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**Oct 21 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-in-Equity

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Appellate Case Nos. 2020-001583 & 2021-001014

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Bonnie Wall, individually and derivatively,  
and Walter B. Wall, Jr.,..... Appellants,

vs.

Jonathan Dye, Shaun Dye, Shellmore Homeowners' Association, Inc., and  
John H. Chakides, Jr., individually and in his capacity as Director of Shellmore  
Homeowners' Association, Inc.,..... Respondents.

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**MOTION TO CONSOLIDATE APPEALS**

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Pursuant to Rules 214 and 240 of the South Carolina Appellate Court Rules ("SCACR"), Respondents Jonathan and Shaun Dye move to consolidate Appellate Case Nos. 2020-01583 and 2021-001014 arising from the same underlying matter. Respondents respectfully request this Court to consolidate these appeals because they arise from the same underlying case and involve overlapping questions of law.

Both appeals arise from the same underlying case brought by Appellants against Respondents challenging the approval and construction of the Dyes' covered dock. In the underlying case, Appellants asserted claims for declaratory judgment, injunctive relief, breach of restrictive covenants, breach of fiduciary duty, civil conspiracy, and nuisance. On November 19,

2020, the lower court issued an order dissolving a preliminary injunction preventing construction of the covered dock and granting summary judgment to Respondents on Appellants' claims for breach of fiduciary duty and civil conspiracy. In response to this order, Appellants initiated Appellate Case No. 2020-01583 ("Appeal I") by filing their Notice of Appeal on November 22, 2020. On July 28, 2021, the lower court issued another order granting summary judgment to Respondents on Appellants' remaining claims. In response to this order and the lower court's denial of their motion for reconsideration, Appellants initiated Appellate Case No. 2021-001014 ("Appeal II") by filing their Notice of Appeal on September 13, 2021.

Appeals I and II involve overlapping questions of law. In Appeal I, Appellants question whether the neighborhood association board members owed Appellants a fiduciary duty. In answering that question, this Court must consider and interpret the requirements of the neighborhood's restrictive covenants. The Court must determine whether the covenants grant the board members discretionary authority to approve covered docks and whether the board members acted within the authority granted by the covenants. These same questions are presented in Appeal II in which Appellants appeal the lower court's declaratory judgment ruling interpreting the covenants. In Appeal II, Appellants are challenging the lower court's holdings that the neighborhood's restrictive covenants grant board members discretionary authority to approve covered docks and that the board members acted within their authority in approving construction of the Dyes' covered dock.

Both appeals also raise questions as to the admissibility, or lack thereof, of the evidence proffered by Appellants in opposition to Respondents' motions for summary judgment to the court below. Resolution of this question—by which the lower court ruled much of Appellants' proffered evidence as inadmissible—is of critical determinative importance in both appeals.

Because both appeals share common questions of law which could prove determinative in each appeal, consolidation of Appeals I and II is required to avoid duplicative arguments to and possible inconsistent rulings from different panels of this Court. Under these circumstances, considerations of judicial economy and consistency demand consolidation. Accordingly, this Court should consolidate Appeals I and II.

### **CONCLUSION**

For the reasons stated above, the Court should consolidate Appellate Case Nos. 2020-01583 and 2021-001014 for argument and for all other purposes deemed appropriate by the Court.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Charleston, South Carolina  
October 21, 2021

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**PROOF OF SERVICE**

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I certify that I have served the foregoing Motion to Consolidate on all parties of record by sending an electronic copy to their respective attorneys' primary e-mail addresses listed in the Attorney Information System (AIS) pursuant to the Supreme Court's Order, dated August 25, 2021, regarding Methods of Electronic Filing and Service, as follows: Ian S. Ford (ian.ford@fordwallace.com) and Ainsley F. Tillman (ainsley.tillman@fordwallace.com) for Appellants; and L. Sidney Connor, IV, (sconnor@classactlaw.net) for Respondents Shellmore Homeowners' Association, Inc., and John H. Chakides, Jr.

[Signature Page to Follow]

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October 21, 2021

## Andrew Connor

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**From:** Andrew Connor  
**Sent:** Thursday, October 21, 2021 11:40 AM  
**To:** Ainsley Tillman; Ian Ford  
**Cc:** L. Sidney Connor IV (sconnor@classactlaw.net); Lynn Benton; Donna Mills  
**Subject:** Wall v. Dye; Court of Appeals Case Nos. 2020-001583 & 2021-001014  
**Attachments:** Motion to Consolidate Appeals 4849-6743-6031 v.5.pdf

Dear Ms. Tillman:

For service upon you, please see the attached Motion to Consolidate in the above-referenced cases.

Best,



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ANDREW M. CONNOR [PARTNER](#)

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