuine issues of material fact, being brought before a Court of Law, for adjudication of alleged-unlawful actions by the Board that have been perpetrated upon WHOA members (Members). Such behavior reflects no pattern that is "... designed to harass members of the different incarnations of the ... Board over past four years ...", as erroneously stated by Defendant in MTD . This being calendar year 2020, with a first-case date of 2017, Defendant erroneously exaggerates to "... four years ...". Under a preamble which begins the "Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision" (Covenants), Plaintiff has specific rights "... to prosecute any proceeding at law ..." (Exhibit OP.2).

4. Though Defendant confirms "... Plaintiff is a resident and member of the WHOA ...", they then go on to say: "... this particular lawsuit arises out of his assertion that the 2020 incarnation of the Board breached its fiduciary duty to the members ...", where the caption of

this Case 2020-CV-23-10201384 (C1384) plainly does not show "... fiduciary duty ...", but rather shows:

Breach of Contract by the Board; Plus Conspiracy by McCabe to
Extort Corporate Funds, and Casting Plaintiff in a False Light

5. Defendant admits that MTB did not represent WHOA as their client, and thus a genuine issue of material fact is related to the Board's acceptance, and payment from WHOA funds, of MTB's invoice for legal fees. MTD variously shows:

... who represented the Board in a previous lawsuit filed by the plaintiff, *C.A. No.: 2017-CP-23-06301* ... The WHOA board retained the services of the law firm of McCabe, Trotter & Beverly, P.C. to represent them in that action. The WHOA Board in that action is still being represented by the law firm of McCabe, Trotter & Beverly, P.C. in the pending appeal of that action.

6. Plaintiff has provided evidence that the action brought is a derivative action; see Figure 1: "Six Member Statements Denying Defendants as Proxy, November 9, 2018 Ballots", as attached to Complaint. Given this proven fact, then it is Defendant's erroneous statement that "... Plaintiff claims ..." that is patently absurd. This evidence, which shows six Members who support Plaintiff, and deny support for the Board, thus belies MTD's erroneous claims:

... Further, plaintiff has not provided any evidence that the action he has brought is a derivative action. ...

... Plaintiff claims to bring this complaint "on behalf of other-similarly - situated Members of Woodington Homeowners' Association, Inc." which is patently absurd. ...

7. A claim by Defendant "... ballots were counted as per Article 17, Section 3, of the Woodington HOA Bylaws ..." belies the unlawful nature of the Board's-counting action. By-Laws cannot contain provisions which are unlawful. This By-Laws-counting provision is "... inconsistent with law ..." and thus cannot be cited as a valid method to count ballots.

7a) Valid-applicable sections from SC Code of Laws, the "South Carolina Nonprofit Corporation Act of 1994" (NPCA), primarily Sections 33-31-206 and 33-31-831, were contained in the Complaint (Exhibit OP.3);

7b) The Complaint cited other violations of law by the Board in several paragraphs:

7b.1. par. 8 and 9 - Section 33-31-140 "... Approved by the members ..."

7b.2. par. 10 - Section 33-31-724. Proxies.

7c) MTD refers to the Order from C1501, which was proposed by the same Counsel who is representing the Board in C1384. Plaintiff objected to content as drafted in a proposed Order (Exhibit OP.4.1), but as a *Pro Se* party was denied the usual courtesy afforded to attorneys for objections to be considered before the draft Order was signed. Consistent with practice of this Counsel, many statements appearing in the Order, which was signed by the Judge without modification from the Proposed Order as drafted by Counsel, were not stated by the Court during the Hearing. Indeed, the only substantive-Hearing comments made by the Court are shown in Exhibit OP.4.2. Plaintiff contends that such falsification of Order content was intentional on the part of Counsel, such that an Order with false content could be quoted in future Court documents, such as MTD. During the Hearing which granted Summary Judgment, the Court made absolutely:

7c.1. no statements about, nor any reference to: "... properly counted the ballots ...";

7c.2. no statements about, nor any reference to: "... [Board] in no way breached its fiduciary duty to WHOA members. ..."

7c.3. no statements about, nor any reference to: "... [The Board] have done nothing improper, have acted in accordance with the WHOA Bylaws ..."

7c.4. no statements about, nor any reference to: "... [Board] did not violate their fiduciary duty ..."

7c.5. no statements about, nor any reference to: "... [The Board] were not in violation of the South Carolina Non-Profit Act as it pertains to the approval for the proposed ballots for indemnification and payment of legal fees."

Falsified content taken from the Order, which was not recorded as part of the Hearing as proven by the "Transcript of Record" (Exhibit OP.4.3), appears in MTD (Exhibit OP.4.4). From Plaintiff's perspective and in his opinion, such falsification of Order content is akin to prevarication.

8. Defendant with presumption makes a false claim, brought without any substantiation and without any confirming evidence, about "... genesis of ..." lawsuits. An event from 2015 was amicably resolved in 2016 and has no bearing, nor is it related in any way, to any of Plaintiff's lawsuits. Plaintiff's lawsuits cite actions and/or inaction by the Board, which are violations of WHOA By-Laws and/or SC Code of Laws. On May 30, 2016, a garage-door-paint-amicable-mutual agreement was reached between all parties (see Exhibit OP.5). Agreement date is almost more than one-year-and-five-months before a first lawsuit of October 2017. This historical timeline contradicts such-false claim, and proves it to be false, where MTD erroneously shows:

The genesis of this lawsuit and the multiple other lawsuits plaintiff has filed against the WHOA Board, stem from a 2016 dispute plaintiff had with the

WHOA Architectural Committee over a sailboat that plaintiff had painted on his garage door.

From Plaintiff's perspective and in his opinion, such-false claim is akin to prevarication.

9. Defendant with presumption makes other false claims, brought without any substantiation and without any confirming evidence, about "... ulterior purposes ..." and "... appears to be a grudge ...", where:

9a) no "... ulterior purposes ..." have been shown as supported by evidence, with only bald and unsupported contentions of opposing parties being of record;

9b) as shown and proven herein, the "grudge" claim is anachronistically incorrect;

Both claims represent irrelevant, immaterial, and scandalous matter which must be stricken from

MTD under Rule 12(f), SCRCp. MTD shows:

Through the course of these lawsuits, Defendant has used the lawsuits themselves and the judicial system and its elements for ulterior purposes, in what appears to be a grudge held against the board following a dispute with the WHOA Architectural Committee over a sailboat that the plaintiff had painted on his garage door.

From Plaintiff's perspective and in his opinion, such-false claims are akin to prevarication.

10. Defendant with presumption makes a false claim, brought without any substantiation and without any confirming evidence, about "... abuse the legal process with the filing of these frivolous lawsuits ...":

10a) Plaintiff craves evidence, where none exists so Defendant cannot produce any, that documents any semblance of Plaintiff's actions that "... abuse the legal process ...";

10b) Factually, all cases filed are based upon violation of By-Laws, or SC Code of Laws, due to actions and/or inaction of the Board. Unlawful actions perpetrated upon Members by the Board cannot be termed "frivolous". Every Board of every HOA must

operate the Association in compliance with the law. In truth, no case has been cited as frivolous and without merit, regardless of attempts by Counsel to mislead Judges by requesting imposition of “frivolous sanctions”. No sanctions were awarded.

This claim represents irrelevant, immaterial, and scandalous matter which must be stricken from MTD under Rule 12(f), SCRPC. MTD shows:

It should be noted plaintiff has continued to abuse the legal process with the continuous filing of these frivolous lawsuits.

From Plaintiff’s perspective and in his opinion, such-false claim is akin to prevarication.

11. Defendant makes false claims, brought without any substantiation and without any confirming evidence, about “... plaintiff in his complaint is asserting the same causes of action against the current Board that he did in *CA No.: 2019-CP-23-01501* ...” :

11a) No Causes of Action were stated in the complaint (CM1) for C1501 that are claimed in MTD:

11a.1. MTD claims CM1 says:

... 1) accepting the legal invoice from McCabe, Trotter & Beverly, P.C. for legal services rendered ...

but the term “legal invoice” did not appear in CM1 except as shown in the Fact section:

29. On February 2, 2018, Plaintiff repeated a demand that the legal invoice not be paid since to do so would: ...

11a.2. MTD claims CM1 says:

2) violated the WHOA bylaws and covenants by sending out ballots and the method used to subsequently count those ballots in passing an assessment to pay for the said legal fees

but the term "sending out ballots" did not appear in CM1 except as shown in the Fact section:

33. In two ballots due November 22, 2018, the Board sought to ratify such misconduct by sending out ballots to Members (Exhibits 9 and 10) asking for them to approve indemnification payments resulting from a McCabe invoice, by way of a substantial increase in dues plus an assessment of a one-time-Member fee, based on information and belief (Affidavit).

11a.3. MTD claims CM1 says:

3) allege that the Board was in violation of the South Carolina Non-Profit Act in counting the ballots pertaining to the proposed assessment vote.

but reference to "violation ... NPCA" did not appear in CM1 except as shown by two paragraphs in the Fact section:

29b) be a direct violation of indemnification specifications found in the NPCA (Exhibit 5);

42. On February 15, 2019, Plaintiff informed Defendants of a new homeowner, and they were asked to provide Plaintiff with an updated list of WHOA Members, but in direct violation of the NPCA which requires a Board to supply a Member list on request, Defendants continue to breach their duty by ignoring Plaintiff's request (Affidavit, Exhibit 14).

11b) As related to "... plaintiff in his complaint is asserting the same causes of action ...", Complaint shows nothing akin to MTD 1), 2), nor 3), as above and below, where the only potentially-related claim found in Complaint in the "Causes of Action" section was numbered paragraph 92 (see Exhibit OP.6). MTD erroneously showed:

In the instant case, plaintiff in his complaint is asserting the same causes of action against the current Board that he did in *CA No.: 2019-CP-23-01501*. Specifically, that the Board violated its fiduciary duties to the WHOA by 1) accepting the legal invoice from McCabe, Trotter & Beverly, P.C. for legal services rendered; 2) violated the WHOA bylaws and covenants by sending out ballots and the method used to subsequently count those ballots in passing an assessment to pay for the said legal fees; 3) allege that the Board was in violation of the South Carolina Non-Profit Act in counting the ballots pertaining to the proposed assessment vote.

These claims represents irrelevant, immaterial, and scandalous matter which must be stricken from MTD under Rule 12(f), SCRCF. From Plaintiff's perspective and in his opinion, such false claims are akin to prevarication.

CONSPIRACY TO EXTORT CORPORATE FUNDS

A) Plaintiff's Claims Related to the Board's Payment of Legal Fees to MTB do not Violate the Doctrine of *Res Judicata*, a Clearly Erroneous Claim

12. MTD variously makes several erroneous points related to: "... same exact claims ...", "... attempt to re-litigate ...", and "... already been decided ...". These claims clearly pertain to the Doctrine of *Res Judicata*. All these points have an intent to claim that C1384 cannot bring suit against a never-previously-cited Defendant, such as MTB. C1384 has different Causes of Actions, and seeks different relief(s) than any-prior lawsuit. Defendant cites no evidence showing that any-C1384 claim represents a "... same exact claim ...". Nor does Defendant show any evidence of "... re-litigate ..." within C1384. With their admission that cases as cited by Defendant are pending appeal, then they have already conceded that nothing has "... already been decided ...".

13. MTD misstates facts and the meaning of case precedents relative to *Res Judicata*, as articulated by Appellate Courts in South Carolina, which are clearly contrary to Defendant's assertions. The doctrine of *Res Judicata* is inapplicable in C1384. As stated in the seminal case of *Nelson v. QHG of South Carolina Inc.*, 580 S.E.2d 171, 354 S.C. 290 (2003), the Court of Appeals of South Carolina reversed and remanded granting by a circuit court of defendants' motion to dismiss, where this is shown related to *Res Judicata* (emphasis added):

"had its origin in the principle that it is in the public interest that there should be an end of litigation and that **no one should be twice sued** for the

same cause of action. First Natl. Bank v. United States Fid. & Guar. Co., 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945)”

14. Clearly, here the Defendants are different, and the basis of the Complaint includes multiple causes of action which differ from those of the prior action. Thus, not only were the claims different but the claims in C1384 seek different relief(s).

15. Rationale behind *Res Judicata* is to not try twice issues that were previously litigated. “*Res judicata* ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues.” James F. Flanagan, South Carolina Civil Procedure 642 (2d ed. 1996) (*Nelson v. OHG, infra*). Thus, there is no issue of preservation of judicial economy by virtue to C1384. Accordingly, various claims in MTD regarding *Res Judicata* must fail.

16. Several other points apply to C1384, fully substantiated by case precedents:

16a) no adjudication of the meritorious issues;

16b) the Court of Appeals of South Carolina affirmed that a final order is required (emphasis added):

... The court concluded *res judicata* did not apply because the order entered in the 1978 case was not a valid final order since the court at that time did not comply with the applicable statute and made no finding that the settlement was “a fair one, in the best interests of the minor, and it was not approved by [the court].” *Jennings v. Dargan*, 417 S.E.2d 646, 308 S.C. 317 (S.C. App. 1992)

16c) these points are fully substantiated by case precedents (see Exhibit OP.7).

B) Plaintiff's Claims Related to the Board's Payment of Legal Fees to MTB are NOT Barred by Collateral Estoppel, Which is a Claim Having No Merit

17. Since no decisions from any previous actions are known to Plaintiff, and Defendant admits Collateral Estoppel: “... prevents a party from relitigating an issue that was decided in a previous action ...”, then a claim of “re-litigating” is false. No judgments exist from the

referenced case: C1501, other than a wrongful granting of Summary Judgment against Plaintiff; see Appeal 2020-000506, where Plaintiff's Brief cites many errors of law associated with such granting. This Appeal is pending at this time. Plaintiff believes reversal of Summary Judgment will be forthcoming from the Appellate Court, which will result in a decision favorable to Plaintiff. However, no decision exists at this time.

18. The MTD argument that Collateral Estoppel applies in C1384 is not supported by evidence, facts, nor by case precedents, being clearly articulated by Appellate Courts in South Carolina, as explained in *Beall v. Doe*, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984; see Exhibit OP.8). It is abundantly clear from this black-letter precedent that claims of Collateral Estoppel do not apply, on multiple bases, under facts of C1384. The party asserting collateral estoppel must prove that they were either a party to the action, or in "privity" with such party. Neither applies in C1384. Thus this claim has no merit.

19. A **non-factual contention** that the Order in C1501 "... unequivocally found that membership of WHOA voted to indemnify the individual defendants from Case 2017-CP-23-06301 ..." was **proven false** as shown by Exhibit 13 as filed with SUC which showed on its face:

Due by Friday, November 9th

EXHIBIT 13

BALLOT #1 [Majority Vote Needed to Pass (34 of 66)]

The Association shall indemnify the 2017 Board Members ...

as **further proven false** by Complaint par. 43, and Exhibit 17 - an Affidavit attesting to **only 29 "FOR" votes cast by Members** – short of the required 34 - which showed (emphasis added):

43. A majority (34) of Member votes did not approve Ballot 1 nor Ballot 2, where in violation of the NPCA Section 33-31-831(f), the Board used assumed-Proxy votes to erroneously contend "PASSED", where **only 29 Member-votes were counted "FOR"** on Ballot 1, ... as seen in Paragraph 10 of: "Affidavit of Christopher Edwards" (Exhibit 17, p. 3, par. 10), filed in the Greenville-County-Circuit-Court-Public Index on May 21, 2019, which shows:

10. November 9, 2018 was the due date for the ballots that were sent out October 11, 2018. Forty One (41) total ballots were returned. :

- Ballot #1 (Indemnification) – PASSED
 - 53 FOR (29 returned and 24 Board Proxies)

20. A **non-factual contention** that the Order in C1501 "... further held the membership voted to pay the legal fee invoice submitted by MTB through a payment plan. ..." was similarly **proven false** as shown by Exhibit 5 as filed with SUC which showed on its face:

Due by Friday, November 9th

EXHIBIT 5

BALLOT #2 [Majority Vote Needed to Pass (34 of 66)]

Should Ballot 1 pass, the proposed payment plan shall be utilized to pay ...

as **further proven false** by Complaint par. 43, and Exhibit 17 - an Affidavit attesting to **only 32 "FOR" votes cast by Members** – short of the required 34 - which showed (emphasis added):

43. A majority (34) of Member votes did not approve Ballot 1 nor Ballot 2, where in violation of the NPCA Section 33-31-831(f), the Board used assumed-Proxy votes to erroneously contend "PASSED", where **only ... 32 Member-votes were counted "FOR"** on Ballot 2, as seen in Paragraph 10 of: "Affidavit of Christopher Edwards" (Exhibit 17, p. 3, par. 10), filed in the Greenville-County-Circuit-Court-Public Index on May 21, 2019, which shows:

10. November 9, 2018 was the due date for the ballots that were sent out October 11, 2018. Forty One (41) total ballots were returned. :

- Ballot #2 (Payment Plan) – PASSED
 - 56 FOR (32 returned and 24 Board Proxies)

21. Plaintiff contends no legal basis nor authority exists related to his Complaint that requires specification about immaterial and impertinent supposition, related to which claims are being brought against The Board individually and/or derivatively, which is also irrelevant.

22. None of Defendant's Exhibits A, B, nor C, which contain statements of dismissal, without adjudication on the merits of Plaintiff's prior cases, factually exhibit relevant nor pertinent information. Plaintiff has objected on the Court Record to the practice of Counsel writing Orders which are used as "soapboxes" for their positions, where very little akin to Order content was stated by Judges during hearings, but when thereafter the Judge simply signs the proposed Order without modification. The same facts and allegations against the Board were not brought for this C1384, which is captioned "Breach of Contract", nor for cases (as 1b and 1c):

1b) 2019-CP-23-00269: ... "Verified Complaint for Declaratory Judgment and Injunctive Relief (non-Jury)" ...;

1c) 2019-CP-23-01501: ... "Verified Complaint for Breach of Covenants, and Breach of Fiduciary Duty" ...;

Dismissal of all cases was unlawfully and wrongfully done, as is clearly apparent from Court Records, as well as reiterated in the "Record on Appeal" for appealed cases.

C) Plaintiff Possesses Standing to Bring a Derivative Suit

23. Plaintiff documented evidence showing support for him by six-other Members in Figure 1 as attached to SUC. This meets all requirements of Rule 23, SCRCP, giving Plaintiff standing to bring a derivative suit. MTD erroneously shows:

... Plaintiff has failed to meet the requirements of Rule 23, SCRCP, and therefore lacks standing to bring a derivative suit. ...

24. Plaintiff does not need to show support from all Members, nor from any-fixed number of Members to be able to state, as in the caption to C1384: "... and on behalf of other-similarly-

situated Members ...”. MTD erroneously shows:

... Plaintiff does not fairly and adequately represent the members of the Woodington Homeowners’ Association, Inc., ...

25. Plaintiff exhaustively has documented evidence in SUC and its Exhibits, which shows no support for the Board from a majority of Members. All recent ballot results lack approval from a majority of Members, to which Defendants themselves admit as Plaintiff has documented. In violation of NPCA Section 33-31-831(f), the Board – not the Members – voted to “overwhelmingly” approve recent ballots. MTD erroneously shows:

... Notably, the members of Woodington Homeowners’ Association, Inc. voted overwhelmingly to ratify many of the issues alleged by Plaintiff in this suit, and such ratification being noted and identified in plaintiff’s Complaint.

Defendants deny documented evidence with their-false claim of “... such ratification being noted and identified in plaintiff’s Complaint. ...” From Plaintiff’s perspective and in his opinion, such-false claim is akin to prevarication.

26. The fact that the Board has continuously acted to smear Plaintiff, and thus to brainwash other Members into thinking that Plaintiff is an enemy who acts against the lawful operation of WHOA, is the reason that the Board engaged a law firm and convinced other Members to act as Plaintiffs. Indeed upon query from Plaintiff, the Board facetiously said they “... know nothing ...” about the class-action lawsuit. There is little chance that such suit can qualify as a class action and become certified. This suit is not certified at this time. MTD erroneously shows:

... In fact, a class action suit has been brought against the plaintiff by members of the WHOA, entitled: Beverly Taylor, Marvin Taylor and Ada Alvarez, individually and on behalf of all similarly situated individuals v. Raymond Wedlake, C.A. No.: 2020-CP-23-01458.

As such, the bringing of a suit against Plaintiff is irrelevant, immaterial, and scandalous matter which must be stricken from MTD pursuant to Rule 12(f), SCRCF.

27. No non-factual contentions, nor any contentions which are prevarications, should lead to dismissal of Plaintiff's claims related to the Board's-allegedly-unlawful payment of legal fees.

CONCLUSION

THEREFORE, for reasons stated herein, Defendant's MTD must be **DENIED**.

Additionally, Plaintiff asserts that his underlying case has validity, and merit, and asks the Court to appreciate that alleged-unlawful actions perpetrated by the Board upon Members must not be allowed to continue. Plaintiff contends that all claimed grounds for dismissal are unfounded, and further MTD must be considered as a "Motion to Dismiss in Part". Plaintiff has cited lawful requirements to which the Board has not complied, and brought evidence showing unlawful actions by the Board, which have been perpetrated upon Plaintiffs.

The moving party with their MTD makes no statement about being entitled to a judgment as a matter of law. In this "Memorandum in Opposition ...", Plaintiff raises many genuine issues as to material fact that are in dispute. Black-letter precedents as enunciated by Appellate Courts of South Carolina, relative to claims of *Res Judicata* and Collateral Estoppel, make clear these grounds are without merit, under documented evidence and facts, for C1384.

Court policy in South Carolina is to permit liberal reading and construction of pleadings to permit claims to be addressed on their merits, and policy further supports the clear conclusion that this Court must **DENY** Defendant's MTD.

Dated this 16th day of November, 2020.

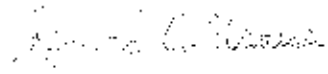

Raymond A. Wedlake, Plaintiff (*Pro Se*)
703 Creekview Drive, Greenville, SC 29607
864-254-9262 wedlakera@gmail.com

Exhibit OPJ - Proof of all requirements for jurisdiction (excerpts from Complaint)

1. All of the Board of Directors (Board) of Woodington Homeowners' Association, Inc. (WHOA), reside in Greenville County, and I believe the defendant: McCabe, Trotter & Beverly, P.C. (McCabe), practices law in Greenville County, which is within the Judge's magisterial jurisdiction and this Complaint is properly filed in Greenville County at address: Clerk of Magistrate's Court, 205 North Maple Street. # 4, Simpsonville, SC 29681, pursuant to Rule 4, SCRMC, which says:

(a) A civil action may be filed in any magistrates court in the county in which at least one defendant resides or where the most substantial part of the cause of action arose, except that civil actions against domestic corporations may be filed in the county where such corporation shall have its principal place of business.

and also comes under the jurisdiction of this Court as stated by the South Carolina (SC) Code of Laws, "HOA Act" :

SECTION 27-30-160. Jurisdiction of magistrates court.

Pursuant to Section 22-3-10, the magistrates court shall have concurrent jurisdiction to adjudicate monetary disputes arising under this article, provided the dispute meets the jurisdictional requirements of Section 22-3-10.

where Section 22-3-10 affirms jurisdiction of this Court:

SECTION 22-3-10. Concurrent civil jurisdiction. [as excerpted]

Magistrates have concurrent civil jurisdiction in the following cases:

(1) in actions arising on contracts for the recovery of money only, if the sum claimed does not exceed seven thousand five hundred dollars;

(11) in any action to recover the possession of personal property claimed, the value of which, as stated in the affidavit of the plaintiff, his agent, or attorney, does not exceed the sum of seven thousand five hundred dollars;

Exhibit OP.2

Preamble which begins the "Declaration of Covenants,
Conditions and Restrictions for Woodington Subdivision" (Covenants)
(excerpted from "Supplement to Complaint")

2. Plaintiff is a law-abiding citizen, and expects the Board to act in a law-abiding manner. When they perpetrate unlawful actions upon Members, Plaintiff has specific-Covenants-given authority to: "... prosecute any proceeding at law or in equity against the person or persons violating ...", as stated in the Covenants (p. 913) (emphasis added):

... If the undersigned, its successors or assigns, or any owner of any lot, their heirs or assigns, **should violate** or attempt to violate any of the covenants, conditions and restrictions herein contained, it **shall be lawful for any person or persons owning any of the real estate described above to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate same, to either prevent his or them from so doing, or to recover damages for such violations, ...**

Exhibit OP.3

Valid-applicable sections from SC Code of Laws, from the
"South Carolina Nonprofit Corporation Act of 1994" (NPCA)
(excerpted from "Supplement to Complaint")

7. By-Laws cannot be used to overrule the law as stated by the NPCA (emphasis added):

SECTION 33-31-206. Bylaws.

(a) The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.

(b) The **bylaws may contain any provision** for regulating and managing the affairs of the corporation that is **not inconsistent with law** or the articles of incorporation.

Plaintiff claims that the counting method as specified in By-Laws, Article XVII, Section 3, is an error of law pursuant to NPCA Section 33-31-206, because this By-Laws provision is "inconsistent with law", and thus must be deemed null and void.

11. Per NPCA Section 33-31-831, the Board cannot use their control for ballots not voted by Members, which nullifies "Board Proxies" as voted to claim "PASSED". The NPCA is specific in its statement that: "... voted under the control of a director ... may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (c)(2)" where excerpts from the NPCA show (emphasis added):

SECTION 33-31-831. Director conflict of interest.

(a) A **conflict of interest transaction** is a transaction with the corporation in which a **director** of the corporation has a **direct** or indirect **interest**. A conflict of interest transaction is not voidable [f]or [on] the basis for imposing liability on the director if the transaction was fair to the corporation at the time it was entered ...

(c) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if:

(2) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

(f) For purposes of subsection (c)(2), a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a **majority** of the votes entitled to be counted under this subsection. **Votes cast** by or voted under the control of a **director** who has a **direct** or indirect **interest** in the transaction, ... may **not** be counted in a vote of members to **determine whether to authorize, approve, or ratify a conflict of interest transaction** under subsection (c)(2). ...

and therefore the By-Laws provision which allows: "... Ballots of Members not returned by the specified return date shall be voted by the Board. ...", is "inconsistent with law", and must be cited as null and void (emphasis added):

ARTICLE XVII - AMENDMENTS AND VOTING

Section 3: Any and all issues may be resolved per the simple majority result of vote by ballot by all Association Members. The Board Secretary shall deliver a ballot to every Member, with a specified return date determined by the Board. The return date shall be no earlier than twenty-one (21) days from date of delivery. The voting period shall include at least three Saturdays, and three Sundays, where end of the voting period shall be neither Saturday nor Sunday. **Ballots of Members not returned by the specified return date shall be voted by the Board.** The Board's vote for non-returned ballots shall be clearly specified on ballots at the time they are delivered to Members.

EXHIBIT OP.4.1 - Appellant Objected to the Proposed Order,
but was not Given Time to Respond

From: "Ray Wedlake" <wedlakera@mail.com>
To: emillersc@sccourts.org
Cc: mmurphy@clarksonwalsh.com, larmstrong@clarksonwalsh.com, sgray@clarksonwalsh.com
Subject: RE: Proposed Order for 2019-CP-23-01501 - Summary Judgment
Date: Tue, 10 Mar 2020 23:31:25

Dear Honorable Judge Miller:

Please recall my "Notice of Unavailability" which was filed in the Public Index on February 4, 2020, also recalling that unavailability is due to "Community Service" as I volunteer as a Tax-Aide Counselor to help individuals prepare and electronically file their United States and South Carolina tax returns. This week, I am committed to a Tax-Aide site on all remaining days (including Saturday).

Would you be so kind, please, to defer issuing the Proposed Order (PO) until sometime next week? I would like to have, and to take, the time to suggest a Plaintiff's version for a PO. My initial reaction to the non-judicial content of the PO is that it is totally absurd, and totally inappropriate as a Circuit-Court Order. The PO is basically a recitation, in some cases verbatim, of their "... Memorandum in Support of Their Motion for Summary Judgment". Other initial reactions to the PO are appended.

Thank you.

Cheers wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Never let failure get to your heart !!
Stop organized crime. Re-elect no one !

----- Original Message -----

Sent: Tuesday, March 10, 2020 at 1:33 PM
From: "Stephanie Gray" <sgray@clarksonwalsh.com>
To: "emillersc@sccourts.org" <emillersc@sccourts.org>
Cc: "Ray Wedlake" <wedlakera@mail.com>, "Michael Murphy" <mmurphy@clarksonwalsh.com>, "Lisa Ledbetter" <larmstrong@clarksonwalsh.com>
Subject: 2019-CP-23-01501; Wedlake v. Bashor

Good afternoon,

Please find the attached Proposed Order Granting Defendants' Motion for Summary Judgment. I have included Mr. Wedlake on this email as well.

Thank you kindly,

Stephanie Gray
Legal Assistant
sgray@clarksonwalsh.com
Direct: 864.720.1998

1164A Woodruff Road | Greenville, SC 29607
P.O. Box 6728 | Greenville, SC 29606
Office: 864.232.4400 | Fax: 864.235.4399
www.clarksonwalsh.com

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----- Appendix -----

The Proposed Oder contains content which is:

- > irrelevant and definitely inappropriate for a court's order
- > neither accurate nor germane to the issues presented, and therefore should be stricken
- > unnecessary and incomplete in any event, and therefore should be stricken
- > not reflective of a judicial viewpoint nor proper judicial objectivity
- > not reflective of the fact that there were multiple disputes of material fact
- > presenting and raising questions of material fact
- > conclusionary as in a trial setting, which is not appropriate for a finding of summary judgment
- > in dispute by Plaintiff, who presented well-articulated argument based upon statute, yet his argument was not addressed at the Hearing, nor is it noted in this proposed order

Exhibit OP.4.2

Content found in the Order was not stated by the Court during the Hearing

The only-substantive-Hearing comments made by the Court were:

[Transcript Page] 13

15 **THE COURT:** So if I understand you correctly that these
16 attorney's fees -- these attorney's fees that were incurred to
17 defend your lawsuits, you're saying it's your position that
18 the board should have just rolled over and let you win your
19 lawsuits. I'm not asking for a response.
20 I would suggest -- you're a very studious individual.
21 And I think I've told you before that we welcome pro se
22 litigants. But we hold them to the same standards as we do
23 attorneys. And I suggest that you review Rule 11 with respect
24 to sanctions for pleadings or lawsuits that are -- have no
25 valid basis or merit.

[Transcript Page] 14

1 Having said that, I am going to grant the motion for
2 Summary judgment. I'm going to request that counsel prepare
3 an order to reflect the arguments presented today. All right?

EXHIBIT OP.4.3

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

RAYMOND A. WEDLAKE,
ET AL.

PLAINTIFF,

-VS-

SCOTT BASHOR,
ET AL.

DEFENDANT.

2019-CP-23-01501

TRANSCRIPT OF RECORD

FEBRUARY 27, 2020
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

PRO SE

ATTORNEY FOR DEFENDANT:

P. CHRISTOPHER SMITH, JR., ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

CERTIFICATE OF REPORTER

15

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

(No exhibits were presented to the court reporter to mark during this hearing)

1 **MR. SMITH:** Chris Smith here for the Defendants, Your
2 Honor. It's our motion for summary judgment. This case is
3 similar to several others I have where I feel like individuals
4 on the other side should put a sign in their yard, move away,
5 and get away from any neighborhood that has a homeowners
6 association.

7 This one appears to have started over a red sailboat that
8 kind of looks like a Jack-o-lantern, I'm told, and a fine over
9 that. He got fired up, started filing lawsuits. Several
10 lawsuits, several years go by.

11 The attorneys representing our clients on those, some of
12 whom are with me here today, incurred fifty-six thousand
13 dollars and some change in legal fees through the McCabe
14 Trotter Law Firm as a result of defending his suits. And now
15 this current suit is challenging the Board's decision through
16 the community to pay the legal fees they incurred from
17 fighting his suit. So he's causing them to incur more legal
18 fees to fight this suit. And at some point it's just got to
19 stop and he's got to quit filing suits.

20 But we're here today, and I'm arguing that, number one,
21 it's not a properly filed derivative suit. He's not filing
22 this on behalf of the members of the association even though
23 he says he's filing as a member of the association. This is
24 in his individual capacity. It's not any type of derivative
25 suit, number one.

1 Number two, he's suing the individually named board
2 members. And they're insulated from liability and aren't
3 proper Defendants in this case.

4 And separately the bylaws that he appears to be
5 challenging through his lawsuit, which I think started with an
6 attorney before attorney withdrew as counsel, were actually
7 adopted when he was a board member many years ago. And the
8 notice was proper. The votes were proper. And the decisions
9 were made to pay these legal fees which were incurred because
10 of his conduct. And I say there's no issue of fact, Judge,
11 and this case should be dismissed.

12 **THE COURT:** Okay. Your turn, Mr. Wedlake.

13 **MR. WEDLAKE:** Before I begin, Your Honor, filed February
14 24th was my memorandum in opposition to Defendant's motion for
15 summary judgment. I'd like to request that document be
16 recognized in its entirety as part of the court record for
17 this hearing.

18 **THE COURT:** Mr. Wedlake, did you file it with the clerk's
19 office?

20 **MR. WEDLAKE:** It is filed in the public index, sir, ---

21 **THE COURT:** There you go. Okay.

22 **MR. WEDLAKE:** --- February 24th.

23 **THE COURT:** Point for you.

24 **MR. WEDLAKE:** And similarly I had filed on February 20th.
25 and it is in the public index, a motion for clarification and

1 requesting a stay of hearing for this motion for summary
2 judgment. I would also request that that be entered into its
3 entirety as part of the court record in this hearing.

4 **THE COURT:** Mr. Wedlake, if you file it, it's part of the
5 court record. Okay? So your motion is unnecessary. Go
6 ahead.

7 **MR. WEDLAKE:** That wasn't the case in the referenced case
8 that counsel had just cited where involuntary non-suit was
9 granted against me where that case was merely declaratory
10 judgment ---

11 **THE COURT:** We're not here to argue some other case, Mr.
12 Wedlake. Let's get ---

13 **MR. WEDLAKE:** That's correct, ---

14 **THE COURT:** --- to the points ---

15 **MR. WEDLAKE:** --- sir, but that's why I was ---

16 **THE COURT:** Mr. Wedlake, ---

17 **MR. WEDLAKE:** --- confused ---

18 **THE COURT:** Mr. Wedlake, don't interrupt me. I won't
19 interrupt you, so don't interrupt me. Okay? We're not going
20 to argue the other case. Respond to this motion for summary
21 judgment. Thank you.

22 **MR. WEDLAKE:** I'll just make some kind of highlight
23 comments from my memorandum in opposition. My understanding
24 is the standard is that the court shall only grant summary
25 judgment if there's no genuine issues as to any material fact.

1 That's item 1 on page 1.

2 And I put in a header for a number 2 in following that
3 there are genuine issues of material facts. Number 2, the
4 bare statement that they did not have any breach of their duty
5 in this case is wholly inadequate. I have a complaint which
6 was filed on March 23rd, 2019 which substantiated specific
7 statements of violations and supported by exhibits and
8 affidavits.

9 Number 3, I would point out that discovery has not been
10 completed and mediation has not occurred in this case, which
11 is in violation of the ADR 300 day from filing deadline. So
12 the motion is premature.

13 On page 3 I summarize item 5(b). The board really did
14 not address the elements required for a motion in summary
15 judgment. And looking down that page, item (a), the reference
16 to the bylaws cannot be used in this manner since they --
17 board had created new empowerment that they gave themselves
18 with what they did with the bylaws, which is contrary to the
19 restrictive covenants. So additionally the bylaws are invalid
20 because they are inconsistent with -- with the law.

21 The bottom of paragraph -- on page 3, the Non-profit
22 Corporation Act, section 33-31-140 defines approved by the
23 members and also states that a board cannot act to vote as
24 proxy for non-voting members and then also to claim that there
25 was member approval associated with that.

1 And on page 4, item (f) as quoted from an exhibit in the
2 referenced ballot, only 41 total ballots were returned, which
3 did not meet a requirement of 50 ballots for a bylaws
4 amendment to be valid.

5 Item 6(a), issues of law that may have been stated by
6 counsel are not appropriate for a motion for summary judgment.
7 They should rather have been put into a motion to dismiss and,
8 therefore, Defendants have filed the wrong motion.

9 And, again, the proper standard that was cited earlier as
10 per the South Carolina Supreme Court and the addition to that
11 is that all inferences which can reasonably be drawn therefrom
12 must be viewed in the light most favorable to the non-moving
13 party, which would be me, the Plaintiff.

14 In item 8 I cite again my complaint. And we had
15 statements of facts, paragraph 19 through 46, which showed
16 actionable negligence due to breach of fiduciary duty. And
17 ---

18 **THE COURT:** What are those acts of negligence?

19 **MR. WEDLAKE:** Particularly over to page 4 and 5 I've
20 cited selected paragraphs from the complaint. Number 29 where
21 I repeated a demand that the legal invoice referred to by
22 counsel not be paid. And also items 35 -- particularly items
23 35 -- paragraph 35, 42, 43 and 44. I won't bother reading
24 them all on page 5.

25 And the additional things that may become pertinent once

1 I've finished speaking here, they claim a lawsuit cannot be
2 brought against a board. In exhibit 3 of this memorandum in
3 opposition it shows that throughout history many cases have
4 been brought against a board of directors.

5 Before -- paragraph 12, a lawsuit must be brought against
6 WHOA. Again, I don't think that's correct as stated
7 previously in another hearing, which would lead -- because it
8 would lead to self-incrimination of myself because I am a
9 member of the association, which is prohibited by the
10 Constitution of the United States.

11 The thing that keeps coming up is this wrong party
12 argument. So on number 13, specifically 13(a) on page 6 I
13 cite section 33-31 140 of the Non-profit Corporation Act,
14 which defines the board of directors as the individuals vested
15 with overall management of affairs of the domestic or foreign
16 corporation, particularly irrespective of the name by which
17 the individual or individuals are designated.

18 And similarly a motion to dismiss on the same wrong party
19 argument of not being the proper party was denied on January
20 3rd, 2019 by this Court in the case that was referenced by
21 counsel.

22 On page 7 the immunity from suit issue, item 15(a), the
23 Non-profit Corporation Act, section 33 31 834(a) shows,
24 eliminating the first few sentences, nothing in this section
25 may be construed to grant immunity to the not-for-profit

1 cooperatives, corporations, associations, or organizations.

2 Item 15(b), it is further clarified in section 834(b)
3 that the tax -- a tax exempt status is required before
4 immunity from suit applies, specifically (b)(2) not-for-profit
5 corporations, associations, or organizations as recognized in
6 and exempted from taxation under federal income tax code
7 section 501(c)(3)(c)(6) or (c)(12).

8 And item 15(c), the homeowners association does not
9 possess and can never possess any of the required tax exempt
10 classifications to qualify for immunity from suit. And I've
11 also cited figure 1 of this document which is a statement from
12 an officer of the court as disclosed on October 31, 2019 which
13 shows in particular although the HOA is a non-profit and we
14 believe the HOA is eligible to file for tax classification
15 under 501(c)(3), (6) or (12) the HOA has not made the requisite
16 tax filings at this point.

17 And my understanding is -- and I have another exhibit,
18 exhibit 6 attached to this document that the tax exempt status
19 of 501(c)(3) is reserved for charitable organizations whereas
20 Woodington Homeowners Association is a mutual benefit non-
21 profit corporation where I would highlight that in exhibit 6
22 that reference shows an association would not qualify if its
23 principal activities consist of securing benefits and
24 performing particular services for members.

25 So basically that's a summary of my memorandum in

1 opposition. I have other points in my motion to clarify and
2 stay, which I will go in -- go into if so desired by the
3 Court.

4 **THE COURT:** . Okay.

5 **MR. WEDLAKE:** Okay. Do you desire that I hit some other
6 highlights?

7 **THE COURT:** No, I don't.

8 **MR. WEDLAKE:** All right. Thank you.

9 **THE COURT:** All right.

10 **MR. SMITH:** Very briefly, Your Honor. No evidence has
11 been supported to create even a mere scintilla of evidence in
12 this case. And it's his own attorney's fees that he caused
13 the association to incur that he's now saying they shouldn't
14 pay which would have caused that law firm to then file a
15 lawsuit against the community causing even more harm, which is
16 just absurd.

17 And he's suing the individual members in their individual
18 capacity, which is not proper in this case. And quite
19 honestly, his assessment -- I understand his individual
20 portion of what would have been assessed out of that fifty-
21 three thousand, six hundred, eighty-four dollars and fifty
22 cents (\$53,684.50) was only a few hundred dollars. So he's
23 just doing this out of spite and out of further harm to the
24 community.

25 And his suit's not properly filed. He has not properly

1 filed a derivative suit. And this case should be dismissed.

2 Thank you.

3 **THE COURT:** Okay. There haven't been any motion for Rule
4 11 sanctions or anything like that?

5 **MR. SMITH:** No, Your Honor. It's my understanding the
6 community has taken steps to make further amendments to try to
7 head this off going forward to give remedies for attorney's
8 fees to actually pursue him under contract and under the
9 bylaws for future actions.

10 **THE COURT:** Okay.

11 **MR. SMITH:** But I've got to talk with my clients. Those
12 type motions may be forthcoming, Your Honor.

13 **THE COURT:** Okay.

14 **MR. WEDLAKE:** May I speak again, please, Your Honor?

15 **THE COURT:** Briefly.

16 **MR. WEDLAKE:** No attorney's fees have been imposed by me
17 on any member of this association. The reference to my
18 lawsuits, although valid, all those costs have been incurred
19 by the board. And, again, the case cited by defense counsel
20 was for declaratory judgment. There's absolutely no need for
21 the board to have brought in attorneys and/or incurred any
22 legal fees whatsoever.

23 Furthermore, all of my cases have been brought for one
24 dollar in nominal damages. So the fact that the board had
25 decided that they were going to fight against questions that

1 were just about, look, here's what the bylaws say, I say they
2 mean this, you say they mean that, that was utterly absurd and
3 was indeed wilful, wanton and gross negligence on their part
4 to run up, which in addition to the fees claimed by defense
5 counsel, they have actually now totaled up to about one
6 hundred thirty thousand dollars (\$130,000.00) against my case
7 where three dollars (\$3.00) were asked for the Court to award
8 to me.

9 Again, no attorney's fees whatever have been imposed by
10 me upon the members of the association. Those fees represent
11 responsibility of the board in their wrongful actions to defer
12 resolutions of disputes which would help improve the
13 association and help everyone to move forward and to put this
14 behind us.

15 **THE COURT:** So if I understand you correctly that these
16 attorney's fees -- these attorney's fees that were incurred to
17 defend your lawsuits, you're saying it's your position that
18 the board should have just rolled over and let you win your
19 lawsuits. I'm not asking for a response.

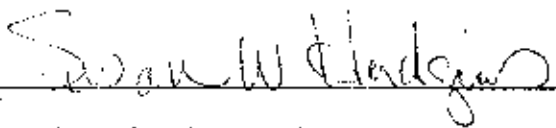
20 I would suggest -- you're a very studious individual.
21 And I think I've told you before that we welcome pro se
22 litigants. But we hold them to the same standards as we do
23 attorneys. And I suggest that you review Rule 11 with respect
24 to sanctions for pleadings or lawsuits that are -- have no
25 valid basis or merit.

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 27th day of February 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 9, 2020



Circuit Court Reporter

Exhibit OP.4.4

Falsified content taken from the Order appears in "... Motion to Dismiss"

- [The Board] properly counted the ballots both returned and not returned in accordance with the HOA Bylaws, and in no way breached its fiduciary duty to WHOA members."
- "Based on the plain language of the Bylaws, it appears that [the Board] acted in accordance with the WHOA Bylaws."
- [The Board] have done nothing improper, have acted in accordance with the WHOA Bylaws, and did not violate their fiduciary duty to its members."
- [The Board] were not in violation of the South Carolina Non-Profit Act as it pertains to the approval for the proposed ballots for indemnification and payment of legal fees."

EXHIBIT OP.5 - Amicable Agreement, May 2016

May 30, 2016

Mr. Ray Wedlake
703 Creekview Dr.
Greenville, SC 29607

Subject: Garage Door Paint

Dear Ray:

The Woodington Homeowners Association Board of Directors and the Architectural Committee reviewed your email of May 8th. In this email you describe three options for painting your garage door; 1) all red, 2) a checkerboard design, and 3) a two-color red and white design similar to the garage door at 307 Woodington Drive. You stated your preferred option is number 3. The Board of Directors and Architectural Committee concluded that option 3 is an acceptable paint design for the garage door.

Please prepare a Request For Architectural Improvement Form describing your request to paint your garage door in this manner. This is our normal procedure and allows us to maintain a record of such requests in our files. You should have received one of these forms recently. Please provide a paper copy of the Request Form to George Padgett at 305 Woodington Drive by Monday, June 6, 2016. If you prefer you may provide the Request to any member of the Board of Directors.

Thank you for your suggested solutions to this issue. We assure you we will process your request quickly.

Sincerely,
The Woodington Board
The Woodington Architectural Committee

Exhibit OP.6

The only potentially-related claim found in the "Causes of Action" section
(as excerpted from "Supplement to Complaint")

CAUSES OF ACTION

92. McCabe admitted that WHOA was not their client, and WHOA by McCabe's own admissions was "... never a party ...", but yet violated their "South Carolina Lawyer's Oath" (Exhibit 46) which shows (emphasis added):

I will respect and preserve inviolate the confidences of my clients, and
will **accept no compensation** in connection with a client's business
except from the client or with the client's knowledge and approval;

by sending an invoice to WHOA, to whom they provided no legal services as related to their defense of 2017-Board-members in Case [2017-CP-23-06301]. Thus, Plaintiff suggests this Court find McCabe's bill to WHOA was illegitimate, so funds paid to McCabe to date from WHOA are properly held in escrow at this time until after resolution of pending Appeal 2018-001209.

Exhibit OP.7

Plaintiff's points are fully substantiated by case precedents

The assertion of *res judicata* does not properly defend against a direct action to set aside a judgment. In *Cathcart v. Hopkins*, 119 S.C. 190, 207, 112 S.E. 64, 69-70 (1922), the Court stated the premise upon which the doctrine of *res judicata* rests:

"[A] fact which has been directly tried and decided by a Court of competent jurisdiction cannot be contested again between the same parties in the same or any other Court, and ... where some controlling fact or question material to the determination of both actions has been determined in a former suit, and the same fact [or] question is again at issue between the same parties, its adjudication in the first will, if properly presented, be conclusive of the same question in the latter suit, without regard to whether the cause of action is the same or [284 S.C. 490] not, or whether the second suit involves the same or a different subject-matter, or whether or not [it] is in the same form of proceeding A matter ... which has been solemnly adjudicated by a Court of competent jurisdiction, must, in subsequent litigation between the same parties, where the same question or questions arise, be deemed to have been finally and conclusively settled, except where the litigation is a direct proceeding for the purpose of reversing or setting aside such adjudication." 15 R.C.L. tit. Judgments, Section 450. [emphasis added]

...
[as excerpted from *Anderson v. Anderson*, 327 S.E.2d 355, 284 S.C. 487 (S.C. App. 1984)]

A case that is dismissed 'with prejudice' indicates an adjudication on the merits and, pursuant to *res judicata*, prohibits subsequent litigation to the same extent as if the action had been tried to a final adjudication."

Nelson v. QHG of S.C., Inc., 354 S.C. 290, 311, 580 S.E.2d 171, 182 (Ct.App.2003).

[as excerpted from *Rim Associates v. Blackwell*, 359 S.C. 170, 597 S.E.2d 152 (S.C. App. 2004)]

... Moreover, [Greenville] Hospital System failed to prove, (1) identity of the parties; (2) identity of the subject matter; and (3) a final judgment in the former suit on the merits. All of which are necessary elements in order to invoke the doctrine of *res judicata*. See: *Wold* [276 S.C. 320] v. *Funderburg*, 250 S.C. 205, 157 S.E.2d 180 (1967). [as excerpted from *John D. Hollingsworth on Wheels, Inc. v. Greenville County Treasurer*, 278 S.E.2d 340, 276 S.C. 314 (S.C. 1981)]

Exhibit OP.8

The "... Motion to Dismiss" argument that Collateral Estoppel applies in 2020-CV-23-10201384 is **not** supported by evidence, facts, nor by case precedents

Beall v. Doe, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984)

The doctrines of *res judicata* and **collateral estoppel** are ... two different concepts. A **final judgment on the merits** in a prior action will **conclude the parties and their privies** under the doctrine of *res judicata* in a **second action based on the same claim as to issues actually litigated** and as to issues which might have been litigated in the first action. Under the doctrine of **collateral estoppel**, ... the **second action is based upon a different claim** and the **judgment in the first action precludes relitigation of only those issues actually and necessarily litigated and determined** in the first suit. *Id.* at 369 n.1, 315 S.E.2d at 190 n.1.

Under the doctrine of **collateral estoppel**, once a **final judgment on the merits** has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim.

The factors to consider in determining whether the defense of collateral estoppel exists and whether the issues were actually litigated in the first suit include: [a] whether privity exists, [b] whether the doctrine is used offensively or defensively, and [c] whether the party adversely affected had a full and fair opportunity to litigate the relevant issue effectively in the prior action. *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). The party asserting collateral estoppel **must prove** that the issue was actually **litigated and directly determined** in the prior action and that the matter or fact directly in issue was **necessary to support the first judgment**. *Carrigg v. Cannon*, 347 S.C. 75, 552 S.E.2d 767 (Ct. App. 2001); *Beall v. Doe*, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984). **Only a party to a prior action or one in privity with the party can be precluded from relitigating an issue on the basis of offensive collateral estoppel.** *Carrigg*, 347 S.C. at 80, 552 S.E.2d at 770.

ATTACHMENT IB.8 - Opposition to Motion to Dismiss - State Farm

STATE OF SOUTH CAROLINA	)	
	)	2020-CV-23-10201384
COUNTY OF GREENVILLE	)	
	)	CIVIL CASE NUMBER
Raymond A. Wedlake, as a Member of	)	
Woodington Homeowners' Association, Inc.	)	IN THE MAGISTRATE'S COURT
and on behalf of other-similarly-situated Members	)	
of Woodington Homeowners' Association, Inc.	)	
PLAINTIFFS	)	MEMORANDUM IN OPPOSITION
VS.	)	
	)	TO
Board of Directors of Woodington Homeowners'	)	
Association, Inc., comprised of Mona Craigo,	)	STATE FARM
Edward Decker, and Sandra LaCroix at the time	)	
of filing	)	FIRE AND CASUALTY COMPANY'S
AND	)	
	)	NOTICE OF MOTION
McCabe, Trotter & Beverly, P.C.	)	
AND	)	AND
	)	
State Farm Fire and Casualty Company	)	MOTION TO DISMISS
DEFENDANTS	)	

COMES NOW Raymond A. Wedlake, Plaintiff (Pro Se), and brings this "Memorandum in Opposition to State Farm Fire and Casualty Company's Notice of Motion and Motion to Dismiss", stating as follows.

Acceptance by the Court of "... Motion to Dismiss" (MTD) by State Farm (SF) necessitated this "Memorandum in Opposition ..." (MOP). It is clear from MOP content, as supported by facts of this Case, that all claimed grounds for dismissal are unfounded. Further, MTD must be considered as a "Motion for Dismissal in Part". Where there are multiple causes of action, as here, as the Court is well aware, a motion for dismissal should not be viewed as an "all or nothing" disposition. The Court perhaps may decide to dismiss one claim, but not to dismiss the entirety of Plaintiff's case against SF in the execution of, and in the serving of, the interests of

justice. Plaintiff has cited lawful requirements to which SF has not complied.

Multiple-Genuine Issues of Material Fact Exist and are in Dispute

Plaintiff has brought evidence, for example, showing Breach of Contract by SF, which they deny, that has been perpetrated upon Woodington Homeowners' Association, Inc. (WHOA), members (Members) who are Plaintiffs, which SF denies. Thus, consistent with enunciated policy of Appellate Courts, it is essential that merits of Plaintiff's case against SF be heard. The merits, as supported by evidence, substantially outweigh all claims to dismiss.

By reference, Plaintiff includes his original "Complaint Breach of Contract by the Board; Plus Conspiracy by McCabe to Extort Corporate Funds, and Casting Plaintiff in a False Light", along with its "Supplement to Complaint" (Complaint Plus Supplement, CPS), along with its supporting Exhibits and Affidavit, as well as his "First Amended Complaint" (FAC), in their entirety.

STANDARD FOR REVIEW OF MOTION TO DISMISS

The standard based upon Rule 12(b)(6), SCRCF indicates that only in the absence of "... facts sufficient ..." can this rule be applied. Plaintiff's FAC cited "Facts / Breach of Contract by SF" in paragraphs 4 – 10 (pp. 3 – 6). Plaintiff's FAC cited "Causes of Action" in paragraphs 25 – 29 (pp. 12 – 13). All these Facts form a set of evidence more than sufficient to constitute causes of action as cited. Rule 12(b)(6) shows (excerpted, emphasis added):

RULE 12 DEFENSES AND OBJECTIONS ...

(b) How Presented. Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(6) failure to state facts sufficient to constitute a cause of action, ...

STANDARD FOR REVIEW OF MOTION TO DISMISS IN FEDERAL COURT

The standard for analysis of a Motion to Dismiss in Federal Court is set forth in *Erickson v. Pardus*, 127 S. Ct. 2197, 167 L.Ed.2d 1081, 551 U.S. 89, 75 BNA USLW 3643 (2007) (*Erickson*).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Specific facts are not necessary; the statement need only “ ‘give the defendant fair notice of what the ... claim is and the grounds upon which it rests.’ ” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)). In [551 U.S. 94] addition, when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint. *Bell Atlantic Corp.*, *supra*, at 555 – 556, 127 S.Ct. 1955 (citing *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 508, n. 1, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002); *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989); *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974)). *Erickson v. Pardus*, 127 S. Ct. 2197, 167 L.Ed.2d 1081, 551 U.S. 89, 75 BNA USLW 3643 (2007)

The Court must take a liberal view of the pleadings, especially, as here, where the petitioner is *Pro Se*. As the Court also stated in *Erickson*:

The Court of Appeals' departure from the liberal pleading standards set forth by Rule 8(a)(2) is even more pronounced in this particular case because petitioner has been proceeding, from the litigation's outset, without counsel. A document filed *pro se* is “to be liberally construed,” *Estelle*, 429 U.S., at 106, 97 S.Ct. 285, and “a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers,” *ibid.* (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) (“All pleadings shall be so construed as to do substantial justice”). *Erickson v. Pardus*, 127 S. Ct. 2197, 167 L.Ed.2d 1081, 551 U.S. 89, 75 BNA USLW 3643 (2007)” *Ibid*

In the event that the Court may interpret MTD as translated into a motion for Summary Judgment, since Plaintiff requested a “... full and fair opportunity to complete discovery ...” via “Motion for a Continuance to Postpone a 11/24/2020 Scheduled Hearing to Allow

Discovery” dated 10/30/2020, it is Plaintiff’s understanding that (excerpted, emphasis added):

Further, “[s]ummary judgment is a drastic remedy and **must not be granted until the opposing party has had a full and fair opportunity to complete discovery.**” *Dawkins v. Fields*, 354 S.C. 58, 69 (S.C., 2003)

and

Summary judgment is not appropriate where further inquiry into the facts is desirable to clarify application of the law. *Evening Post Publ’g Co. v. Berkeley County Sch. Dist.*, 392 S.C. 76, 82 (S.C., 2011)

Per the Supreme Court of South Carolina, Summary Judgment is “Premature” when (excerpted, emphasis added):

“Since it is a drastic remedy, summary judgment “should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.” *Watson v. Southern Ry. Co.*, 420 F. Supp. 483, 486 (D.S.C. 1975); see also *Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E. (2d) 728, 729 (1986) (“an extreme remedy to be cautiously invoked”). This means, among other things, that **summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.** 10A Wright & Miller, Federal Practice and Procedure § 2741, p. 543 (1983); 6 Moore’s Federal Practice ¶ 56.02[6], p. 56-39 (2d) ed. 1990); see, e.g., *First Chicago Int’l v. United Exchange Co.*, 836 F. (2d) 1375 (D.C. Cir.1988); *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 756 F. (2d) 230 (2d Cir.1985); *Tyler v. City of Enterprise*, 521 So. (2d) 951 (Ala. 1988); *Gangadean v. Leumi Fin. Corp.*, 13 Ariz. App. 534, 478 P. (2d) 532 (1970); *Commercial Bank of Kendall v. Heiman*, 322 So. (2d) 564 (Fla. Dist. Ct. App. 1975); *Board of Education v. Van Buren & Firestone, Architects, Inc.*, 165 W. Va. 140, 267 S.E. (2d) 440 (1980); cf. Rule 56(f), S.C.R.C.P.[4]
[as cited from: *Baughman, et al. v. American Telephone and Telegraph Company, et al.*, 410 S.E.2d 537, 306 S.C. 101 (1991), Supreme Court of South Carolina.]

ADMINISTRATIVE HISTORY

Plaintiff’s original CPS for this case (C1384) was dated 06/10/2020, with FAC dated 09/28/2020. Plaintiff received notice from the Court of MTD being made part of a Hearing scheduled for 11/24/2020, with the result that this MOP is consequently brought.

ARGUMENTS
MTD'S CLAIMS ARE ERRONEOUS AND/OR REFLECT MISINFORMATION

1. **Plaintiff has standing to sue via payment of dues as a Member of WHOA, that pays the insurance-coverage premium to SF.** Plaintiff thanks SF for verification that it was the Board of WHOA, not Plaintiff, who incurred legal fees for "... payment of legal fees incurred by the [W]HOA Board ...". SF admits in MTD that an insurance contract (ICO) exists between WHOA and SF "... HOA Board is insured by State Farm ...". Plaintiffs are part-owners and therefore policyholders of this ICO due to their payment of dues, which are used to make premium payments to maintain the ICO in force. Consequently, Plaintiffs have a vested interest that SF perform according to ICO provisions, and is a Third-Party Beneficiary under such Contract with Standing to Sue.

Plaintiffs are Third-Party Beneficiaries

Indeed, regardless of averments found in MTD is the fact that Plaintiffs have an indirect action against State Farm. Plaintiffs are Members of WHOA and as such are **third-party beneficiaries**, thus able to enforce the terms of the Contract.

The Appellate Courts of South Carolina have made clear that a non-party may enforce contractual terms that intentionally provide her direct benefits. See, *e.g. Kingman v. Nationwide Mut. Ins. Co.*, 243 S.C. 405, 412, 134 S.E.2d 217, 221 (1964) (emphasis added):

"We have held in numerous cases that a **contract between two persons, for the benefit of a third, even though such third party be not named therein, can be enforced by such third party.**"; *Jennings v. First of Ga. Underwriters Co.*, 283 S.C. 455, 457, 322 S.E.2d 694, 695 (Ct. App. 1984) (explaining [429 S.C. 508] contracts between two persons for the benefit of a third **can be enforced by the third person even though she is not named therein**)...*Beverly v. Grand Strand Reg'l Med. Ctr., LLC*, 429 S.C. 502, 839 S.E.2d 468 (S.C. App. 2020)

SF has **not** performed according to ICO, taking “optional” elections (as alleged by SF) to provide coverage in Breach of Contract under the ICO, because Plaintiffs did not claim “monetary damages” which are an ICO requirement before coverage can be provided.

MTD states irrelevant, impertinent, and scandalous content that “... Board are not employees of State Farm and State Farm is not vicariously liable for their conduct. ...”, which must be stricken from MTD pursuant to Rule 12(f), SCRCF. MTD shows (emphasis added):

1. This matter arises out of a dispute between the plaintiffs and the Board of Directors for the Woodington Homeowners Association (“the HOA Board”) regarding the **payment of legal fees incurred by the HOA Board** in defending several prior lawsuits filed by the plaintiffs. The **HOA Board is insured by State Farm**. However, the members of the HOA Board are not employees of State Farm and State Farm is not vicariously liable for their conduct.
2. The ICO does not provide an option for SF to agree to provide a defense, and therefore such agreement is a Breach of Contract, which will cause damage to Plaintiff’s via subsequent increases of premium to maintain ICO in force. MTD shows (emphasis added):

2. Upon the filing of this lawsuit, **State Farm agreed to provide the HOA Board with a defense** in this action under a reservation of rights.

No such language “... reservation of rights ...” appears in the ICO; see Exhibit D as attached to FAC. SF is contractually limited to pay only “... those sums that the insured becomes legally obligated to pay as damages ...”. Since FAC requests **ZERO** dollars in damages, then no damages exist, and consequently SF can never come into a position of obligation to pay damages. The ICO confirms for SF that “... we will have no duty to defend the insured ...” as related to C1384 since this suit seeks **no** damages, and consequently “... this endorsement does not apply ...”. Plaintiff reiterates content from Exhibit D - Directors and Officers Liability (excerpted, emphasis added):

CMP-4814 DIRECTORS AND OFFICERS LIABILITY

This endorsement modifies insurance provided under the following:
BUSINESSOWNERS COVERAGE FORM

1. The following coverage is added to **SECTION II - LIABILITY:**

DIRECTORS AND OFFICERS LIABILITY

a. When a Limit Of insurance is shown in the Declarations for Directors And Officers Liability, **we will pay those sums that the insured becomes legally obligated to pay as damages** because of a "wrongful act" to which this endorsement applies.

We will have the right and duty to defend the insured, by counsel of our choice, against any "suit" seeking those damages. However, **we will have no duty to defend the insured against any "suit" seeking damages to which this endorsement does not apply.** ...

3. MTD attempts to gloss over that Plaintiff's CPS effectually sought "no damages" from the start. CPS sought \$1 in Nominal Damages, where Plaintiff was appalled that SF's position was that this minuscule and insignificant amount was claimed to be "damages" by SF, and thus they were contractually obliged to "... defend the insured ...". Such position to continue to defend after FAC with "no damages" is a Breach of Contract by SF. MTD erroneously shows:

3. The plaintiffs subsequently filed the amended complaint in this action. In the amended complaint, the plaintiffs amend their allegations against the HOA Board in an attempt, based on the plaintiffs' interpretation of the State Farm policy, to remove any potential insurance coverage afforded the HOA Board.

4. MTD does not cite any provision of the ICO that "... triggers coverage ..." resulting from FAC. With no effective ICO provision so stating, it must be concluded that MTD erroneously shows:

4. Likewise, in the amended complaint, the plaintiffs assert a breach of contract claim against State Farm for providing a defense to the HOA Board on the grounds that the amended complaint allegedly no longer triggers coverage under the State Farm policy.

5. Plaintiff contends that as a policyholder and third-party beneficiary, he has every right to hold SF accountable to provisions found in the ICO. No claim was made in FAC that Plaintiffs are insured under the ICO. Attempting to prosecuting a claim against the Board would be pointless, and dishonest. SF has breached provisions of the ICO, and therefore Plaintiffs as policyholders rightfully brought a direct action against SF. In a worst case, Plaintiffs are "third-Party Beneficiaries" and thus have standing to sue. MTD shows erroneously, in part:

5. The plaintiffs are not insureds under the State Farm policy. Rather, they are third-party claimants. The plaintiffs have not prosecuted their claim against the HOA Board in this action to conclusion and **have no direct action against State Farm.**

6. MTD contends, but without supporting evidence and without any stated rationale, where MTD erroneously shows:

6. As such, the plaintiffs have no claim against State Farm and cannot prosecute the current action against it.

where thus Plaintiff finds "... no claim ..." and "... cannot prosecute ..." to be irrelevant, immaterial, and scandalous matter which must be stricken from MTD pursuant to Rule 12(f), SCRPC.

7. "Standard of Review" sections of MOP addressed MTD's misdirected claims pursuant to Rule 12(b)(6). MTD is vague and ambiguous with references to "... common and statutory laws ...", stating no legal grounds for dismissal. MTD presumptively shows:

7. This motion is made pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and is based upon that rule, the facts of this case and the common and statutory laws of the State of South Carolina.

8. Pursuant to SC Code of Laws: "Uniform Commercial Code—Sales", Section 36-2-210, lawful justification for Plaintiff to require and to enforce conformance to the contract by SF is noted. Pursuant to Section 36-2-301, SF as seller of their goods (ICO) has an obligation to "... deliver ... in accordance with the contract. ..." (excerpted, emphasis added):

SECTION 36-2-210. Delegation of performance; assignment of rights.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

SECTION 36-2-301. General obligations of parties.

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

9. Plaintiff contends that a false claim for payment has been presented to SF by parties involved with this action, because contractual provisions required before payment can be made have been ignored or breached, based upon information and belief, pursuant to SC Code of Laws, Section 38-55-170. A false claim for payment is a misdemeanor triable in magistrates court (excerpted, emphasis added):

Section 38-55-170. Presenting false claims for payment.

A person who knowingly causes to be presented a false claim for payment to an insurer transacting business in this State, ... or who knowingly assists, solicits, or conspires with another to present a false claim for payment as described above, is guilty of a:

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the amount of the claim is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both.

CONCLUSION

It is abundantly clear that Plaintiffs' underlying case has validity, and merit. The Court is asked to appreciate that a contract exists between SF and Plaintiffs, who are owners of the ICO provided to WHOA. Or, at a minimum, that Plaintiffs have standing as Members of WHOA, where Member dues pay the premium on the Policy. Black-letter statute demands that SF has a duty to perform according to contractual provisions. Plaintiff contends that all claimed grounds for dismissal are unfounded, and further MTD must be considered as a "Motion to Dismiss in Part". Plaintiff has cited lawful requirements to which SF has not complied, and brought evidence showing breach of contract by SF in FAC.

The moving party with their MTD makes no statement about being entitled to a judgment as a matter of law. In this MOP, Plaintiff raises many genuine issues as to material fact that are in dispute, under documented evidence and facts for C1384.

Court policy in South Carolina is to permit liberal reading and construction of pleadings to permit claims to be addressed on their merits, and policy further supports the clear conclusion that this Court must **DENY** Defendant SF's MTD.

THEREFORE, based upon CPS, FAC and their Exhibits and Affidavit, as well as arguments found here in MOP and Exhibit D, with the addition of matter that may be presented at a Hearing on MTD and other pleadings that may be made, Plaintiff prays for **DENIAL** of Defendant SF's MTD.

Dated this 19th day of November, 2020.

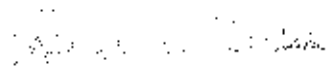

Raymond A. Wedlake, Plaintiff (*Pro Se*)
703 Creekview Drive Greenville, SC 29607
864-254-9262 wedlakera@mail.com

EXHIBIT D - DIRECTORS AND OFFICERS LIABILITY

CMP-4814
Page 1 of 3

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CMP-4814 DIRECTORS AND OFFICERS LIABILITY

This endorsement modifies insurance provided under the following:
BUSINESSOWNERS COVERAGE FORM

1. The following coverage is added to SECTION II — LIABILITY:

DIRECTORS AND OFFICERS LIABILITY

- a. When a Limit Of Insurance is shown in the Declarations for Directors And Officers Liability, we will pay those sums that the insured becomes legally obligated to pay as damages because of a "wrongful act" to which this endorsement applies.

We will have the right and duty to defend the insured, by counsel of our choice, against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages to which this endorsement does not apply. We may at our discretion, investigate any incident and settle any claim or "suit" with or without the insured's consent, for any reason and at any time. But:

- (1) The most we will pay for damages is limited as described in **SECTION II — DIRECTORS AND OFFICERS LIABILITY LIMITS OF INSURANCE**; and
- (2) Our right and duty to defend end when we have used up that amount in the payment of judgments or settlements for a "wrongful act".

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **Section II — Supplementary Payments**.

- b. This insurance applies to a "wrongful act" only if the "wrongful act" takes place:

- (1) During the policy period and a claim is made in writing or "suit" filed and brought no later than one year from the end of the policy period; or
- (2) Prior to the policy period where:
- (a) There is no other insurance which:
1. Is valid and collectible; or

- II. Would be valid and collectible but for the exhaustion of the limits of insurance;

- (b) No insured listed under **SECTION II — WHO IS AN INSURED** and no "employee" authorized by you to give or receive notice of a "wrongful act", had prior knowledge or could reasonably have foreseen any circumstances which might result in a claim or "suit"; and

- (c) A claim is made in writing or "suit" filed and brought during the policy period.

- c. All damage involving a single "wrongful act" or a series of related "wrongful acts", caused by one or more persons, is considered one "wrongful act".

2. With respect to coverage provided under Directors And Officers Liability, all exclusions under **Section II — Exclusions** are replaced with the following:

Section II — Exclusions

This coverage provided under Directors And Officers Liability does not apply to:

- a. **Criminal Acts**

Dishonest, fraudulent, criminal or malicious act, including fines and penalties resulting from these acts.

- b. **Actual Knowledge Or Intent**

"Wrongful act" by an insured with actual knowledge of its wrongful nature or with intent to cause injury or damage.

- c. **Bodily Injury, Property Damage Or Personal Or Advertising Injury**

"Bodily injury", "property damage" or "personal or advertising injury" liability.

- d. **Profit Or Advantage From Securities**

Any profit, remuneration or advantage, resulting from the purchase or sale of any securities, including an accounting of these.

e. Salaries Or Compensations

Salaries, compensations, bonuses or other remuneration, of employees, directors, officers, "managers" or trustees.

f. Insurance Policy and Claims

Any failure or omission to effect, maintain, or procure any insurance policy or bond, including any failure or omission to report a loss or obtain proper amounts, forms, conditions or provisions on any insurance policy or bond.

g. Personal Profit Or Advantage

Damages arising out of any transaction of the insured from which the insured will gain any personal profit or advantage, which is not shared equitably by the members of the organization.

h. Civil Right Violations

Violations of any federal or state civil rights law or local ordinance, including but not limited to discrimination on account of race, religion, disability, sex or age.

i. Non-Monetary Relief

Any costs incurred to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief.

j. Fines Or Penalties

Any civil or criminal fines or penalties imposed by law or taxes.

k. ERISA

Any obligation of the insured under the Employees' Retirement Income Security Act (ERISA) and any amendments thereto or any similar federal, state or local statute.

l. Pollution, "Fungi" Or Bacteria

"Pollutants", "fungi", bacteria, wet or dry rot or nuclear reaction or the cost or expense to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize "pollutants", "fungi", bacteria, wet or dry rot or nuclear reaction.

m. Construction Operations

Damage caused by or resulting from operations (including construction, design, survey and engineering services) performed by or on behalf of the declarant, builder, sponsor, developer, promoter, engineer or architect at any premises insured under this policy.

n. Rights Against Builder

Any failure or inability of any insured to enforce your rights against the declarant, builder, sponsor, developer, promoter, engineer or architect at any premises insured under this policy.

o. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

p. Employment-Related Practices

(1) Damages to:

(a) A person arising out of any:

- i. Refusal to employ that person;
- ii. Termination of that person's employment; or
- iii. Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, malicious prosecution, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or

(b) The spouse, child, parent, brother or sister of that person as a consequence of Paragraph (a) above.

(2) This exclusion applies:

(a) Whether the insured may be liable as an employer or in any other capacity;

(b) To any obligation to share damages with or repay someone else who must pay damages because of the injury; or

(c) Whether the injury causing event described in Paragraph (1)(a) above occurs before employment, during employment or after employment of that person.

q. Other Organizations

Any "wrongful act" committed or allegedly committed by any insured serving in any position or capacity in any organization or association other than the Named Insured even if the Named Insured directed or requested that insured to serve in such other position or capacity.

r. Supervision Of Contractors

Any "wrongful act" in the selection or direct or indirect supervision of any contractor or subcontractor liable or alleged to be liable for any defect in construction at any premises insured under this policy.

s. Budgeting

Any act or failure to budget, reserve, conduct reserve studies or account for the cost to upkeep, maintain or address deficiencies or repairs regarding any premises insured under this policy.

3. With respect to coverage provided under Directors And Officers Liability, SECTION II — WHO IS AN INSURED is replaced by the following:

The unqualified word insured means only the following:

a. Any of your directors, officers, "managers" or trustees, collectively and individually, which form your administrative body provided that each individual:

- (1) Is duly elected or appointed to serve on the managing body of the organization; and
- (2) Acts within the scope of their duties as a director, officer, "manager" or trustee on your behalf;

However if the declarant, builder, sponsor, developer, promoter, engineer or architect is also a director, officer, "manager" or trustee, the declarant, builder, sponsor, developer, promoter, engineer or architect is an insured, but only with respect to their liability arising solely out of his or her capacity as a director, officer, "manager" or trustee.

b. The Named Insured shown in the Declarations with respect to liability because of "wrongful acts" committed by an insured.

c. Any of your members or renters, but only with respect to their liability for your activities or activities they perform on your behalf as a member of a committee appointed by the administrative or managing body.

d. Any lawful spouse of any person identified in Paragraph a.(1) or a.(2) above, but only in respect to liability arising solely out of his or her capacity as a spouse where such liability seeks damages from the marital property, community property, jointly held property or property transferred from any

person identified in Paragraph a.(1) or a.(2) above. The spouse is not an insured for any "wrongful act" of any person in Paragraph a.(1) or a.(2) above.

e. No person or organization, including those listed in Paragraphs a. through d. above, is an insured with respect to "wrongful acts":

- (1) For which that person or organization may be liable in their capacity as a declarant, builder, sponsor, developer, promoter, engineer or architect; or
- (2) While acting within the scope of their duties for a declarant, builder, sponsor, developer, promoter, engineer or architect.

4. With respect to coverage provided under Directors And Officers Liability, SECTION II — LIMITS OF INSURANCE is replaced by the following:

SECTION II — DIRECTORS AND OFFICERS LIABILITY LIMITS OF INSURANCE

a. The Limits Of Insurance for Directors And Officers Liability, shown in the Declarations, and the rules below, fix the most we will pay regardless of the number of:

- (1) Insureds;
- (2) Premises insured;
- (3) Claims made or "suits" brought; or
- (4) Persons or organizations making claims or bringing "suits".

b. The most we will pay for damages because of any one "wrongful act" is the Directors And Officers Liability Limit shown in the Declarations.

The most we will pay for the sum of all damages because of all "wrongful acts" during the policy period is the Directors And Officers Aggregate Limit shown in the Declarations.

5. With respect to coverage provided under Directors And Officers Liability, the following definition is added to SECTION II — DEFINITIONS:

"Wrongful act" means any actual or alleged error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted or allegedly committed or attempted by an insured arising solely out of his or her capacity as director, officer, "manager" or trustee relating to the operations of your organization.

All other policy provisions apply.

ATTACHMENT IB.9 - Opposition to Defendants' Proposed Order

STATE OF SOUTH CAROLINA	)	<u>2020-CV-23-10201384</u>
	)	
COUNTY OF GREENVILLE	)	CIVIL CASE NUMBER
	)	
Raymond A. Wedlake, as a Member of	)	
Woodington Homeowners' Association, Inc.	)	
and on behalf of other-similarly-situated Members	)	IN THE MAGISTRATE'S COURT
of Woodington Homeowners' Association, Inc.	)	
Plaintiffs	)	
vs.	)	
Board of Directors of Woodington Homeowners'	)	MEMORANDUM IN OPPOSITION
Association, Inc., comprised of Mona Craig,	)	
Edward Decker, and Sandra LaCroix	)	
at the time of filing	)	TO DEFENDANTS'
and	)	
McCabe, Trotter & Beverly, P.C.	)	PROPOSED ORDER
and	)	
State Farm Fire and Casualty Company	)	
<u>Defendants</u>	)	

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*), registering objections by bringing this "Memorandum in Opposition ..." (MOP) to a proposed Order (PO). The PO is titled: "Order Granting Defendants' Motion to Dismiss", which was submitted to the Honorable Judge Laura Saunders on 12/11/20, after a hearing of 11/24/20 (Hearing). Plaintiff reviews facts and evidence supporting such facts. No statement of facts being in dispute was voiced in prior pleadings nor during the Hearing. MOP documents many points found in the PO as invalid. MOP requests invalid content in the PO must be stricken pursuant to Rule 12(f), SCRPC (emphasis added):

(f) Motion to Strike. Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

ADMINISTRATIVE HISTORY

Dated 06/10/20, Plaintiff submitted an original Complaint plus Supplement (CPS) for two Defendants:

- a) Board of Directors (Board) of Woodington Homeowners' Association, Inc. (WHOA); and,
- b) McCabe, Trotter & Beverly, P.C. (MTB).

Complaint included a "Supplement to Complaint" (SUC), being completely supported by 46 Exhibits and Affidavit. Dated 09/28/20, a "First Amended Complaint" (FAC) was submitted supported by an additional 17 Exhibits. FAC added a third Defendant: State Farm Fire and Casualty Company. FAC was brought as an addendum to CPS, but FAC did not annul nor subjugate CPS in any manner. CPS stands as a matter before the Court.

Each Defendant submitted a "... Motion to Dismiss ..." (MTD) before the Hearing. Plaintiff submitted a MOP for each MTD, respectively. In the Hearing, dismissal of the entirety of Plaintiff's case (C1384) was verbally granted.

ARGUMENT

A) PO Contains Misinformation and Misstatements, or Incorrectly Stated Conclusions

1. Granting of MTD's must pertain to all of CPS, Exhibits, Affidavit, FAC and its Exhibits, MOP's, and all pleadings and contents of Record. Plaintiff stated in FAC (emphasis added):

1. By reference, Plaintiff includes his original "Complaint Breach of Contract by the Board; Plus Conspiracy by McCabe to Extort Corporate Funds, and Casting Plaintiff in a False Light", along with its "Supplement to Complaint" (Complaint Plus Supplement, CPS), along with its supporting Exhibits and Affidavit, in their entirety. **Consequently, this FAC is like an addendum to CPS.**

Granting cannot be based upon FAC solely, as erroneously stated in PO :

THIS MATTER IS BEFORE the court on the defendants' motions to dismiss the plaintiffs' amended complaint.

For the foregoing reasons, the Court GRANTS the defendants' motions to dismiss. IT IS HEREBY ORDERED that the plaintiff's amended complaint be dismissed in its entirety with prejudice.

2. Plaintiff contends all parts of "Background" content that are redundant, immaterial, impertinent or scandalous matter must be stricken from PO pursuant to Rule 12(f), SCRCR. Content in an Order, such as "Background" that is of a "soapbox" nature is immaterial, impertinent or scandalous matter that must be stricken.

2a) PO prevaricates when it states: "The genesis of this lawsuit and ... stem from a 2016 dispute ... sailboat that plaintiff had painted on his garage door." Such 2015-paint dispute was amicably resolved in 2016, as was documented in paragraph 8 of "Memorandum in Opposition to Defendants' Board ... Motion to Dismiss Plaintiff's Complaint", as shown by evidence in Exhibit OP.5; PO is factually inaccurate, since it is a matter of Court Record that at no time nor in any instance does any case refer to a "garage door";

2a.1. In the trial of a referenced case: 2017-CP-23-06301 (C6301), Counsel for the Board did not make a motion requesting an involuntary non-suit. Counsel asked for a "... directed verdict ...", which the Judge on his own volition translated into "involuntary non-suit". The Judge did so only by ignoring evidence, and documents, that were present in the Court Record. Evidence showed violation by the Board of By-Laws provisions. Other supporting evidence was contained in multiple exhibits, which was also ignored;

2a.2. As is a matter of Court Record, the Board's prior MTD in C6301 was **DENIED** by Order of 01/23/18. In fact, the Court of Appeals not only accepted the Appeal on C6301, but also denied a subsequent MTD by Respondents;

Consequently, this-background content must be stricken pursuant to Rule 12(f), as erroneously stated in the PO :

The genesis of this lawsuit and the multiple other lawsuits plaintiff has filed against the WHOA Board, stem from a 2016 dispute plaintiff had with the Woodington Homeowners Association ("WHOA") Architectural Committee over a sailboat that plaintiff had painted on his garage door. Plaintiff filed a lawsuit against the WHOA Board ... following plaintiff's presentation of his case at trial ... issued an Order granting the WHOA Board's motion for an involuntary non-suit ... Court granted defendants' motion to dismiss plaintiff's case. ...

2b) PO prevaricates when it states: "... the same exact claims ...", as proven by evidence presented herein via Exhibits OD.1 (C6301), OD.2 {case 2018-CP-2303758 (C3758)}, OD.3 (2019-CP-23-00269), OD.4 (2019-CP-23-01501), and Exhibit OD.5 (this-instant C1384):

2b.1. Inspection of Exhibit OD.5 as compared to prior cases (OD.1 – OD.4) shows no claims in C1384 are "... the same exact claims ..." to any previous case;

2b.2. Only where claims are similar enough to be deemed "... the same ..." can a contention be made that "... re-litigate the issues ..." applies;

2b.3 Only those issues that the Court deems are re-litigation can be dismissed; many new issues in C1384 can not be dismissed based upon such claim;

2b.4 For the Court to dismiss the entirety of all of C1384 suggests a lack of knowledge and understanding that new issues in C1384 must be recognized, contrary to the PO;

2b.5 In C3758, no issues were litigated; C3758 was settled by mutual agreement and was not dismissed per Court Order;

Consequently, this-background content must be stricken, as erroneously stated in PO :

... These are the same exact claims that plaintiff has brought before the Magistrate's Court in this lawsuit in an attempt to re-litigate the issues that have already been decided in previous actions.

2c) The insurance contract (ICO) states no provisions such as "... reservation of rights ...", and thus does not allow Defendant State Farm (SF) "... to provide the HOA Board with a defense ..." pursuant to such claim. Plaintiff proved that the ICO (Exhibit D to FAC) requires "... monetary damages ..." to exist before coverage is triggered under a State-Farm policy.

Consequently, this-background content must be stricken, as erroneously stated in PO :

State Farm Fire and Casualty Company ("State Farm") is the liability insurer for WHOA. Upon the filing of this lawsuit, State Farm agreed to provide the HOA Board with a defense in this action under a reservation of rights. ... in the amended complaint, the plaintiff asserts a breach of contract claim against State Farm for providing a defense to WHOA on the grounds that the amended complaint allegedly no longer triggers coverage under the State Farm policy.

B) Rule 12(b)(6) Does Not Apply to C1384

3. PO plainly states that the Court "... may dismiss a claim when the defendant demonstrates the plaintiff's "failure to state facts sufficient to constitute a cause of action" in the pleadings filed with the court ...". Plaintiff filed CPS and FAC, both of which stated "... facts sufficient ..." (SUC par. 28-78; FAC par. 11-24) to constitute a cause of action (SUC par. 87-96; FAC par. 25-29) to fully annul any Rule 12(b)(6), SCRCF claims.

4. PO plainly states "... court must grant the motion if the facts alleged in the complaint and the inferences reasonably deduced therefrom do not entitle the plaintiff to relief on any theory of the case. ...". Plaintiff contends that no reasonable Judge nor jury would find any mandate for dismissal, because several theories of the case entitle the plaintiff to relief.

5. During the Hearing, 12(b)(6) was not important enough for any of Defendants' counsel (Counsel) to mention, so therefore all 12(b)(6) content in the PO must be stricken pursuant to Rule 12(f).

C) Collateral Estoppel Cannot Be Applied to New Issues Found in C1384

6. Documented evidence (Exhibits OD.1 – OD.5) brought with this MOP proves that Counsel misrepresented issues found in C1384 by characterizing all issues as “re-litigation”. PO admits that it is only “... Plaintiff’s claims related to invoicing and payment of legal fees for Case 2017-CP-23-06301 must be dismissed. ...”. That is, other claims that plainly are not related to “... invoicing and payment of legal fees ...” cannot be dismissed based upon any claim of collateral estoppel. Clarification was given as found above: paragraphs 2b.1 – 2b.4.

D) Casting Plaintiff in a False Light

7. Though there may have been confusion as to limitations of South Carolina “Causes of Action”, all “False Light” claims are valid, and unethical misconduct by MTB was documented in Exhibits to CPS. This Court is probably aware that other jurisdictions recognize a “False Light” claim. South Carolina recognizes such claim under a guise of “Breach of Privacy”, which was rejected by this Court via dismissal. In “Memorandum in Opposition to Defendant McCabe Trotter & Beverly, PC’s Motion to Dismiss” (MOPMTB), Plaintiff plainly stated:

1. ... Plaintiff knows of no law, Court rule, nor any precedent which precludes presentation of evidence to form a “preponderance of evidence” for his case. It is therefore moot and academic as to whether or not a “False Light” cause of action exists, because South Carolina (SC) courts have viewed other cases either as claims for defamation or as claims related to breach of privacy.

E) Conspiracy

8. PO prevaricates when as related to “special damages” it states “... Plaintiff has failed to state with specificity ...” and “... Plaintiff has failed to specifically state ...”. In MOPMTB, Plaintiff showed an entire section titled: **“B) Plaintiff's Complaint Alleges Special Damages with Specificity”**, so therefore all such “failed” content in the PO must be stricken under Rule 12(f), where the PO shows:

... dismissed pursuant to Rule 12(b)(6) because Plaintiff has failed to state with specificity what special damages he suffered as a result of an alleged conspiracy. ... Additionally, Plaintiff has failed to specifically state the special damages allegedly suffered as required by Rule 9(g), SCRCF.

During the Hearing, neither of Rule 12(b)(6) nor Rule 9(g) was important enough for any Counsel to mention, which affirms application of Rule 12(f) to strike such portions found in the PO.

F) Standing to Bring a Derivative Suit

9. Plaintiff has standing to bring a derivative suit because evidence was attached to CPS that showed support for Plaintiff by six-other WHOA members (Members); see Figure 1 - “Six Member Statements Denying Defendants as Proxy, November 9, 2018 Ballots”. PO prevaricates when it suggests that a **MINORITY** of Members who support the Board (less than a required 34 for a majority), means that Plaintiff cannot recognize other similarly-situated Members to satisfy requirements for a derivative suit. In MOPMTB, Plaintiff showed an entire section titled: **“G) Complaint Showed Proven Standing to Bring a Derivative Suit”**, so therefore all such contrary content such as “... is not representative of the position of the WHOA members ...”, and “... not allowed to bring this suit derivatively. ...”, in the PO must be stricken under Rule 12(f).

10. Plaintiff's C1384 was brought both **individually** and **derivatively**, where the caption shows (emphasis added):

Raymond A. Wedlake, **as a Member** of Woodington Homeowners' Association, Inc. **and** on behalf of **other-similarly-situated Members** of Woodington Homeowners' Association, Inc.

10a) whether or not Plaintiff has standing to bring a derivative action is immaterial, impertinent, and scandalous matter, and cannot be used by the Court to deny Plaintiff's- "Covenants" -given right to bring an **individual** action; see "Standing" section in CPS, par. 2;

10b) PO misleads by stating "... plaintiff cannot bring a derivative suit on behalf of a non-profit corporation as a *pro se* litigant. ...", because C1384 is brought by Plaintiff as a Member, and on behalf of Members who are proven by Figure 1 to be similarly situated. C1384 is not brought "... on behalf of a non-profit corporation ...", Plaintiff is not "... attempting to represent the corporate entity ...". Consequently, these claims and all associated claims in the PO are immaterial, impertinent and scandalous matter that must be stricken pursuant to Rule 12(f);

10c) the fact that Plaintiff brings C1384 as a *Pro Se* litigant is immaterial, impertinent and scandalous matter that must be stricken pursuant to Rule 12(f);

10d) as a citizen of the United States (US), state laws cannot be used to deny Plaintiff's rights under the "Constitution of the US", nor to deny "... due process ...", nor to deny "... equal protection of the laws ..." from Plaintiff. The "Bill of Rights" via Amendment XIV shows (emphasis added):

AMENDMENT XIV Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State

wherein they reside. **No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

Plaintiff does not need to possess a law license to enjoy US Constitutional rights. Consequently, all claims that pertain to "... state laws ..." being used to "... abridge the privileges or immunities ..." of a citizen of the US represent immaterial, impertinent and scandalous matter the must be stricken pursuant to Rule 12(f).

11. In MOPMTB, Section G gave counter arguments related to "soapbox" content found in the PO as regards "... class action ...", and "... news story ...". Consequently, in the PO all such claims represent immaterial, impertinent and scandalous matter the must be stricken pursuant to Rule 12(f).

G) Plaintiff is a Policyholder, and thus is a Party to the State Farm Insurance Policy

12. Plaintiff is a party who pays (a part of) the insurance premium, and is therefore an owner of the policy, where the term "policyholder" is used here. Plaintiff believes that argument which contends that a policyholder has no standing to expect the insurance provider to comply with contractual requirements is tacitly ridiculous. When the provider willfully and knowingly elects to breach contractual-policy provisions, then the policyholder has every right and standing to bring an action to enforce the contract via a Breach of Contract suit. This is the situation, here, but the PO attempts to mislead with statements like "... policy was issued to WHOA. ...".

WHOA is comprised of its property-owner Members. WHOA does not represent any other other entity, nor any other corporate interest, nor any other parties, other than its Members.

Consequently, Plaintiff as a Member is a party to the contract. The PO admits that (emphasis added) "... an injured person **who is not a party** to the insurance contract **has no standing** to litigate a dispute between an insurer and an insured ...". Since Plaintiff **is a party** to the ICO, then he **has standing** to litigate a dispute between the insurer and the insured. Consequently, PO content that denies standing to bring a breach of contract claim is immaterial, impertinent and scandalous matter which must be stricken pursuant to Rule 12(f).

13. SC Code of Laws, Section 38-59-20 (Exhibit OD.6), recognizes Third-Party Claims; in all eight numbered sections of this statute, is seen: third-party claimants, or third-party claims, or third-party liability claims. This alliteration affirms standing of a third-party claimant.

14. The Supreme Court of SC precedent cited in PO "*Park v. Safeco. Ins. Co. of America*", simply does not apply to C1384. *Park* speaks to when a Plaintiff is **not** a party to an ICO. Only when a Plaintiff is **not** a party do establishment of "liability", and "... a judgment ..." become prerequisites. Only when a Plaintiff is **not** a party does it apply "... that he is therefore a stranger to the contract without standing in court", where *Park* shows:

To this complaint Safeco demurs, submitting that the complaint should be dismissed as to it because it appears on the face of the complaint: (1) that **plaintiff is not a party to Safeco's contract of insurance** alleged to protect McCall and the Ford involved in the collision, and has **no rights thereunder until and unless he first establishes liability and obtains a judgment** binding McCall or one protected by Safeco; and, (2) that there is no allegation that plaintiff has procured such judgment and **that he is therefore a stranger to the contract without standing in court.** [*Park v. Safeco. Ins. Co. of America*, 162 S.E.2d 709, 251 S.C. 410 (1968)]

15. The Supreme Court of SC affirms standing of "... an association's members ...":

The three part test for associational standing requires that an association's members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of

individual members in the lawsuit ... [*Carnival Corp v. Historic Ansonborough Neighborhood Ass'n*, 753 S.E.2d 846, 407 S.C. 67 (2014)]

H) Other Arguments

16. Plaintiff voiced objection during the Hearing, about Counsel writing proposed Orders which are used as “soapboxes”, and requested an opportunity to comment, which is fulfilled by this MOP.

17. Dismissal of C1384 in its entirety cannot be justified based upon any legal grounds. Plaintiff requests the Court recognize that only where legal grounds exist to dismiss one, or perhaps a few, of Plaintiff’s claims is dismissal of those subset of claims appropriate and proper. Plaintiff emphasizes this point as contained in a “Memorandum in Opposition ... Dismiss”, which was reiterated in the Hearing:

... but I think an important distinction that I point out here is that each of these Motions to Dismiss must be considered as a Motion for Dismissal in part. That is to say that whether certain points are dismissed does not necessarily mean that the entirety of my case should be dismissed. ...
[Transcript of “Magistrate Hearing ...”, p. 41, ll. 1 - 7]

THEREFORE, Plaintiff prays for careful review, and not for a simple “rubber stamp” of the PO, until after undisputed facts that are supported by evidence are clearly understood, and content that was cited under Rule 12(f), SCRPC is stricken, or revised.

Dated this 17th day of December, 2020.

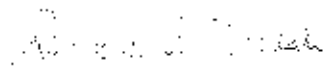

Raymond A. Wedlake, Plaintiff (Pro Se)
703 Creekview Drive, Greenville, SC 29607
864-254-9262 wedlakera@gmail.com

EXHIBIT OD.1 - Stipulation of Issues for Trial 2017-CP-23-06301

OVERVIEW SUMMARY OF SIX – DECLARATORY - JUDGMENT ISSUES

- 1a. ... the Board ... must comply with ... the Association's bylaws.
- 1b. ... that the bylaws place a duty on the Board ... to fill a vacancy ...
- 1c. ... that the bylaws require a majority of all members to both enter into, and to renew, management contract.
- 1d. ... that the bylaws do not permit a Director to remain beyond a five-year term ...
- 1e. ... that the Bylaws ... do not permit delegation of the role or authority of the Board.
- 1f. ... that the Bylaws require the Board ... to send out a ballot to the membership for voting if a proposed amendment to the Bylaws is submitted by an eligible member.

[The stamped-Court-filed document of March 29, 2018 continues on the next page]

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT
C/A No.: 2017-CP-23-6301

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

Plaintiff(s),)

v.)

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

and,)

Association Management Group SC, Inc.,)

Defendant(s).)

STIPULATION OF ISSUES FOR TRIAL

017402.00009

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.

The e-filer affirmatively states that he has obtained the required consent pursuant to Rule 5 of the E-filing Rules to use the electronic signature of Grant H. Gibson.

/s/ Ely O. Grote

Ely O. Grote (SC Bar No.: 75379)
McCabe, Trotter & Beverly, P.C.
P.O. Box 212069, Columbia, SC 29221
Telephone: (803) 724-5000
Email: ely.grote@mtb-law.com
*Attorneys for Defendants Benjamin Acord,
William Craigo, Denis Esteve, and Brian
James*

/s/ Grant H. Gibson

Grant H. Gibson (SC Bar No.: 9269)
G. Gibson & Associates, LLC
1200 Woodruff Rd., A-3
Greenville, South Carolina 29607
Telephone: (864) 630-7471
Email: gibson@ggibsonllc.com
Attorney for Plaintiffs

Columbia, South Carolina
March 29, 2018

EXHIBIT OD.2 - Issues 2018-CP-23-03758

THIS CASE NEVER CAME TO COURT - NO ISSUES WERE LITIGATED
MEDIATION RESULTED IN AN INDEPENDENT SETTLEMENT AGREEMENT

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Raymond A. Wedlake, prays for judgment against Defendants,
as follows:

- A. That this Court find against Defendants and in favor of Plaintiff with regard to his claim of Defamation, both as to Libel and Slander.
 - B. That this Court award Plaintiff damages in an amount commensurate with the injury sustained by Plaintiff to his reputation as a result of such Defamation.
 - C. That this Court award Plaintiff the reasonable costs and expenses of this action, including reasonable attorney's fees;
- and,
- D. That this Court grant such other and further relief as this Court deems equitable and just under the circumstances.

Dated this 13th day of July, 2018.

PLAINTIFF HAS A LAWFUL RIGHT TO CORPORATE INFORMATION

Civil Case No. 2018-CP-23

2019-CP-23-00269

PRAYER FOR RELIEF **VERIFIED COMPLAINT FOR**

WHEREFORE, Plaintiff, Raymond A. Wedlake, appearing *pro se*, prays for judgment for the

DECLARATORY JUDGMENT

Plaintiff, as follows:

AND INJUNCTIVE RELIEF

- A. That the Court find against Defendants and grant Plaintiff's request for a Declaratory
(NON-JURY)
Judgment confirming under the NPCA that Plaintiff is entitled to "inspect and copy"
requested Documents, specifically the List from November 9, 2018 balloting;
- B. That the Court confirm Plaintiff has a right for access to requested Documents per NPCA
Section 33-31-1602(d), and other all sections of NPCA granting such right;
- C. That the Court compel Defendants to permit such inspection and copying of Documents, and
to provide the List from ballots of November 9, 2018;
- D. That the Court affirm a Board must act with good faith to provide access to Documents to
which Plaintiff is entitled, and to which such right to "inspect and copy" exists;
- E. That the Court recognize Injunctive Relief is appropriate and necessary to carry out the
Court's Declaratory Relief;
- F. That this Court award Plaintiff "Nominal Damages" of \$1;
- G. That this Court award Plaintiff the reasonable costs and expenses of this action;
and,
- H. That this Court grant such other and further relief as this Court deems equitable and just
under the circumstances.

Dated this 17th day of January, 2019.

MANY FACTS CITED SUPPORTING EVIDENCE;
HOWEVER, ISSUES FOR LITIGATION WERE LIMITED TO ONLY THOSE ISSUES
PURSUANT TO RELIEF THAT WAS SOUGHT

PRAYER FOR RELIEF

- A. Plaintiff prays for the Court to find in favor of Plaintiff's claim against Defendants for Breach of Covenant of Good Faith and Breach of Fiduciary duty;
- B. Plaintiff prays for the Court to order that Defendants demand recovery from McCabe to WHOA for any and all monies already paid, resulting from 2017-CP-23-06301 or 2018-001209; or, in any event that such funds be placed and held in escrow, until after a final judgment is rendered;
- C. That this Court award Plaintiff "Nominal Damages" of \$1;
- D. That this Court award Plaintiff the reasonable costs and expenses of this action;
and,
- E. That this Court grant such other and further relief as this Court deems equitable and just under the circumstances.

Dated this 21st day of March, 2019.

FILED MAR 23 9 42 AM - GREENVILLE - COMMON PLEAS CASE#2019CP2301501

EXHIBIT OP.5 - Amicable Agreement, May 2016

May 30, 2016

Mr. Ray Wedlake
703 Creekview Dr.
Greenville, SC 29607

Subject: Garage Door Paint

Dear Ray:

The Woodington Homeowners Association Board of Directors and the Architectural Committee reviewed your email of May 8th. In this email you describe three options for painting your garage door; 1) all red, 2) a checkerboard design, and 3) a two-color red and white design similar to the garage door at 307 Woodington Drive. You stated your preferred option is number 3. The Board of Directors and Architectural Committee concluded that option 3 is an acceptable paint design for the garage door.

Please prepare a Request For Architectural Improvement Form describing your request to paint your garage door in this manner. This is our normal procedure and allows us to maintain a record of such requests in our files. You should have received one of these forms recently. Please provide a paper copy of the Request Form to George Padgett at 305 Woodington Drive by Monday, June 6, 2016. If you prefer you may provide the Request to any member of the Board of Directors.

Thank you for your suggested solutions to this issue. We assure you we will process your request quickly.

Sincerely,
The Woodington Board
The Woodington Architectural Committee

EXHIBIT OD.5 - Issues 2020-CV-23-10201384 - Complaint, Supplement
to Complaint, and First Amended Complaint

MANY FACTS CITED SUPPORTING EVIDENCE;

HOWEVER, ISSUES FOR LITIGATION WERE LIMITED TO ONLY THOSE ISSUES

PURSUANT TO CAUSES OF ACTION, AND RELIEF THAT WAS SOUGHT

SUMMARY OF ISSUES FOUND IN COMPLAINT, AND SUPPLEMENT (excerpted)

88. ... Covenants are the controlling document ... the Board has no legal right to impose any assessment upon Members to pay for Fees, since it is not a power granted to them in the Contract. ...

89. ... Court must annul and void any and all extended powers added in the By-Laws, which were not granted to the Board in the Covenants.

90. Pursuant to NPCA Section 33-31-206, By-Laws provisions that are "inconsistent with law" are therefore null and void. Also per NPCA Section 31-33-724 the Board must possess a signed-proxy-appointment form to act as Proxy for a Member. ... This Court must disallow the Board to vote ballots ... recognizing By-Laws Article XVII, Section 3, as a provision that is inconsistent with law.

91. ... conspiracy perpetrated by McCabe and the Board exists, and thus this Court must find that McCabe extorted WHOA funds.

92. McCabe admitted that WHOA was not their client, and WHOA by McCabe's own admissions was "... never a party ...", but yet violated ... by sending an invoice to WHOA, to whom they provided no legal services as related to their defense of 2017-Board-members in Case [C6301]. ... McCabe's bill to WHOA was illegitimate ... until after resolution of pending Appeal 2018-001209.

93. McCabe is legally obligated to "... contribute back ..." to WHOA pursuant to NPCA Section 33-31-833(b)(2), and thus this Court must so order McCabe to "pay back".

94. Pursuant to NPCA 33-31-834(a and b), the Board has no immunity from suit. ...

95. Pursuant to NPCA Section 33-31-830 ... the Board did not act in good faith, nor with the care an ordinarily-prudent person would exercise, nor in a manner reasonably believed to be in the best interests of the corporation. ...

SUMMARY OF PRAYER FOR RELIEF (excerpted)

- A1. Construe the Contract and provide Declaratory Judgment (DJ) for breach of contract, confirming no authority nor powers are given to the Board under the Covenants to assess Members for Fees [legal fees];
- A2. Construe the Covenants and By-Laws and provide DJ that the By-Laws conflict with the Covenants regarding authority and powers to assess Members for Fees, and thus the Covenants must control;
- A3. Construe opinions issued by the Attorney General, and provide DJ that the Board cannot use the By-Laws, nor any "governing" document which came after the Covenants, to give to themselves extended or additional authority or powers that were not specifically granted by the Covenants;
- B. ... Court to find ... against McCabe [MTB]:
- B1. conspiracy and extortion;
- C. ... Court ... Order ... the Board:
- C1. to pay back to other-similarly-situated Members any-and-all assessments paid to date by Members for Fees;
- C6. to declare null and void all of By-Laws Revisions 1, 2, and 3, since no By-Laws revision to date was approved by Members as defined and required by NPCA Section 33-31-140;
- D. ... Court ... Order ... McCabe:
- D1. to pay back \$7493 to WHOA Board;
- D2. in the alternative, to set aside and hold in escrow such WHOA funds possessed by McCabe, until after a final judgment is rendered from pending Appeal 2018-001209;

SUMMARY OF ISSUES FOUND IN AMENDED COMPLAINT

26. SF [State Farm] has violated provisions and exclusions found in the ICO [insurance contract], and all such actions contrary to their ICO with WHOA, which is a matter of record, leave SF in BOC [breach of contract].
27. BOC by SF, who is contractually obligated to comply with the ICO, is an actionable status upon which this Court can grant requested relief.
28. By providing "coverage" to the Board in this instance, contrary to contractual obligations as found in the ICO which prohibit coverage, SF is enabling legal malpractice on the part of CWC [Clarkson, Walsh & Coulter, P.A.], based upon information and belief.
29. Plaintiff's FAC [First Amended Complaint] takes away "monetary damages", and thus SF is contractually bound by the ICO not to provide coverage to the Board ...

SUMMARY OF AMENDED PRAYER FOR RELIEF (excerpted)

Plaintiff reiterates and affirms all prayers for relief: A – F found in CPS [Complaint Plus Supplement], where however, the amount of “Nominal Damages” needs to be amended to zero dollars in “E” :

E. That this Court award ... Nominal Damages of \$0 = zero dollars;

... addition of amended prayers ...

G. ... Court to find ... against SF, giving Declaratory Judgment for Breach of Contract;

H. ... Court ... Order ... for SF :

H1. to request return to SF of all payments made to CWC for Plaintiff’s case;

H2. pursuant to the ICO that SF is contractually bound not to provide “coverage” to the Board because no monetary damages are sought in Plaintiff’s case.

EXHIBIT OD.6 - Statute Recognizes Third-Party Claims

SECTION 38-59-20. Improper claim practices. [emphasis added;
Former 1976 Code Section 38-37-1110]

Any of the following acts by an insurer doing accident and health insurance, property insurance, casualty insurance, surety insurance, marine insurance, or title insurance business, if committed without just cause and performed with such frequency as to indicate a general business practice, constitutes improper claim practices:

(1) Knowingly misrepresenting to insureds or **third-party claimants** pertinent facts or policy provisions relating to coverages at issue or providing deceptive or misleading information with respect to coverages.

(2) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies, **including third-party claims** arising under liability insurance policies.

(3) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims, **including third-party liability claims**, arising under its policies.

(4) Not attempting in good faith to effect prompt, fair, and equitable settlement of claims, **including third-party liability claims**, submitted to it in which liability has become reasonably clear.

(5) Compelling policyholders or claimants, **including third-party claimants** under liability policies, to institute suits to recover amounts reasonably due or payable with respect to claims arising under its policies by offering substantially less than the amounts ultimately recovered through suits brought by the claimants or through settlements with their attorneys employed as the result of the inability of the claimants to effect reasonable settlements with the insurers.

(6) Offering to settle claims, **including third-party liability claims**, for an amount less than the amount otherwise reasonably due or payable based upon the possibility or probability that the policyholder or claimant would be required to incur attorneys' fees to recover the amount reasonably due or payable.

(7) Invoking or threatening to invoke policy defenses or to rescind the policy as of its inception, not in good faith and with a reasonable expectation of prevailing with respect to the policy defense or attempted rescission, but for the primary purpose of discouraging or reducing a claim, **including a third-party liability claim**.

(8) Any other practice which constitutes an unreasonable delay in paying or an unreasonable failure to pay or settle in full claims, **including third-party liability claims**, arising under coverages provided by its policies.

ATTACHMENT IB.10 - Notice of Civil Appeal

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Raymond A. Wedlake, as a Member of
Woodington Homeowners' Association, Inc.
and on behalf of other-similarly-situated Members
of Woodington Homeowners' Association, Inc.
Appellant)

vs.)

Board of Directors of Woodington Homeowners'
Association, Inc., comprised of Mona Craig,
Edward Decker, and Sandra LaCroix
at the time of filing)

and)

McCabe, Trotter & Beverly, P.C.)

and)

State Farm Fire and Casualty Company)

Respondents)

2020-CP-23-05996
COMMON PLEAS CASE NUMBER

2020-CV-23-10201384
MAGISTRATE CIVIL CASE NUMBER

IN THE COURT OF COMMON PLEAS

NOTICE OF CIVIL APPEAL

FILED
CLERK OF COURT
JAN 13 2021
GREENVILLE, SC

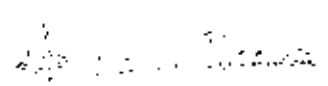
The Plaintiff, Raymond A. Wedlake (*Pro Se*), hereby gives notice of appeal pursuant to Rule 18, SCRMC, from the judgment of the magistrate's court in the above action, to the Circuit Court of Common Pleas, in the county of Greenville.

This notice of appeal is made subsequent to an "Order Granting Defendants' Motion to Dismiss" which was received on the 28th day of December, 2020. South Carolina Code of Laws: Title 18, Chapters 1 and 7, grant to Plaintiff a statutory right for this Appeal.

The appellant's exceptions to the judgment of the magistrate are set forth as follows:

- The Order granting dismissal was based upon Errors of Law and Errors of Fact;
- Plaintiff was not clear about actual-legal grounds upon which dismissal was based;
- Plaintiff's pleadings and documents, that gave clear evidence of genuine issues of material fact, were not given lawful consideration pursuant to statutory law, nor pursuant to South Carolina Supreme Court precedents;
- Plaintiff reserves the right to file a subsequent Initial Brief that will support these, and additional, claims.

Dated this 28th day of December, 2020.


Raymond A. Wedlake, Appellant (*Pro Se*)
703 Creekview Drive, Greenville, SC 29607
864-254-9262 wedlakera@gmail.com

Verified

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 13 TH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C/A No.: 2017-CP-23-6301
	)	
	)	
Raymond A. Wedlake, individually and	)	
derivatively, on behalf of all Members of	)	
the Woodington Homeowners'	)	
Association, Inc.,	)	
	)	
Plaintiff(s),	)	MOTION TO DISMISS BY DEFENDANTS
	)	BENJAMIN ACORD, WILLIAM
v.	)	CRAIGO, DENIS ESTEVE, AND BRIAN
	)	JAMES, AND ALTERNATIVELY TO
Benjamin Acord, William Craigo, Denis	)	STRIKE FOR A MORE DEFINITE
Esteve, and Brian James in their capacity as	)	STATEMENT
the current Board of Directors of the	)	
Woodington Homeowners' Association,	)	
Inc.,	)	
	)	
and,	)	
	)	
Association Management Group SC, Inc.,	)	
	)	
Defendant(s).	)	
	)	

017402.00009

TO: GRANT GIBSON, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorneys for the Defendants Benjamin Acord, William Craigo, Denis Esteve, and Brian James will move before the Presiding Judge of the Greenville County Court of Common Pleas at the Greenville County Courthouse at 10:00 a.m. on the 10th day after service hereof or as soon thereafter as possible for an Order dismissing Plaintiff's Complaint against them pursuant to Rule 12, SCRPC, and if the Complaint is not dismissed, to strike portions of the Complaint pursuant to Rule 12(f), SCRPC, and to make a more definite statement pursuant to Rule 12(e), SCRPC, as set forth herein. The grounds for dismissal include, but are not limited to the following:

1. Rule 12(b)(6), SCRCF. Plaintiff's Complaint fails to state a claim and fails to state facts sufficient to constitute a cause of action against these Defendants. The grounds include, but are not limited to the following:
 - a. These Defendants, as current directors of the Woodington Homeowners' Association, Inc., a nonprofit corporation, are immune to suit for monetary damages, including, but not limited to, pursuant to S.C. Code Ann. § 33-31-202.
 - b. Plaintiff has failed to meet the requirements of Rule 23, SCRCF, and therefore lacks standing to bring a derivative suit. The grounds specifically include, but are not limited to the following. Plaintiff does not fairly and adequately represent the members of the Woodington Homeowners' Association, Inc., and Plaintiff's Complaint fails to allege that he does. In fact, the allegations of Plaintiff's Complaint, on their face, actually demonstrate that Plaintiff does not fairly and adequately represent the members of Woodington Homeowners' Association, Inc. Notably, the members of Woodington Homeowners' Association, Inc. voted overwhelmingly to ratify many of the issues alleged by Plaintiff in this suit at the last Annual Meeting, such ratification being noted and identified in Plaintiff's Complaint. Such ratifications, as referenced in Plaintiff's Complaint, are a clear indicia that Plaintiff does not represent the interests of the members of the Woodington Homeowners' Association, Inc. or the community. Therefore, Plaintiff's claims must be dismissed.
 - c. Pursuant to South Carolina law, including but not limited to S.C. Code Ann. § 33-31-304, a suit to set aside or enjoin a corporate action where a third party has already acquired rights, including contracts already entered into or completed, is improper and cannot be maintained. Thus, a suit seeking to set aside or nullify

any management contract with Association Management Group SC, Inc., including any funds paid pursuant thereto, is not allowed under South Carolina law and must be dismissed.

- d. Many of the issues alleged in Plaintiff's Complaint have been ratified by the membership, as acknowledged in Plaintiff's Complaint. Such ratifications were voted upon by the membership and not solely done by the Board or Directors.¹ Further, these Defendants were not even serving as directors when the ratifications occurred, as acknowledged by Plaintiff's Complaint.² An action against the current board of directors for Woodington Homeowners' Association, Inc. cannot set aside a ratification that was done by the membership as a whole and also one that occurred while these Defendants were not even directors of the Woodington Homeowners' Association, Inc. These Defendants are not proper parties to such claims and Plaintiff has failed to name proper parties and/or necessary parties to seek the relief requested. See also, Rule 12(b)(7), SCRCF.
- e. Plaintiff's Complaint purports to seek relief against these Defendants for alleged actions and conduct that was allegedly performed by other persons, including the actions of prior board members for Woodington Homeowners' Association, Inc. For example, the ratifications that Plaintiff seeks to set aside were voted upon by the membership as a whole and solely not by the directors of Woodington Homeowners' Association, Inc. and such ratifications took place prior to these Defendants' terms as directors.³ By way of further example, Plaintiff seeks to challenge contract renewals and conduct at meetings that occurred prior to these

¹ See Paragraph 34 of Plaintiff's Complaint.

² See Paragraph 34 of Plaintiff's Complaint stating that it was the 2016 Board that permitted the membership vote on the ratifications.

³ See Paragraph 34 of Plaintiff's Complaint.

Defendants' tenure as directors. These Defendants were not directors at the time of the ratifications, nor has Plaintiff alleged that they were.⁴

- f. These Defendants are not the proper parties as to all of the claims and relief requested by Plaintiff, and Plaintiff has failed to name the proper parties and/or necessary parties to seek all of the relief requested.⁵
- g. Plaintiff's Complaint fails to allege a justiciable controversy as to these Defendants. Many of the issues alleged by Plaintiff are moot and/or cannot be redressed by an action against these Defendants. For example, Plaintiff appears to challenge prior contract renewals that have been fully performed as well as actions and matters clearly prior to these Defendants terms as directors and also beyond the statute of limitations. Further, some claims are unripe as to these Defendants, such as the requested declaration that these Defendants (the current board of directors) do not have unilateral authority to increase management company fees, when there is no allegation that these defendants have made such a unilateral increase. By way of further example, Plaintiff appears to seek redress over annual meeting minutes that are not yet final and have not been placed before the membership for approval and adoption. Additionally, there is no allegation that these Defendants have served terms in excess of five years, therefore, such a claim against them is unripe. Further, to the extent such claim involves terms of prior directors, these Defendants are not proper parties for such claims and such claims would be moot in any event.
- h. The hiring of a management company to assist the board of directors is authorized by the bylaws asserted by Plaintiff in his Complaint to be controlling, and

⁴ See Paragraph 34 of Plaintiff's Complaint.

⁵ Including pursuant to Rule 12(b)(7), SCRCP.

Plaintiff's Complaint acknowledges the same.⁶ Plaintiff fails to allege any specific duties or authority that have been improperly delegated to Association Management Group SC, Inc. Further, any functions that have been performed by Association Management Group SC, Inc. do not constitute an improper delegation as a matter of law.

- i. Plaintiff's Complaint fails to state legally cognizable claims against these Defendants in several respects. As an example, upon information and belief, there is no legally cognizable claim to require the directors of a nonprofit corporation to send out a ballot on a bylaw amendment proposed by a member. Plaintiff has failed to allege that he has fulfilled the necessary requirements for calling a special meeting for a vote upon such proposed amendment.
 - j. Such further grounds as may be set forth in a memorandum of law in support of this motion.
2. As set forth above, Plaintiff lacks standing to bring a derivative claim for failing to meet the requirements of Rule 23, SCRCP. Therefore dismissal is proper under Rule 12(b)(1), SCRCP, for lack of subject matter jurisdiction and pursuant to Rule 12(b)(6), SCRCP.
 3. These Defendants are not proper parties for the relief sought by Plaintiff. Plaintiff has failed to name proper parties to seek the redress requested and has failed to include necessary parties pursuant to Rule 12(b)(7).
 4. Upon information and belief, these Defendants have not been properly served with the Summons and Complaint that was filed with the Court, thus, upon information and belief, dismissal is appropriate under Rule 12(b)(2) and Rule 12(b)(5), SCRCP for insufficiency of service of process and lack of personal jurisdiction.

⁶ See, e.g., Paragraphs 47-48 of Plaintiff's Complaint.

5. Such further grounds as may be set forth in a memorandum of law in support of this motion.

Based on the foregoing, Plaintiff's Complaint should be dismissed. Should Plaintiff's Complaint not be dismissed in its entirety, these Defendants move to strike the exhibits to Plaintiff's Complaint pursuant to Rule 12(b)(f), SCRPC on the grounds that such exhibits contain improper evidentiary matters, unofficial versions of records, impertinent matters, excerpted documents, and otherwise inadmissible matters. Further, Plaintiff's complaint contains numerous allegations that are immaterial and impertinent to the requested relief and asserted causes of action, and such immaterial and impertinent allegations should be stricken.

Further, Plaintiff's Complaint is vague, ambiguous, and conflicting as to the relief sought against these Defendants, and is vague and ambiguous as to which claims are being asserted individually versus derivatively. Should Plaintiff's Complaint not be dismissed in its entirety, these Defendants move pursuant to Rule 12(e) to require Plaintiff to make a more definite statement to clarify the relief sought and which claims Plaintiff is seeking to assert individually as to those that he is purporting to assert derivatively.

This motion may be further supported by a memorandum of law. These Defendants further seek an award of attorney's fees and costs.

s/ Ely O. Grote

Ely O. Grote (SC Bar No.: 75379)

McCabe, Trotter & Beverly, PC.

140 Stoneridge Dr., Suite 650 (29210)

P.O. Box 212069 · Columbia, SC 29221

Phone: (803) 724-5000 · Fax: (803) 724-5001

Email:

Attorney for Defendants

Columbia, South Carolina
November 6, 2017

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

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

Plaintiff(s)

VS.

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

and,

Association Management Group SC, Inc.,

Defendants

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Civil Action No.

2017-CP-23-06301

**ORDER DENYING MOTION TO
DISMISS, AND IN THE ALTERNATIVE
MOTION TO STRIKE OR FOR A
MORE DEFINITE STATEMENT**

This matter came before me on January 3, 2018, for a hearing regarding a Motion to Dismiss, or in the Alternative, to Strike or for a More Definite Statement on behalf of Defendants Benjamin Acord, William Craig, Denis Esteve and Brian James, (the “Board Defendants”). The aforementioned motion was heard following approval by this Court of a settlement between Plaintiff and Defendant Association Management Group SC, Inc. (“AMG”). Upon the Court’s approval of the settlement between Plaintiff and AMG, counsel for Plaintiff and AMG entered a stipulation on the record that all claims against the Board Defendants relating to AMG, including all claims relating to or arising out of AMG’s contract(s) with Woodington Homeowners’ Association, Inc. were dismissed. Such Stipulation did not include Plaintiff’s request for the Court to interpret the By-Laws with regard to voting requirements for management contracts and renewals thereof. After hearing oral argument of counsel, and following review of Plaintiff’s

Complaint, the Board Defendants' Motion, Board Defendants' Memorandum in Support and related Affidavits and Exhibits, and Plaintiff's Memorandum in Opposition and related Affidavits and Exhibits, I find in favor of Plaintiff, denying Board Defendants' Motion in all respects.

THEREFORE, IT IS ORDERED, that Board Defendants' Motion to Dismiss, and, in the alternative, to Strike or for a More Definite Statement is DENIED. Further, by stipulation of counsel, all claims against the Board Defendants relating to AMG, including all claims relating to or arising out of AMG's contract(s) with Woodington Homeowners' Association, Inc. are dismissed

IT IS SO ORDERED.

Robin B. Stilwell, Circuit Court Judge

Date: _____



Greenville Common Pleas

Case Caption: Raymond A Wedlake , plaintiff, et al vs. Benjamin Acord , defendant,
et al
Case Number: 2017CP2306301
Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

ATTACHMENT IB.13 - Official Transcript of Record - Hearing of 11/24/20

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	
COUNTY OF GREENVILLE	)	
Raymond A. Wedlake, as a Member	)	2020- CV- 23- 10201384
of Woodington Homeowners'	)	
Association, Inc. and on	)	
behalf of other-similarly-	)	
situated Members of Woodington	)	
Homeowners' Association, Inc.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Board of Directors of	)	
Woodington Homeowners'	)	
Association, Inc., comprised	)	
of Mona Craig, Edward Decker,	)	
and Sandra LaCroix at the	)	
time of filing	)	
AND	)	
McCabe, Trotter, and Beverly,	)	
P.C.	)	
AND	)	
State Farm Fire and Casualty	)	
Company,	)	
	)	
Defendants.	)	

Magistrate hearing taken in the aforementioned matter was heard before the Honorable Laura M. Saunders taken before Rachel H. Wood, Court Reporter and Notary Public, at Fairview Austin Summary Court, 205 North Maple Street, Suite 4, Simpsonville, South Carolina, on the 24th day of November, 2020, commencing at the hour of 10:01 a.m.

REPORTED BY: Rachel H. Wood
Court Reporter
LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-587-7050 or 864-467-1373
depos@egal eagleinc.com

APPEARANCES:

RAYMOND A. WEDLAKE
703 Creekview Drive
Greenville, South Carolina 29607
(Wedlaker@mail.com)
(864) 254-9262

Pro Se Plaintiff,

P. CHRISTOPHER SMITH, J.R., Esquire
Clarkson, Walsh & Coulter, P.A.
1164 Woodruff road
Greenville, South Carolina 29607
(864) 232-4400
(Csmith@clarksonwalsh.com)

Attorney for Defendants Board of Directors &
Board Members,

NICK FARR, Esquire
Gallivan White Boyd
55 Beattie Place, Suite 1200
Post Office Box 10589 (29603)
Greenville, South Carolina 29601
(864) 271-9580
(NFarr@gwblawfirm.com)

Attorney for Defendant State Farm

APPEARANCES: (continued):

STEPHANIE TROTTER KELLAHAN, Esquire

McCabe, Trotter & Beverly, P.C.

4500 Fort Jackson Boulevard, Suite 250

Post Office Box 212069 (29221)

Columbia, South Carolina 29209

(803) 724-5000

(Stephanie.kellahan@mccabetrotter.com)

Attorney for Defendant McCabe, Trotter & Beverly,
P.C.

I N D E X

1		
2		
3	Court's Opening Remarks.....	5
4	McCabe, Trotter & Beverly Case.....	6
5	Board of Directors Case.....	21
6	State Farm Case.....	24
7	Plaintiff's Case.....	27
8	McCabe, Trotter & Beverly Rebuttal.....	51
9	Board of Directors Rebuttal.....	52
10	State Farm Rebuttal.....	53
11	Plaintiff's Rebuttal.....	55
12	Court's Ruling.....	55
13	Certificate of Reporter.....	65

EXHIBITS:

(None were marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT:

2 We are going to go ahead and go on the record. This is
3 Case Number 2020-CV-23-10201384. This is Raymond A.
4 Wedlake, as a Member of the Woodington Homeowners'
5 Association, Incorporated on behalf of other-similarly-
6 situated members of the Woodington HOA versus the Board
7 of Directors of the Woodington HOA, Mona Craig, Edward
8 Decker, Sandra LaCroix, and McCabe, Trotter & Beverly,
9 P.C. along with State Farm Fire and Casualty Company.
10 So we have Raymond Wedlake present on behalf of the
11 Plaintiff. I believe Stephanie --

12 MS. KELLAHAN:

13 Your Honor, I'm Stephanie Kellahan from McCabe, Trotter
14 Beverly.

15 THE COURT:

16 Nice to meet you, Stephanie.

17 MS. KELLAHAN:

18 Nice to meet you.

19 THE COURT:

20 And then we have?

21 MR. FARR:

22 And I am Nick Farr with Gallivan White & Boyd here on
23 behalf of State Farm Fire and Casualty.

24 THE COURT:

25 Nice to meet you. Thank you.

1 MR. SMITH:

2 And Chris Smith here on behalf of the Board Members and
3 the Board.

4 THE COURT:

5 Okay. Great. So because we had so many Dispositive
6 Motions filed at once, Mr. Wedlake, I wanted to
7 schedule these for today because it would take some
8 time on a schedule date for a bench trial. I know the
9 way the Notices went out it said a bench trial, but
10 today is actually per my email just scheduled for the
11 Motions to Dismiss, along with I believe you filed some
12 sort of Motion for a Preliminary Injunction, Mr.
13 Wedlake, so I'll hear from you last on that.

14 MR. WEDLAKE:

15 That Motion has been withdrawn, Your Honor, which I did
16 inform The Court.

17 THE COURT:

18 Okay. I apologize. There's been such a flurry of
19 filings that I may have missed that.

20 MR. WEDLAKE:

21 Is this Rachel Wood, the court reporter?

22 THE COURT:

23 Yes, Ms. Wood also is here hired by the Plaintiff to
24 provide court reporting services and I believe she is
25 on the record and taking down everything that's being

1 said as we go along.

2 MR. WEDLAKE:

3 I hadn't noticed at first when I came in. Thank you,
4 Ms. Wood.

5 THE COURT:

6 Okay. All right. Well, thank you. So we'll go ahead
7 and get started. I don't know if any of the Defense
8 Counsel has decided on who is going to go first, but I
9 know that McCabe, Trotter actually filed their Motion
10 first, so we can start with you if you'd like to.

11 MS. KELLAHAN:

12 Thank you, Your Honor.

13 MR. SMITH:

14 I think I filed the longest.

15 THE COURT:

16 All right. Yes, ma'am

17 MS. KELLAHAN:

18 Thank you, Your Honor. As I stated I'm Stephanie
19 Trotter Kellahan. I am the managing shareholder for
20 McCabe, Trotter & Beverly and I'm here today as Counsel
21 for the firm. We filed a Motion to Dismiss based on
22 several different grounds. And I think it would help
23 The Court for me to sort of lay a roadmap before we get
24 started. The way that I read Mr. Wedlake's Complaint
25 is that there are essentially a direct claim by Mr.

1 Wedlake. He is individually asserting against McCabe
2 Trotter & Beverly a claim that he has filed as casting
3 plaintiff in a false light. I do believe that he has
4 asserted several derivative claims. And those are for
5 extortion and/or conspiracy to extort, unlawful
6 distribution under the Nonprofit Act, and those are the
7 three claims that he has asserted derivatively.
8 Beginning with the direct claim Your Honor, I believe
9 The Court should dismiss this for two reasons. One,
10 South Carolina does not recognize a Cause of Action
11 called casting plaintiff in a false light. Brown
12 versus Pearson in the Court of Appeals decided that was
13 not a Cause of Action in 1997. The case cites it as
14 326 S.C. 409. However, when you construe Mr. Wedlake's
15 pleadings liberally as a Pro Se litigant I think he
16 probably has alleged the elements of defamation. His
17 allegation is essentially that an attorney in our firm
18 wrote a letter.

19 (Off the Record 10:06 a.m -- 10:06 a.m)

20 MS. KELLAHAN:

21 Mr. Wedlake has essentially alleged that a lawyer in my
22 firm Ryan Oates --

23 THE COURT:

24 You-all can remove your masks. It's your choice.

25 MS. KELLAHAN:

1 Thank you. Has alleged that an attorney in my office,
2 Ryan Oates, wrote a letter to the membership of
3 Woodington Homeowners' Association that Mr. Wedlake
4 alleges defamed him. He alleges that it ruined his
5 reputation in the community. And I believe those are
6 the elements for liable in South Carolina. The problem
7 is, and the reason I think The Court should still
8 dismiss this Cause of Action, is that the statute of
9 limitations for defamation is two years. And that
10 begins to run when the allegedly defamatory statement
11 is made. Mr. Wedlake has attached that letter as an
12 exhibit to his Complaint and the date on that letter is
13 September 18th of 2016. South Carolina Code 15-3-550
14 states the statute of limitations is two years. In
15 Jones versus Folly Beach, which I cited in my Motion,
16 provides there is no Discovery Rule for liable. So the
17 statute begins to run on the date the statement was
18 made, not the date it was discovered. Even if we did
19 recognize the Discovery Rule Mr. Wedlake attaches his
20 response to that letter, which was dated I believe
21 September 25th of 2016. So he discovered the
22 defamatory statement in 2016. He did not bring this
23 action until 2020. So the statute has well run. Mr.
24 Wedlake's Memorandum in Opposition to our Motion cites
25 the Discovery Rule. He cites some case law. I would

1 represent to Your Honor that that case law is about the
2 statute of limitations for contract actions, not for
3 liable. He also makes a claim here alleging defamation
4 and that this was an attempt to twist his allegations
5 to be defeated by the statute of limitations. However,
6 Your Honor, in a Common Pleas case 2020-CP-23-1679 he
7 alleged the same Cause of Action, casting in a false
8 light against different parties. The Circuit Court
9 Judge in that case granted Summary Judgment and in his
10 Motion to Reconsider Mr. Wedlake said, "Well, everybody
11 knows that casting in a false light is really
12 defamation." So I think what's before The Court are
13 allegations that amount to defamation. What's attached
14 to the Complaint clearly shows it accrued more than two
15 years ago and so that direct claim by Mr. Wedlake
16 should be dismissed. If that claim is dismissed all
17 that's left are derivative claims. And I believed that
18 Mr. Wedlake, first and foremost, lacks the ability to
19 bring those because he's not a licensed attorney in the
20 State of South Carolina. A derivative claim can be
21 thought of in two ways. Either the shareholder is
22 bringing the claim on behalf of the corporation, the
23 corporation is the real party of interest, which is
24 what the Supreme Court in Johnson versus Baldwin 221
25 S.C. 141 stated, "The shareholder is a nominal

1 plaintiff. The corporation is the real party of
2 interest." To think of it in another way Mr. Wedlake
3 is alleging that he is bringing this action on behalf
4 of other homeowners in the Woodington Homeowners'
5 Association that are situated similarly to him. In
6 either case he's bringing the action on behalf of
7 someone other than himself, which he's not allowed to
8 do if he's not a licensed attorney. Now, in
9 Magistrate's Court a corporation can be represented
10 under certain circumstances. However, the Supreme
11 Court as well as the statute requires that a written
12 authorization signed by the corporation's president,
13 chairperson, general partner, owner or CEO must sign
14 the written authorization and the authorization has to
15 be filed with the Magistrate at the time the initial
16 pleading is filed. I would submit to The Court I
17 haven't seen such a written authorization and based on
18 the facts of this case I don't believe that Mr. Wedlake
19 could obtain a written authorization because he has
20 named the president of the Association as an adverse
21 party. So I believe that his derivative claim should
22 be dismissed on a standing issue in that he doesn't
23 have standing to represent the corporation or his
24 neighbors as he's an unlicensed attorney before the
25 Magistrate Court. Even if Mr. Wedlake were allowed to

1 represent the corporation or his neighbors I believe
2 his claims fail substantively. And I'll just run
3 through those very quickly. I've laid them out in my
4 Motion to The Court. First, Mr. Wedlake alleges that
5 the Board paid -- the Association paid my law firm
6 attorney's fees and that those attorney's fees should
7 be refunded to the Association under South Carolina
8 Code 33-31-833 (b)(2). Your Honor, a reading of that
9 statute and the other sections within that chapter show
10 that this section is really a mechanism whereby The
11 Court determines if the distribution was illegal makes
12 the guilty -- one of the guilty directors pay the full
13 amount of the illegal distribution back to the
14 corporation and this section allows that guilty
15 director to seek contribution from the other guilty
16 parties. So a bad guy issues a distribution to all the
17 shareholders and he's enriched by \$100, but the
18 corporation loses 1,000. If The Court says, "Bad guy,
19 you have to pay the full 1,000 back," he can use this
20 section to go to the other people that got \$100 and
21 seek contribution from them. 33-31 defines
22 distribution as a defined term in the definition
23 section. And it says it is a direct or indirect
24 transfer back to a member, officer or director.
25 Plaintiff's Complaint does not allege that McCabe,

1 Trotter & Beverly is a member, officer, or director, so
2 any money that was paid to McCabe, Trotter & Beverly
3 isn't a distribution so it doesn't fall under the
4 statute. Additionally, as I just said this a mechanism
5 for a guilty director to get paid back. The Plaintiffs
6 don't allege that they are a guilty director who made a
7 distribution in violation of the Act or that they've
8 paid that money back and now they're seeking
9 contribution. So this -- this section is entirely
10 inapplicable to the case at hand. The bulk of the
11 Plaintiff's Complaint derivatively seems to fluctuate
12 between two theories. One, that McCabe, Trotter &
13 Beverly extorted these legal fees from the Board or
14 from the HOA and the idea that McCabe, Trotter &
15 Beverly conspired with the Board to extort the money
16 from the HOA. Accepting all of his factual allegations
17 is true I still don't believe the Plaintiff has stated
18 a Cause of Action for either of these. The first thing
19 is South Carolina doesn't recognize a civil cause of
20 action for extortion. There is a criminal offense for
21 extortion. It's a misdemeanor. Common law extortion
22 can only be committed by a public official who expects
23 money for official duties. That hasn't been alleged
24 here at all. The Plaintiff's response to McCabe,
25 Trotter & Beverly's Motion to Dismiss states that he

1 meant for it be a criminal allegation. That it was the
2 Magistrate's Court that labeled it civil.

3 Unfortunately, Mr. Wedlake can't prosecute a criminal
4 action in Magistrate's Court under In re Matter of
5 Richland County Magistrate's Court 389 S.C. 408. So if
6 it's a civil cause of action it fails because South
7 Carolina doesn't recognize a civil cause for extortion.
8 If it's a criminal allegation it fails because Mr.

9 Wedlake can't enforce criminal offenses. The remainder
10 of the Complaint seems to allege that we conspired.

11 Conspiracy is two or more persons joining together to
12 injure the Plaintiff and causing special damages, which
13 is critical for a conspiracy theory or a conspiracy
14 cause of action. This cause fails for two reasons.

15 First, the Complaint alternates between alleging that
16 we conspired with the Board, that's paragraph 24 of the
17 Complaint. Then it changes to we threatened and
18 coerced the Board. That's paragraph 48 and then it
19 becomes that we hid information from the Board to trick
20 the HOA into paying us, and that's paragraph 52. None
21 of those theories add up to conspiring with another
22 party. And that's just an element of conspiracy. If
23 we threatened, coerced, forced, hid information we
24 couldn't have been working in concert with that main
25 part, the Board. The Complaint also fails because it

1 fails to allege any special damages. Special damages
2 are damages that are separate and distinct from the
3 damages alleged in the other causes of action. The
4 only damages alleged is that a refund of these legal
5 fees need to be made. The legal fees are what are
6 extorted. The legal fees are what Plaintiffs are
7 asking to come back. But that is the same damage and
8 same relief requested both under the Nonprofit Statute,
9 that I just discussed, as well as the breach of
10 contract claim that has been alleged against the Board
11 Members. So there's no separate and distinct special
12 damage that has been alleged that would support a
13 conspiracy cause of action. Additionally, attorneys
14 are immune for liability to third parties if the
15 allegations arise from the performance of their
16 professional activities. To be guilty or liable for
17 conspiring with your client you have to breach an
18 independent duty to a third party and you have to act
19 outside your scope of representation, and neither of
20 those things have been alleged in the Complaint. The
21 only allegation is that McCabe, Trotter & Beverly
22 conspired with their client, the individual Board
23 Members, to get the Board Members' legal fees paid.
24 And even assuming that there was some bad act in there
25 the only allegation is that McCabe, Trotter & Beverly

1 worked with their client to represent their client in a
2 legal capacity. The final thing that I would like to
3 bring to The Court's attention is I believe that all
4 these claims are precluded under claim preclusion and
5 collateral estoppel. Mr. Wedlake has brought several
6 lawsuits. This all started in 2017 with the case he
7 brought against several members who served on the Board
8 of Directors. My understanding this was a Declaratory
9 Judgment Action seeking a DJ that the Board should
10 comply with the Bylaws among other things. That case
11 was -- involuntary nonsuit was granted in favor of the
12 Board Members. That's on appeal. Mr. Wedlake sued
13 other Board Members in 2019 for a records request. He
14 sued other Board Members in 2019. And that 2019 case,
15 2019-CP-23-1501, is the case where Mr. Wedlake already
16 rehashed all of this. His theory is essentially the
17 Association should have never paid our legal fees.

18 THE COURT:

19 Hold on just a second. My battery just died. I know
20 we have a court reporter, but I want to have my own
21 record.

22 (Off the Record 10:17 a.m. -- 10:18 a.m.)

23 THE COURT:

24 All right. Back on the record. I apologize.

25 MS. KELLAHAN:

1 Thank you, Your Honor. The 2019-1501 case is a case
2 where he essentially rehashes all of this same theory.
3 Mr. Wedlake's position is that the HOA should have
4 never paid our legal fees. The Association held a vote
5 where they asked the Membership to vote on whether the
6 Board Members should be indemnified. That is should
7 the Association pay the legal fees associated with
8 2017-6301, and if that vote is yes, will the Membership
9 approve a payment plan that the Association had
10 proposed to McCabe, Trotter & Beverly. And Mr.
11 Wedlake's theory is that the way those votes were
12 counted is improper. And he spends a lot of time going
13 through the ballots that were received for, ballots
14 that were not returned, the ballots received not for
15 these two proposals. All of this was the subject of
16 the lawsuit in 2019. And what the Circuit Court found
17 was that they dismissed Mr. Wedlake's claim. They
18 granted Summary Judgment in favor of the Defendants.
19 He is correct in that the causes of actions that he
20 alleged in 2019 differ from the causes of actions that
21 he has alleged here. He is also correct that my law
22 firm was not a party to the 2019 case. So the parties
23 are a little bit different. However, I don't believe
24 that precludes The Court from applying collateral
25 estoppel here. Collateral estoppel provides that where

1 an issue has already been litigated, no matter what
2 name you call it, no matter what theory you are
3 seeking, if the issue has already been litigated it
4 cannot be relitigated in a subsequent court
5 proceeding. So the heart of this conspiracy, extortion
6 claim and I'm sure Mr. Smith will talk about this a
7 little bit in his Motion to Dismiss some of the claims
8 against the Board, the heart of it is this vote was
9 wrong. The ballots were wrong. They weren't counted
10 correctly. The Bylaws don't allow you to do it that
11 way or if they do the Bylaws are illegal. Whatever the
12 theory is it all goes to this vote was wrong and so the
13 money should have never been paid to McCabe, Trotter &
14 Beverly. That has already been litigated. That has
15 already been decided by the Circuit Court and Summary
16 Judgment has already been granted. What Mr. Wedlake
17 has done is he's decided to come to This Court and try
18 to get a different answer. And he admits as much in
19 his pleadings in his -- in my motion -- my Memorandum
20 in Opposition to ADR I made a statement if Mr. Wedlake
21 wanted ADR he could have filed this action in the Court
22 of Common Pleas. He, in fact, had to specifically
23 settle for \$7,495 as his damages instead of the full
24 33,000 my law firm was paid in order to be in the
25 jurisdiction of This Court. And his response was that

1 I'm well aware, I was not aware, but that everyone
2 knows he experiences extreme bias in the Common Pleas.
3 That he can't get a fair shake up there because they
4 keep ruling against him so he's come here as a Pro Se
5 litigant to try to get the relieve he seeks. And
6 that's just not how our system works. He had a full
7 and fair chance to litigate this before the Court of
8 Common Pleas. It was a Summary Judgment Hearing.
9 Summary Judgment was granted and so this issue has
10 already been decided. The fact that McCabe, Trotter &
11 Beverly wasn't there doesn't matter. It would only
12 matter if Mr. Wedlake were trying to assert this claim
13 against us. So not being a party to the original
14 action only works if someone is trying to assert
15 collateral estoppel against you. But because Mr.
16 Wedlake was a party in the original action, because he
17 had a full and fair opportunity to litigate this,
18 collateral estoppel would prohibit him from bringing a
19 new cause of action on the same theory, the same set of
20 facts before This Court in an attempt to get a
21 different answer. To quickly recap, Your Honor, first
22 I believe the casting plaintiff in a false light is
23 barred by the statute of limitations. I believe The
24 Court should strike the remainder of Mr. Wedlake's
25 claims since he's not a licensed attorney. He cannot

1 represent Woodington Homeowners' Association or his
2 individual neighbors as a non-lawyer in Magistrate's
3 Court. Even if Mr. Wedlake could represent those
4 parties, even if he were licensed in the State of South
5 Carolina, the remainder of his claims would fail
6 substantively and they are also blocked by collateral
7 estoppel because he has already litigated these issues
8 before the Court of Common Pleas.

9 THE COURT:

10 All right. So, I see Mr. Smith standing, so we'll hear
11 from Mr. Smith on behalf of I believe it's --

12 MR. SMITH:

13 I've got the Board Members and the entire Board.

14 THE COURT:

15 Board of Directors. Okay. Thank you. Well, hold on
16 just a second. Mr. Wedlake, what I'd like to do I have
17 a feeling after reading their Motions to Dismiss and
18 Memorandums in Support, I want to hear from all of
19 three attorneys. I think they're all basically joining
20 in the same arguments and then I'm going to afford you
21 an opportunity to respond. I think that's the most
22 efficient way to do things.

23 MR. WEDLAKE:

24 Well, you see, Your Honor, at my age I get confused
25 easy between arguments and so if I get muddled in my

1 mind --

2 THE COURT:

3 Okay. Well, you can take notes. You can take notes.

4 MR. WEDLAKE:

5 And as you're aware I have submitted the Memorandums in
6 Opposition to these things.

7 THE COURT:

8 And I have read them I have read them very carefully,
9 so I just think in the interest of judicial economy,
10 since we have all those people out there in the waiting
11 room I'm going to hear from all three attorneys and
12 then I'm going to allow you to respond to all three
13 arguments. You can go one by one by one, but I'm not
14 going to go back and forth and back and forth. That
15 would just waste time.

16 MR. WEDLAKE:

17 I see. However, should I become confused if you might
18 point that out to me then --

19 THE COURT:

20 I will do my best to keep you on track. Mr. Smith.

21 MR. SMITH:

22 And I will be very brief, Your Honor, so I don't
23 confuse Mr. Wedlake in any fashion if I can help it. I
24 would just incorporate Stephanie's arguments first of
25 all. They're mostly duplicative and I don't need to

1 rehash them. I was actual present for that February
2 hearing with Judge Miller and Mr. Wedlake actually
3 attached the transcript to the Memorandum in Opposition
4 to our Motion. That's all you need to read quite
5 honestly. Judge Miller on page 13 of the transcript,
6 "So if I understand you correctly these attorney's
7 fees, the fees that were incurred to defend your
8 lawsuits." So he filed a lawsuit against our Board.
9 They're forced as a Board and a corporation to go hire
10 an attorney to defend his suit, and then he files a
11 separate suit saying you shouldn't have defended my
12 lawsuit and shouldn't have paid the attorney's fees.
13 And he said, "What would you have them do, just
14 rollover? They can't do that." And it's different
15 Board Members named, but it's the same arguments in
16 this one and it's not a properly filed derivative suit,
17 first of all. It's barred by collateral estoppel.
18 It's potentially res judicata as well. It's not a
19 properly filed class action and no one is in line with
20 him separately. It's important because Mr. Wedlake,
21 and I've only heard this through hearsay, I've covered
22 two hearings. I haven't touched these otherwise, but
23 it happened to be two of the most critical hearings.
24 Six lawsuits in Federal Court, State court, pending at
25 various Courts of Appeals at the moment. And it all

1 started over a sailboat on a garage and a rejection and
2 he just got fired up and started filing suits. And
3 when they didn't turn out his way filed more. And I've
4 heard it through the grapevine he said he has a million
5 dollars and he won't stop until all his money is
6 exhausted. And so now these homeowners have filed a
7 class action against him and I would hate to see him
8 waste his money on this. Like just -- just come to a
9 settlement of that class action and move on with your
10 life. If you're that angry sell your house, you know,
11 and get out of the neighborhood. But the idea of
12 having six lawsuits over the same issues and keep forum
13 shopping basically by filing in different courts to
14 litigate this sailboat on a garage, it's destructive on
15 his own behalf and there's no merit to it. And we've
16 had multiple courts, including Judge Miller, and that
17 Order was attached to our Motion to Dismiss and as I
18 said Mr. Wedlake has attached the transcript, which has
19 our arguments and has Judge Miller's oral findings on
20 the record. And, Your Honor, I just would suggest that
21 this case should be dismissed as the others have been
22 dismissed on the same grounds and on the grounds that
23 it's now collateral estoppel, because it's the exact
24 same issues rehashed. And as it pertains to my clients
25 he's only asking for a \$1 in this case. It just like

1 we're an added necessary party to go against the claims
2 against the law firm that -- that properly billed fees
3 to defend his lawsuits and then now against the
4 insurance company, who is properly providing a defense
5 when my clients turned it over to their carrier. And
6 there's no viable cause of action against any of us.

7 Thank you.

8 THE COURT:

9 Thank you, Mr. Smith. Are you with me Mr. Wedlake?

10 Are you staying with us?

11 MR. WEDLAKE:

12 I am

13 THE COURT:

14 All right.

15 MR. FARR:

16 All right, Your Honor.

17 THE COURT:

18 I'll hear from you, Mr. Farr.

19 MR. FARR:

20 Nick Farr here on behalf of State Farm. I'm going to
21 be very brief as well, but just some -- a little bit of
22 background on State Farm's involvement in this. State
23 Farm is the liability insurer for the HOA. And so when
24 they -- when the HOA provided them with notice of this
25 lawsuit State Farm reviewed the allegations in the

1 Complaint and decided to extend a defense. They hired
2 Mr. Smith and his firm to provide a defense to the HOA.
3 Mr. Wedlake apparently didn't like the fact that they
4 decided to defend the lawsuit so he filed this Amended
5 Complaint. He asserts one cause and he adds State Farm
6 as a Defendant and he asserts one cause of action for
7 breach of contract. His basis is that in the Amended
8 -- in the very Amended Complaint that he added State
9 Farm he changed an allegation to go from seeking \$1 in
10 monetary damages to no monetary damages. So because of
11 that he says it's no longer covered and State Farm
12 can't provide a defense. So he's basing his claim for
13 one on the Amended Complaint that he has already --
14 that he is filing to name them as a Defendant. But
15 secondly, he is -- the genesis as you heard, the
16 genesis of all this is that he didn't want to the HOA
17 to be able to pay the legal fees of their own counsel
18 that they had. So then when they give it to the
19 insurance company and the insurance company is now
20 paying for their legal fees he doesn't like that
21 either. But he does not have any standing to bring
22 this claim. He is not a -- he is not -- this is a
23 contract between State Farm and the HOA. He's not a
24 party to that contract. This is a longstanding
25 precedent. The South Carolina Supreme Court ruled in

1 this issue in Park versus Safeco Insurance Company,
2 which is 251 S.C. 410. It's a 1968 decision. A
3 plaintiff who is not a party to the lawsuit does not
4 have standing to litigate a dispute between the
5 insurance company and its insurer unless he has first
6 gotten a judgment against -- if he has gone and gotten
7 a judgment against the HOA and he wants to seek a
8 Declaratory Judgment and that judgment is covered by
9 the terms of the policy he could do that, but he has
10 not done that. And there is not a dispute between
11 State Farm and the HOA. State Farm is actually
12 providing a defense for the HOA. There's nothing to be
13 litigated on that front. And then going to the merits,
14 you know, I've been representing insurance companies
15 for over tens years and this is honestly the first time
16 I've ever been sued for extending a defense to the
17 insurer when the insurer wants us to do that.

18 THE COURT:

19 Like a good faith claim and a bad faith claim

20 MR. FARR:

21 Yeah, exactly. So for those reasons, and I'll
22 incorporate these other arguments that have also been
23 made, but his claims against State Farm should be
24 dismissed. Thank you.

25 THE COURT:

1 Thank you very much. All right. Having heard from all
2 the three attorneys for the Defense and the different
3 parties involved, Mr. Wedlake, I'm going to turn the
4 floor over to you and hear from you in response.

5 MR. WEDLAKE:

6 Yes. So I have filed a Memorandum in Opposition to all
7 of these things, which as you have indicated that you
8 are aware of and you have read. I'm always amazed at
9 how attorneys can come into Court and try to twist
10 things around, which particularly I find often are
11 inapplicable really to the arguments that I have
12 presented in my Complaint. But I will start first from
13 my Memorandum in Opposition for McCabe, Trotter &
14 Beverly. Now, before I begin, Your Honor, do you have
15 specific questions over any content or I should just
16 kind of go through a brief summary review of my
17 Memorandum in Opposition?

18 THE COURT:

19 I don't have any specific questions at this time, so
20 I'd like for you to summarize as best you can based on
21 all of your different Memorandums that have been filed.

22 MR. WEDLAKE:

23 Okay. So on page 1 of my Memorandum in Opposition to
24 Dismiss for McCabe, MTB as I've noted it in the
25 document, I indicate a standard for review of Motion to

1 Dismiss and I note that no attorney here today has so
2 much as referenced what they claimed in their Motion to
3 Dismiss about Rule 12(b)(6), the South Carolina Rules
4 of Civil Procedure. And in one instance also a
5 12(b)(1) the lack of jurisdiction, they didn't seem to
6 feel that was important to bring up, which is the
7 standard upon which Motions to Dismiss must be based.
8 On page 1 of my Memorandum in Opposition I say that
9 Rule 12(b)(6) indicates that only in the absence of
10 facts sufficient can the Rule be applied. In my
11 Complaint and Supplement to my Complaint in this case,
12 all of those facts form a set of evidence more than
13 sufficient to constitute a Cause of Action is what I
14 say on page 1. I also cite case precedent on page 2
15 under the section Standards for Review to Motion to
16 Dismiss in Federal Court citing Erickson versus Pardus,
17 which says that Federal Rules of Civil Procedure
18 require only "a short and plain statement of the claim
19 showing that the pleader is entitled to relief." It
20 also goes on to say specific facts are not necessary.
21 The statement need only, "give the Defendant fair
22 notice of what ... the claims and the grounds upon
23 which it rests." Also citing another case precedent
24 reference. Counsel I believe admitted that The Court
25 must take a liberal view of the -- of the pleadings as

1 is indicated on page 2 of my Memorandum citing Estelle
2 -- well, it's found in Erickson versus Pardus. Now, in
3 this specific instance on page 3 I address the casting
4 plaintiff in a false light and I believe my Complaint
5 contains factual evidence demonstrating the misconduct
6 by MTB related to this item. And I don't know of any
7 law or precedent which precludes the presentation of
8 evidence to form a preponderance of evidence for my
9 case on page 3. Therefore I state it's moot and
10 academic as to whether or not a false light cause of
11 action exists and there is a precedent in South
12 Carolina that other cases have viewed this as either a
13 claim for defamation or a claim related to breach of
14 privacy. I also contended in my Memorandum that the
15 claims were brought within the two-year period of my
16 learning that they -- that MTB was the root cause of
17 their own actions and I cite content from my Complaint,
18 which has two Exhibits 43 and 44, Item 85 in the
19 Complaint, paragraph 85 in the Complaint. And then
20 Item 3 on page 3 I understand how MTB wants to make
21 this false light into defamation so that they can bring
22 all these arguments about the statute of limitation and
23 that my claim really is defamation, which again I
24 really see as moot and academic and kind of irrelevant
25 in that regard. On page 4, Item 4, I state that I,

1 Plaintiff, cites precedent and go into details of
2 various case precedent, which give authority to my
3 position. Then Item 5 on page 4 in reference to these
4 other cases where I believe all of the parties have
5 fully admitted that none of this stuff has been
6 litigated before because it was simply dismissed. The
7 merits were never addressed. Litigation never
8 addressed the merits of my case. It was simply
9 dismissed, leading to my appeal in each instance and I
10 state on Paragraph 5, page 4 that reversal upon appeal
11 will annul any statute of limitations. And I cite
12 Section 15-3-90 titled Effect of Reversal of Judgment
13 from the S.C. Code of Laws. I also believe that on
14 page 5, Item 6, there is evidence to prevent the bar of
15 the statute of limitations citing S.C. Code Law Section
16 15-3-130. Item 7 on page 5 I say The Court is bound by
17 precedent to interpret statutory language by, "Their
18 plain and ordinary meaning without resulting to subtle
19 or forced construction." And I cited case references
20 to that effect. And on page 5 I begin a section where
21 I claim all of the claims are not barred by collateral
22 estoppel. There in Item 8 the crux of this matter is
23 as I state, "Since no decisions from any previous
24 actions are known to Plaintiff, and Defendant admits
25 collateral estoppel prevents a party from relitigating

1 an issue that was decided in a previous action then a
2 claim of relitigating is false." There have been no
3 judgments other than the granting of dismissal and
4 wrongful granting of Summary Judgment leading to appeal
5 in those cases where Summary Judgment was ordered. In
6 Item 9 on page 5 I also claim that collateral estoppel
7 does not apply and cite cause of action against MTB was
8 not -- was not known in case as cited 03758 and only
9 obtained after the settlement which resulted after
10 mediation. Where it says I am not entirely lacking in
11 every instance. Counsel has seen to fit to use what
12 call legal rambling tactics to preclude any mediation
13 such that some of these things might be properly
14 mediated with the advice of an impartial mediator. On
15 page 6, Item 10 I state Defendant's contention of same
16 theories is ridiculous and show details of captions and
17 I believe it was also admitted here in This Court that
18 MTB was not a named party to the case they cited 01501.
19 On page 6, Item 11 the main crux is that there are
20 genuine issues of material fact involved in the cases
21 where Summary Judgment was improperly granted. And
22 given my pleadings as known to This Court, I would
23 contend that Your Honor is well aware that pleadings
24 are complete and indicate many genuine issues of
25 material fact involved in all of my cases where

1 primarily my cases have been cited against the Board
2 based on aspects of law, which I have properly cited in
3 this case. In Item 12 on page 6 I made it a record in
4 the Public Index about the reference to orders and
5 actions of Judges in prior actions, where the thrust of
6 this argument is for the specific case cited now
7 resulting in the appeal of 506 in the Court of Appeals,
8 is that the Proposed Order contained a whole bunch of
9 stuff which I had objected to. And what happens is
10 that due to the bias against me that exist in the
11 Circuit Court, as was admitted to by Counsel here
12 today, the Judge makes a ruling and states no -- no
13 reason or rationale why he has ruled that way. He
14 merely suggests to Counsel that Counsel present a
15 Proposed Order, which they use as a soapbox, as I say
16 on page 7. As drafted by Counsel and fabricate based
17 upon matter that aired in Court, and this is the
18 critical thing here, Your Honor, what gets written into
19 the Order is not matter that was aired in Court, that
20 was not stated by the Judge. And on page 7, I start to
21 go into the full set of comments made by The Court in
22 the referenced case that were limited to stuff as
23 shown, where at the bottom of page 7 in the instance as
24 cited it was the Judge himself without prompting from
25 Counsel that asked about Rule 11 Sanctions, which was

1 answered by Counsel, that, no, there were no Rule 11
2 Sanctions proposed. And at the bottom of the page 7
3 then The Court says, "Okay. Blah, blah, blah. That
4 the Board should have just rolled over," which I
5 believe I heard the Counsel say here today. But then
6 he cut me off and didn't let me even have a chance to
7 respond. And even though he claims that he's told me
8 they welcome Pro Se litigants he goes on then to say as
9 I quote in the bottom of page 7, "But we hold them to
10 the same standards as we do attorneys." This case in
11 question was drafted and signed by an attorney, even
12 though at the time of the hearing he had been dismissed
13 as the Counsel, because of his remaining in Florida
14 where he was when he was engaged as my attorney. He
15 had plans at that time to return to South Carolina, but
16 did not.

17 THE COURT:

18 Well, I think at that time, Mr. Wedlake, you were
19 representing yourself before The Court, so.

20 MR. WEDLAKE:

21 That's correct. He was dismissed at that time. Now, I
22 believe if I misspoke that what's I intended to say.

23 THE COURT:

24 All right. Let's move on.

25 MR. WEDLAKE:

1 In any event, the Ruling for Summary Judgment was based
2 on Rule 11 with respect to Sanctions for Pleading or
3 lawsuits that have no valid basis for merits, which was
4 simply false as I believe it's contained in all of the
5 pleadings as you will find in the record will plainly
6 show. This again is the bottom of page 7. Then on
7 page 8 in following I cite in Item 13 what I believe to
8 be nonfactual contentions that apply as stated in the
9 case. And, of course, the deal is here that Counsel
10 wants to paint me as claiming improperly that the
11 members have voted on these things that they present as
12 reasons as to why I can't bring the cases. Where
13 indeed I show that the members, the majority of
14 members, did not vote for any of the things that they
15 so claim that were voted and passed by the Association.
16 And if this is not been appreciated by, Your Honor,
17 this is the thing. The law defines approval by the
18 members and states that as a vote of the members,
19 whereas these things were merely voted by the Board to
20 claim passage. The law also says that the Board can't
21 do that as I have cited and included in my case. So
22 the point of that is that the Board has perpetrated
23 unlawful actions upon the membership of the
24 Association, which is a legitimate genuine issue of
25 material fact that is in dispute. And I reiterate that

1 in page 9 in 14, the same deal. The members did not
2 vote to pass the cited bill as has been claimed,
3 unlawfully claimed by the Board as being passed. In
4 Item 15 on page 9 I state that no nonfactual contention
5 should lead to dismissal of Plaintiff's claims. In
6 Item 16 relative to special damages which have been
7 contended, I did not so state. I state Item 16 the
8 specific damage suffered as a result of alleged
9 conspiracy were contained in my Supplement to the
10 Complaint and cite the evidence. On page 10, Item 17,
11 the gist of this is the claim was made that I'm trying
12 to get the money back for my benefit and this is
13 inaccurate. I state in Item 17 factually such refunds
14 was rather sought to accrue to the benefit of WHOA, not
15 to accrue to Plaintiff's benefit and cite the
16 Supplemented Complaint that shows they're lying. In
17 Item 18 I state that -- Plaintiff specifically stated
18 damages to comply with Rule 9(g) South Carolina Rules
19 of Civil Procedure, where as I believe Counsel erred
20 here today that I did not do that. That was done. In
21 Item 19 I state that several facts sufficient to quote,
22 "To show a claim for conspiracy are contained in the
23 Complaint," and reference the specific paragraphs. In
24 item -- in item under section of S.C. Code of Laws
25 recognizes an action by a citizen/extortion. I show

1 the statutory basis upon which item in paragraph 20.
2 S.C. Code of Law a citizen cannot be barred from
3 prosecution of his own cause. And I understood or I
4 thought I heard that I can't do this because I have no
5 rights in this state as a citizen because I'm not an
6 attorney and I find that particularly inappropriate.
7 In Item 20 I cite that S.C. Code of Law Section 40-5-
8 80. There's also been contentions that I can't do
9 things that are of a criminal nature and there again I
10 don't believe there's a basis under the law. In
11 paragraph 21 I cite Section 40-11-110. There's also
12 been jurisdictional questions that were brought where
13 on page 11, Item 23 I state Magistrates have
14 jurisdiction and cite Section 22-3-520 and Section 22-
15 3-550. There was also a statement of attorney immunity
16 and I state on page 11 I don't believe that that
17 doctrine applies to my claims. And I reiterate in
18 paragraph 24 that all the pleadings have made clear the
19 corporate entity WHOA was never a client of MTB. If
20 they were not their client then how can MTB bill the
21 corporation for their legal expenses? And in Item 24 I
22 say a whole bunch of stuff as well as reference the
23 Supplemental Complaint. In Item 25 of my conclusion is
24 stated therefore MTB is liable to members for damages
25 suffered and I believe that I am coming to the point of

1 law that says that. Counsel themselves here today
2 tried to indicate that the S.C. Code of Laws 33-31-
3 833(b)(2) contradicts my claim based on the definition
4 of distribution. I believe that's inapplicable as I
5 state in paragraph 26 on page 12. And I believe that
6 they are confused between distribution and the plainly
7 stated unlawful distributions to which this Code
8 Section in 833(b)(2) applies. And on page 13 I
9 actually quote that section of the law. Where the
10 punch line in (b)(2) is that from each person who
11 received an unlawful distribution for the amount of the
12 distribution whether or not the person receiving the
13 distribution knew it was made in violation of this
14 chapter, which to me is a black letter as stated in the
15 statute. So I contend on page 13 then that it is clear
16 and plain-legislative intent that an unlawful
17 distributions must be paid back. There is -- then I
18 start a section titled "G" on page 13 that my Complaint
19 showed proven, standing to bring a derivative suit
20 where I believe the Motion to -- a Motion to Dismiss
21 has stated that I didn't say or show anything that
22 showed I could do that. In paragraph 27 on page 13 I
23 specifically say my Complaint showed figured 1, six
24 member statements denying Defendants had proxy November
25 9, 2018 ballots, which proved at least six members,

1 which is about ten percent of 65 other members, support
2 a basic argument by Plaintiff. And this -- this is
3 another thing that although not stated here yet in this
4 hearing I had intended to discover in previous cases
5 more members that supported my position, but I was
6 unable to do that because of, again, the bias against
7 me in our Circuit Court where my subpoenas and my
8 Motions for Discovery were quashed denying me the right
9 of discovery, which I need to show that there are other
10 members in addition to these six in figure 1 that I
11 have cited that support my position and therefore give
12 me the standing to bring a derivative suit. So I
13 believe arguments that I have no standing and didn't
14 show any reason or rationale that I have standing are
15 indeed false claims. In paragraph 28 on page 14 I
16 state that I don't believe there is legally-valid
17 rationale that leads to dismiss -- dismissal. The
18 reference to other cases being brought to me and that I
19 should just move out of the neighborhood and go home
20 and duck my head, the specific thing I say on page 14,
21 Item 28(a) certification of the class action against me
22 has not been certified at this time. And in that
23 regard I don't believe there is any legitimate claims
24 that will lead to certification of that case. I'm not
25 sure if it was stated here today, but on page 14, Item

1 29, I state, Defendant must be specific, which was not
2 done nor supported by evidence in claims to strike
3 and/or require a more definite statement. I also make
4 at the bottom of page 14 continuing on 15, paragraph 30
5 that the Defendants must bring specific proof to the
6 contrary for evidence to be admissible. And when I
7 come into hearings like this in front of The Court I
8 hear a lot of things said, but basically they're just
9 words that are spoken. Whether they put them in
10 writing in their Memorandums to Dismiss or not, none of
11 them being supported by evidence nor by anything that
12 indicates validity or gives support to such statements.
13 On page 15 I go into the Rule 104, and Rule 401, and
14 Rule 402, and Rule 1001, Definitions and so forth. And
15 on page 16, paragraph 31 I say as to which claims are
16 being asserted individually versus derivatively. Such
17 is irrelevant, unrelated to, and academic towards This
18 Court serving the interest of justice. And then I
19 state a conclusion. So that is my highlights from my
20 Memorandum in Opposition for MTB. I also have other
21 Memorandums for each other Defendant. And may I take a
22 moment to get cited on that?

23 THE COURT:

24 Decided?

25 MR. WEDLAKE:

1 Cited.

2 THE COURT:

3 Cited. Sure.

4 MR. WEDLAKE:

5 All right.

6 THE COURT:

7 Actually we'll take about a five minute break if that's
8 okay with everybody. The rest room is the last door on
9 the right, so I'll give you five minutes to get
10 everything pulled up so we can proceed with your
11 argument. Okay?

12 MR. WEDLAKE:

13 It will just take me a minute and I'll be ready. Thank
14 you.

15 THE COURT:

16 All right. We'll be at ease for five minutes.

17 (Off the Record 11:01 a.m -- 11:09 a.m)

18 THE COURT:

19 We'll go back on the record. Mr. Wedlake, I think you
20 were going to present on some of your other Memorandums
21 in Opposition as to State Farm and Woodington HOA.

22 MR. WEDLAKE:

23 Yeah. So in the order now I will hit highlights from
24 my Motion -- Memorandum in Opposition for the Board.
25 So on page 1 of this Memorandum which I may have

missed now in the earlier one as well, but I think an important distinction that I point out here is that each of these Motions to Dismiss must be considered as a Motion for Dismissal in part. That is to say that whether certain points are dismissed does not necessarily mean that the entirety of my case should be dismissed. That's on page 1. Similarly, starting on page 2, the same thing that the standard of review should be based on Rule 12(b)(6), which again didn't seem to be mentioned. The same arguments otherwise as I think we've previously covered. However, in this case there was a claim that there was no jurisdiction so that Rule 12(b)(1) indicated that my case should be dismissed. Whereas as shown on page 2, I state the jurisdiction of This Court applies per Complaint, paragraph 1, which showed proof of all the requirements for jurisdiction and reiterated that in exhibit as attached to this Memorandum Exhibit OP.1. I review again the same stuff about the Motion to Dismiss in Federal Court on page 3, Erickson versus Pardus. All the same stuff there otherwise. However, now in this Memorandum I state that -- at the end of page 3 continuing on page 4, in the event that The Court may interpret the Motion to Dismiss as translated into a Motion for Summary Judgment, since Plaintiff requested

1 a "full and fair opportunity to complete discovery via
2 my Motion for a Continuation to postpone to allow
3 discovery," which I believe is also properly filed
4 before This Court. Citing the case precedents that
5 indicate again that that should not be done.

6 Continuing onto page 4. I reiterate again at the
7 bottom of page 4, Argument 1, that everyone here is in
8 agreement that the previous cases are currently pending
9 appeal. No final order giving judgment exists for any
10 appealed case. And then go onto to clarify a listing
11 of the cases on page 5, where the captions particularly
12 indicate that these things are not the same. And said
13 that is indicated based upon what is appearing on page
14 5 of my Memorandum ending on page 6. I state again on
15 page 6 that I fully expect reversal from dismissal of
16 all three appealed cases. And then I cite the South
17 Carolina Code of Laws Section 15-3-90, which gives me
18 the right to bring another case as I understand the
19 meaning of this statute. And I state on page 6,
20 paragraph 3 that Plaintiff's lawsuits to date relate to
21 the Board are based upon questions of law as supported
22 by genuine issues of material fact being brought before
23 a Court of law. And I go on with other comments there.
24 Specifically, that under the Preamble in the
25 Declaration of Covenants, Conditions, and Restrictions

1 for Woodington Subdivision it says that Plaintiff, that
2 I have specific rights "to prosecute any proceeding at
3 law" which I indicated as Exhibit OP.2. And in item
4 -- paragraph 4, it continues over on page 7. The case
5 caption in this case is based on breach of contract by
6 the Board, which is not the same as is cited in other
7 cases. In Item-- paragraph 6 on page 7, again I
8 reiterate as I did in the previous Memorandum that I
9 provided evidence that the action brought is a
10 derivative action and I stated comments on that
11 previous page as also contained in paragraph 6. I
12 won't reiterate again the fact that the Bylaws as in
13 paragraph 7 on the bottom of page 7, Bylaws cannot
14 contain provisions which are unlawful, which has been
15 the crux of arguments brought previously. And then
16 it's specific in S.C. Code of Laws. The Bylaws cannot
17 contain provisions which are unlawful. Consequently
18 claims based on unlawful provisions of the Bylaws
19 really have no standing for This Court. On page 8,
20 Item 7A I cite the Nonprofit Corporation Act, Sections
21 33-31-206 and 33-31-831, which I also attached as
22 Exhibit OP.3 to this Memorandum. In Item 7B I again
23 review all the other violations of law by the Board
24 citing Section 33-31-140 as we discussed previously
25 voted by the numbers. Not discussed previously 7(b)(2)

1 on page 8, Section in 33-31-724. The Board had no
2 proxies for what they did when they voted in the
3 ballots as they claim has been done. There were no
4 proxies that they had and consequently the law
5 precludes them having done this. Item 7C again I
6 review the statements that appear in Orders that have
7 been referenced in the Memorandum-- the Motions to
8 Dismiss, where again much of content of those Orders
9 were not stated by Courts during hearings. And I have
10 attached Exhibit OP. 4.2 to prove that contention. And
11 I itemize again in Item 7C.1 through 7C.5 that none of
12 these statements were proper in the Order.

13 THE COURT:

14 Mr. Wedlake, I just want to remind you that I've read
15 this -- your Memos and I will possibly read them again,
16 but you don't have to go through every single point.
17 What I need you to do in this Motion Hearing is to
18 properly and summarily respond to the Defense Counsel's
19 arguments for dismissal of your suit. I've read it in
20 detail.

21 MR. WEDLAKE:

22 Okay.

23 THE COURT:

24 Going through point by point and paragraph by paragraph
25 summing it back up to me, you know, is -- I don't want

1 -- I just don't think it's going to help much because
2 I've read it.

3 MR. WEDLAKE:

4 And thank you for that, Your Honor.

5 THE COURT:

6 Yes, sir.

7 MR. WEDLAKE:

8 My impression however has been in Circuit Court that
9 that is not the case. The Judges not only are
10 uninformed or have not read the content that's
11 presented before The Court.

12 THE COURT:

13 Well, we're not in Circuit Court. We're sitting here
14 in the People's Court, Magistrate's Court and you're
15 representing yourself.

16 MR. WEDLAKE:

17 It's very good, but they also -- they also do not
18 listen to anything I say when I plead in hearings as
19 well, which is the nature of the abuse of judicial
20 discretion which I believe has been referenced here.

21 THE COURT:

22 We're not here to relitigate the other cases that were
23 or are pending in Circuit Court or Appeals Court.
24 We're here on this case and I am intently listening to
25 you.

1 MR. WEDLAKE:

2 All right.

3 THE COURT:

4 So you may proceed.

5 MR. WEDLAKE:

6 Well, in other pages then I cite what I believe are
7 other false claims. And particularly on page 11 I cite
8 Rule 12(f) South Carolina Rules of Civil Procedure that
9 there are claims brought in their Motions which are
10 immaterial, scandalous matter, and must be stricken
11 under this Rule. An important point on page 11,
12 paragraph -- page 11, paragraph 11, no causes of action
13 in the Complaint are the same that have been previously
14 claimed and I give the details of that. Okay. I
15 present on page 13 and following, content relating to
16 the conspiracy, which Counsel has claimed again is
17 irrelevant, and I can't say that, but what I have said
18 is contained in 12, 13. Now, another important point
19 though was picked up on paragraph 13. The doctrine of
20 res judicata I say is inapplicable in this case and
21 give arguments to that effect. Defendants are
22 different and so forth saying claims are not claims and
23 so forth. I also contend in Section Titled B on page
24 14 that my claims are not barred by collateral
25 estoppel. And I won't -- won't go into any other

1 details then based upon comments from Your Honor. The
2 important points are however is that their claims are
3 not supported by evidence, facts, nor by case
4 precedents. Okay. Again, I state on page 17 that I
5 don't believe there's any legal basis nor authority
6 that exists about the question of which claims are
7 individual and which are derivative, and it has been
8 stated by Counsel here today that again I have
9 improperly filed a derivative action. I don't believe
10 that's true. Again, no previous cases have been --
11 have been -- the judgments have been given without
12 adjudication on the merits. And I state on page 17
13 again I believe I have a standing to bring a derivative
14 suit. Importantly relative to this on paragraph 24 on
15 page 17 I do not need support shown from -- from all
16 the members nor from any fixed number of members to be
17 able to state as I have in the caption of my cases this
18 is brought on behalf of other-similarly-situated
19 members as has been proven by the figure cited
20 previously. Okay. I believe that I covered that the
21 referenced suit class action against me is not
22 certified at this time. And I conclude at page 19,
23 paragraph 27 no nonfactual contentions nor any
24 contentions which are for prevarications, should lead
25 to dismissal. So that summarizes this Memorandum in

1 Opposition. So may I continue on to the next
2 Memorandum in Opposition as relates to State Farm?

3 THE COURT:

4 You may proceed. This is your time.

5 MR. WEDLAKE:

6 Give me just a moment to switch pages here. All right.
7 So similarly State Farm has claimed that I cannot bring
8 action against them under the contract and that is the
9 key of my argument in my Memorandum in Opposition. And
10 as I state on page 2 again there are multiple genuine
11 issues of material fact that exists and are in dispute.
12 And I have presumed that my Amended Complaint has been
13 accepted and is in front of This Court based on the
14 fact that you heard arguments from Counsel representing
15 State Farm

16 THE COURT:

17 Correct.

18 MR. WEDLAKE:

19 Then I review the standard for Motion to Dismiss. The
20 same stuff about Motion to Dismiss in Federal Court,
21 Erickson versus Pardus. I review again if it should
22 translated into a Motion for Summary Judgment. All
23 right. So my arguments begin on page 5. That I have
24 standing to sue via payment of dues as a member of the
25 WHOA that paid the insurance coverage premium And

1 since I paid the premium in part I am an owner of the
2 policy, which therefore in my statements here in
3 summary are that if I am an owner of the policy then I
4 have a right to presume that the contract must be
5 abided by -- by State Farm. And an important point
6 here on page 5, a section titled "Plaintiffs are third-
7 party beneficiaries," is that this also gives me an
8 indirect action against State Farm as a third-party
9 beneficiary. And I cite case precedent Kingman versus
10 Nationwide Mutual Insurance Company as such on page 5.
11 And on page 6 the point of the matter is State Farm has
12 not performed according to the insurance contract
13 taking optional elections as they allege to provide
14 coverage, which is a breach of contract under the
15 insurance contract, because I have not claimed monetary
16 damages. As may be recalled from the Amended Complaint
17 I specifically changed request for nominal damages of
18 \$1 to zero dollars such that the contract provision
19 that monetary damages must exist for them to provide
20 coverage does not exist in my case. Consequently
21 without contractual means by which they can provide
22 coverage they cannot provide coverage under the
23 contract. I also claim in Item 2 on page 6 that the
24 contract does not provide the option that they claim
25 they have to provide a defense. And on page 7 I

1 excerpt the actual contract contents, which I believe
2 applies. Okay. I won't -- I won't state anything else
3 on any of this other stuff on page 7, Items 3 and Items
4 4, other than is nothing in the contract that triggers
5 coverage. So, again, under the contract they are
6 prohibited from supplying coverage. Now, in that
7 regard the fact that the Board seeks Counsel to
8 represent them although that may be their right, is
9 contrary to the best interest of the Association
10 because that simply leads to stuff like this, Motions
11 to Dismiss so that my cases never are addressed and
12 their merits are never heard, judgments are never
13 given, ruling -- are never stated to resolve the
14 issues. The lack of resolution of the issues is the
15 thing that damages the corporation and leads to
16 continued disputed unrest between me and the Board.
17 All right. So, the other points that they made in
18 their Motion to Dismiss is that I cannot prosecute the
19 current action against it. I am a policyholder
20 therefore I have every right to expect them to act
21 according to the contract. On page 9, paragraph 8 I
22 cite the Section 36-2-210 and 36-2-301. Okay. And
23 that's -- that's basically it on this one, Your Honor.
24 Thank you, Your Honor.

25 THE COURT:

1 Thank you, Mr. Wedlake. Would any of the Defense
2 Counsel like to respond to Mr. Wedlake's presentation?

3 MS. KELLAHAN:

4 Your Honor, I just a few things that I want to point
5 out and make sure The Court is clear on.

6 THE COURT:

7 Yes, ma'am

8 MS. KELLAHAN:

9 Very briefly. Mr. Wedlake made a statement that the
10 parties admit the merits have never been considered,
11 that his cases have just been dismissed, and I wanted
12 to be sure that the record was clear. McCabe, Trotter
13 & Beverly does not admit that. The case that we were
14 all talking about 2019-CP-23-1501 was dismissed on
15 Summary Judgment, which is a determination on the
16 merits. The Court decided there were no genuine
17 material issues of fact and decided the case was a
18 matter of law. So McCabe, Trotter & Beverly believes
19 that this was decided on the merits. Mr. Wedlake cites
20 Section 15-3-90 which says -- which is the effect of a
21 Reversal Judgment for the proposition that his
22 defamation claim isn't barred by the statute of
23 limitations and he says he expects case 2017-6301 will
24 be reversed. That case didn't have anything to do with
25 McCabe, Trotter & Beverly. We were Counsel in that

1 case, but we weren't a party. There was no defamation
2 claim. So even if that case is reversed it wouldn't
3 somehow restart the statute of limitations on a
4 defamation claim that wasn't brought until 2020. He
5 also cites Section 15-31-30 as -- for the proposition
6 that because Woodington Homeowners' Association, who he
7 purports to represent as a nominal Plaintiff, because
8 they paid our invoice that somehow restarts the statute
9 of limitation on Mr. Wedlake's defamation claim.
10 That's not at all what that section provides. That
11 section provides that when you make a part payment on a
12 debt and that restarts the statute of limitations based
13 on common law that this section just provides the
14 mechanism by which you bring suit -- you bring suit on
15 the original action, not the new payment. And the last
16 thing I just wanted to point out to The Court was that
17 Mr. Wedlake cited Section 40-11-110 for the proposition
18 that McCabe, Trotter & Beverly can be held guilty of
19 extortion. Title 40, Chapter 11 governs contractors.
20 It doesn't at all apply to the case at hand. It's
21 talking about when a homebuilder or another general
22 contractor commits some bad act, so it doesn't apply in
23 this case here.

24 THE COURT:

25 Mr. Smith.

1 MR. SMITH:

2 Very briefly, Your Honor. First of all, no discovery
3 in Magistrate's Court so Mr. Wedlake's argument for
4 discovery is improper. Secondly, Exhibit B to our
5 Motion, which is the Order granting Summary Judgment in
6 Case 2019-CP-23-1501, makes findings of the fact that
7 essentially refute all of Mr. Wedlake's arguments and
8 he's made it clear that he believes the Circuit Court
9 is biased and he's trying to relitigate that Order here
10 and that's improper. And I would suggest that the only
11 person harming the community is Mr. Wedlake and he
12 continues to do so with these filings and I don't know
13 that sanctions are warranted, but at some point he's
14 got to stop with these frivolous lawsuits and
15 continuing to just file in other forums. And I don't
16 know that there's anything that Your Honor can do to
17 curtail that and he seems pretty determined, but we
18 would just ask that our Motions be granted in their
19 entirety based on the fact that he's just relitigating
20 the same cases and then barred by collateral estoppel.

21 THE COURT:

22 Mr. Farr.

23 MR. FARR:

24 And very briefly on behalf of State Farm Mr. Wedlake
25 mentioned over and over about there are genuine issues

1 of material fact. This is not a Summary Judgment
2 Hearing. This is a Motion to Dismiss Hearing. I will
3 state his failure to state a claim upon which relief
4 can be granted, so even if he could have all the
5 discovery he wanted the simple fact is that as is
6 currently pled he has not stated a claim against State
7 Farm. He is -- there is no contract between the
8 parties. There has been no breach and he has shown no
9 damages. The fact that he is, you know, presumably I
10 guess paying HOA dues and so part of those dues maybe
11 go to paying the premiums of the policy doesn't make
12 him a policyholder. My neighbor, if I get in a bad
13 poker match with my neighbor and I wager that I'll pay
14 his insurance premiums for six months and lose, doesn't
15 make me all a sudden a party to that contract even
16 though I'm paying for his policy. He's also not a
17 third-party beneficiary particularly with respect to
18 these claims. I'm trying to figure out exactly what
19 benefit he was supposed to have gotten when he sues his
20 own HOA Board here, but. And then damages, I don't
21 really know how he's been damaged by the fact that
22 State Farm is defending his HOA. You know like I think
23 what he just summed up saying he doesn't want them to
24 have a lawyer. He wants to be able just to come in and
25 do what he wants. And so he can't have it both ways.

1 He can't say, "You guys want to pay for a lawyer, you
2 can't do that. Your insurance company wants to pay for
3 it, you can't do that either." So, thank you.

4 THE COURT:

5 Thank you very much. Mr. Wedlake, I'm going to --

6 MR. WEDLAKE:

7 May I make one counter comment then?

8 THE COURT:

9 All right. You can make one more counter comment, yes,
10 sir.

11 MR. WEDLAKE:

12 The dispute under the Rules of This Court about the
13 discovery statement that was just made that discovery
14 isn't improper. I don't believe that's true. Rule
15 15(a) was cited by the Board's representative in a
16 letter I received, which was not put in front of This
17 Court, which I responded to. Since there is no Rule in
18 Magistrate's Court stating provisions for discovery,
19 therefore Rule 2 of Magistrate's Court it says you will
20 comply with the statutory requirements and/or Circuit
21 Court Rules as the rule that applies. I believe
22 discovery is entirely proper in every court proceeding
23 such that the claim about discovery being improper I
24 believe is incorrect.

25 THE COURT:

1 All right. Well, I've had an opportunity to listen to
2 the arguments of Counsel of Pro Se Litigant, Mr.
3 Wedlake. I've read all the Memorandums filed in
4 support of the Motions to Dismiss as well as the
5 Memorandums in Opposition filed by the Plaintiff. You
6 know and unfortunately, Mr. Wedlake, I agree with the
7 Defense here. You know I tried to -- I tried very hard
8 and I do my very best to stay unbiased in my position
9 as a Magistrate to make sure that Pro Se Litigants like
10 yourself are properly represented or properly allowed
11 to represent themselves in Magistrate's Court. And I
12 think you do a very good job of filing all the
13 necessary documents that I need to review. However,
14 Defense Counsel has made some very pointed -- some
15 strong points and they hit the high notes in their
16 arguments and I agree with them. You know casting the
17 Plaintiff in a false light that is not a recognized
18 cause of action in Civil Court. It may be construed as
19 a defamation suit, but in that case it has to fall
20 within the required statute of limitations and I find
21 that that falls out of the two-year statute of
22 limitations as the Defense Counsel has presented. So
23 for that reason the false light claim is dismissed. As
24 to the derivative claim you know, I agree you're not
25 allowed to bring a derivative claim on behalf of the

1 Board or the Members of the Board without approval by
2 the Board. And we don't have any written authorization
3 by the Board President under the Rules that will allow
4 you to do that. Therefore, you know, your derivative
5 claim is not valid and you don't have any standing to
6 bring that suit. You know as far as your ability to
7 prosecute a criminal action in Civil Court that's not
8 allowed. So the extortion claim is not a civil cause
9 of action that I can consider and it certainly can't be
10 prosecuted in the Civil Court realm. It has to be
11 taken up the Solicitor's office and law enforcement. I
12 can't consider that. As far as conspiracy is concerned
13 you would have to prove some sort of special or
14 economic damage such as lost wages. These legal fees
15 that have been accrued so far are as a direct result of
16 your lawsuits against the Board and the Members of the
17 Board. They have had no choice but to hire legal
18 counsel to represent them. And, you know, the attorney
19 doesn't represent in that -- well, we didn't really go
20 into this, but I wouldn't think that the attorneys for
21 the Board represent the individual members. They're
22 hired on behalf of the Board. So, you know, I haven't
23 seen any special damages presented or any factual
24 evidence. Well, we haven't had any evidentiary
25 evidence presented to The Court necessarily. I'm

1 making this ruling as a matter of law. You know
2 collateral estoppel that's issue preclusion. Basically
3 has this issue been previously litigated in other
4 courts. I absolutely believe it has. I think, you
5 know, at some point, Mr. Wedlake, this has got to stop.
6 This is costing a lot of money. I mean something that
7 can potentially bankrupt your HOA. I don't know what
8 happens when an HOA goes bankrupt. I don't practice in
9 that area of law or hear those kind of issues in This
10 Court. But, again, back to the -- or as to the State
11 Farmsuit, you know, Mr. Farr is correct. You have to
12 go get a D.J. or file a D.J. Action, get a Declaratory
13 Judgment that says you should be a party to that
14 insurance contract between the Board and State Farm.
15 But, otherwise, you don't have the ability to file suit
16 against them for providing a defense to the HOA Board
17 and you certainly aren't a party to that contract which
18 would invoke any coverage or protections for yourself
19 as an individual at this time. Unless a Court says
20 otherwise that matter is not before me today and I
21 certainly am not going to rule on whether or not you have
22 any protections under the State Farm policy as an
23 individual member or member of the Association. You
24 know I know that you mentioned in some of your Memos
25 that there were some evidentiary issues and brought up

1 some of the Rules of Evidence, but this is a hearing on
2 the Motion to Dismiss and all the grounds presented
3 along with your defenses to those. I can't really make
4 any determinations on any evidentiary issues because we
5 just haven't gotten that far. You know I'm happy to
6 let the Circuit Court make a decision on what I rule
7 today, but, you know, you don't have a standing to sue
8 State Farm and you certainly don't have a standing to
9 bring a derivative suit. And any of the false light or
10 extortion claims fail as a matter of law. So with
11 that, Mr. Wedlake, I'm going to have to dismiss this
12 suit. And I'm dismissing it in This Court with
13 prejudice. You can't bring it back here. And, you
14 know, I appreciate what you're doing, but I think it's
15 causing an intense hardship on your neighborhood. I
16 mean, you know, these attorneys over here are making
17 plenty of money defending your lawsuits, but it's not
18 helping your neighborhood at all. You know I can't get
19 involved in the governments of your Board. I can't
20 make decisions about that, so I'm not. So I can just
21 look at this suit and decide whether or not it needs to
22 go to any further and I'm dismissing it today. So with
23 that would, Ms. Kellahan, or which of the attorneys
24 would like to prepare a proposed Order. I know you-all
25 want to put in some specifics here.

1 MS. KELLAHAN:

2 Your Honor, I'm actually not being paid to be here
3 today.

4 THE COURT:

5 Okay. I'm sorry. I shouldn't have gone there.

6 MS. KELLAHAN:

7 No, that's okay. So if somebody who is getting paid
8 here today wants to draft it that would be great, too.

9 MR. FARR:

10 How about Chris and I both are being paid by State
11 Farm so why don't we work together and we'll come up
12 with a joint Order for everybody?

13 THE COURT:

14 All right. All right. I don't mean to get involved in
15 who's getting paid and who's not, but definitely would
16 -- you-all just agree on who is going to submit a
17 Proposed Order. And what that they're going to do is
18 email it to us because we're all on that same email
19 chain, Mr. Wedlake. And then you'll have an
20 opportunity to review it and respond to it with any
21 corrections and/or clarifications or proposed
22 deletions, however you want, and then I'll take a look
23 at it. Kind of like we did in the last case.

24 MR. WEDLAKE:

25 Yes. Now, Your Honor, am I correct that there have

1 been no claims for dismissal with prejudice brought to
2 The Court?

3 THE COURT:

4 I have the discretion to do that and so I'm doing it.

5 MR. WEDLAKE:

6 So you are doing that on your discretion?

7 THE COURT:

8 Yes, sir.

9 MR. WEDLAKE:

10 And we touched on the fact that when Counsel writes
11 Orders, Proposed Orders, they submit them I reply
12 with objections and my objections are never considered
13 and then a whole bunch of stuff goes into the Order,
14 which is then used as a soapbox just like it was by
15 Counsel here today.

16 THE COURT:

17 Well, we haven't ever exchanged Proposed Orders. So
18 you don't know how I'm going to do that. So what I'd
19 like for you to do is once he emails the Order if you
20 have Microsoft Word you can take it and do it, review
21 it, and add things or delete things, strike through
22 things using track changes. So I'll see where every
23 time you've made an edit you can email that to me.

24 MR. WEDLAKE:

25 Now, that's what I have done in the past, which has

1 been ignored, which is all I'm citing to your attention
2 at this time.

3 THE COURT:

4 Okay. Well, I won't ignore it. I'll certainly
5 consider it. Now, that doesn't mean that I'm going to
6 agree with you, but I'll let you know.

7 MR. WEDLAKE:

8 Now, I have four other hearings scheduled on the 30th
9 so what the game typically is is an Order is put in and
10 within three days it's signed by the Judge regardless
11 of my objections and/or the fact that I said, "Look, I
12 can't respond in that interval."

13 THE COURT:

14 What other hearings? They're not relative to this
15 action necessarily. There's nothing else to be heard
16 in This Court.

17 MR. WEDLAKE:

18 This is the same issue I brought up to The Court here
19 as well as The Court, the Circuit Court involving this
20 one. I'm just a single person. There's just 24 hours
21 in a day.

22 THE COURT:

23 You brought this all on yourself.

24 MR. WEDLAKE:

25 I can't do things that The Court requires within a

1 specific time frame necessarily and I'm not talking
2 about months. I'm talking about just a matter of days.
3 One of the Orders, Proposed Order, that was issued was
4 signed by the Judge without any change overall of my
5 objections within one day.

6 THE COURT:

7 And that's within the Judge's purview to do that, so.

8 MR. WEDLAKE:

9 I'm not saying it's not within the Judge's purview.

10 I'm saying it's judicial bias against me, Your Honor.

11 THE COURT:

12 Okay. Well, I'm trying to really hard to be neutral
13 here, but I have to do -- I have to consider this as a
14 matter of law. We're not getting into this --

15 MR. WEDLAKE:

16 Yes, I am not questioning matters of the law or your
17 judgment in that regard at this time.

18 THE COURT:

19 Thank you.

20 MR. WEDLAKE:

21 However, I will confer with my attorney adviser and
22 decide whether a Notice of Appeal will be appropriate
23 in this case. Particularly as in my Complaint I have
24 cited unlawful actions by the Board which apparently
25 have been ignored by this hearing.

1 THE COURT:

2 You can appeal me. I will not be personally offended
3 one bit. We can let the Circuit Court listen to the
4 record and decide for themselves. I won't be offended,
5 but that's your decision to make, but for purposes of
6 today this hearing is concluded and the matter is
7 dismissed with prejudice.

8 MR. WEDLAKE:

9 Thank you, Your Honor, and I will consciously consider
10 what you have said.

11 THE COURT:

12 Yes, sir.

13 MR. WEDLAKE:

14 Thank you very much.

15 THE COURT:

16 Thank you, Mr. Wedlake. Thank you, Counsel. You- all I
17 have a good day.

18 HEARING ADJOURNED 11:51 A.M

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CERTIFICATE OF REPORTER

I, RACHEL H. WOOD, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 64 pages represents a true and accurate transcript of the Magistrate Court hearing which was taken by me on the 24th day of November, 2020.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Rachel H. Wood, Reporter
Notary Public for South Carolina
Commission Expires: 02/13/2029

**ATTACHMENT IB.14 - Motion to Reconsider an Order Denying Plaintiffs'
Motion for ADR; or Alternately, Renewal of Motion for ADR**

STATE OF SOUTH CAROLINA	)	
	)	2020-CV-23-10201384
COUNTY OF GREENVILLE	)	
	)	CIVIL CASE NUMBER
Raymond A. Wedlake, as a Member of	)	
Woodington Homeowners' Association, Inc.	)	IN THE MAGISTRATE'S COURT
and on behalf of other-similarly-situated Members	)	
of Woodington Homeowners' Association, Inc.	)	
PLAINTIFFS	)	MOTION TO RECONSIDER AN
VS.	)	
Board of Directors of Woodington Homeowners'	)	ORDER DENYING
Association, Inc., comprised of Mona Craigo,	)	
Edward Decker, and Sandra LaCroix at the time	)	PLAINTIFFS'
of filing	)	
AND	)	MOTION FOR ADR;
McCabe, Trotter & Beverly, P.C.	)	
AND	)	OR ALTERNATELY, RENEWAL OF
State Farm Fire and Casualty Company	)	
DEFENDANTS	)	MOTION FOR ADR

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*) requesting reconsideration of an Order which denied his "Motion for ADR" (MADR) of 07/13/20, that was issued to Plaintiff on 10/05/20 (Exhibit R15.2). Or alternately, Plaintiff requests renewal of MADR. Plaintiff believes the simple fact that ADR would benefit all parties in this action. Plaintiff requests that both MADR, and his "Memorandum in Support of Plaintiff's Motion for ADR" (MSUP) of 09/21/20 be included here, in their entirety by reference.

ORDER CONFLICTED WITH THE CLERK'S PRIOR ASSURANCES

1. At the time of Plaintiff's filing of MADR, he was verbally informed by the Clerk of Court that MADR would be held aside until the time of completion of service, when thereafter it would be properly considered.

2. For MADR's denial to be based solely upon "... was filed prior to all parties being served ..." directly contradicts assurances given to Plaintiff by the Clerk.

3. With no knowledge of denial being made known to Plaintiff until 10/05, he feels justified in bringing this "Motion to Reconsider ...", where Exhibit R15.2 showed:

Your motion for ADR was filed prior to all parties being served, therefore; it was denied. ... Please consider this my written order on that Motion.

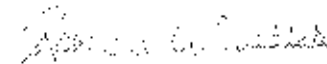
CONSIDERATION OF MADR, MSUP ANEW, IN THE ALTERNATIVE

4. Inasmuch as the basis for ADR denial was that the motion was untimely, being in advance of service of process and not filed on a substantive ground, Plaintiff requests in the alternative, therefore, for both MADR and MSUP to be re-filed and then newly considered.

5. In both MADR and MSUP, Plaintiff presented many cogent reasons for ADR to occur, and asks for all reasons to be considered before an official-written Order is issued for this motion, or its alternative, where Plaintiff requests timely and direct service of such Order.

THEREFORE, Plaintiff prays for recognition of ADR as an element of Court process which has merit, and which will be helpful in achieving meaningful resolution of disputed issues. Upon reconsideration or renewal of Plaintiffs' merits found in MADR, as supported by MSUP, Plaintiff respectfully requests this Court to rescind its Order denying ADR, and to **GRANT** this motion and thus schedule a date before which an ADR conference should occur.

Dated this 13th day of October, 2020.


Raymond A. Wedlake, Plaintiff (Pro Se)
703 Creekview Drive, Greenville, SC 29607
864-254-9262 wedlakera@mail.com

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

Raymond A. Wedlake, as a Member of
 Woodington Homeowners' Association, Inc.
 and on behalf of all other similarly situated
 members of Woodington Homeowners'
 Association, Inc.,

Magistrate Case No. 2020CV2310201384

Common Pleas Case No. 2020 CP-23-05996

Appellant,

Aug 09 2021

vs.

SC Court of Appeals
MAGISTRATE'S RETURN

Board of Directors of Woodington
 Homeowners' Association, Inc., comprised of
 Mona Craigo, Edward Decker, and Sandra
 LaCroix; McCabe, Trotter & Beverly, P.C.; and
 State Farm Fire and Casualty Company,

Respondents.

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2021 JAN 28 AM 11:57

FILED - SUMMARY COURT
GREENVILLE CO. S.C.
JUDGE DEAN E. FARR

The above case came before this Court as a pretrial motion hearing on November 24, 2020. Appellant filed a suit against all Respondents raising several causes of action, including casting the Plaintiff in a false light, extortion as well as a derivative suit on behalf of the Woodington Homeowner's Association, among others. Defendants listed above filed a joint Motion to Dismiss the Plaintiff's Complaint on several grounds, including for collateral estoppel and that Appellant is prohibited from bringing a derivative suit. Appellant filed a Motion for Preliminary Injunction which was withdrawn by the Appellant.

Present at the hearing were Raymond A. Wedlake, appearing *pro se*; Stephanie Kellahan of the firm McCabe, Trotter & Beverly, P.C., attorneys for McCabe, Trotter & Beverly, P.C.; Chris Smith of the firm Clarkson Walsh Coulter, attorneys for the Board of Directors of Woodington Homeowners' Association, Inc., comprised of Mona Craigo, Edward Decker, and Sandra LaCroix, and Nicholas A. Farr of the firm Gallivan, White & Boyd, P.A., attorneys for State Farm Fire and Casualty Company.

Based upon pleadings, the memorandums filed in support of the above Motion, the legal arguments presented by all parties and exhibits presented at the hearing, the Court dismissed the Appellant's claims with prejudice. The Court asked Respondents to provide a proposed Order and Appellant was afforded the opportunity to review and make objections and corrections. The attached Order was ultimately signed and provided to the parties and the case was dismissed with prejudice. A flash drive containing the record in this case is attached.

Respectfully submitted,



Laura M. Saunders
Magistrate Judge
Fairview / Austin Summary
Court

I CERTIFY THIS TO BE A
TRUE AND VALID COURT COPY.

DATE 1/28/2021
SIGNED Heidi Patterson

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE MAGISTRATE'S COURT

Raymond A. Wedlake, as a Member of)
Woodington Homeowners' Association,)
Inc. and on behalf of all other similarly)
situated members of Woodington)
Homeowners' Association, Inc.,)

Plaintiffs,)

vs.)

Board of Directors of Woodington)
Homeowners' Association, Inc.,)
comprised of Mona Craigo, Edward)
Decker, and Sandra LaCroix; McCabe,)
Trotter & Beverly, P.C.; and State Farm)
Fire and Casualty Company,)

Defendants.)

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

C.A. No. 2020CV2310201384

FAIRVIEW-AUSTIN

DEC 22 2020

SUMMARY COURT

THIS MATTER IS BEFORE the court on the defendants' motions to dismiss the plaintiffs' amended complaint. A hearing on these motions was held before me on November 24, 2020, Present at the hearing were Raymond A. Wedlake, appearing *pro se*; Stephanie Kellahan of the firm McCabe, Trotter & Beverly, P.C., attorneys for McCabe, Trotter & Beverly, P.C.; Chris Smith of the firm Clarkson Walsh Coulter, attorneys for the Board of Directors of Woodington Homeowners' Association, Inc., comprised of Mona Craigo, Edward Decker, and Sandra LaCroix, and Nicholas A. Farr of the firm Gallivan, White & Boyd, P.A., attorneys for State Farm Fire and Casualty Company. Based upon the arguments of the parties, pleadings, exhibits, applicable law and the record in this case, the court hereby orders that the defendants' motions to dismiss be GRANTED with prejudice.

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Background

The genesis of this lawsuit and the multiple other lawsuits plaintiff has filed against the WHOA Board, stem from a 2016 dispute plaintiff had with the Woodington Homeowners Association ("WHOA") Architectural Committee over a sailboat that plaintiff had painted on his garage door. Plaintiff filed a lawsuit against the WHOA Board titled: *Raymond A. Wedlake, individually and derivatively, on behalf of all Members of The Woodington Homeowners' Association, Inc., 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., and, Association Management Group SC, Inc., C.A. No.: 2017-CP-23-06301*. On May 29, 2018, following plaintiff's presentation of his case at trial, the Honorable Judge Simmons issued an Order granting the WHOA Board's motion for an involuntary non-suit under rule 41(b) and dismissed plaintiff's case. Plaintiff's lawsuit was for a declaratory judgment as it pertained to the interpretation of the WHOA bylaws. Plaintiff also sought nominal damages and attorney's fees. Following plaintiff's presentation of his evidence at the trial of this case, the Court granted defendants' motion to dismiss plaintiff's case. Plaintiff appealed the Court's decision, and this matter is currently pending in the Court of Appeals. The WHOA board retained the services of the law firm of McCabe, Trotter & Beverly, P.C. to represent them in that action. The WHOA Board in that action is still being represented by the law firm of McCabe, Trotter & Beverly, P.C. ("MTB") in the pending appeal of that action.

In April 2018, the WHOA elected its 2018 Board, in which Chris Edwards, Chip Koshis, Denis Esteve, William Craigo, and Mike Keels were duly elected. On July 13, 2018, the 2018 WHOA Board received a legal bill from MTB in the amount of \$53,684.50 for legal services rendered in the defense of plaintiff's lawsuit against the 2017 WHOA Board.


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On July 14, 2018, the plaintiff filed a defamation lawsuit against individual WHOA board members, Kristine Lynch and Dawn Vonderbecke, in the Greenville County Court of Common Pleas, titled: *Raymond A. Wedlake, as a Member of the Woodington Homeowners' Association, Inc. vs. Kristine Lynch and Dawn Vonderbecke and John Does & Jane Does numbers 1-10 and Doe Legal Entities numbers 1-10, C.A. No.: 2018-CP-23-03758*. The Clarkson Walsh Coulter law firm defended the individually named defendants in that case.

On January 24, 2019, the Annual Meeting of the Woodington HOA was held. The annual WHOA budget was presented in detail by the Treasurer, Denis Esteve. The budget included line items matching the additional funds to be collected by an approved Payment Plan and corresponding payments of Legal Fees. The Budget was passed by verbal vote of those in attendance. It is believed that the plaintiff, Raymond Wedlake was the only WHOA member present who voted against the proposed budget.

On January 17, 2019, the plaintiff filed a complaint against the WHOA Board that consisted of Christopher Edwards, Charles Koshis, Denis Esteve, Michael Keels and William Craigo in their capacity as Board of Directors of the Woodington Homeowners' Association, Inc., Case No. 2019-CP-23-00269.

On March 23, 2019, the plaintiff filed a lawsuit against the 2019 WHOA Board entitled: *Raymond Wedlake, as a Member of the Woodington Homeowners' Association, Inc. v. Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve and Charles Koshis in their capacity as members of the current Board of Directors of Woodington Homeowners' Association, Inc., CA No.: 2019-CP-23-01501*. The lawsuit claimed that the defendants breached their fiduciary duty to the WHOA by first accepting the invoice for legal services rendered by MTB and further violated their fiduciary duty by counting the ballots that had been sent out to


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the community in October of 2018 (ballots pertaining to indemnification and payment plan for legal fees) that were not returned by WHOA members as proxy "Yes" votes in favor of the proposed plan. These are the same exact claims that plaintiff has brought before the Magistrate's Court in this lawsuit in an attempt to re-litigate the issues that have already been decided in previous actions.

State Farm Fire and Casualty Company ("State Farm") is the liability insurer for WHOA. Upon the filing of this lawsuit, State Farm agreed to provide the HOA Board with a defense in this action under a reservation of rights. The plaintiff subsequently filed the amended complaint in this action. In the amended complaint, the plaintiff amends his allegations against WHOA in an attempt, based on the plaintiff's interpretation of the State Farm policy, to remove any potential insurance coverage afforded WHOA. Likewise, in the amended complaint, the plaintiff asserts a breach of contract claim against State Farm for providing a defense to WHOA on the grounds that the amended complaint allegedly no longer triggers coverage under the State Farm policy.

Legal Standard

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the court may dismiss a claim when the defendant demonstrates the plaintiff's "failure to state facts sufficient to constitute a cause of action" in the pleadings filed with the court. *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct. App. 2002). When ruling on a motion to dismiss for failure to state facts to constitute a cause of action, the court must base its decision solely upon the allegations set forth on the face of the complaint. *Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987). The court must grant the motion if the facts

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alleged in the complaint and the inferences reasonably deduced therefrom do not entitle the plaintiff to relief on any theory of the case. *Id.*

Discussion

I. Collateral Estoppel

“Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.” *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). In the instant case Plaintiff alleges that, due to the alleged bad acts of MTB, WHOA improperly and involuntarily paid an invoice for legal fees related to Case 2017-CP-23-06301. However, Plaintiff filed a lawsuit under that same theory in March 2020 in Case 2019-CP-23-01501¹. Specifically, Plaintiff alleged:

COMES NOW, Raymond A. Wedlake (Plaintiff), in his capacity as a member in good standing of Woodington Homeowners' Association, Inc.(WHOA), and by and through his undersigned legal counsel, Grant H. Gibson, Esq., hereby asserts a breach of covenants and breach of fiduciary duty by Defendants arising from acceptance of an improper invoice from the law firm of McCabe, Trotter, and Beverly, P.C. (McCabe), coupled with disbursement of WHOA funds to McCabe, or any partner or associate thereof.

In Case 2019-CP-23-01501 Plaintiff laid out almost identical facts to allege that several directors of WHOA improperly accepted a bill from MTB, held an improper vote to attempt to approve payment of that bill, miscounted votes in determining the membership approved the vote, demanded the court require WHOA seek recovery of over \$6,000 from MTB, and suggested any funds owed to MTB should be held in escrow until the appeal in case 2017-CP-

¹ MTB was not a named party to Case 2019-CP-23-01501. However, this does not prevent MTB or any other party from asserting collateral estoppel as a bar to this suit because “modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009).

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23-06301 has been decided. These claims were all dismissed via Summary Judgment on March 13, 2020. Specifically, The Honorable Edward Miller held the following:

- "The Board properly counted the ballots both returned and not returned in accordance with the WHOA Bylaws, and in no way breached its fiduciary duty to WHOA members." (Order, p. 6.)
- "[P]laintiff has failed to establish that the Board did not receive a majority of votes needed to pass the payment plan proposal . . ." (Order, p. 7.)
- "Based on the plain language of the Bylaws, it appears that the [board members] acted in accordance with WHOA Bylaws . . ." (Order, p. 7.)
- "[The board members] have done nothing improper, have acted in accordance with the WHOA Bylaws, and did not violate their fiduciary duty to its members." (Order, p. 7.)
- "[The board members] were not in violation of the South Carolina Non-Profit Act as it pertains to the approval for the proposed ballots for indemnification and payment of legal fees." (Order, p. 9.).

Judge Miller's Order in Case 2019-CP-23-01501 unequivocally found that membership of WHOA voted indemnify the individual defendants from Case 2017-CP-23-6301 and such vote was properly held and valid. He further held the membership voted to pay the legal fee invoice submitted by MTB through a payment plan. Plaintiff cannot seek to collaterally attack Judge Miller's holding by seeking relief from this Court. For that reason, Plaintiff's claims related to invoicing and payment of legal fees for Case 2017-CP-23-06301 must be dismissed.

II. Casting Plaintiff in False Light

Plaintiff's amended complaint fails to state a claim and fails to state facts sufficient to constitute a cause of action against MTB pursuant to Rule 12(b)(6), SCRPC because South Carolina does not recognize a cause of action for "Casting in a False Light." Even if the court were to interpret this claim as a cause of action for defamation, said claim is barred by the statute of limitations. A claim for libel or slander must be brought within two years. S.C. Code §15-3-

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550. The statute of limitations begins running at the time of the allegedly defamatory statement because "South Carolina has not adopted the discovery rule in libel and slander cases." *Jones v. City of Folly Beach*, 326 S.C. 360, 369, 483 S.E.2d 770, 775 (Ct. App. 1997). Plaintiff's amended complaint states on its face that the allegedly defamatory statement was made September 20, 2016. While Plaintiff's amended complaint alleges the statute of limitations cannot begin to run until Plaintiff learned MTB "acted on [its] own initiative," Plaintiff does not, and cannot, cite any authority for this position. Instead, the case law of this state is clear that the statutory period began on September 21, 2016 and expired on September 21, 2018. Plaintiff did not bring this suit until almost 2 years after that time. For these reasons Plaintiff's claim for defamation must be dismissed.

III. Conspiracy

Plaintiff's claim for conspiracy must also be dismissed pursuant to Rule 12(b)(6) because Plaintiff has failed to state with specificity what special damages he suffered as a result of an alleged conspiracy. Special damages are an essential element in proving a claim for conspiracy. *LaMotte v. Punchline of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988). Specifically, damages alleged in a civil conspiracy claim must go beyond those alleged in other causes of action. *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006). However, in this case the damages sought by Plaintiff, a refund of legal fees allegedly paid in violation of the WHOA's covenants, are the same damages sought by Plaintiff for its Breach of Contract claim. Additionally, Plaintiff has failed to specifically state the special damages allegedly suffered as required by Rule 9(g), SCRPC. As such, the conspiracy claim must be dismissed.

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IV. Plaintiff Lacks Standing to Bring a Derivative Suit

Plaintiff has failed to meet the requirements of Rule 23, SCRCP, and therefore lacks standing to bring a derivative suit. Plaintiff does not fairly and adequately represent the members of WHOA, and Plaintiff's amended complaint fails to allege that he does. In fact, there is currently pending before the Court of Common Pleas for Greenville County a class action lawsuit brought by other members of WHOA alleging ²:

1. This case is about Defendant's actions of harassing his neighbors, eroding community camaraderie, and subjecting the Woodington residents to unnecessary legal expenses, using the Court system and its inherent authority to give credence to his bullying tactics. Defendant has engaged in a clear pattern of harassment through the use of the Court system and its elements through his frivolous lawsuits.

In 2019 The Greenville News published a story outlining Mr. Wedlake's harassment of his neighbors. <https://www.greenvilleonline.com/story/news/2019/04/02/sc-hoa-says-lawsuits-bankrupting-their-greenville-community/2919200002/>. Specifically, at least nine members met with the newspaper to discuss the endless lawsuits filed by Mr. Wedlake. Additionally, Plaintiff's own complaint shows that 29 members of WHOA returned ballots indicating they voted for indemnification and 32 members of WHOA returned ballots indicating they voted for the payment plan. This alone demonstrates Plaintiff's amended complaint is not representative of the position of the WHOA members. As such, he is not allowed to bring this suit derivatively.

Additionally, plaintiff cannot bring a derivative suit on behalf of a non-profit corporation as a *pro se* litigant. In a derivative suit the shareholder bringing the suit is only a nominal plaintiff and the corporation is the real party in interest. *Johnson v. Baldwin*, 69 S.E.2d 585, 588

² 2020-CP-23-01458 was filed March 9, 2020 against Defendant Raymond A. Wedlake. A trial court may take judicial notice of previously entered, related court documents and consider them when ruling on a Motion to Dismiss under Rule 12(b)(6), SCRCP. See *Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n. 2, 754 S.E.2d 494, 497 n. 2 (2014).



221 S.C. 141, 149 (1952). In the instant action plaintiff is attempting to represent the corporate entity and "six similarly situated HOA members." State law prohibits an individual from practicing law without first possessing a law license. S.C. Code § 40-5-310. While a non-lawyer is allowed to represent a corporation before the magistrate court, the corporation must first give the non-lawyer "written authorization from the entity's president, chairperson, general partner, owner, or chief executive officer." *In re Unauthorized Practice of Law Rules Proposed by SC Bar*, 422 S.E.2d 123, 124, 309 S.C. 304, 306 (1992). Such written authorization must be submitted to the magistrate at the time the initial pleading in the case is filed. S.C. Code § 33-1-103. Plaintiff is not a licensed lawyer and therefore may not represent his fellow HOA members in this suit. Additionally, plaintiff has not submitted written authorization from the WHOA's chief executive officer and therefore cannot represent the corporation before this court. For these reasons I find plaintiff's derivative claims must be dismissed.

V. Plaintiff is not a party to the State Farm Insurance Policy

In this matter, Plaintiff has asserted a breach of contract claim against State Farm, disputing whether the claims he has asserted against WHOA are covered by the terms and conditions of the State Farm policy. The State Farm policy at issue was issued to WHOA. The plaintiff is not a party to the insurance contract. Under South Carolina law, an injured person who is not a party to the insurance contract has no standing to litigate a dispute between an insurer and an insured unless he has first established liability against the insured. *Park v. Safeco Ins. Co. of America*, 251 S.C. 410, 162 S.E.2d 709, 711 (1968); *see also Erwin v. Universal Underwriters Ins. Co.*, 2007 WL 30288 (holding that injured motorcyclist lacked standing to pursue claims against tortfeasor's insurer without obtaining judgment against tortfeasor). Here, the plaintiff has not established liability on the part of WHOA. In addition, the court is not

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aware of any dispute between State Farm and its insured, WHOA. As he is not an insured under the State Farm policy, the plaintiff has no standing to bring a breach of contract claim as to the available coverage under the policy. As such, his claims must be dismissed.

CONCLUSION

For the foregoing reasons, the Court GRANTS the defendants' motions to dismiss. IT IS HEREBY ORDERED that the plaintiff's amended complaint be dismissed in its entirety with prejudice.

FAIRVIEW-AUSTIN
DEC 28 2020
 COURT

The Honorable Laura M. Saunders
Judge, Fairview/Austin Summary Court

Greenville, South Carolina

December 28, 2020



EXHIBIT NOA.2

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE MAGISTRATE'S COURT

Raymond A. Wedlake, as a Member of)
Woodington Homeowners' Association,)
Inc. and on behalf of all other similarly)
situated members of Woodington)
Homeowners' Association, Inc.,)

Plaintiffs,)

vs.)

Board of Directors of Woodington)
Homeowners' Association, Inc.,)
comprised of Mona Craigo, Edward)
Decker, and Sandra LaCroix; McCabe,)
Trotter & Beverly, P.C.; and State Farm)
Fire and Casualty Company,)

Defendants.)

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

C.A. No. 2020CV2310201384

RECEIVED

Aug 09 2021

SC Court of Appeals

FAIRVIEW-AUSTIN

SEP 22 2021

SUMMARY COURT

THIS MATTER IS BEFORE the court on the defendants' motions to dismiss the plaintiffs' amended complaint. A hearing on these motions was held before me on November 24, 2020, Present at the hearing were Raymond A. Wedlake, appearing *pro se*; Stephanie Kellahan of the firm McCabe, Trotter & Beverly, P.C., attorneys for McCabe, Trotter & Beverly, P.C.; Chris Smith of the firm Clarkson Walsh Coulter, attorneys for the Board of Directors of Woodington Homeowners' Association, Inc., comprised of Mona Craigo, Edward Decker, and Sandra LaCroix, and Nicholas A. Farr of the firm Gallivan, White & Boyd, P.A., attorneys for State Farm Fire and Casualty Company. Based upon the arguments of the parties, pleadings, exhibits, applicable law and the record in this case, the court hereby orders that the defendants' motions to dismiss be GRANTED with prejudice.

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Background

The genesis of this lawsuit and the multiple other lawsuits plaintiff has filed against the WHOA Board, stem from a 2016 dispute plaintiff had with the Woodington Homeowners Association (“WHOA”) Architectural Committee over a sailboat that plaintiff had painted on his garage door. Plaintiff filed a lawsuit against the WHOA Board titled: *Raymond A. Wedlake, individually and derivatively, on behalf of all Members of The Woodington Homeowners’ Association, Inc., 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., and, Association Management Group SC, Inc., C.A. No.: 2017-CP-23-06301*. On May 29, 2018, following plaintiff’s presentation of his case at trial, the Honorable Judge Simmons issued an Order granting the WHOA Board’s motion for an involuntary non-suit under rule 41(b) and dismissed plaintiff’s case. Plaintiff’s lawsuit was for a declaratory judgment as it pertained to the interpretation of the WHOA bylaws. Plaintiff also sought nominal damages and attorney’s fees. Following plaintiff’s presentation of his evidence at the trial of this case, the Court granted defendants’ motion to dismiss plaintiff’s case. Plaintiff appealed the Court’s decision, and this matter is currently pending in the Court of Appeals. The WHOA board retained the services of the law firm of McCabe, Trotter & Beverly, P.C. to represent them in that action. The WHOA Board in that action is still being represented by the law firm of McCabe, Trotter & Beverly, P.C. (“MTB”) in the pending appeal of that action.

In April 2018, the WHOA elected its 2018 Board, in which Chris Edwards, Chip Koshis, Denis Esteve, William Craigo, and Mike Keels were duly elected. On July 13, 2018, the 2018 WHOA Board received a legal bill from MTB in the amount of \$53,684.50 for legal services rendered in the defense of plaintiff’s lawsuit against the 2017 WHOA Board.

On July 14, 2018, the plaintiff filed a defamation lawsuit against individual WHOA board members, Kristine Lynch and Dawn Vonderbecke, in the Greenville County Court of Common Pleas, titled: *Raymond A. Wedlake, as a Member of the Woodington Homeowners' Association, Inc. vs. Kristine Lynch and Dawn Vonderbecke and John Does & Jane Does numbers 1-10 and Doe Legal Entities numbers 1-10, C.A. No.: 2018-CP-23-03758*. The Clarkson Walsh Coulter law firm defended the individually named defendants in that case.

On January 24, 2019, the Annual Meeting of the Woodington HOA was held. The annual WHOA budget was presented in detail by the Treasurer, Denis Esteve. The budget included line items matching the additional funds to be collected by an approved Payment Plan and corresponding payments of Legal Fees. The Budget was passed by verbal vote of those in attendance. It is believed that the plaintiff, Raymond Wedlake was the only WHOA member present who voted against the proposed budget.

On January 17, 2019, the plaintiff filed a complaint against the WHOA Board that consisted of Christopher Edwards, Charles Koshis, Denis Esteve, Michael Keels and William Craigo in their capacity as Board of Directors of the Woodington Homeowners' Association, Inc., Case No. 2019-CP-23-00269.

On March 23, 2019, the plaintiff filed a lawsuit against the 2019 WHOA Board entitled: *Raymond Wedlake, as a Member of the Woodington Homeowners' Association, Inc. v. Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve and Charles Koshis in their capacity as members of the current Board of Directors of Woodington Homeowners' Association, Inc., CA No.: 2019-CP-23-01501*. The lawsuit claimed that the defendants breached their fiduciary duty to the WHOA by first accepting the invoice for legal services rendered by MTB and further violated their fiduciary duty by counting the ballots that had been sent out to



the community in October of 2018 (ballots pertaining to indemnification and payment plan for legal fees) that were not returned by WHOA members as proxy "Yes" votes in favor of the proposed plan. These are the same exact claims that plaintiff has brought before the Magistrate's Court in this lawsuit in an attempt to re-litigate the issues that have already been decided in previous actions.

State Farm Fire and Casualty Company ("State Farm") is the liability insurer for WHOA. Upon the filing of this lawsuit, State Farm agreed to provide the HOA Board with a defense in this action under a reservation of rights. The plaintiff subsequently filed the amended complaint in this action. In the amended complaint, the plaintiff amends his allegations against WHOA in an attempt, based on the plaintiff's interpretation of the State Farm policy, to remove any potential insurance coverage afforded WHOA. Likewise, in the amended complaint, the plaintiff asserts a breach of contract claim against State Farm for providing a defense to WHOA on the grounds that the amended complaint allegedly no longer triggers coverage under the State Farm policy.

Legal Standard

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the court may dismiss a claim when the defendant demonstrates the plaintiff's "failure to state facts sufficient to constitute a cause of action" in the pleadings filed with the court. *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct. App. 2002). When ruling on a motion to dismiss for failure to state facts to constitute a cause of action, the court must base its decision solely upon the allegations set forth on the face of the complaint. *Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987). The court must grant the motion if the facts

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alleged in the complaint and the inferences reasonably deduced therefrom do not entitle the plaintiff to relief on any theory of the case. *Id.*

Discussion

I. Collateral Estoppel

“Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.” *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). In the instant case Plaintiff alleges that, due to the alleged bad acts of MTB, WHOA improperly and involuntarily paid an invoice for legal fees related to Case 2017-CP-23-06301. However, Plaintiff filed a lawsuit under that same theory in March 2020 in Case 2019-CP-23-01501¹. Specifically, Plaintiff alleged:

COMES NOW, Raymond A. Wedlake (Plaintiff), in his capacity as a member in good standing of Woodington Homeowners' Association, Inc.(WHOA), and by and through his undersigned legal counsel, Grant H. Gibson, Esq., hereby asserts a breach of covenants and breach of fiduciary duty by Defendants arising from acceptance of an improper invoice from the law firm of McCabe, Trotter, and Beverly, P.C. (McCabe), coupled with disbursement of WHOA funds to McCabe, or any partner or associate thereof.

In Case 2019-CP-23-01501 Plaintiff laid out almost identical facts to allege that several directors of WHOA improperly accepted a bill from MTB, held an improper vote to attempt to approve payment of that bill, miscounted votes in determining the membership approved the vote, demanded the court require WHOA seek recovery of over \$6,000 from MTB, and suggested any funds owed to MTB should be held in escrow until the appeal in case 2017-CP-

¹ MTB was not a named party to Case 2019-CP-23-01501. However, this does not prevent MTB or any other party from asserting collateral estoppel as a bar to this suit because “modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009).

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23-06301 has been decided. These claims were all dismissed via Summary Judgment on March 13, 2020. Specifically, The Honorable Edward Miller held the following:

- “The Board properly counted the ballots both returned and not returned in accordance with the WHOA Bylaws, and in no way breached its fiduciary duty to WHOA members.” (Order, p. 6.)
- “[P]laintiff has failed to establish that the Board did not receive a majority of votes needed to pass the payment plan proposal . . .” (Order, p. 7.)
- “Based on the plain language of the Bylaws, it appears that the [board members] acted in accordance with WHOA Bylaws . . .” (Order, p. 7.)
- “[The board members] have done nothing improper, have acted in accordance with the WHOA Bylaws, and did not violate their fiduciary duty to its members.” (Order, p. 7.)
- “[The board members] were not in violation of the South Carolina Non-Profit Act as it pertains to the approval for the proposed ballots for indemnification and payment of legal fees.” (Order, p. 9.).

Judge Miller’s Order in Case 2019-CP-23-01501 unequivocally found that membership of WHOA voted indemnify the individual defendants from Case 2017-CP-23-6301 and such vote was properly held and valid. He further held the membership voted to pay the legal fee invoice submitted by MTB through a payment plan. Plaintiff cannot seek to collaterally attack Judge Miller’s holding by seeking relief from this Court. For that reason, Plaintiff’s claims related to invoicing and payment of legal fees for Case 2017-CP-23-06301 must be dismissed.

II. Casting Plaintiff in False Light

Plaintiff’s amended complaint fails to state a claim and fails to state facts sufficient to constitute a cause of action against MTB pursuant to Rule 12(b)(6), SCRPC because South Carolina does not recognize a cause of action for “Casting in a False Light.” Even if the court were to interpret this claim as a cause of action for defamation, said claim is barred by the statute of limitations. A claim for libel or slander must be brought within two years. S.C. Code §15-3-

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550. The statute of limitations begins running at the time of the allegedly defamatory statement because “South Carolina has not adopted the discovery rule in libel and slander cases.” *Jones v. City of Folly Beach*, 326 S.C. 360, 369, 483 S.E.2d 770, 775 (Ct. App. 1997). Plaintiff’s amended complaint states on its face that the allegedly defamatory statement was made September 20, 2016. While Plaintiff’s amended complaint alleges the statute of limitations cannot begin to run until Plaintiff learned MTB “acted on [its] own initiative,” Plaintiff does not, and cannot, cite any authority for this position. Instead, the case law of this state is clear that the statutory period began on September 21, 2016 and expired on September 21, 2018. Plaintiff did not bring this suit until almost 2 years after that time. For these reasons Plaintiff’s claim for defamation must be dismissed.

III. Conspiracy

Plaintiff’s claim for conspiracy must also be dismissed pursuant to Rule 12(b)(6) because Plaintiff has failed to state with specificity what special damages he suffered as a result of an alleged conspiracy. Special damages are an essential element in proving a claim for conspiracy. *LaMotte v. Punchline of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988). Specifically, damages alleged in a civil conspiracy claim must go beyond those alleged in other causes of action. *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006). However, in this case the damages sought by Plaintiff, a refund of legal fees allegedly paid in violation of the WHOA’s covenants, are the same damages sought by Plaintiff for its Breach of Contract claim. Additionally, Plaintiff has failed to specifically state the special damages allegedly suffered as required by Rule 9(g), SCRPC. As such, the conspiracy claim must be dismissed.

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IV. Plaintiff Lacks Standing to Bring a Derivative Suit

Plaintiff has failed to meet the requirements of Rule 23, SCRCP, and therefore lacks standing to bring a derivative suit. Plaintiff does not fairly and adequately represent the members of WHOA, and Plaintiff's amended complaint fails to allege that he does. In fact, there is currently pending before the Court of Common Pleas for Greenville County a class action lawsuit brought by other members of WHOA alleging ²:

1. This case is about Defendant's actions of harassing his neighbors, eroding community camaraderie, and subjecting the Woodington residents to unnecessary legal expenses, using the Court system and its inherent authority to give credence to his bullying tactics. Defendant has engaged in a clear pattern of harassment through the use of the Court system and its elements through his frivolous lawsuits.

In 2019 The Greenville News published a story outlining Mr. Wedlake's harassment of his neighbors. <https://www.greenvilleonline.com/story/news/2019/04/02/sc-hoa-says-lawsuits-bankrupting-their-greenville-community/2919200002/>. Specifically, at least nine members met with the newspaper to discuss the endless lawsuits filed by Mr. Wedlake. Additionally, Plaintiff's own complaint shows that 29 members of WHOA returned ballots indicating they voted for indemnification and 32 members of WHOA returned ballots indicating they voted for the payment plan. This alone demonstrates Plaintiff's amended complaint is not representative of the position of the WHOA members. As such, he is not allowed to bring this suit derivatively.

Additionally, plaintiff cannot bring a derivative suit on behalf of a non-profit corporation as a *pro se* litigant. In a derivative suit the shareholder bringing the suit is only a nominal plaintiff and the corporation is the real party in interest. *Johnson v. Baldwin*, 69 S.E.2d 585, 588

² 2020-CP-23-01458 was filed March 9, 2020 against Defendant Raymond A. Wedlake. A trial court may take judicial notice of previously entered, related court documents and consider them when ruling on a Motion to Dismiss under Rule 12(b)(6), SCRCP. See *Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n. 2, 754 S.E.2d 494, 497 n. 2 (2014).



221 S.C. 141, 149 (1952). In the instant action plaintiff is attempting to represent the corporate entity and “six similarly situated HOA members.” State law prohibits an individual from practicing law without first possessing a law license. S.C. Code § 40-5-310. While a non-lawyer is allowed to represent a corporation before the magistrate court, the corporation must first give the non-lawyer “written authorization from the entity’s president, chairperson, general partner, owner, or chief executive officer.” *In re Unauthorized Practice of Law Rules Proposed by SC Bar*, 422 S.E.2d 123, 124, 309 S.C. 304, 306 (1992). Such written authorization must be submitted to the magistrate at the time the initial pleading in the case is filed. S.C. Code § 33-1-103. Plaintiff is not a licensed lawyer and therefore may not represent his fellow HOA members in this suit. Additionally, plaintiff has not submitted written authorization from the WHOA’s chief executive officer and therefore cannot represent the corporation before this court. For these reasons I find plaintiff’s derivative claims must be dismissed.

V. Plaintiff is not a party to the State Farm Insurance Policy

In this matter, Plaintiff has asserted a breach of contract claim against State Farm, disputing whether the claims he has asserted against WHOA are covered by the terms and conditions of the State Farm policy. The State Farm policy at issue was issued to WHOA. The plaintiff is not a party to the insurance contract. Under South Carolina law, an injured person who is not a party to the insurance contract has no standing to litigate a dispute between an insurer and an insured unless he has first established liability against the insured. *Park v. Safeco Ins. Co. of America*, 251 S.C. 410, 162 S.E.2d 709, 711 (1968); *see also Erwin v. Universal Underwriters Ins. Co.*, 2007 WL 30288 (holding that injured motorcyclist lacked standing to pursue claims against tortfeasor’s insurer without obtaining judgment against tortfeasor). Here, the plaintiff has not established liability on the part of WHOA. In addition, the court is not

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aware of any dispute between State Farm and its insured, WHOA. As he is not an insured under the State Farm policy, the plaintiff has no standing to bring a breach of contract claim as to the available coverage under the policy. As such, his claims must be dismissed.

CONCLUSION

For the foregoing reasons, the Court GRANTS the defendants' motions to dismiss. IT IS HEREBY ORDERED that the plaintiff's amended complaint be dismissed in its entirety with prejudice.

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The Honorable Laura M. Saunders
Judge, Fairview/Austin Summary Court

Greenville, South Carolina

December 28, 2020

