

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No: 2011-CP-22-319

Litchfield Plantation Association, Inc., Joseph E. Johnson, Thomas Eckard,
Carol E. Kirby, Robert F. McMahan, Jr. and Thomas Martin Phillips.....Appellants.

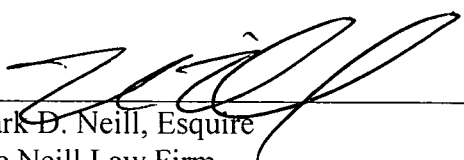
v.

Litchfield Plantation Company, Inc. Respondent.

AND,

E.Scott Trotter.....Intervenor.

RESPONDENT'S MOTION TO DISMISS APPEAL


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Litchfield Plantation Company, Inc.

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APR 16 2013

SC Court of Appeals

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RESPONDENT'S MOTION TO DISMISS APPEAL

The Respondent, Litchfield Plantation Company, Inc., pursuant to Rule 260, SCACR, moves the Court for an order dismissing the appeal filed by the Appellants. In support of the Motion, Respondent will show the Appellants, through their Initial Brief, failed to comply with the requirements of the Appellate Court Rules. Specifically, Appellants' Initial Brief violates Appellate Court Rule 208(b)(1)(C) in that Appellants included in their Initial Brief contested matters which are the subject of a separate, currently pending lawsuit. Appellants also violated Appellate Court Rules 209(b) and 210(c) in that Appellants are attempting to include in the Record on Appeal matters not relevant to the Appeal and matters not presented to and/or determined by the lower Court.

I. Procedural History:

On March 9, 2011, the Appellants/Plaintiffs filed their Complaint in the above captioned matter. Appellants' Complaint asserts two causes of action: (1) a Declaratory Judgment from the Court determining the individual Appellants were elected to the Board of Governors at a meeting held February 26, 2011; and (2) a Declaratory Judgment from the Court determining Respondent lost its Class B membership status as of January 1, 2011. A copy of the Complaint is attached as Exhibit "A."

The Respondent/Defendant filed an Answer on April 29, 2011 and an Amended Answer and Counterclaim on May 27, 2011. On September 23, 2011, an Order was filed granting E. Scott Trotter's Motion to Intervene. On that same date, Mr. Trotter filed his Summons and Intervenor Complaint. On or about October 21, 2011, Respondent filed its Answer to the Intervenor's Complaint and a Second Amended Answer and Counterclaim against the Appellants.

Appellants and Respondent filed cross-motions for Summary Judgment. By way of an Order filed May 25, 2012, the lower Court granted Respondent's Motion for Summary Judgment as to Appellants' second cause of action. The lower Court found Respondent's status as the Class B member was not terminated. A copy of the Order is attached hereto as Exhibit "B." The lower Court further determined that once Respondent paid an arrearage to the Association, its voting rights would be restored. However, the Court determined that it could not issue a judgment regarding Appellants' first cause of action, accordingly, the case remains on the non-jury trial roster for a determination as to whether or not the individual Appellants were properly elected to the Board of Governors at a meeting held February 26, 2011.

On or about June 6, 2012, Appellants filed a Motion to Reconsider, a copy of which is attached hereto as Exhibit "C." By way of a Form Order filed August 17, 2012, the lower Court denied the Motion. A copy of the Order is attached hereto as Exhibit "D." Appellants filed Notice of Appeal as to that Order on or about August 24, 2012. On September 7, 2012, Respondent filed a Motion for Temporary Injunction/Lift of Stay because Appellants improperly attempted to prevent Respondent from exercising its voting rights. By way of Order filed October 22, 2012, the lower Court granted Respondent's Motion. A copy of the Order is attached hereto as Exhibit "E." Thereafter, Appellants filed Notice of Appeal on October 31, 2012.

II. Appellants' Initial Brief Violates Appellate Court Rules:

Instead of addressing the specific issue on appeal – whether or not the lower Court properly determined Respondent maintains its Class "B" membership status - the Appellants' initial brief improperly includes matters completely irrelevant to that issue, as well as, issues

currently litigated in a separate lawsuit pending in Georgetown County. Furthermore, Appellants' brief attempts to mislead the Court by erroneously claiming these matters are undisputed and should form the basis of the Court's decision to reverse the lower Court's Orders.

Because Appellants improperly included irrelevant and contested matters, their Appeal should be dismissed pursuant to the following Appellate Court Rules:

- a. Rule 260(a) provides:

Involuntary Dismissal and Reinstatement. Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. The clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing being excluded).

- b. As to Appellant's Initial Brief, Rule 208 (b)(1)(C) provides:

Statement of the Case. The statement shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal. The statement shall not contain contested matters and shall contain, as a minimum, the following information: the date of the commencement of the action or matter; the nature of the action or matter; the nature of the defense or of the response; the action of the court, jury, master, or administrative tribunal; the date(s) of trial or hearing; the mode of trial; the amount involved on appeal; the date and nature of the order, judgment or decision appealed from; the date of the service of the notice of appeal; the date of and description of such orders, judgments, decisions and proceedings of the lower court or administrative tribunal that may have affected the appeal, or may throw light upon the questions involved in the appeal; and any changes made in the parties by death, substitution, or otherwise. Any matters stated or alleged in appellant's statement shall be binding on appellant.

- c. Rule 208(b)(4) further provides as to all briefs:

References to Record. The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged. References shall also be made to where relevant objections and rulings occurred in the transcript. In the initial briefs, these references should be to the page and line number of the transcript prepared by the court reporter or by the page of the material to be referenced; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used. After the Record on Appeal is prepared, these references shall be revised as provided by Rule 211(b)(1).

- d. As to the Designation of Matter, Rule 209 provides:

(b) Content. The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]. A party shall not include any matter in his Designation which is not relevant to the appeal.

(c) Certification. The Designation shall be accompanied by a certificate signed by the party's counsel of record that the Designation contains no matter which is irrelevant to the appeal.

- d. As to the Record of Appeal, Rule 210 provides:

(c) Content. The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal.

(g) Certificate of Counsel. Appellant or his counsel shall certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

III. Appellants' Brief Includes Disputed Matters and Falsehoods:

Appellants' Brief is based upon disputed and irrelevant matters. It is clear that instead of arguing the specific issue that is on appeal, Appellants want to distract the Court

by dredging up matters that occurred over thirty years involving parties, facts, and documents not involved in the present dispute. Beginning on page six of their brief, Appellants erroneously state Respondent has abused its control over the Association. However, these claims have not been heard or determined by the lower Court.

A. Appellants falsely state Respondent wrongfully took one million dollars.

Appellants' first argument is based upon the false premise that Respondent "wrongfully took almost one million dollars in association money." This representation to the Court is false. The allegation Respondent owes money to the Association arises from Appellants' claims that Respondent breached three promissory notes and is liable for repairs to a beach house owned by the Association. Respondent adamantly denies Appellants' claims. There has been no finding that Respondent "wrongfully took" money from the Association. There has been no finding that Respondent owes "almost one million dollars." As discussed further below, the only determination as to monies owed by Respondent to the Association is set forth in the lower Court's Order filed May 25, 2012, attached hereto as Exhibit "B." In that Order, Judge Hyman determined Respondent owed monies totaling \$149,981.60. On August 3, 2012, Respondent made full payment of those monies. See Order filed October 22, 2012, attached hereto as Exhibit "E."

Appellants' claim that the Respondent owes money to the Association is also the subject of a separate lawsuit filed in Georgetown County – Case No: 2012-CP-22-00341 entitled "Litchfield Plantation Association, Inc. vs. Litchfield Plantation Company, Inc.; Louise P. Parsons; South Carolina Dept. of Revenue; BDC Capital, Inc., f/k/a BDC Capital, LLC; Allan L. Kidston; First National Bank of South Carolina; Lawrence A. Shapiro; Info Quest, Inc.; Small Luxury Hotels of the World Limited; and Litchfield Buyout Group, LLC.

A copy of the pleading is attached hereto as Exhibit "F." Appellants filed this action on behalf of the Association on April 10, 2012. In the complaint, Appellants allege Respondent breached four separate promissory notes, breached a fiduciary duty to make repairs to a beach house, and breached its fiduciary duty by not properly funding a reserve account and failing to fund budget shortages. Respondent filed its Answer on June 1, 2012 denying Appellants' allegations and asserting several affirmative defenses. A copy of Respondent's pleading is attached hereto as Exhibit "G." That case is currently pending on the trial roster.

At the hearing held before the lower Court in the present case on April 19, 2012, Appellants acknowledged there was a separately filed lawsuit against Respondent. The Transcript is attached as Exhibit "H."

Now **we** have actually filed a lawsuit to collect this money on behalf of our homeowners association and **that lawsuit is a separate action** and it also seeks a mortgage foreclosure...we are seeking a reference to the Master in Equity here in Georgetown County to calculate and establish the amounts owed which include every element of this accounting or the proper way to do it there has to be an evidentiary hearing. Transcript, April 19, 2013, page 12, line 10 – page 13, line 1.

Appellants argued to Judge Hyman that Respondent neglected to fund the reserve account, Transcript, April 19, 2013, page 39, line 17 – 22, and also owed money for repairs to the beach house. Transcript, April 19, 2013, page 45, lines 10-10. Respondent informed the Judge that these matters were in dispute, were not raised in the present lawsuit, and were the subject of the other lawsuit. Transcript, April 19, 2013, page 47, lines 11-20; page 42, lines 6-12; page 28, line 25 – page 29, line 5.

Judge Hyman informed counsel he was trying to treat the parties fairly. He wanted Respondent to have its voting rights restored but did not want the Association to suffer if it was owed monies. Transcript, April 19, 2013, page 19, line 17 – page 19, line 23. The Judge

wanted to make sure the Association could operate and determined that it would be best for Respondent to pay what monies it owed **which were not in dispute**. Issues as to the reserve account and repairs to the beach house would be determined at another time. Transcript, April 19, 2013, page 41, line 20 – page 41, line 5. Judge Hyman stated:

I understand, I understand what arrears means and that's what I'm trying to do. We can wait two years and try to find out what is really arrears and in the meantime if they don't have voting rights I don't blame them, I wouldn't pay anything if I don't have to. I'm trying to strike a balance here so that we can have them pay up and make a good faith payment of what I consider to be due as of this date, if we have no litigation what, where would we be right now and that's how I'm trying to calculate these amounts so that they can get their voting rights, they can pay in, and then we can proceed with whatever else we have. Transcript, April 19, 2013, page 42, lines 13 – 24.

Respondent agreed to pay monies that Judge Hyman determined were currently due. As set forth in the lower Court's Order filed May 25, 2012, attached as Exhibit "B," Judge Hyman determined Respondent must pay the current budget shortage of \$119,148.00, the balance on a Promissory Note dated July 21, 2009 in the amount of \$17,887.12, and the Balance on a Promissory Note dated June 1, 2011 in the amount of \$12,946.48. As to the other monies the Appellants claimed were owed for the remaining promissory notes and beach house repairs, Judge Hyman determined "it has not been conclusively established at this present time that Defendant is liable to the Association for those monies and therefore, those monies are not currently in arrears." *See* page seven of the Order filed May 25, 2012, attached as Exhibit "B."

Appellants' false assertion that Respondent "wrongfully took almost one million dollars" is entwined throughout Appellants' initial brief. On pages seven and eight of the brief, Appellants allege Respondent "took" the monies set forth in the promissory notes from

the Association. On page eight, Appellants falsely state all notes were in default. On page 10, Appellants falsely states “[i]n granting Summary Judgment to Developer, the court found Developer’s voting rights were suspended until it paid \$149,981.60 of the \$987,895.54 it owed to the Association.” As discussed above, Judge Hyman actually determined “it has not been conclusively established at this present time that Defendant is liable to the Association for those monies and therefore, those monies are not currently in arrears.”

B. Appellants falsely state the claims against Respondent are “undisputed.”

Appellants’ brief improperly alleges Respondent took monies from the Association and breached various duties to the Association. To make matters worse, Appellants’ brief falsely states the allegations are not disputed. However, Respondent has denied the allegations. There has been no hearing regarding the allegations and no determination by the lower Court. The false statements fall in the following categories:

- Developer took and converted Association’s money. Pages 14, 15, 17, 21, 24, 25, 37
- Developer transferred the Beach House amenity to the Association in a state of disrepair. Pages 14, 17, 26, 27
- Developer failed to fund the Capital Reserve account as required. Pages 14, 18, 20, 21
- Developer repeatedly violated the Covenants and breached fiduciary duties. Pages 15, 17, 18, 37. .
- Developer failed to meet its financial obligations to the Association. The Developer admits to this breach. Pages 20, 21.
- Developer is insolvent. Page 20.
- Developer paid only 15% of the amount owed. Page 22.

Because Appellants' initial brief violates the Appellate Court rules and resembles more of an argumentative opening statement rather than a proper discussion of undisputed facts and pertinent legal authority, it is virtually impossible for Respondent to prepare a proper brief in response. Appellants' brief must be stricken and the appeal dismissed.

IV. Appellants' Brief Includes Irrelevant Matters:

The Appellate Rules require only relevant and undisputed matters to be included in the parties' briefs and in the record on appeal. On page five of the initial brief, Appellants provide "Litchfield Plantation is currently governed by the Amended to the Declaration of Protective Covenants, Conditions and Restrictions for Litchfield Plantation ("Covenants") filed May 2, 2005, and the Amended and Restated Bylaws ("Bylaws") promulgated thereunder. (2005 Covenants and Bylaws)." This fact is one of the very few undisputed facts found in Appellants' initial brief. Appellants' Complaint, sought a determination by the lower Court that Respondent lost its Class "B" membership status as that term is defined by the 2005 Covenants and Bylaws. The lower Court determined Respondent had not lost its Class "B" membership status. Accordingly, matters unrelated to the determination of Respondent's status pursuant to the 2005 Covenants and Bylaws should not be included in Record on Appeal or in the Briefs.

Appellants have included matters completely irrelevant to the 2005 Covenants and Bylaws. Their initial brief references a lawsuit which occurred over thirty years ago in an attempt to support their argument that Respondent lost its Class "B" membership status as of January 1, 2011. Appellants cite a 1986 Circuit Order but fail to mention that the circuit court reviewed and based its decision on restrictive covenants and bylaws for the Association

filed in 1971. Appellants also improperly cite Peoples Federal Savings and Loan Ass'n of South Carolina v. Resources Planning Corporation, Litchfield Plantation Company, Inc. Litchfield Plantation Association, Inc., et al., 358 S.C. 460, 596 S.E.2d 51 (2004). In that case, the Supreme Court considered the 1971 Covenants and 1988 Assessments improperly imposed on the Bank. Obviously a different set of facts and governing documents were at the heart of the prior litigation. Different parties were also involved with different legal and equitable claims.

Appellants' Brief also includes irrelevant allegations against Intervenor E. Scott Trotter. Mr. Trotter is not the current president of Litchfield Plantation Company, Inc. and is represented by separate counsel. The claims against Mr. Trotter have not been asserted in the present lawsuit and should not be raised in Appellants' initial brief. *See* Appellants' Answer to Intervenor's Complaint attached hereto as Exhibit "I."

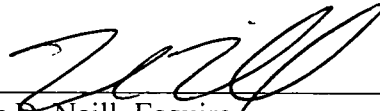
V. Appellants' Designation of Matter Includes Improper Materials:

As discussed above, Appellants include references in their brief to matters currently in dispute. As such, any documents improperly relied upon by Appellants must be excluded from the Record on Appeal, including the promissory notes, assignments, and mortgage. Said documents are the subject of Civil Action 2012-CP-22-00341 currently pending in Georgetown County. Also, all documents regarding the 1984 lawsuit or claims against the Intervenor not asserted in the present case must be excluded. Finally, Appellants have proposed to include in the Record various Affidavits and documents called "Declaration of Rights" which were not even cited in their initial brief. Those documents must also be excluded.

VI. Conclusion:

For the reasons set forth above, Appellants' Appeal must be dismissed pursuant to Rule 260 (a), SCACR.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Neill', is written over a horizontal line.

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Litchfield Plantation Company, Inc.

A

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN

CIVIL ACTION COVER SHEET

Litchfield Plantation Association, Inc., Joseph
E. Johnston, Thomas Eckard, Carol Kirby,
Robert F. McMahan, Jr. and Thomas Martin
Phillips,

2011- CP -22- 00319

FILED
ALMA Y. WHITE
CLERK OF COURT

2011 MAR -9 P 4:49 SS

GEORGETOWN COUNTY, S.C.

Plaintiff(s),

vs.

Litchfield Plantation Company, Inc.,

Defendant(s)

(Please print)

Submitted By: Robert F. McMahan, Jr.

Address: Post Office Box 2277

Conway, SC 29528

SC Bar #: 3891

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Fax #: (843) 234-9970

E-mail: rfm@harrisgraves.com

NOTE: The cover sheet and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

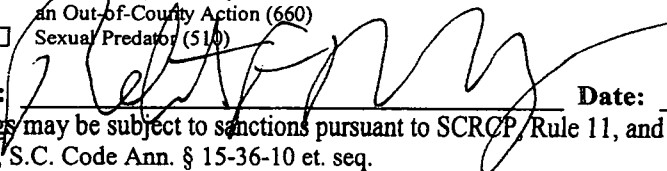
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Notice/ File Med. Mal. (230)
Previous Notice of Intent Case #
20 -CP- -
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture - Petition (840)
☐ Forfeiture - Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate - Civil (910)
☐ Magistrate - Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Workers' Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm. (991)
☐ Other (999) |
| Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-Country Action (660)
☐ Sexual Predator (510) | | | |

Submitting Party Signature: Date: 3-9-11

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et. seq.

SCCA / 234 (4/08)

FOR MANDATED ADR COUNTIES ONLY
Florence, Horry, Lexington, Richland, Greenville and Anderson

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
2011-CP-22-00319

Litchfield Plantation Association, Inc., Joseph E.
Johnston, Thomas Eckard, Carol E. Kirby, Robert
F. McMahan, Jr. and Thomas Martin Phillips,

Plaintiff(s),

vs.

Litchfield Plantation Company, Inc.,

Defendant(s).

Civil Action No.

SUMMONS

Non Jury Trial Requested

ALMA Y. WHITE
CLERK OF COURT

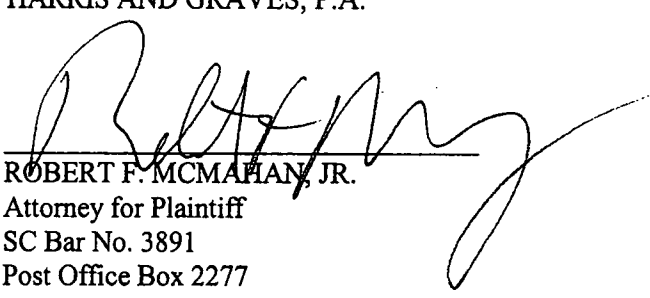
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FILED
GEORGETOWN COUNTY, S.C.

TO: THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their office, Conway, SC, within thirty (30) days after service thereof exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

HARRIS AND GRAVES, P.A.


ROBERT F. MCMAHAN, JR.

Attorney for Plaintiff

SC Bar No. 3891

Post Office Box 2277

Conway, SC 29528

(843) 234-2390

rfm@harrisgraves.com

Conway, South Carolina

Dated: March 9, 2011

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

2011-CP-22-00319

Litchfield Plantation Association, Inc., Joseph E.
Johnston, Thomas Eckard, Carol E. Kirby, Robert
F. McMahan, Jr. and Thomas Martin Phillips,

Plaintiff(s),

vs.

Litchfield Plantation Company, Inc.,

Defendant(s).

Civil Action No.

**COMPLAINT FOR DECLARATORY
RELIEF
(Non-Jury)**

FILED
ALISA Y. WHITE
CLERK OF COURT

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GEORGETOWN COUNTY, S.C.

1. The plaintiff, Litchfield Plantation Association, Inc., (hereinafter "the Association") is a South Carolina non-profit corporation that is the homeowners association for Litchfield Plantation located in Georgetown County, South Carolina.
2. The plaintiffs' Joseph E. Johnston, Thomas Eckard, Carol E. Kirby, Robert F. McMahan, Jr. and Thomas Martin Phillips are property owners in Litchfield Plantation and are the duly elected Board of Governors of the Association.
3. The defendant Litchfield Plantation Company, Inc., (hereinafter "the Company") is a South Carolina corporation with its principle place of business in Georgetown County, South Carolina.
4. Litchfield Plantation is a real estate development located in Georgetown County, South Carolina that has been governed for the last 5 years by an Amendment to the Declaration of Protective Covenants, Conditions and Restrictions for Litchfield Plantation (hereinafter the "Covenants") filed in the Georgetown County Clerk of Court Office on May 3, 2005 at Book no 1642, page no 1 et seq. and Bylaws (hereinafter "Bylaws") promulgated thereunder.
5. The Company has been the owner and developer of Litchfield Plantation for 40 years and has exercised control over the Association through its power to control the voting for the directors of the Association for the entire 40 year period.

6. During the year 2010 the President of the Association, E. Scott Trotter (hereinafter "Trotter"), notified the members of the Association by multiple letters that the Association was going to be out of funds going into 2011 and that the Company was unable to fund the deficits in the budget of the Association.
7. As a result of the letters from Trotter concerned property owners met and elected a committee to investigate the financial condition of the Association and meet with the Company.
8. As a result of the committee's investigation it was determined that the following actions had occurred during the time that the Company controlled the Association:
 - a. No federal income tax returns had been filed for the Association for the years 2008 or 2009;
 - b. An amenity of the Plantation was sold for non payment of taxes. That property has now been redeemed;
 - c. Loans were made by the Association to the Company that are secured by collateral that is, in part, worthless;
 - d. A mortgage that was given as collateral for a loan from the Association to the Company was subordinated to a mortgage given by the Company to it's law firm to keep the Company from being sued by the law firm for unpaid legal fees;
 - e. Property was transferred from the Company to the Association that was in a poor state of repair and was subject to a mortgage; and
 - f. Association funds were used to pay expenses of the Company.
9. This action is brought pursuant to the South Carolina Uniform Declaratory Judgments Act, SC Code Ann § 15-53-10 et seq. (1976).

FOR A FIRST CAUSE OF ACTION

10. Pursuant to Article 2, Para 2.4 of the Covenants, the governing body of the Association is deemed to be the Board of Governors, selected as provided in the Bylaws.

11. Pursuant to Article VII, section 1 of the Bylaws, the Board of Governors shall consist of five (5) members.
12. Pursuant to Article VII, section 7 of the Bylaws, the Board of Governors is required to be elected by written ballot.
13. Pursuant to Article VII, Section 8 of the Bylaws, the term of each Governor's service extends until the next annual meeting and thereafter until his or her successor is elected or appointed and qualified, or until he is removed in a manner elsewhere prescribed.
14. The Board of Governors of the Association has had only two members since 2009. Those members were Trotter and Jeffrey W. Van Treese (hereinafter "Van Tresse").
15. Since 2009, Trotter and Van Treese were also officers or board members of the Company
16. Since 2009 Trotter has been the President of the Association.
17. South Carolina law as found at SC Code Ann § 33-31-803 requires that all Boards of Directors for non-profit corporations consist of at least 3 members.
18. Pursuant to Article VI, Section 4 of the Bylaws, the annual meeting of the Association shall be held on the second Tuesday in November of each year. The election of the Board of Governors is held at the annual meeting.
19. No annual meeting has been held by the Association in the years 2009 or 2010. Trotter refused to schedule an annual meeting when requested to do so in February, 2011.
20. On February 26, 2011, a Special Meeting of the Members (hereinafter "Special Meeting") was held pursuant to Article VI, section 5 of the Bylaws to remove the existing members of the Board of Governors and to elect a new Board of Governors.
21. At the Special Meeting, the existing members of the Board of Governors who consisted of Trotter and Van Treese were removed by written ballots cast by a majority vote of the members pursuant to Article VII, sec. 3 of the Bylaws.

22. At the Special Meeting, a majority of the members by written ballot elected a new Board of Governors that consists of Joseph E. Johnston, Thomas Eckard, Carol E. Kirby, Robert F. McMahan, Jr. and Thomas Martin Phillips.
23. The Company did not cast a written ballot for either removal of the existing members of the Board of Governors nor did the Company cast a written ballot for election of the new Board of Governors at the Special Meeting.
24. The Company refuses to recognize and acknowledge that Joseph E. Johnston, Thomas Eckard, Carol Kirby, Robert F. McMahan, Jr. and Thomas Martin Phillips constitute the Board of Governors of the Association.
25. The Association, Joseph E. Johnston, Thomas Eckard, Carol Kirby, Robert F. McMahan, Jr. and Thomas Martin Phillips hereby request that this Court declare Joseph E. Johnston, Thomas Eckard, Carol E. Kirby, Robert F. McMahan, Jr. and Thomas Martin Phillips to be the lawful and duly elected Board of Governors of the Association.

FOR A SECOND CAUSE OF ACTION

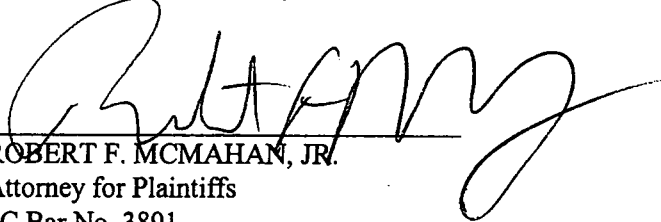
26. Plaintiffs reallege herein the preceding allegations of this Complaint.
27. Pursuant to Article 5, Section 5.5 of the Covenants, the ability to levy assessments and the voting rights of the members of the Association and Company are determined by whether the "Class B" period is in effect.
28. Pursuant to Article 5, Section 5.8 of the Covenants, during the Class B period, the Company has to make an election annually to either pay assessments on its unsold Lots or pay the "shortage" for each fiscal year.
29. The term "shortage" is defined as the difference between the income and revenue received by the Association from member assessments and other income and the amount of expenditures incurred by the Association for the fiscal year.
30. Pursuant to Article 5, section 5.11 of the Covenants, during the "Class B" period, the Association is limited in the amount of annual assessments that can be levied.

31. Pursuant to Article 5, section 5.11 of the Covenants and longstanding practice of the Association, the date on which the annual assessments are due is April 1 of each year.
32. On January 1, 2011, the Association was out of money and unable to pay its financial obligations.
33. On January 1, 2011, the Company was unable to pay the "shortage" and was unable to pay assessments on its property.
34. On or about January 1, 2011 the Association issued an assessment to the members to raise additional funds before the annual assessment date of April 1.
35. The decision to make the assessment in January 1, 2011 was made by Trotter and Van Treese in their capacity as Governors of the Association.
36. The reason that the Association accelerated the assessment from April 1 to January 1, 2011 was that the Association was out of money and the Company was unable to either pay the shortage or pay assessments on its property.
37. The actions taken by Van Treese and Trotter to accelerate the assessment from April 1, 2011 to January 1, 2011 are invalid due to the lack of the required members on the Board pursuant to SC Code Ann § 33-31-803 and due to both Trotter and Van Treese having conflicts of interest between their positions as directors of the Association and their positions as directors of the Company.
38. The money raised by assessments levied by the Association on January 1, 2011 is not sufficient to pay the expenses of the Association for the year 2011.
39. While the Class B period is in effect the Association is not allowed to levy another general assessment in 2011 to raise money to pay the Association's financial obligations for 2011 pursuant to the provisions of the Covenants.
40. Due to the inability of the Company to pay the "shortage" or assessments on its property and due to the Company's numerous breaches of the Covenants as previously described herein and due to the breaches of fiduciary duties owed by the Company to the Association and the

mismanagement of the affairs of the Association by the Company as set forth in paragraph 8, the plaintiffs petition the Court for a declaration that the "Class B" period as defined by the Covenants ended as of January 1, 2011.

WHEREFORE, having fully set forth their complaint against the defendant, the plaintiffs' hereby petition the Court for a declaration that the duly elected and constituted Board of Governors of Litchfield Plantation Association consists of Joseph E. Johnston, Thomas Eckard, Carol E. Kirby, Robert F. McMahan, Jr. and Thomas Martin Phillips and further petition the Court for a declaration that the Class B period as set forth in the Covenants expired on January 1, 2011 for the costs of this matter and for such other and further relief as the Court deems fit and proper.

HARRIS AND GRAVES, P.A.



ROBERT F. MCMAHAN, JR.

Attorney for Plaintiffs

SC Bar No. 3891

Post Office Box 2277

Conway, SC 29528

(843) 234-2390

rfm@harrisgraves.com

Conway, South Carolina

Dated: March 9, 2011

2A



STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FOR THE 15th JUDICIAL CIRCUIT

CASE NO: 2011-CP-22-00319

Litchfield Plantation Association, Inc., Joseph E.)
Johnston, Thomas Eckard, Carol E. Kirby, Robert)
F. McMahan, Jr., and Thomas Martin Phillips,)

Plaintiffs,)

vs.)

Litchfield Plantation Company, Inc.,)

Defendant,)

E. Scott Trotter,)

Intervenor.)

ORDER GRANTING
DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT
(Not Ending Action)

COPIES
MAILED

FILED
GEORGETOWN COUNTY, S.C.
2012 MAY 25 AM 8:55
ALMA Y. WHITTON
CLERK OF COURT
MAY 17 10:39
CLOCK IN THE COURT
WARD

ORDER

This matter came before the Court pursuant to Defendant Litchfield Plantation Company, Inc.'s Motion for Summary Judgment filed on September 9, 2011 and Plaintiffs' Motion for Summary Judgment filed June 7, 2011. Both motions concerned only the Second Cause of Action of Plaintiffs' Complaint in which Plaintiffs petitioned the Court to declare that Defendant's Class B Membership ended as of January 1, 2011. The first of two hearings was held on December 8, 2011. A second hearing was held on April 19, 2013. Present for the hearings on behalf of the Plaintiffs were Robert F. McMahan, Jr. and Douglas C. Baxter. Mark D. Neill was present on behalf of the Defendant, Litchfield Plantation Company, Inc. Robert S. Shelton was present for E. Scott Trotter. After hearing oral arguments from the parties' counsel, reviewing the affidavits and record of the case, and considering legal authorities, the Court hereby GRANTS Defendant's Motion and DENIES Plaintiffs' Motion as follows:

All parties agreed the currently governing documents for Litchfield Plantation Association consist of the 2005 Amendments to the Declaration of Protective Covenants and Bylaws. These documents were filed with the Georgetown County Register of Deeds on May 3, 2005 in Deed Book 1642 at Page 1. The Declaration, on page twenty-five, provides for two classes of membership in the Association, Class "A" and Class "B." Class "A" members included all owners except for the Class "B" Member. Class "A" Members have one vote for each Lot and there is only one vote per Lot. The sole Class "B" Member shall be the Declarant – Litchfield Plantation Company, Inc. The Class "B" Member has the number of votes equal to all Class "A" Members plus one (1) vote.

The Amended Declaration provides the Class "B" membership is terminated and converted to a Class "A" Membership upon the earlier occurrence of the following:

1. An initial period commencing on January 1, 2005 and ending December 31, 2010; provided, this initial period shall be automatically extended for successive periods of five (5) years, provided that in each five-year period prior to the automatic extension the Declarant has sold 100 or more lots, including the number of Lots or Dwelling Units designated in connection with a Bulk Sale, to non-affiliated Owners;
2. When, in its discretion, the Declarant so determines; or,
3. One Hundred Eighty (180) Days after the Declarant has sold 90% of all Lots subject to this Declaration.

There is no evidence that any of the above three scenarios occurred. It is clear that Litchfield Plantation Company, Inc. did not, in its discretion, volunteer to convert its membership or that 90% of all lots have been sold. As to the first scenario, the undisputed evidence shows that Litchfield Plantation Company, Inc. sold 100 or more lots between January 1, 2005 and December 31, 2010. Plaintiffs have not submitted any evidence to show otherwise. Furthermore, the evidence shows that on December 3, 2010, Litchfield Plantation Company, Inc.

filed an “Affidavit of Extension of Class “B” Membership with the Georgetown County Register of Deeds in Deed Book 1591 at Page 131. According to the Amended Bylaws, the condition for automatic five-year (5) extensions of the Class “B” share period is conclusively established by the Declarant recording an affidavit stating the Declarant has sold 100 or more lots to Non-Affiliated Owners in the preceding five (5) years.

The Declaration, on page twenty-eight, requires the Defendant to either pay assessments on all of its unsold lots or to pay the budget shortfall for each fiscal year. The Plaintiffs argued that due to the Defendant’s failure or inability to pay budget shortages or assessments, as well as, alleged breaches of its fiduciary duties, Defendant’s Class B Membership status should be terminated. The Defendant argued that the relief sought by the Plaintiffs violated the Declaration of Restrictive Covenants and Bylaws for Litchfield Plantation. The Defendant further argued that the Declaration and Bylaws specifically provides the consequences in the event the Class B Member fails to pay the budget shortage or assessments – its voting rights are temporarily suspended.

After acknowledging the relief sought by the Plaintiffs was not provided for in the Declaration and Bylaws, the Plaintiffs argued that the Court had authority to grant equitable relief and terminate the Class “B” Membership. However, in the present case, ordering such equitable relief would not be accordance with South Carolina caselaw. A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property. Hardy v. Aiken, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006). In Cullen v. McNeal, 702 S.E.2d 378 (Ct.App. 2010), the Court of Appeals applied the rules of contract interpretation in reviewing a declaration of restrictive covenants. “The main guide in contract

interpretation is to ascertain and give legal effect to the intentions of the parties as expressed in the language of the [contract]. If a contract's language is clear and capable of legal construction, this [c]ourt's function is to interpret its lawful meaning and the intent of the parties as found in the agreement." Id., quoting Gilbert v. Miller, 356 S.C. 25, 30-31, 586 S.E.2d 861, 864 (Ct.App. 2003). Courts are without authority to alter an unambiguous contract by construction or to make new contracts for the parties. South Carolina Dept. of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 667 S.E.2d 7 (Ct. App. 2008). Under South Carolina law, construction and enforcement of unambiguous contract is question of law for court, and thus can be properly disposed of at summary judgment. Harbour Town Yacht Club Boat Slip Owners' Ass'n v. Safe Berth Management, Inc., 421 F. Supp. 2d 908 (D.S.C. 2006).

This Court finds the 2005 Amended Declaration and Bylaws are clear and unambiguous. Accordingly, this Court has no authority to alter the documents to provide for the relief sought by the Plaintiffs. Furthermore, the Plaintiffs' argument that they have no other effective relief is without merit. Paragraph three on page two of the Bylaws envisions a scenario in which the Declarant is more than sixty days in arrears. The paragraph provides:

During the Class "B" Share Period, the Class "B" member shall have the number of votes equal to all Class "A" members plus one (1) vote. Provided, the Declarant shall not have a vote for any Lot as to which Declarant is more than sixty (60) days in arrears with respect to all money owed to the Association.

During the initial hearing, Plaintiffs asserted that the Defendant has failed to pay the budget shortfall or assessments it owes to the Association. Defendant acknowledged that it owed monies but argued the Association has failed to inform the Defendant the amount of the budget shortfall. The Defendant moved, without objection, that an accounting be performed to determine the current amount of the budget shortfall. The Court held that until the Defendant

paid the current shortfall or assessments on its Lots, as specified and required by the Amended Declaration and Bylaws, the Defendant's voting rights are temporarily suspended. However, the Class "B" Membership period had not been suspended or terminated and the 2005 Amendment and Bylaws remain in full force and effect as to the Class "B" Member's rights and duties.

During the initial hearing, this Court ordered Litchfield Plantation Association, Inc., have an accounting performed to determine the current budget shortfall or monies Litchfield Plantation Company owed that were in arrears. At the second hearing on April 19, 2012, the accounting was presented to the Court. The accounting determined seven items which the Plaintiffs alleged constituted monies owed by Litchfield Plantation Company to the Association in the amount of \$987,895.54. Those seven items included the following:

1. Shortage in Litchfield Plantation Association Budget for April 2010 through December 2011 in the amount of \$119,148.00;
2. Failure to fund Capital Reserve Account per Paragraph 5.8 of the Declaration of Restrictive Covenants in the amount of \$63,966.67;
3. Repairs to a beach house which is a common element in the amount of \$63,911.00.
4. Balance on a Promissory Note dated May 22, 2009 in the amount of \$621,680.67;
5. Balance on a Promissory Note dated June 10, 2009 in the amount of \$88,325.00;
6. Balance on a Promissory Note dated July 21, 2009 in the amount of \$17,887.12;
7. Balance on a Promissory Note dated June 1, 2011 in the amount of \$12,946.48;

As to Item # 1, the budget shortfall, Defendant acknowledged that it owed a budget shortfall and did not object that the budget shortfall amounted to \$119,148.00. However, Defendant argued that it was entitled to a setoff in the amount of approximately \$18,562.50 that was recently paid to the Association from a real estate closing. Additionally, Defendant

acknowledged , as to Item # 6 and Item #7, it owed the calculated balances on the promissory notes. However, Defendant argued that it had not previously been notified that the notes were in default and that because of the preset litigation, it did not know who were the proper board members of the Association to receive payment.

As to the remaining Items identified by the Plaintiffs, Defendant denied those amounts were currently owed by the Defendant to the Association. As to Item #2, Defendant directed the Court to provisions within the Declaration of Restrictive Covenants and Bylaws which indicated the Defendant was not responsible for collecting association dues. Defendant argued if purchasers of property failed to make the required payments to fund the Capital Reserve then the Association should be responsible for collecting those monies. As to Item # 3, the Defendant argued that the costs of repairs to the beach house was disputed and that those costs have not been established and were not in arrears. Also, it appears that the issue is the subject of a subsequently filed lawsuit, Civil Action Number 2012CP22-00341. As to Item # 4 and Item #5, it appears those notes were assigned to a third-party entity and were no longer in possession of the Association. Furthermore, those notes are not currently in default. The Association argued those notes had been improperly assigned by the Interpleader, E. Scott Trotter, and rightfully belonged to the Association. This dispute is also an issue which is the subject of a subsequently filed lawsuit, Civil Action Number 2012CP22-00341.

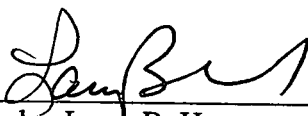
After hearing oral argument from counsel and reviewing the record, this Court determined that in order to restore its voting rights, the Defendant would be required to pay the current budget shortage of \$119,148.00, the balance on a Promissory Note dated July 21, 2009 in the amount of \$17,887.12 (as of February 6, 2012), with interest accruing thereon of \$1.48 per day, and the balance on a Promissory Note dated June 1, 2011 in the amount of \$12,946.48 (as of

February 6, 2012), with interest accruing thereon of \$1.07 per day. These three items total \$149,981.60 (not including the accruing interest on the notes) and are currently in arrears justifying the current suspension of Defendant's voting rights. Defendant must make payment of these monies to the Association in order to restore its voting rights, which rights are incidental of Defendant's ownership of property and its Class "B" Membership which has not terminated. The Court directs that the monies be paid into the accounts of the Association.

The Court will not address at this time whether or not Defendant's voting rights were properly suspended prior to this current determination of the monies in arrears or whether or not the Defendant is entitled to a set-off or credit for the approximately \$18,562.50 recently paid to the Association from a real estate closing. Furthermore, the Court's decision is not intended to, nor will it prevent, the Association from pursuing its claims that it is owed the monies set forth in Items # 2, 3, 4, and 5. However, at this time, this Court has determined that it has not been conclusively established at this present time that Defendant is liable to the Association for those monies and therefore, those monies are not currently in arrears.

IT IS THEREFORE ORDERED that Defendant's Motion for Summary Judgment is hereby GRANTED and Plaintiffs' Motion for Summary Judgment is DENIED. Plaintiffs' Second Cause of Action is hereby DISMISSED. It is FURTHER ORDERED that Defendant's voting rights are suspended until such time as it pays to the Association monies in arrears totaling \$149,981.60, together with any interest accruing on the notes as set forth above.

IT IS SO ORDERED!



Judge Larry B. Hyman
Fifteenth Judicial Circuit

Dated: 5-11-, 2012
Conway, South Carolina

C

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE

☒ COURT OF COMMON PLEAS
☐ FAMILY COURT

Litchfield Plantation Association, Inc., Joseph E.
Johnston, Thomas Eckard, Carol E. Kirby, Robert
F. McMahan, Jr. and Thomas Martin Phillips,
☒ Plaintiff(s),

vs.

Litchfield Plantation Company, Inc.,
☐ Defendant(s).

CASE NO. 2011-CP-22-00319

**MOTION INFORMATION FORM
AND COVER SHEET**

check box above indicating submitting party

name, SC Bar no. and address of plaintiff's attorney
Robert F. McMahan, Jr.
Harris and Graves, P.A.
Post Office Box 2277
Conway, SC 29528
telephone: (843) 234-2390 Fax: (843) 234-9970
e-mail: rfm@harrisgraves.com other:

name, SC Bar no. and address of defendant's attorney

telephone: fax:
e-mail: other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Plaintiff's Motion for Reconsideration
Estimated Time Needed: 30 minutes

Court Reporter Needed: (YES) / NO

SECTION II: Motion Type

☒ Written motion attached
☐ Form Motion -

I hereby move for relief or action by the court as set forth in the proposed order.

[Signature]
Signature of Attorney for Plaintiff / Defendant

6-6-12
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: _____

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE

CODE: _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____
(print name)

DATE FILED

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

ACCOUNTINGSTATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

Litchfield Plantation Association, Inc., Joseph E.
Johnston, Thomas Eckard, Carol E. Kirby, Robert
F. McMahan, Jr. and Thomas Martin Phillips,

Plaintiff(s),

vs.

Litchfield Plantation Company, Inc.,

Defendant(s).

E Scott Trotter,

Intervenor.

Civil Action No. 2011-CP-22-00319

**PLAINTIFFS' MOTION FOR
RECONSIDERATION**

The Plaintiffs hereby move pursuant to SCRCivP 59(e) that The Honorable Larry B. Hyman reconsider his Order Granting Defendant's Motion for Summary Judgment dated May 11, 2012, filed May 25, 2012 written notice of which was received by the Plaintiffs on May 29, 2012.

PROCEDURAL HISTORY

At a hearing held on December 8, 2011 the Court orally required that the Plaintiff, Litchfield Plantation Association (hereinafter the "Association") provide an Accounting to the Defendant setting forth what the Association contended was owed by the Defendant.(see Transcript of ruling attached hereto as Exhibit A). The purpose of that accounting was to determine what amount the Defendant had to pay in order to restore its Class B voting rights. On February 6 , 2012 the Association served the Accounting that is attached hereto as Exhibit B together with the cover letter attached hereto as Exhibit C on the Defendant. The Defendant never filed any objections to the Accounting. The Court had a hearing in this case on April 19, 2012 on outstanding motions. There was no motion scheduled to be heard on April 19, 2012 relating to the Accounting. At the hearing on April 19, 2012 the Court took up the issues

relating to the Accounting at the Defendant's request even though there was no notice to the parties that the issues were to be ruled upon at the April 19, 2012 hearing.

At the April 19, 2012 hearing the Defendant for the first time asserted that it contested certain items in the Accounting. The Association requested that the Court schedule an evidentiary hearing on those contested issues which was refused by the Court. The Court then heard oral argument on the contested issues in the Accounting and issued an Order dated May 11, 2012 that resolved the contested issues in the Accounting.

DISCUSSION

It is axiomatic that due process requires notice to a party that a matter is to be heard. It is also established law that summary judgment cannot be granted when there are genuine issues of material fact. In this case there was no notice to the Association that the Accounting was contested or that issues relating to the Accounting were to be decided at the April 19, 2012 hearing. Nor was there any procedure to resolve any factual issues in the Accounting provided by the Court in its ruling at the December 8, 2011 hearing. The lack of notice and any procedure to resolve the disputed issues in the Accounting deprived the Association of due process under the law. The Court then proceeded to resolve the following disputed factual issues in the Accounting in the hearing and its Order dated May 11, 2012 unfavorably to the Association.

Failure to Fund Reserve Account

One element of the Accounting concerned the failure to fund the reserve account of the Association by the Defendant. Section 5.18 of the Covenants sets forth the following:

Each Lot Owner purchasing from the Declarant, or a Lot Owner purchasing a Lot from a Bulk Sale, shall pay the Association a working capital contribution equal to 12 months of base assessments for each Lot sold after this Declaration is recorded. Each such working capital contribution shall be paid to the Association at the time of closing. One-third (1/3) of each Working Capital Assessment shall be deposited in the Association's Reserve Account...

On September 26, 2011 the Defendant filed an affidavit of E.Scott Trotter who was the Defendant's former president. (Copy attached as Exhibit D). In paragraph 19 of the Trotter affidavit it asserts that 101 lots were sold. In paragraph 23 of that affidavit Trotter describes a handout that he

provided to the Association's members on behalf of the Defendant while he was still the Defendant's president. The handout is attached to the Trotter affidavit and admits on page 8 of that handout that "The Declarant has an obligation to fund a reserve account with deposits equal to one-third of each Working Capital Assessment collected." The handout further states "The Reserve Account following the transfer of 101 Lots from the Declarant should contain a total of \$63,966.67,..." That affidavit and handout is an admission by the Defendant pursuant to SCREvid 801 (d) (2) that the amount listed on the Accounting for the Reserve Account is owed and is sufficient evidence to create a genuine issue of material fact on that issue.

Beach House Repairs

The Accounting also contains an item for beach house repairs. In Goddard v. Fairways Dev. Gen Part. 310 S.C. 408, 426 S.E.2d 828 (Ct. App. 1993) and in Concerned Dunes West Residents, Inc., v. Georgia Pacific Corp. 349 S.C.251, 562 S.E.2d 633 (S.C. 2002) both the South Carolina Court of Appeals and the South Carolina Supreme Court held that a developer of a property owners association owes a fiduciary duty to turn over common areas that are not substandard and that are in good repair. Failure to do so subjects the developer to liability for bringing the common areas up to standard. The obligation to turn the common areas over in good repair or to provide funds sufficient to effectuate any repairs is "...at the time of transfer..." according to the Supreme Court in Concerned Dunes West Resident, supra, 349 S.C. at 260.

In this case the Defendant turned over a beach house to the Association. That beach house is a common area pursuant to the Covenants. At the time of the transfer the beach house was not in good repair. That was also admitted in the handout attached to the affidavit of the Defendant's former president, E. Scott Trotter that the Defendant filed with this Court. Pages 7 and 8 of the handout describe that the beach house was turned over to the Association on December 29, 2010 and admits that the Association and its members "...have a right to commence a civil action to extent that the Beach House is not in good repair, and LPC has not provided the funds necessary to bring the Beach House up to a standard of reasonably good repair,..." The handout further describes a estimate prepared by a

contractor to bring the beach house into "good condition." That estimate was in the amount of \$42,556.00 and was included in the Accounting. The Association disagrees with the Defendant's position as to the scope of the work needed to bring the beach house up to a state of good repair and included in the Accounting other estimates for a total of \$63,911.00.

Balance due on Promissory Notes Dated May 22, 2009 and June 10, 2009

The Defendant has taken money belonging to the Association on 4 separate occasions. On each occasion the Defendant gave promissory notes back to the Association. Two of those notes were admitted by the Defendant to be in default (ie. the note dated July 21, 2009 with the current balance of \$17,887.72 and the note dated June 1, 2011 with the current balance of \$12,946.48). On the date of the last note, the Defendant gave a mortgage that secured the obligation to repay all of those notes. That mortgage was drafted by the Defendant and is entitled Commercial Mortgage of Real Property and Security Agreement for Four (4) Loans (hereinafter the "Mortgage") and is attached hereto as Exhibit E. Paragraph 3.01(e) of the Mortgage entitled Event of Default states

"The term Event of Default, wherever used in this Mortgage shall mean any one or more of the following events:...

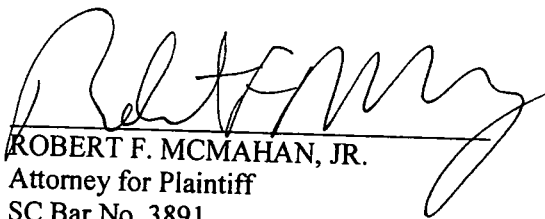
e. A default in either of the Promissory Notes shall constitute a default in the Notes and a default in this Mortgage."

The term "Notes" is defined on page 2 of the Mortgage as all four notes that the Mortgage secures.

Notice of the default was given by the Association to the Defendant in the letter dated February 6, 2012 that transmitted the Accounting to the Defendant (copy attached hereto as Exhibit C). Thus the finding in the Court's Order dated May 11, 2012 that the two (2) Notes dated May 22, 2009 with the current balance due of \$621,680.67 and June 10, 2009 with the current balance due of \$88,325.00 are not currently in default is directly contrary to the Mortgage that was prepared by the Defendant and the letter notifying the Defendant of that default. Based upon the foregoing the Plaintiffs request that the Court reconsider the Order of May 11, 2012 and grant the Plaintiffs an evidentiary hearing with proper notice before determining the amount that the Defendant owes before restoration of its Class B voting rights.

Respectfully submitted,

HARRIS AND GRAVES, P.A.



ROBERT F. MCMAHAN, JR.

Attorney for Plaintiff

SC Bar No. 3891

Post Office Box 2277

Conway, SC 29528

(843) 234-2390

rfm@harrisgraves.com

Conway, South Carolina

Dated: 6-6-12

CERTIFICATE OF SERVICE

Shannon Campman says that she is the Paralegal for the Attorney for the Plaintiff, with offices at 1261 Hwy 501 E. Ste F, Conway, SC, and that on June 6, 2012, (s)he mailed in a sealed envelope, postage prepaid, a copy of Plaintiffs' Motion for Reconsideration to:

Douglas C. Baxter
Richardson, Plowden & Robinson
P.O. Box 3646
Myrtle Beach, SC 29578

Robert Shelton
Bellamy Law Firm
P.O. Box 357
Myrtle Beach, SC 29578

Mark D. Neill, Esquire
Post Office Box 2810
Murrells Inlet, SC 29576


Shannon Campman

D

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP2200319

Litchfield Plantation Association Inc Thomas Eckard Robert F McMahan Jr	Joseph E Johnston Carol E Kirby Thomas Martin Phillips	Litchfield Plantation Company Inc	E Scott Trotter
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant
---------------	---

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: _____
- ☐ **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:

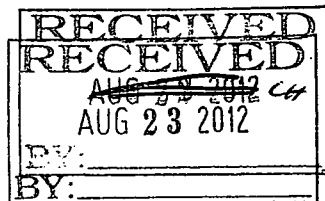
Plaintiff's Motion for Reconsideration by Attorney McMahan is Denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

FILED
GEORGETOWN COUNTY, S.C.
2012 AUG 17 PM 12:40
ALMA Y. WHITE
CLERK OF COURT



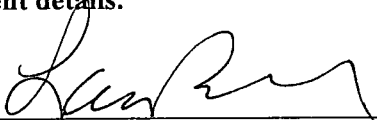
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**



Circuit Court Judge

2152

Judge Code

8/16/2012

Date

For Clerk of Court Office Use Only

This judgment was entered on August 17, 2012, and a copy mailed first class or placed in the appropriate attorney's box on August 17, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Robert Francis McMahan Jr. PO Box 2277 Conway, SC
29528

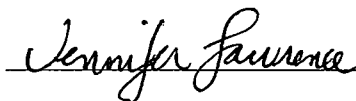
Douglas Charles Baxter PO Box 3646 Myrtle Beach, SC
29578

ATTORNEY(S) FOR THE PLAINTIFF(S)

Mark David Neill PO Box 2810 Murrells Inlet, SC 29576
Charles Owen Nation II PO Drawer 1657 Georgetown, SC
29442

Howell V. Bellamy Jr. PO Box 357 Myrtle Beach, SC 29578
Robert S. Shelton PO Box 357 Myrtle Beach, SC 29578

ATTORNEY(S) FOR THE DEFENDANT(S)



Alma Y. White - Clerk of Court

Court Reporter *Kay Richardson*

E



COUNTY OF GEORGETOWN

Litchfield Plantation Association, Inc., Joseph E. Johnston, Thomas Eckard, Carol E. Kirby, Robert F. McMahan, Jr., and Thomas Martin Phillips,

Plaintiffs,

VS.

Litchfield Plantation Company, Inc.,

Defendant,

And

E. Scott Trotter,

Intervenor,

) IN THE COURT OF COMMON PLEAS
) FOR THE 15th JUDICIAL CIRCUIT

CASE NO: 2011-CP-22-00319

ORDER GRANTING Motion for
Temporary Restraining Order

ALMA J. WHITE
CLERK OF COURT

2012 OCT 22 PM 4:41

FILED
GEORGETOWN COUNTY, S.C.

ORDER GRANTING TEMPORARY RESTRAINING ORDER

This matter came before the Court pursuant to Defendant Litchfield Plantation Company, Inc.'s Motion for Injunctive relief. Present for the hearing held on September 20, 2012 was Attorney Mark D. Neill for the Defendant. Attorneys Robert F. McMahan, Jr. and Timothy W. Bouch were present on behalf of Plaintiffs. The Court has reviewed the record and affidavits files in this matter and has determined that an Order Granting Injunctive Relief is necessary for the following reasons:

A. FINDINGS OF FACT:

(1) The currently governing documents for Litchfield Plantation Association consist of the 2005 Amendments to the Declaration of Protective Covenants and Bylaws. These documents were filed with the Georgetown County Register of Deeds on May 3, 2005 in Deed Book 1642 at Page 1.

(2) As stated in the Declaration, Litchfield Plantation Association, Inc. is a not for profit corporation and its shareholder members are the owners of lots subject to the Declaration. As stated in Paragraph 5.4 of the Declaration, Membership shall be appurtenant to and may not be separated from ownership of any Lot.

(3) The Declaration provides for two classes of membership in the Association, Class "A" and Class "B." Class "A" members included all owners except for the Class "B" Member. Class "A" Members have one vote for each Lot and there is only one vote per Lot. The sole Class "B" Member is the Defendant – Litchfield Plantation Company, Inc. The Class "B" Member has the number of votes equal to all Class "A" Members plus one (1) vote.

(4) Pursuant to the Amendment, the Class B membership terminates and is converted to a Class A Membership after:

An initial period commencing on January 1, 2005 and ending December 31, 2010; provided, this initial period shall be automatically extended for successive periods of five (5) years, provided that in each five-year period prior to the automatic extension the Declarant has sold 100 or more lots, including the number of Lots or Dwelling Units designated in connection with a Bulk Sale, to non-affiliated Owners.

(5) On March 9, 2011, the Plaintiffs filed their Complaint in the above captioned matter. The Complaint sought a declaration from the Court that the individual Plaintiffs are the duly elected Board of Governors of Plaintiff Litchfield Plantation Association, Inc. and the Class B period ended on January 1, 2011.

(6) By way of an Order filed on May 25, 2012, the Court determined that the Class B period did not end. Therefore, the Court dismissed the Plaintiffs' Second Cause of Action.

(7) By way of the Order filed May 25, 2012, the Court determined that Defendant's voting rights were suspended until it paid certain monies to the Association the Court determined was presently in arrearage.

(8) The Plaintiffs filed a motion for reconsideration dated June 6, 2012. The Plaintiffs did not ask the Court to reconsider the dismissal of their second cause of action, rather, the Plaintiffs only asked the Court to reconsider the amount of the arrearage the Defendant should pay to have its voting rights deemed restored.

(9) On August 3, 2012, the Defendant made full payment of the monies the Court determined was in arrearage to the Association. In accordance with the Declaration and Bylaws, Defendant requested that a special meeting of owners be called to remove the individuals (including the Plaintiffs) holding themselves out to be the Governors of the Association and to nominate and elect five individuals to serve as the proper Board. The special meeting was scheduled for August 25, 2012.

- (10) On August 16, 2012, a hearing was held pursuant to Plaintiffs' Motion to Reconsider, during which the Court denied Plaintiffs' motion.
- (11) On or about August 24, 2012, Plaintiffs filed a Notice of Appeal. Plaintiffs did not post any bond.
- (12) The Special Meeting took place on August 25, 2012. A quorum was present.
- (12) During the Special Meeting, Plaintiff McMahon announced that because he had filed a notice of appeal of the court's order, it was his opinion that Judge Hyman's Order was stayed and Litchfield Plantation Company did not have the right to vote on any issues. He and the other Plaintiffs took votes from all the other owners present and determined he and the other Plaintiffs had not been removed as governors. Plaintiff Joe Johnson acknowledged that but for the exclusion of the votes of Litchfield Plantation Company, the current board would have been removed. The purported Board then left even after being informed they were not acting properly and that the special meeting would continue without them.
- (13) After the Plaintiffs left, the Defendant and remaining owners continued on with the special meeting, and nominated and elected five individuals to serve as the proper Board of Governors.
- (14) The five individuals elected to the Board of Governors are John Miller, Carson Benton, Jason Morris, Billy Deagan, and Paul Suter.

B. CONCLUSIONS OF LAW:

The membership of Litchfield Plantation Association, Inc. includes Litchfield Plantation Company, Inc. All members of a non-profit corporation have the same rights and obligations with respect to voting unless the articles or bylaws established classes of membership with different rights or obligations. S.C. Code § 33-31-610. The right to vote is an integral part of ownership in a corporation, and therefore, valuable personal property:

Generally, **the right to vote stock** at a corporate shareholder meetings **is an incident of stock ownership**, and while it is to be exercised in the mode and under the restrictions prescribed by the charter and bylaws, **it is nevertheless a part of the stockholder's property** inherent in the stockholder by virtue of the stockholder's title. There is a general policy against the disenfranchisement of stockholders. The shareholder vote has primacy in the system of corporate governance because it is the ideological underpinning upon which the legitimacy of directorial power rests. **The**

right to vote is among the most fundamental rights of ownership of voting shares. The right to vote and act in corporate matters is a valuable right which cannot be taken away by the act or failure to act of the corporate officers. 18 A Am. Jur. 2d Corporations § 850. (emphasis added)

The right to vote cannot be separated from the ownership of voting stock without the consent of the legal owner of the stock. 18 C.J.S. Corporations § 456. The right to vote is to be exercised free of duress and intimidation by corporate management. Id. A corporate board of directors may take no action that interferes with the shareholders' exercise of their voting rights without showing a compelling justification for its actions. Id.

In addition to its right to vote as a member of the corporation, the Defendant's voting rights are directly related and arise solely from their ownership of property in Litchfield Plantation. These voting rights provide the Defendant with certain valuable property rights which are only available provided that they own property within Litchfield Plantation. See Am. Condo. Ass'n v. IDC, Inc., 844 A.2d 117, 136-137 (R.I. 2004) *decision clarified on reargument*, 870 A.2d 434 (R.I. 2005); Kelso Woods Ass'n, Inc. v. Swanson, 753 A.2d 894 (P.A. 2000); C.M. King et al v. Oakmore Homes Ass'n, 195 Cal.App. 3d (1987); In re Fentonville Cemetary Ass'n, 238 A.D. 491, 264 N.Y.S. 790 (App.Ct. 1933); McCarthy v. The Homeowners's Ass'n of Tweed Lakes, Inc., 2012 WL 3834033. Therefore the right to its "Class "B" votes is not only a personal right, but a property rights as well.

In the present case, this Court previously determined that once the Defendant paid the arrearage, then its voting rights would be restored. The Plaintiffs filed a Motion to Reconsider contesting the amount of the arrearage determined by this Court. Thereafter, Plaintiffs filed a Notice of Appeal. The Defendant argued that the appeal is not proper because the Order was not a final judgment pursuant to SCACR Rule 201(A). Additionally, the defendant argued even if the Appeal

was not an impermissible interlocutory appeal, the notice of appeal would not serve as an automatic stay. SCACR Rule 241 (b) provides exceptions to the general rule. One of the exceptions is for *judgments directing the delivery of personal property and another is for judgments directing the delivery of possession of real property*. As set forth above, restoration of the Defendants Class “B” voting rights constitute not only the delivery of personal property under the statute, but real property as well.

This Court finds that the Notice of Appeal filed by Plaintiffs did not result in an automatic stay of the proceedings. S.C. Code Ann. §18-9-150 provides the execution of judgment directing the delivery of documents or personal property shall not be stayed on appeal unless the property is delivered into the Court or the appellant posts a bond. The Supreme Court in Harmna v. Wagner, 33 S.C. 487, 12 S.E. 98 (1890) held where an appeal without bond is taken by the executor from an order appointing a receiver of the personal property of the estate, it does not operate to stay the execution of the order unless the property be brought into court or bond with surety given. Additionally, S.C. Code Ann. §18-9-170 also provides the execution of judgment directing the delivery of possession of real property shall not be stayed on appeal unless a written undertaking be executed on the part of the appellant, with two sureties. Because the Plaintiffs did not file a bond, the notice of appeal did not trigger an automatic stay.

This Court further find that even if the automatic stay was triggered, the Defendant would be entitled to an Order Lifting the Stay in light of the significant property interests affected. The Defendant paid the arrearage of over \$150,000.00 pursuant to this Court’ prior Order with the expectation of having its voting rights restored. The Plaintiffs, purportedly on behalf of the Association, accepted the monies and now have control over the monies. Thereafter, Plaintiffs refused to recognize Defendant’s voting rights were restored and at the same time, failed to return the

Defendant's monies. These facts certainly present an inequitable situation for the Defendant. Defendant should not be penalized for following this Court's prior Order.

Additionally, not only has the Defendant's fundamental right to vote been impeded by and its

payment of over \$150,000.00 taken by the Plaintiffs, Defendant's ability to sell its property within Litchfield Plantation has also been thwarted by the Plaintiffs. As set forth above, the Amended Declaration requires the Defendant to sell 100 lots by December 31, 2015 in order to maintain its Class "B" Membership with superior voting rights. It is axiomatic that a potential purchaser would be less likely to purchase Defendant's property knowing Plaintiffs refuse to recognize the fundamental voting rights connected with the ownership of that property. It is clear that if Defendant's property rights remain in limbo for the duration of this litigation and appeal, Defendant would likely suffer significant damages without any adequate remedy at law.

ACCORDINGLY, I FIND: (1) The filing of the Plaintiffs' notice of appeal did not stay the execution of this Court's prior Order; (2) The Defendant will suffer immediate and irreparable injury, loss, and/or damages without entry of the requested injunctive relief; (3) Any legal remedy would be inadequate. **Defendant's Motion for Injunctive Relief is GRANTED.**

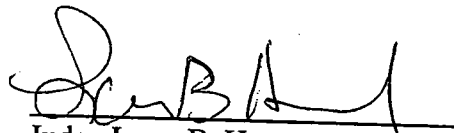
The Plaintiffs, and their agents, including KA Diehl, are prohibited from taking any further action which interferes with the Defendant's voting rights. Because Defendant paid the arrearage as determined by this Court's prior Order, Defendant was entitled to exercise its voting rights at the special meeting. During the special meeting, the Defendant exercised its voting rights and properly removed and elected a new Board of Governors for Litchfield Plantation Association, Inc. The Plaintiffs and their agents, including KA Diehl, are prohibited from taking any action to interfere with the new Board of Governors elected at the special meeting. This Court hereby recognizes John

Miller, Carson Benton, Jason Morris, Billy Deagan, and Paul Suter are now the presently serving Board of Governors for Litchfield Plantation Association, Inc.

The Defendant is required to post a bond of \$ 25,000⁰⁰.

IT IS SO ORDERED!

Dated ^{OCT} ~~September~~ 11, 2012
Georgetown, South Carolina


Judge Larry B. Hyman
Fifteenth Judicial Circuit

5



STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE CIRCUIT COURT FOR THE

Litchfield Plantation Association, Inc.,

Plaintiff,

vs.

Litchfield Plantation Company, Inc.;
Louise P. Parsons; South Carolina
Department of Revenue; BDC Capital,
Inc. FKA BDC Capital, LLC; Allan L.
Kidston; First National Bank of South
Carolina; Lawrence A. Shapiro; Info
Quest, Inc.; Small Luxury Hotels
of the World Limited; and Litchfield
Plantation Buyout Group, LLC.

Defendant(s).

CIVIL ACTION COVERSHEET

CP-

2012CP2200341

ALMA Y. WHITE
CLERK OF COURT

2012 APR 10 AM 11:02

FILED
GEORGETOWN COUNTY, S.C.

Submitted By:

Robert F. McMahan, Jr.
Address: P.O. Box 2277
Conway, SC 29528

SC Bar #: 3891
Telephone #: 843-234-2390
Fax #: 803-790-1277
E-mail: rfm@harrisgraves.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this Cover Sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- () **JURY TRIAL** demanded in complaint (X) **NON-JURY TRIAL** demanded in complaint
() This case is subject to **ARBITRATION** pursuant to Circuit Court Annexed Alternative Dispute Resolution Rules.
() This case is subject to **MEDIATION** pursuant to the Circuit Court Annexed Alternative Dispute Resolution Rules.
(X) This case is exempt from **ADR (Proof of ADR/Exemption Attached)**.

NATURE OF ACTION: (check one box Below)

- | | | | |
|---|---|---|--|
| Contracts
() Construction (100)
() Debt Collection (110)
() Employment (120)
() General (130)
() Breach of Contract (140)
() Other (199) | Torts - Professional Malpractice
() Dental Malpractice (200)
() Legal Malpractice (210)
() Medical Malpractice (220)
() Previous Notice of Intent
Case No. 20 CP _____
() Notice/File Med Mal (230)
() Other (299) | Torts - Personal Injury
() Assault/Slander/Libel (300)
() Conversion (310)
() Motor Vehicle Accident (320)
() Premises Liability (330)
() Products Liability (340)
() Personal Injury (350)
() Wrongful Death (360)
(X) Other (399) | Real Property
() Claim & Delivery (400)
() Condemnation (410)
(X) Foreclosure (420)
() Mechanic's Lien (430)
() Partition (440)
() Possession (450)
() Building Code Violation (460)
() Other (499) |
| Inmate Petitions
() PCR (500)
() Madamus (520)
() Habeas Corpus (530)
() Other (599) | Judgments/Settlements
() Death Settlement (700)
() Foreign Judgment (710)
() Magistrate's Judgment (720)
() Minor Settlement (730)
() Transcript Judgment (740)
() Lis Pendens (750)
() Transfer of Structured Settlement
Payment Rights Application (760)
() Other (799) | Administrative Law/Relief
() Reinstate Driver's License (800)
() Judicial Review (810)
() Relief (820)
() Permanent Injunction (830)
() Forfeiture-Petition (840)
() Forfeiture-Consent Order (850)
() Other (899) | Appeals
() Arbitration (900)
() Magistrate-Civil (910)
() Magistrate-Criminal (920)
() Municipal (930)
() Probate Court (940)
() SCDOT (950)
() Worker's Comp (960)
() Zoning Board (970)
() Public Service Commission (990)
() Employment Security Comm (991)
() Other (999) |
| Special/Complex/Other
() Environmental (600)
() Automobile Arb. (610)
() Medical (620)
() Other (699) | Out-of-County Action
() Sexual Predator (510)
() Pharmaceuticals (630)
() Unfair Trade Practices (640)
() Out-of State Depositions (650)
() Motion to Quash Subpoena in
Out-of-County Action (660) | | |

Submitting Party Signature:

Date: April 9, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10, et seq.

FOR MANDATED ADR COUNTIES ONLY
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton,
Horry, Jasper, Lexington, Pickens (Family Court Only), Richland Union and York

**SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN
ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.**

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suite" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special Proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

SCCA/234 (01/2010)

Page 2 of 2

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Litchfield Plantation Association, Inc.,

Plaintiff,

vs.

Litchfield Plantation Company, Inc.;
Louise P. Parsons; South Carolina
Department of Revenue; BDC Capital,
Inc. FKA BDC Capital, LLC; Allan L.
Kidston; First National Bank of South
Carolina; Lawrence A. Shapiro; Info
Quest, Inc.; Small Luxury Hotels
of the World Limited; and Litchfield
Plantation Buyout Group, LLC.,

Defendant(s).

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.

2012cp2200341

CERTIFICATE OF
EXEMPTION/WITHDRAWAL
FROM ARBITRATION

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ARBITRATION BECAUSE:

_____ monetary relief requested exceeds \$25,000;

_____ this is a class action;

_____ there is a substantial claim for injunction or declaratory relief requested in this case

 X this case involves (check one or more of the following)

_____ title to real estate;

_____ wills, trusts and decedents' estates;

 X mortgage foreclosure;

_____ partition;

_____ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

_____ monetary relief requested in this case is unspecified but exceeds \$25,000;

_____ this case is a companion or related to similar actions pending in other courts with which the action might be consolidated but for lack of jurisdiction or venue;

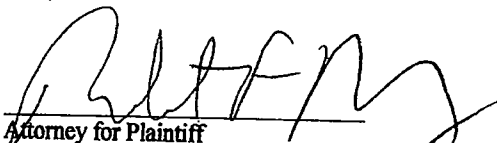
_____ this action is appellate in nature;

_____ this is a post-conviction relief matter;

_____ this is a forfeiture proceeding brought by the State; or

_____ this is a contempt of court proceeding.

Date: April 9, 2012



Attorney for Plaintiff

*Note: Motion must be presented to the court, a hearing held, and a finding made, for exemption or withdrawal from arbitration for "strong and compelling reason" sought pursuant to Rule 1(d), Rules of Circuit Court Arbitration.

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Litchfield Plantation Association, Inc.,

Plaintiff,

vs.

Litchfield Plantation Company, Inc.;
Louise P. Parsons; South Carolina
Department of Revenue; BDC Capital,
Inc. FKA BDC Capital, LLC; Allan L.
Kidston; First National Bank of South
Carolina; Lawrence A. Shapiro; Info
Quest, Inc.; Small Luxury Hotels
of the World Limited; and Litchfield
Plantation Buyout Group, LLC.,

Defendant(s).

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.

2012CP0200341

SUMMONS AND NOTICES

Foreclosure of Real Estate
Mortgage (Non-Jury)

Deficiency Demanded

FILED
GEORGETOWN COUNTY, S.C.
2012 APR 10 AM 11:03
ALMA Y. WHITE
CLERK OF COURT

TO THE DEFENDANT(S) NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said Complaint on the persons whose names are subscribed below at PO Box 2277, Conway, SC 29528, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that, pursuant to Rule 53(b) *South Carolina Rules of Civil Procedure*, as amended effective September 1, 2002, the undersigned attorneys, on behalf of the Plaintiff herein, will seek a general Order of Reference to the Master-in-Equity or Special Referee for Georgetown County, South Carolina, which order shall, pursuant to the Rule 53(b) *South Carolina Rules of Civil Procedure*, specifically provide that the Master-in-Equity or Special Referee is authorized and empowered to enter a final judgment in this action, with any appeal from the final judgment entered by the Master-in-Equity or Special Referee directly to the Supreme Court or to the Court of Appeals, whichever is appropriate.

April 9, 2012

By:

Harris and Graves, P.A.

Robert F. McMahan, Jr.

PO Box 2277

Conway, SC 29528

(843) 234-2390

Attorney for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Litchfield Plantation Association, Inc.,

Plaintiff,

vs.

Litchfield Plantation Company, Inc.;
Louise P. Parsons; South Carolina
Department of Revenue; BDC Capital,
Inc. FKA BDC Capital, LLC; Allan L.
Kidston; First National Bank of South
Carolina; Lawrence A. Shapiro; Info
Quest, Inc.; Small Luxury Hotels
of the World Limited; and Litchfield
Plantation Buyout Group, LLC.,

Defendant(s).

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.

2012 CP 2200341

COMPLAINT
(Non-Jury)

ALMA Y. WHITE
CLERK OF COURT

2012 APR 10 AM 11:03

FILED
GEORGETOWN COUNTY, S.C.

Litchfield Plantation Association, Inc. (the "Plaintiff"), complaining of the above-captioned Defendant(s), alleges as follows:

1. The Plaintiff is a non-profit corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.
2. The Plaintiff is the owner and holder of four Promissory Notes and Mortgages covering real property, which is the subject of the foreclosure action herein, located in the County of Georgetown, State of South Carolina and this Court has proper jurisdiction over the subject matter and the parties of this action.
3. The Defendant Litchfield Plantation Company, Inc., is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina which owns property, does business, and maintains agents, employees, and its principal place of business in Georgetown County, South Carolina. Litchfield Plantation Company, Inc., is the original developer of Litchfield Plantation located in Georgetown County, South Carolina and incorporated the Plaintiff in 1971 to be the homeowners association for Litchfield Plantation.
4. The Defendant, Louise P. Parsons, is upon information and belief, a citizen and resident of the State of Florida, and is named herein by virtue of her interest in a mortgage upon the subject property dated April 21, 2011, and recorded August 10, 2011, in Book 1728, at Page 127, in the Office of the Register of Deeds for Georgetown County.
5. The Defendant, South Carolina Department of Revenue, is named as a Defendant

because it has, or may claim an interest in the subject property by virtue of those certain Tax Liens filed against Defendant Litchfield Plantation Company, Inc. in the amount of \$518.81, Tax Lien Number 3-51297870-4, recorded in the Office of the Register of Deeds for Georgetown County on September 19, 2011, in Book 11MS22, at Page 1052; and in the amount of \$666.19, Tax Lien Number 3-51329407-2, recorded in the Office of the Register of Deeds for Georgetown County on December 21, 2011, in Book 11MS22, at Page 1888.

6. The Defendant, BDC Capital, Inc. f/k/a BDC Capital LLC Inc. (hereinafter "BDC Capital"), upon information and belief, is a corporation organized and existing pursuant to the laws of the Commonwealth of Virginia, and is named herein by virtue of pending action against Defendant Litchfield Plantation Company, Inc. Civil Action Number 2010-CP-22-01265 in the Georgetown County public records.

7. The Defendant, Allan L. Kidston, upon information and belief, is a resident of the State of Massachusetts, and is named herein by virtue of that judgment against Litchfield Plantation Company, Inc. in JR Number 2010-CP-22-01527, and in the pending Civil Action Number 2011-CP-22-00528.

8. The Defendant, First National Bank of South Carolina (hereinafter "First National") is, upon information and belief, a financial institution providing such services in the State of South Carolina, and is named herein by virtue of that pending action against Litchfield Plantation Company, Inc. in Civil Action Number 2010-CP-22-01839.

9. The Defendant, Lawrence A. Shapiro, upon information and belief, is a citizen of the Commonwealth of Virginia, and is named herein by virtue of that pending action against Litchfield Plantation Company, Inc. in Civil Action Number 2010-CP-22-01967.

10. The Defendant, Info Quest, Inc., upon information and belief, is a corporation organized and existing pursuant to the laws of the State of South Carolina, and is named herein by virtue of that judgment in the amount of \$4,793.28 against Litchfield Plantation Company, Inc. filed June 8, 2011, JR No. 2011-CP-22-00752.

11. The Defendant, Small Luxury Hotels of the World Limited, upon information and belief, is a hotel chain providing such services in Georgetown County, State of South Carolina, and is named herein by virtue of that judgment in the amount of \$28,370.60 against Litchfield Plantation Company, Inc. filed January 31, 2008, in JR No. 2007-CP-22-00254.

12. The Defendant, Litchfield Plantation Buyout Group, LLC, upon information and belief, is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, and is named herein by virtue of an Assignment of Promissory Notes, Guarantees and Mortgages (hereinafter the "Assignment") filed in the Georgetown County Register of Deeds on April 27, 2011 in book 1675, page

100. The Assignment is void for lack of consideration. The Assignment is also void for lack of authority for the signatory to execute the Assignment.

13. Plaintiff, in compliance with The Supreme Court of South Carolina *Administrative Order Re: Mortgage Foreclosures and the Home Affordable Modification Program ("HMP")*, 2009-05-22-01, filed May 22, 2009, asserts that the loan subject to this action is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac, nor is the Plaintiff a servicer who has signed an agreement to participate in the HMP.

14. Plaintiff, in compliance with The Supreme Court of South Carolina *Administrative Order Re: Mortgage Foreclosures Actions*, signed May 2, 2011, certifies that the Mortgaged Property that is subject to this action is not owner-occupied.

15. Based upon a search of the public records of Georgetown County, all persons or entities having an interest or lien or possible claim in or upon the subject property that is subordinate to the lien of the Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made defendants.

16. Any Defendant(s) herein described as judgment creditors, by filing of said judgments, have designated their attorney entering the judgment as their agent for service of process under the provisions of §15-35-840 of the *South Carolina Code of Laws* (1976 as amended).

**FOR A FIRST CAUSE OF ACTION
(Foreclosure of Mortgage and Security Agreement)**

17. The allegations of the preceding paragraphs are reasserted and incorporated herein as if restated verbatim.

18. For valuable consideration given, Litchfield Plantation Company, Inc., executed and delivered to Litchfield Plantation Association, Inc. ("Plaintiff"), certain Secured Promissory Notes, one dated May 22, 2009 in the principal sum of Five Hundred and Seventy Thousand and 00/100 (\$570,000.00) Dollars, with interest accruing pursuant to the terms contained therein, one dated the 1st day of June, 2010, in the principal sum of Fifty thousand and 00/100 (\$50,000.00) Dollars, with interest accruing pursuant to the terms contained therein, one dated June 10, 2009, in the principal sum of Seventy Five Thousand and 00/100 (\$75,000.00) Dollars, with interest accruing pursuant to the terms contained therein, one dated July 21, 2009 in the principal sum of Twenty Thousand and 00/100 Dollars (\$20,000.00), ("Notes"). Litchfield Plantation promised to repay the Plaintiff the amounts advanced under the Notes.

19. Subsequent to the execution of the Notes, and to better secure the repayment of the Notes and the debts evidenced thereby, Litchfield Plantation Company, Inc. executed and delivered unto the Plaintiff, a certain Mortgage dated the 1st day of June, 2010 ("Mortgage), covering a number of various properties, to which the following described property ("Mortgaged Property") is the subject of this action:

All that certain piece, parcel or lot of land lying, being and situate in Tax District Number Four, County of Georgetown, State of South Carolina, shown as "7.35 AC." on a plat entitled "MAP OF LITCHFIELD PLANTATION COMPANY, INC. AND RESOURCES PLANNING CORPORATION," prepared by Powers and Associates Surveyors, Inc. dated February 23, 2005, and filed of record May 3, 2005, in the Office of the Register of Deeds for the County of Georgetown in Plat Slide 543, at Page 1 through 3, and more particularly shown on that plat entitled "Plat of 7.35 acres in Litchfield Plantation, Waccamaw Neck" surveyed for Litchfield Plantation Company, Inc., prepared by Powers Land Surveying, dated June 7, 2011, and recorded in Plat Slide 735, at Page 7B, in the Office of the Georgetown County Register of Deeds, State of South Carolina.

Being a portion of TMS No. 4-413-1

20. Thereafter, the Mortgage was recorded on June 1, 2010, in Mortgage Book 1487, at Page 258 in the Office of the Georgetown County Register of Deeds.
21. The above-referenced instruments constitute a first lien on the Mortgaged Property.
22. Pursuant to the terms of the Mortgage, any sums paid by the Plaintiff for inspecting and securing the Mortgaged Property, for fire and other hazard insurance, taxes and assessments for the Mortgaged Property, and any costs of collection, including reasonable attorney's fees, are secured by the Mortgage.
23. The payments due on the Note and Mortgage are in default. Although demand for payment thereof has been made and the Plaintiff, as present lienholder, after providing all required notices, elects to, and does declare the entire balance due and payable, and that there is due and owing on the Notes as of April, 9, 2012 the sum of Seven Hundred and Thirty Four Thousand Six Hundred and Twenty Four Dollars and Forty Nine Cents (\$734,624.49), together with interest as provided at the rate set forth in the Notes from to the date of payment, and also for the costs and disbursements of this action, including attorney's fees.
24. Pursuant to §37-3-105, *South Carolina Code of Laws* (1976 as amended), the mortgage lien, which is subject to this action, is a first lien on real estate and is not a 'consumer loan' for the purposes of the South Carolina Consumer Protection Code. Any notices of right to cure have been given as required.
25. Pursuant to its rights under the Notes and Mortgage, Plaintiff has and does hereby elect to declare the total unpaid balance of principal and interest on the Notes due and payable and does hereby elect to foreclose the Mortgage on the Mortgaged Property, reserving however, any and all rights and remedies the Plaintiff may have under the Notes and Mortgage.
26. The Plaintiff has placed this matter with the undersigned attorneys for collection.
27. The Plaintiff does not waive and specifically demands personal judgment against Litchfield Plantation for amounts due on the Notes and Mortgages, with the right to enter personal judgment for any deficiency remaining after the sale of the Mortgaged Property.

**FOR A SECOND CAUSE OF ACTION
(Appointment of Receiver)**

28. The allegations of the preceding paragraphs are reasserted and incorporated herein as if restated verbatim.

29. It is further provided in the loan documents that in the event of default, the Plaintiff shall be entitled to the immediate appointment of a receiver to take possession and control of the subject properties and to secure and manage the same, and to collect any and all rents, income, revenue, earnings, issues and profits therefrom.

30. Plaintiff is informed and believes that it is entitled to the appointment of a Receiver, to secure and protect the subject properties, together with any and all rents and profits accruing therefrom.

**FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty)**

31. On or about December 29, 2010, Litchfield Plantation Company, Inc. deeded to the Plaintiff a beach house on Pawleys Island, South Carolina. The beach house was a common amenity of the Plaintiff.

32. Litchfield Plantation Company, Inc. owed a fiduciary duty to the Plaintiff when it deeded the beach house to the Plaintiff to ensure that the beach house was in a good state of repair or to provide the Plaintiff with funds necessary to bring the beach house to a standard of reasonably good repair.

33. Litchfield Plantation Company, Inc. breached its fiduciary duty to the Plaintiff by transferring the beach house to the Plaintiff when it was in a poor state of repair and by failing to provide the Plaintiff with funds to bring the beach house to a standard of reasonably good repair.

34. Plaintiff has been damaged by Litchfield Plantation Company, Inc.'s breach of its fiduciary duty and is entitled to judgment against Litchfield Plantation Company, Inc. for the cost of bringing the beach house to a standard of reasonably good repair.

**FOR A FOURTH CAUSE OF ACTION
(Breach of Covenants and Fiduciary Duties)**

35. Pursuant to section 5.5 of the Amendment to the Declaration of Protective Covenants, Conditions and Restrictions for Litchfield Plantation, Litchfield Plantation Company had complete control of the affairs of the Plaintiff from the enactment of the Amendment to the Declaration of Protective Covenants, Conditions and Restrictions until February 26, 2011. Due to Litchfield Plantation Company's right to control the Plaintiff and Litchfield Plantation Company's actual control of the Plaintiff during that

time, Litchfield Plantation Company owed fiduciary duties to the Plaintiff to avoid conflicts of interest and act in good faith and with due care to protect the Plaintiff's interests and collect monies due to the Plaintiff.

36. Pursuant to the provisions of Section 5.18 of the Amendment to the Declaration of Protective Covenants, Conditions and Restrictions for Litchfield Plantation, Litchfield Plantation Company, Inc., was required to collect a working capital contribution from each person who purchased lots or bulk sales and was required to pay one third of a working capital contribution into the Plaintiff's Reserve Account.

37. Litchfield Plantation Company, Inc. contends it sold 101 lots to lot owners from and after the Amendment to the Declaration of Protective Covenants, Conditions and Restrictions were enacted through December 31, 2010.

38. Litchfield Plantation Company, Inc. willfully breached its fiduciary duties to the Plaintiff by either

- a. failing to collect the moneys from the buyers of its lots to be placed into the Plaintiff's Reserve Account, or
- b. by collecting the moneys from the buyers of its lots and failing to place the same into the Plaintiff's Reserve Account.

39. Litchfield Plantation Company concealed its failure to pay the money collected from the buyers of lots by failing to submit budgets showing the amounts in the reserve account and by refusing to have annual meetings of the Plaintiff's membership.

40. Plaintiff has been damaged by Litchfield Plantation Company's breach of its fiduciary duty and is entitled to judgment against Litchfield Plantation Company Inc. for that breach for actual and punitive damages as found by the Court.

**FOR A FIFTH CAUSE OF ACTION
(Breach of Covenants)**

41. Pursuant to Section 5.8 of the Amendment to the Declaration of Protective Covenants, Conditions and Restrictions, Litchfield Plantation Company, Inc. is required to pay the shortage in the Plaintiff's budget for each fiscal year until the Class B share period ends.

42. Litchfield Plantation Company, Inc. contends that the Class B share period is still in effect but has failed to pay the shortage in the Plaintiff's budget and is in breach of its obligation to the Plaintiff to pay the shortage in the Plaintiff's budget.

43. Plaintiff has been damaged by Litchfield Plantation Company, Inc. in breach of its obligation to pay the shortage in the Plaintiff's budget and is entitled to judgment against Litchfield Plantation Company, Inc. for damages for Litchfield Plantation Company, Inc. breach of its obligation to pay the shortage in the Plaintiff's budget.

**FOR A SIXTH CAUSE OF ACTION
(Breach of Fiduciary Duty)**

44. Pursuant to section 5.5 of the Amendment to the Declaration of Protective Covenants, Conditions and Restrictions for Litchfield Plantation, Litchfield Plantation Company had control of the affairs of the Plaintiff from the enactment of the Amendment to the Declaration of Protective Covenants, Conditions and Restrictions until February 26, 2011. Due to Litchfield Plantation Company's right to control the Plaintiff and Litchfield Plantation Company's actual control of the Plaintiff during that time, Litchfield Plantation Company owed fiduciary duties to the Plaintiff to avoid conflicts of interest, and act in good faith and with due care with respect to the Plaintiff's interests.

45. Litchfield Plantation Company exerted its control over the Plaintiff and took money from the Plaintiff for use in paying the expenses of Litchfield Plantation Company and in return gave the Plaintiff various Notes.

46. The decision to take the Plaintiff's money was made by Board Members who were officers and directors of both Litchfield Plantation Company and the Association who had conflicts of interest and who were because of those conflicts of interest were prohibited from voting to take the Plaintiff's money for the use and benefit of Litchfield Plantation Company.

47. The decision to take the Plaintiff's money in exchange for the \$75,000.00 Note, the \$50,000.00 Note and the \$20,000 Note referenced in paragraph 18 above were made by a Board elected by Litchfield Plantation Company that consisted solely of two (2) members both of whom were officers and directors of Litchfield Plantation Company. The Covenant that govern the Plaintiff require that its Board contain five (5) members. The decision by Litchfield Plantation Company to take those moneys was illegal and invalid due to a lack of a valid board for the Plaintiff, lack of a quorum for the Board of the Plaintiff and the conflict of interest of the members elected to the Plaintiff's Board by Litchfield Plantation Company.

48. Litchfield Plantation Company concealed its decision to take the Plaintiff's money in exchange for the \$75,000.00 Note, the \$50,000.00 Note and the \$20,000 Note referenced in paragraph 18 from the Plaintiff's property owners by failing to submit budgets showing those transfers and by refusing to have annual meetings of the Plaintiff's membership.

49. The Notes given by Litchfield Plantation Company to the Plaintiff were commercially unreasonable in that they only paid interest at the Prime Rate at a time when Litchfield Plantation Company was in poor financial condition and was a poor credit risk. Notes given by Litchfield Plantation Company to other lenders in arm's length transactions carried interest at rates of 13% and 16% due to its poor financial condition and poor creditworthiness.

50. The Notes given by Litchfield Plantation Company to the Plaintiff were commercially unreasonable in that they did not provide periodic payments and tied up the Plaintiff's funds for a long period of time.

51. The money taken by Litchfield Plantation Company was in direct violation of the section 5.17 (B) of the Covenants that provides that the "Revenues of the Association may be expended to pay costs and expenses of only the Association".

52. The Plaintiff has been damaged by Litchfield Plantation Company's self dealing, conflicts of interest, failure to exercise due care in protecting the Plaintiff's interests and breach of fiduciary duties in connection with the money taken by Litchfield Plantation Company by being deprived of funds in which to operate and by not being given an appropriate rate of interest on the money commensurate with the risk of the loans and is entitled to actual and punitive damages from Litchfield Plantation Company.

WHEREFORE, having fully set forth its Complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and that:

1. The amount due upon the Notes and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorneys' fees and costs of this action;

2. The Plaintiff's Mortgage be declared a first lien and that the Plaintiff has a judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action.

3. The Mortgaged Property be sold under the direction of this Court, the equity of redemption be barred, and the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and sale;

Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with the attorney's fees as aforesaid; and

Third, the surplus, if any, be distributed according to law.

Fourth, the Plaintiff to have judgment against Litchfield Plantation Company, Inc. for the full amount found to be due on the Plaintiff's Notes and Mortgages, with the right to enter personal judgment against Litchfield Plantation Company, Inc. for any deficiency in this action remaining after the sale of the Mortgaged Property;

4. An Order be entered directing and empowering the Sheriff of Georgetown County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the Mortgaged Property should the same become necessary.

5. An Order be entered for the ejectment of the Defendants in possession herein and all persons claiming thereunder and the removal therefrom of all furnishings, fixtures and items not subject to the lien of the Plaintiff's Mortgage, which personal property, if not removed shall be deemed abandoned and

shall be removed by the Plaintiff or its agents from the Mortgaged Property by placing said property on the public street or highway or by any other means, including by force, if necessary.

6. An Order granting the appointment of a receiver should it become necessary, to secure and supervise the rental of the property to be foreclosed with the authority to take possession thereof and collect rents, issues and profits thereon during the pendency of this action and to hold the same as further security for Plaintiff's debt;

7. An Order to be entered for reimbursement of all costs of inspecting and securing the property incurred by the Plaintiff as a result of the delinquency; and

8. The Defendant(s), and all persons whomever claiming by and through said Defendant(s), be forever barred of right, title and interest of, in and to the Mortgage Property and Collateral, and each and every part thereof; and

9. Judgment for actual damages on the Plaintiff's Third Cause of Action; and

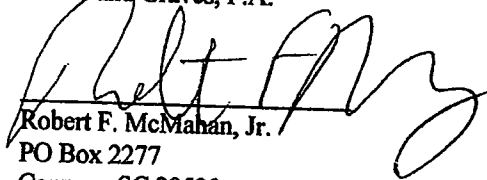
10. Judgment for actual and punitive damages on the Plaintiff's Fourth Cause of Action; and

11. Judgment for actual damages on the Plaintiff's Fifth Cause of Action; and

12. Judgment for actual and punitive damages on the Plaintiff's Sixth Cause of Action; and

13. An Order be entered for such other and further relief as this Court may deem just and proper.

Harris and Graves, P.A.



Robert F. McMahan, Jr.

PO Box 2277

Conway, SC 29528

(843) 234-2390

Attorney for Plaintiff

Date: April 9, 2012

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Litchfield Plantation Association, Inc.,

Plaintiff,

vs.

Litchfield Plantation Company, Inc.;
Louise P. Parsons; South Carolina
Department of Revenue; BDC Capital,
Inc. FKA BDC Capital, LLC; Allan L.
Kidston; First National Bank of South
Carolina; Lawrence A. Shapiro; Info
Quest, Inc.; Small Luxury Hotels
of the World Limited; and Litchfield
Plantation Buyout Group,

Defendant(s).

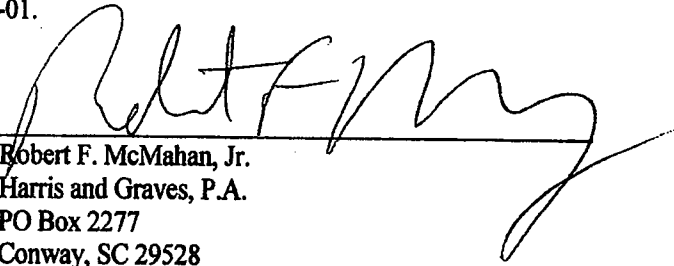
IN THE COURT OF COMMON PLEAS
CASE NO.

**CERTIFICATE OF EXEMPTION FROM
ADMINISTRATIVE ORDER**

2011-05-02-01

(Non-Owner Occupied dwelling)

The undersigned attorney for the Plaintiff has reviewed one or more of the following records: tax records, affidavits of service or non-service, other documents or information provided by the Plaintiff or other persons with knowledge as to the occupancy status of the dwelling that is the subject of the above-captioned action. Upon information and belief, the dwelling is not "Owner-Occupied" as defined by South Carolina Supreme Court Administrative Order 2011-05-02-01.



Robert F. McMahan, Jr.
Harris and Graves, P.A.
PO Box 2277
Conway, SC 29528
(843) 234-2390
Attorney for Plaintiff

Columbia, South Carolina
April 9, 2012

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

Litchfield Plantation Association, Inc.,

Plaintiff,

vs.

Litchfield Plantation Company, Inc.;
Louise P. Parsons; South Carolina
Department of Revenue; BDC Capital,
Inc. FKA BDC Capital, LLC; Allan L.
Kidston; First National Bank of South
Carolina; Lawrence A. Shapiro; Info
Quest, Inc.; Small Luxury Hotels
of the World Limited; and Litchfield
Plantation Buyout Group, LLC.,
Defendant(s).

LIS PENDENS

2012CP2206341

ALMA Y. WHITE
CLERK OF COURT

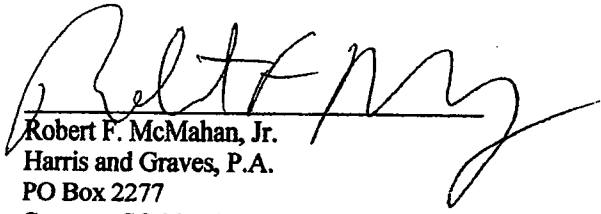
2012 APR 10 AM 11:02

FILED
GEORGETOWN COUNTY, S.C.

NOTICE IS HEREBY GIVEN THAT an action has or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendants for the foreclosure of a certain mortgage of real estate given by Litchfield Plantation Company, Inc. to Litchfield Plantation Association, Inc., dated June 1, 2010, and recorded June 1, 2010, in Book 1487, at Page 258, in the Office of the Register of Deeds for Georgetown County. The real property covered and affected by the said mortgage and by the foreclosure thereof were, at the time of the making thereof and at the time of the filing of this notice, described as follows:

All that certain piece, parcel or lot of land lying, being and situate in Tax District Number Four, County of Georgetown, State of South Carolina, shown as "7.35 AC." on a plat entitled "MAP OF LITCHFIELD PLANTATION COMPANY, INC. AND RESOURCES PLANNING CORPORATION," prepared by Powers and Associates Surveyors, Inc. dated February 23, 2005, and filed of record May 3, 2005, in the Office of the Register of Deeds for the County of Georgetown in Plat Slide 543, at Page 1 through 3, and more particularly shown on that plat entitled "Plat of 7.35 acres in Litchfield Plantation, Waccamaw Neck" surveyed for Litchfield Plantation Company, Inc., prepared by Powers Land Surveying, dated June 7, 2011, and recorded in Plat Slide 735, at Page 7B, in the Office of the Georgetown County Register of Deeds, State of South Carolina.

Being a portion of TMS No. 4-413-1


Robert F. McMahan, Jr.
Harris and Graves, P.A.
PO Box 2277
Conway, SC 29528
(843) 234-2390
Attorney for Plaintiff

April 9, 2012

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE CIRCUIT COURT FOR THE

Litchfield Plantation Association, Inc.,

Plaintiff,

vs.

Litchfield Plantation Company, Inc.;
Louise P. Parsons; South Carolina
Department of Revenue; BDC Capital,
Inc. FKA BDC Capital, LLC; Allan L.
Kidston; First National Bank of South
Carolina; Lawrence A. Shapiro; Info
Quest, Inc.; Small Luxury Hotels
of the World Limited; and Litchfield
Plantation Buyout Group, LLC.

Defendant(s).

CIVIL ACTION COVERSHEET

CP-

2012CP2200341

ALMA Y. WHITE
CLERK OF COURT

2012 APR 10 AM 11:02

FILED
GEORGETOWN COUNTY, S.C.

Submitted By: Robert F. McMahan, Jr.
Address: P.O. Box 2277
Conway, SC 29528

SC Bar #: 3891
Telephone #: 843-234-2390
Fax #: 803-790-1277
E-mail: rfm@harrisgraves.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this Cover Sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- () **JURY TRIAL** demanded in complaint (X) **NON-JURY TRIAL** demanded in complaint
() This case is subject to **ARBITRATION** pursuant to Circuit Court Annexed Alternative Dispute Resolution Rules.
() This case is subject to **MEDIATION** pursuant to the Circuit Court Annexed Alternative Dispute Resolution Rules.
(X) **This case is exempt from ADR (Proof of ADR/Exemption Attached).**

NATURE OF ACTION: (check one box Below)

- | | | | |
|---|---|---|--|
| Contracts
() Construction (100)
() Debt Collection (110)
() Employment (120)
() General (130)
() Breach of Contract (140)
() Other (199) | Torts - Professional Malpractice
() Dental Malpractice (200)
() Legal Malpractice (210)
() Medical Malpractice (220)
() Previous Notice of Intent
Case No. 20 CP
() Notice/File Med Mal (230)
() Other (299) | Torts - Personal Injury
() Assault/Slander/Libel (300)
() Conversion (310)
() Motor Vehicle Accident (320)
() Premises Liability (330)
() Products Liability (340)
() Personal Injury (350)
() Wrongful Death (360)
(X) Other (399) | Real Property
() Claim & Delivery (400)
() Condemnation (410)
(X) Foreclosure (420)
() Mechanic's Lien (430)
() Partition (440)
() Possession (450)
() Building Code Violation (460)
() Other (499) |
| Inmate Petitions
() PCR (500)
() Madamus (520)
() Habeas Corpus (530)
() Other (599) | Judgments/Settlements
() Death Settlement (700)
() Foreign Judgment (710)
() Magistrate's Judgment (720)
() Minor Settlement (730)
() Transcript Judgment (740)
() Lis Pendens (750)
() Transfer of Structured Settlement
Payment Rights Application (760)
() Other (799) | Administrative Law/Relief
() Reinstate Driver's License (800)
() Judicial Review (810)
() Relief (820)
() Permanent Injunction (830)
() Forfeiture-Petition (840)
() Forfeiture-Consent Order (850)
() Other (899) | Appeals
() Arbitration (900)
() Magistrate-Civil (910)
() Magistrate-Criminal (920)
() Municipal (930)
() Probate Court (940)
() SCDOT (950)
() Worker's Comp (960)
() Zoning Board (970)
() Public Service Commission (990)
() Employment Security Comm (991)
() Other (999) |
| Special/Complex/Other
() Environmental (600)
() Automobile Arb. (610)
() Medical (620)
() Other (699) | Out-of-County Action (660)
() Sexual Predator (510)
() Pharmaceuticals (630)
() Unfair Trade Practices (640)
() Out-of-State Depositions (650)
() Motion to Quash Subpoena in | | |

Submitting Party Signature:

Date: April 9, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10, et seq.

FOR MANDATED ADR COUNTIES ONLY
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton,
Horry, Jasper, Lexington, Pickens (Family Court Only), Richland Union and York

**SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN
ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.**

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suite" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special Proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Litchfield Plantation Association, Inc.,

Plaintiff,

vs.

Litchfield Plantation Company, Inc.;
Louise P. Parsons; South Carolina
Department of Revenue; BDC Capital,
Inc. FKA BDC Capital, LLC; Allan L.
Kidston; First National Bank of South
Carolina; Lawrence A. Shapiro; Info
Quest, Inc.; Small Luxury Hotels
of the World Limited; and Litchfield
Plantation Buyout Group, LLC.,

Defendant(s).

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.

2012 CP 2200341

CERTIFICATE OF
EXEMPTION/WITHDRAWAL
FROM ARBITRATION

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ARBITRATION BECAUSE:

_____ monetary relief requested exceeds \$25,000;

_____ this is a class action;

_____ there is a substantial claim for injunction or declaratory relief requested in this case

X this case involves (check one or more of the following)

_____ title to real estate;

_____ wills, trusts and decedents' estates;

X mortgage foreclosure;

_____ partition;

_____ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

_____ monetary relief requested in this case is unspecified but exceeds \$25,000;

_____ this case is a companion or related to similar actions pending in other courts with which the action might be consolidated but for lack of jurisdiction or venue;

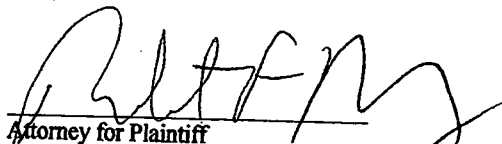
_____ this action is appellate in nature;

_____ this is a post-conviction relief matter;

_____ this is a forfeiture proceeding brought by the State; or

_____ this is a contempt of court proceeding.

Date: April 1, 2012


Attorney for Plaintiff

*Note: Motion must be presented to the court, a hearing held, and a finding made, for exemption or withdrawal from arbitration for "strong and compelling reason" sought pursuant to Rule 1(d), Rules of Circuit Court Arbitration.

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Litchfield Plantation Association, Inc.,

Plaintiff,

vs.

Litchfield Plantation Company, Inc.;
Louise P. Parsons; South Carolina
Department of Revenue; BDC Capital,
Inc. FKA BDC Capital, LLC; Allan L.
Kidston; First National Bank of South
Carolina; Lawrence A. Shapiro; Info
Quest, Inc.; Small Luxury Hotels
of the World Limited; and Litchfield
Plantation Buyout Group, LLC.,

Defendant(s).

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.

2012CP0200341

SUMMONS AND NOTICES

Foreclosure of Real Estate
Mortgage (Non-Jury)

Deficiency Demanded

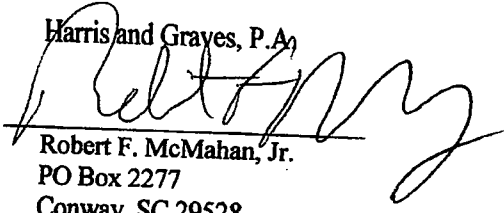
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GEORGETOWN COUNTY, S.C.
2012 APR 10 AM 11:03
ALMA Y. WHITE
CLERK OF COURT

TO THE DEFENDANT(S) NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said Complaint on the persons whose names are subscribed below at PO Box 2277, Conway, SC 29528, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that, pursuant to Rule 53(b) *South Carolina Rules of Civil Procedure*, as amended effective September 1, 2002, the undersigned attorneys, on behalf of the Plaintiff herein, will seek a general Order of Reference to the Master-in-Equity or Special Referee for Georgetown County, South Carolina, which order shall, pursuant to the Rule 53(b) *South Carolina Rules of Civil Procedure*, specifically provide that the Master-in-Equity or Special Referee is authorized and empowered to enter a final judgment in this action, with any appeal from the final judgment entered by the Master-in-Equity or Special Referee directly to the Supreme Court or to the Court of Appeals, whichever is appropriate.

April 9, 2012

Harris and Graves, P.A.
By: 
Robert F. McMahan, Jr.
PO Box 2277
Conway, SC 29528
(843) 234-2390
Attorney for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Litchfield Plantation Association, Inc.,

Plaintiff,

vs.

Litchfield Plantation Company, Inc.;
Louise P. Parsons; South Carolina
Department of Revenue; BDC Capital,
Inc. FKA BDC Capital, LLC; Allan L.
Kidston; First National Bank of South
Carolina; Lawrence A. Shapiro; Info
Quest, Inc.; Small Luxury Hotels
of the World Limited; and Litchfield
Plantation Buyout Group, LLC.,

Defendant(s).

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.

2012CP2200341

COMPLAINT
(Non-Jury)

ALMA Y. WHITE
CLERK OF COURT

2012 APR 10 AM 11:03

FILED
GEORGETOWN COUNTY, S.C.

Litchfield Plantation Association, Inc. (the "Plaintiff"), complaining of the above-captioned Defendant(s), alleges as follows:

1. The Plaintiff is a non-profit corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Georgetown County, South Carolina.
2. The Plaintiff is the owner and holder of four Promissory Notes and Mortgages covering real property, which is the subject of the foreclosure action herein, located in the County of Georgetown, State of South Carolina and this Court has proper jurisdiction over the subject matter and the parties of this action.
3. The Defendant Litchfield Plantation Company, Inc., is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina which owns property, does business, and maintains agents, employees, and its principal place of business in Georgetown County, South Carolina. Litchfield Plantation Company, Inc., is the original developer of Litchfield Plantation located in Georgetown County, South Carolina and incorporated the Plaintiff in 1971 to be the homeowners association for Litchfield Plantation.
4. The Defendant, Louise P. Parsons, is upon information and belief, a citizen and resident of the State of Florida, and is named herein by virtue of her interest in a mortgage upon the subject property dated April 21, 2011, and recorded August 10, 2011, in Book 1728, at Page 127, in the Office of the Register of Deeds for Georgetown County.
5. The Defendant, South Carolina Department of Revenue, is named as a Defendant

because it has, or may claim an interest in the subject property by virtue of those certain Tax Liens filed against Defendant Litchfield Plantation Company, Inc. in the amount of \$518.81, Tax Lien Number 3-51297870-4, recorded in the Office of the Register of Deeds for Georgetown County on September 19, 2011, in Book 11MS22, at Page 1052; and in the amount of \$666.19, Tax Lien Number 3-51329407-2, recorded in the Office of the Register of Deeds for Georgetown County on December 21, 2011, in Book 11MS22, at Page 1888.

6. The Defendant, BDC Capital, Inc. f/k/a BDC Capital LLC Inc. (hereinafter "BDC Capital"), upon information and belief, is a corporation organized and existing pursuant to the laws of the Commonwealth of Virginia, and is named herein by virtue of pending action against Defendant Litchfield Plantation Company, Inc. Civil Action Number 2010-CP-22-01265 in the Georgetown County public records.

7. The Defendant, Allan L. Kidston, upon information and belief, is a resident of the State of Massachusetts, and is named herein by virtue of that judgment against Litchfield Plantation Company, Inc. in JR Number 2010-CP-22-01527, and in the pending Civil Action Number 2011-CP-22-00528.

8. The Defendant, First National Bank of South Carolina (hereinafter "First National") is, upon information and belief, a financial institution providing such services in the State of South Carolina, and is named herein by virtue of that pending action against Litchfield Plantation Company, Inc. in Civil Action Number 2010-CP-22-01839.

9. The Defendant, Lawrence A. Shapiro, upon information and belief, is a citizen of the Commonwealth of Virginia, and is named herein by virtue of that pending action against Litchfield Plantation Company, Inc. in Civil Action Number 2010-CP-22-01967.

10. The Defendant, Info Quest, Inc., upon information and belief, is a corporation organized and existing pursuant to the laws of the State of South Carolina, and is named herein by virtue of that judgment in the amount of \$4,793.28 against Litchfield Plantation Company, Inc. filed June 8, 2011, JR No. 2011-CP-22-00752.

11. The Defendant, Small Luxury Hotels of the World Limited, upon information and belief, is a hotel chain providing such services in Georgetown County, State of South Carolina, and is named herein by virtue of that judgment in the amount of \$28,370.60 against Litchfield Plantation Company, Inc. filed January 31, 2008, in JR No. 2007-CP-22-00254.

12. The Defendant, Litchfield Plantation Buyout Group, LLC, upon information and belief, is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, and is named herein by virtue of an Assignment of Promissory Notes, Guarantees and Mortgages (hereinafter the "Assignment") filed in the Georgetown County Register of Deeds on April 27, 2011 in book 1675, page

100. The Assignment is void for lack of consideration. The Assignment is also void for lack of authority for the signatory to execute the Assignment.

13. Plaintiff, in compliance with The Supreme Court of South Carolina *Administrative Order Re: Mortgage Foreclosures and the Home Affordable Modification Program ("HMP")*, 2009-05-22-01, filed May 22, 2009, asserts that the loan subject to this action is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac, nor is the Plaintiff a servicer who has signed an agreement to participate in the HMP.

14. Plaintiff, in compliance with The Supreme Court of South Carolina *Administrative Order Re: Mortgage Foreclosures Actions*, signed May 2, 2011, certifies that the Mortgaged Property that is subject to this action is not owner-occupied.

15. Based upon a search of the public records of Georgetown County, all persons or entities having an interest or lien or possible claim in or upon the subject property that is subordinate to the lien of the Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made defendants.

16. Any Defendant(s) herein described as judgment creditors, by filing of said judgments, have designated their attorney entering the judgment as their agent for service of process under the provisions of §15-35-840 of the *South Carolina Code of Laws* (1976 as amended).

**FOR A FIRST CAUSE OF ACTION
(Foreclosure of Mortgage and Security Agreement)**

17. The allegations of the preceding paragraphs are reasserted and incorporated herein as if restated verbatim.

18. For valuable consideration given, Litchfield Plantation Company, Inc., executed and delivered to Litchfield Plantation Association, Inc. ("Plaintiff"), certain Secured Promissory Notes, one dated May 22, 2009 in the principal sum of Five Hundred and Seventy Thousand and 00/100 (\$570,000.00) Dollars, with interest accruing pursuant to the terms contained therein, one dated the 1st day of June, 2010, in the principal sum of Fifty thousand and 00/100 (\$50,000.00) Dollars, with interest accruing pursuant to the terms contained therein, one dated June 10, 2009, in the principal sum of Seventy Five Thousand and 00/100 (\$75,000.00) Dollars, with interest accruing pursuant to the terms contained therein, one dated July 21, 2009 in the principal sum of Twenty Thousand and 00/100 Dollars (\$20,000.00), ("Notes"). Litchfield Plantation promised to repay the Plaintiff the amounts advanced under the Notes.

19. Subsequent to the execution of the Notes, and to better secure the repayment of the Notes and the debts evidenced thereby, Litchfield Plantation Company, Inc. executed and delivered unto the Plaintiff, a certain Mortgage dated the 1st day of June, 2010 ("Mortgage"), covering a number of various properties, to which the following described property ("Mortgaged Property") is the subject of this action:

All that certain piece, parcel or lot of land lying, being and situate in Tax District Number Four, County of Georgetown, State of South Carolina, shown as "7.35 AC." on a plat entitled "MAP OF LITCHFIELD PLANTATION COMPANY, INC. AND RESOURCES PLANNING CORPORATION," prepared by Powers and Associates Surveyors, Inc. dated February 23, 2005, and filed of record May 3, 2005, in the Office of the Register of Deeds for the County of Georgetown in Plat Slide 543, at Page 1 through 3, and more particularly shown on that plat entitled "Plat of 7.35 acres in Litchfield Plantation, Waccamaw Neck" surveyed for Litchfield Plantation Company, Inc., prepared by Powers Land Surveying, dated June 7, 2011, and recorded in Plat Slide 735, at Page 7B, in the Office of the Georgetown County Register of Deeds, State of South Carolina.

Being a portion of TMS No. 4-413-1

20. Thereafter, the Mortgage was recorded on June 1, 2010, in Mortgage Book 1487, at Page 258 in the Office of the Georgetown County Register of Deeds.
21. The above-referenced instruments constitute a first lien on the Mortgaged Property.
22. Pursuant to the terms of the Mortgage, any sums paid by the Plaintiff for inspecting and securing the Mortgaged Property, for fire and other hazard insurance, taxes and assessments for the Mortgaged Property, and any costs of collection, including reasonable attorney's fees, are secured by the Mortgage.
23. The payments due on the Note and Mortgage are in default. Although demand for payment thereof has been made and the Plaintiff, as present lienholder, after providing all required notices, elects to, and does declare the entire balance due and payable, and that there is due and owing on the Notes as of April, 9, 2012 the sum of Seven Hundred and Thirty Four Thousand Six Hundred and Twenty Four Dollars and Forty Nine Cents (\$734,624.49), together with interest as provided at the rate set forth in the Notes from to the date of payment, and also for the costs and disbursements of this action, including attorney's fees.
24. Pursuant to §37-3-105, *South Carolina Code of Laws* (1976 as amended), the mortgage lien, which is subject to this action, is a first lien on real estate and is not a '*consumer loan*' for the purposes of the South Carolina Consumer Protection Code. Any notices of right to cure have been given as required.
25. Pursuant to its rights under the Notes and Mortgage, Plaintiff has and does hereby elect to declare the total unpaid balance of principal and interest on the Notes due and payable and does hereby elect to foreclose the Mortgage on the Mortgaged Property, reserving however, any and all rights and remedies the Plaintiff may have under the Notes and Mortgage.
26. The Plaintiff has placed this matter with the undersigned attorneys for collection.
27. The Plaintiff does not waive and specifically demands personal judgment against Litchfield Plantation for amounts due on the Notes and Mortgages, with the right to enter personal judgment for any deficiency remaining after the sale of the Mortgaged Property.

**FOR A SECOND CAUSE OF ACTION
(Appointment of Receiver)**

28. The allegations of the preceding paragraphs are reasserted and incorporated herein as if restated verbatim.

29. It is further provided in the loan documents that in the event of default, the Plaintiff shall be entitled to the immediate appointment of a receiver to take possession and control of the subject properties and to secure and manage the same, and to collect any and all rents, income, revenue, earnings, issues and profits therefrom.

30. Plaintiff is informed and believes that it is entitled to the appointment of a Receiver, to secure and protect the subject properties, together with any and all rents and profits accruing therefrom.

**FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty)**

31. On or about December 29, 2010, Litchfield Plantation Company, Inc. deeded to the Plaintiff a beach house on Pawleys Island, South Carolina. The beach house was a common amenity of the Plaintiff.

32. Litchfield Plantation Company, Inc. owed a fiduciary duty to the Plaintiff when it deeded the beach house to the Plaintiff to ensure that the beach house was in a good state of repair or to provide the Plaintiff with funds necessary to bring the beach house to a standard of reasonably good repair.

33. Litchfield Plantation Company, Inc. breached its fiduciary duty to the Plaintiff by transferring the beach house to the Plaintiff when it was in a poor state of repair and by failing to provide the Plaintiff with funds to bring the beach house to a standard of reasonably good repair.

34. Plaintiff has been damaged by Litchfield Plantation Company, Inc.'s breach of its fiduciary duty and is entitled to judgment against Litchfield Plantation Company, Inc. for the cost of bringing the beach house to a standard of reasonably good repair.

**FOR A FOURTH CAUSE OF ACTION
(Breach of Covenants and Fiduciary Duties)**

35. Pursuant to section 5.5 of the Amendment to the Declaration of Protective Covenants, Conditions and Restrictions for Litchfield Plantation, Litchfield Plantation Company had complete control of the affairs of the Plaintiff from the enactment of the Amendment to the Declaration of Protective Covenants, Conditions and Restrictions until February 26, 2011. Due to Litchfield Plantation Company's right to control the Plaintiff and Litchfield Plantation Company's actual control of the Plaintiff during that

time, Litchfield Plantation Company owed fiduciary duties to the Plaintiff to avoid conflicts of interest and act in good faith and with due care to protect the Plaintiff's interests and collect monies due to the Plaintiff.

36. Pursuant to the provisions of Section 5.18 of the Amendment to the Declaration of Protective Covenants, Conditions and Restrictions for Litchfield Plantation, Litchfield Plantation Company, Inc., was required to collect a working capital contribution from each person who purchased lots or bulk sales and was required to pay one third of a working capital contribution into the Plaintiff's Reserve Account.

37. Litchfield Plantation Company, Inc. contends it sold 101 lots to lot owners from and after the Amendment to the Declaration of Protective Covenants, Conditions and Restrictions were enacted through December 31, 2010.

38. Litchfield Plantation Company, Inc. willfully breached its fiduciary duties to the Plaintiff by either

a. failing to collect the moneys from the buyers of its lots to be placed into the Plaintiff's Reserve Account, or

b. by collecting the moneys from the buyers of its lots and failing to place the same into the Plaintiff's Reserve Account.

39. Litchfield Plantation Company concealed its failure to pay the money collected from the buyers of lots by failing to submit budgets showing the amounts in the reserve account and by refusing to have annual meetings of the Plaintiff's membership.

40. Plaintiff has been damaged by Litchfield Plantation Company's breach of its fiduciary duty and is entitled to judgment against Litchfield Plantation Company Inc. for that breach for actual and punitive damages as found by the Court.

**FOR A FIFTH CAUSE OF ACTION
(Breach of Covenants)**

41. Pursuant to Section 5.8 of the Amendment to the Declaration of Protective Covenants, Conditions and Restrictions, Litchfield Plantation Company, Inc. is required to pay the shortage in the Plaintiff's budget for each fiscal year until the Class B share period ends.

42. Litchfield Plantation Company, Inc. contends that the Class B share period is still in effect but has failed to pay the shortage in the Plaintiff's budget and is in breach of its obligation to the Plaintiff to pay the shortage in the Plaintiff's budget.

43. Plaintiff has been damaged by Litchfield Plantation Company, Inc. is breach of its obligation to pay the shortage in the Plaintiff's budget and it entitled to judgment against Litchfield Plantation Company, Inc. for damages for Litchfield Plantation Company, Inc breach of it's obligation to pay the shortage in the Plaintiff's budget.

**FOR A SIXTH CAUSE OF ACTION
(Breach of Fiduciary Duty)**

44. Pursuant to section 5.5 of the Amendment to the Declaration of Protective Covenants, Conditions and Restrictions for Litchfield Plantation, Litchfield Plantation Company had control of the affairs of the Plaintiff from the enactment of the Amendment to the Declaration of Protective Covenants, Conditions and Restrictions until February 26, 2011. Due to Litchfield Plantation Company's right to control the Plaintiff and Litchfield Plantation Company's actual control of the Plaintiff during that time, Litchfield Plantation Company owed fiduciary duties to the Plaintiff to avoid conflicts of interest, and act in good faith and with due care with respect to the Plaintiff's interests.

45. Litchfield Plantation Company exerted its control over the Plaintiff and took money from the Plaintiff for use in paying the expenses of Litchfield Plantation Company and in return gave the Plaintiff various Notes.

46. The decision to take the Plaintiff's money was made by Board Members who were officers and directors of both Litchfield Plantation Company and the Association who had conflicts of interest and who were because of those conflicts of interest were prohibited from voting to take the Plaintiff's money for the use and benefit of Litchfield Plantation Company.

47. The decision to take the Plaintiff's money in exchange for the \$75,000.00 Note, the \$50,000.00 Note and the \$20,000 Note referenced in paragraph 18 above were made by a Board elected by Litchfield Plantation Company that consisted solely of two (2) members both of whom were officers and directors of Litchfield Plantation Company. The Covenant that govern the Plaintiff require that its Board contain five (5) members. The decision by Litchfield Plantation Company to take those moneys was illegal and invalid due to a lack of a valid board for the Plaintiff, lack of a quorum for the Board of the Plaintiff and the conflict of interest of the members elected to the Plaintiff's Board by Litchfield Plantation Company.

48. Litchfield Plantation Company concealed its decision to take the Plaintiff's money in exchange for the \$75,000.00 Note, the \$50,000.00 Note and the \$20,000 Note referenced in paragraph 18 from the Plaintiff's property owners by failing to submit budgets showing those transfers and by refusing to have annual meetings of the Plaintiff's membership.

49. The Notes given by Litchfield Plantation Company to the Plaintiff were commercially unreasonable in that they only paid interest at the Prime Rate at a time when Litchfield Plantation Company was in poor financial condition and was a poor credit risk. Notes given by Litchfield Plantation Company to other lenders in arm's length transactions carried interest at rates of 13% and 16% due to its poor financial condition and poor creditworthiness.

50. The Notes given by Litchfield Plantation Company to the Plaintiff were commercially unreasonable in that they did not provide periodic payments and tied up the Plaintiff's funds for a long period of time.

51. The money taken by Litchfield Plantation Company was in direct violation of the section 5.17 (B) of the Covenants that provides that the "Revenues of the Association may be expended to pay costs and expenses of only the Association".

52. The Plaintiff has been damaged by Litchfield Plantation Company's self dealing, conflicts of interest, failure to exercise due care in protecting the Plaintiff's interests and breach of fiduciary duties in connection with the money taken by Litchfield Plantation Company by being deprived of funds in which to operate and by not being given an appropriate rate of interest on the money commensurate with the risk of the loans and is entitled to actual and punitive damages from Litchfield Plantation Company.

WHEREFORE, having fully set forth its Complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and that:

1. The amount due upon the Notes and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorneys' fees and costs of this action;
2. The Plaintiff's Mortgage be declared a first lien and that the Plaintiff has a judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action.
3. The Mortgaged Property be sold under the direction of this Court, the equity of redemption be barred, and the proceeds of sale be applied as follows:
First, to the costs and expenses of the within action and sale;
Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with the attorney's fees as aforesaid; and
Third, the surplus, if any, be distributed according to law.
Fourth, the Plaintiff to have judgment against Litchfield Plantation Company, Inc. for the full amount found to be due on the Plaintiff's Notes and Mortgages, with the right to enter personal judgment against Litchfield Plantation Company, Inc. for any deficiency in this action remaining after the sale of the Mortgaged Property;
4. An Order be entered directing and empowering the Sheriff of Georgetown County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the Mortgaged Property should the same become necessary.
5. An Order be entered for the ejectment of the Defendants in possession herein and all persons claiming thereunder and the removal therefrom of all furnishings, fixtures and items not subject to the lien of the Plaintiff's Mortgage, which personal property, if not removed shall be deemed abandoned and

shall be removed by the Plaintiff or its agents from the Mortgaged Property by placing said property on the public street or highway or by any other means, including by force, if necessary.

6. An Order granting the appointment of a receiver should it become necessary, to secure and supervise the rental of the property to be foreclosed with the authority to take possession thereof and collect rents, issues and profits thereon during the pendency of this action and to hold the same as further security for Plaintiff's debt;

7. An Order to be entered for reimbursement of all costs of inspecting and securing the property incurred by the Plaintiff as a result of the delinquency; and

8. The Defendant(s), and all persons whomever claiming by and through said Defendant(s), be forever barred of right, title and interest of, in and to the Mortgage Property and Collateral, and each and every part thereof; and

9. Judgment for actual damages on the Plaintiff's Third Cause of Action; and

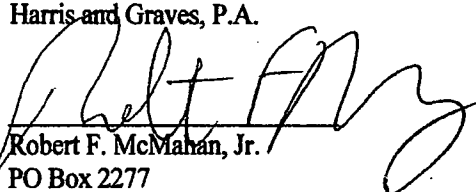
10. Judgment for actual and punitive damages on the Plaintiff's Fourth Cause of Action; and

11. Judgment for actual damages on the Plaintiff's Fifth Cause of Action; and

12. Judgment for actual and punitive damages on the Plaintiff's Sixth Cause of Action; and

13. An Order be entered for such other and further relief as this Court may deem just and proper.

Harris and Graves, P.A.



Robert F. McMahan, Jr.

PO Box 2277

Conway, SC 29528

(843) 234-2390

Attorney for Plaintiff

Date: April 9, 2012

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Litchfield Plantation Association, Inc.,

Plaintiff,

vs.

Litchfield Plantation Company, Inc.;
Louise P. Parsons; South Carolina
Department of Revenue; BDC Capital,
Inc. FKA BDC Capital, LLC; Allan L.
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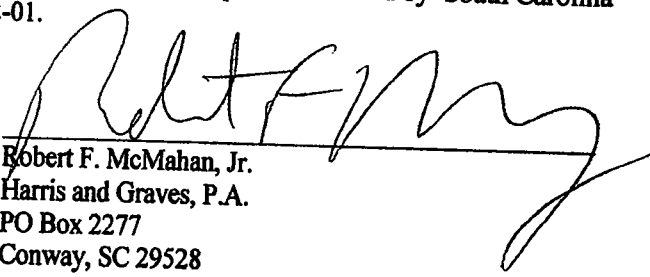
IN THE COURT OF COMMON PLEAS
CASE NO.

**CERTIFICATE OF EXEMPTION FROM
ADMINISTRATIVE ORDER**

2011-05-02-01

(Non-Owner Occupied dwelling)

The undersigned attorney for the Plaintiff has reviewed one or more of the following records: tax records, affidavits of service or non-service, other documents or information provided by the Plaintiff or other persons with knowledge as to the occupancy status of the dwelling that is the subject of the above-captioned action. Upon information and belief, the dwelling is not "Owner-Occupied" as defined by South Carolina Supreme Court Administrative Order 2011-05-02-01.


Robert F. McMahan, Jr.
Harris and Graves, P.A.
PO Box 2277
Conway, SC 29528
(843) 234-2390
Attorney for Plaintiff

Columbia, South Carolina
April 9, 2012

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

Litchfield Plantation Association, Inc.,

Plaintiff,

vs.

Litchfield Plantation Company, Inc.;
Louise P. Parsons; South Carolina
Department of Revenue; BDC Capital,
Inc. FKA BDC Capital, LLC; Allan L.
Kidston; First National Bank of South
Carolina; Lawrence A. Shapiro; Info
Quest, Inc.; Small Luxury Hotels
of the World Limited; and Litchfield
Plantation Buyout Group, LLC.,
Defendant(s).

LIS PENDENS

2012CP2208341

ALMA Y. WHITE
CLERK OF COURT

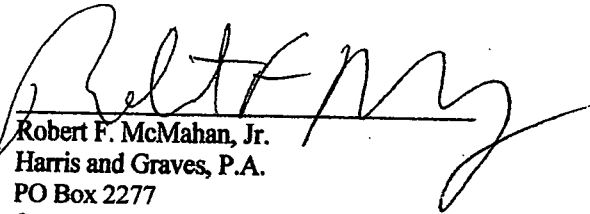
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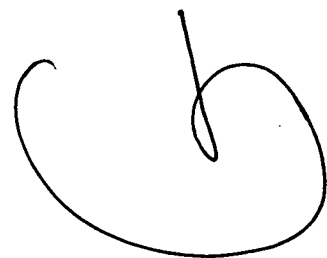
NOTICE IS HEREBY GIVEN THAT an action has or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendants for the foreclosure of a certain mortgage of real estate given by Litchfield Plantation Company, Inc. to Litchfield Plantation Association, Inc., dated June 1, 2010, and recorded June 1, 2010, in Book 1487, at Page 258, in the Office of the Register of Deeds for Georgetown County. The real property covered and affected by the said mortgage and by the foreclosure thereof were, at the time of the making thereof and at the time of the filing of this notice, described as follows:

All that certain piece, parcel or lot of land lying, being and situate in Tax District Number Four, County of Georgetown, State of South Carolina, shown as "7.35 AC." on a plat entitled "MAP OF LITCHFIELD PLANTATION COMPANY, INC. AND RESOURCES PLANNING CORPORATION," prepared by Powers and Associates Surveyors, Inc. dated February 23, 2005, and filed of record May 3, 2005, in the Office of the Register of Deeds for the County of Georgetown in Plat Slide 543, at Page 1 through 3, and more particularly shown on that plat entitled "Plat of 7.35 acres in Litchfield Plantation, Waccamaw Neck" surveyed for Litchfield Plantation Company, Inc., prepared by Powers Land Surveying, dated June 7, 2011, and recorded in Plat Slide 735, at Page 7B, in the Office of the Georgetown County Register of Deeds, State of South Carolina.

Being a portion of TMS No. 4-413-1


Robert F. McMahan, Jr.
Harris and Graves, P.A.
PO Box 2277
Conway, SC 29528
(843) 234-2390
Attorney for Plaintiff

April 9, 2012



A handwritten lowercase letter 'b' with a vertical line passing through its center. The letter is formed by a single continuous stroke that starts at the top, curves down and to the left, then loops back up and to the right to complete the 'b' shape. The vertical line is a separate stroke that intersects the loop.

1

5. The Defendant does not have sufficient knowledge to admit or deny the allegations contained in Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, or 15.
6. The allegations of Paragraphs 13, 14, and 16 call for conclusions of law to which the Defendant is not required to admit or deny.
7. Paragraph 17 is a pleading paragraph requiring no response from the Defendant. To the extent it asserts any delict on the part of the Defendant, those allegations are denied and strict proof demanded thereof.
8. As to the allegations of Paragraphs 18, 19, 20, Defendant craves specific reference to the referenced Notes and Mortgage. Defendant denies any interpretation or characterization of those documents that may conflict with the actual terms and conditions set forth within those documents.
9. The allegations of Paragraph 21 call for conclusions of law to which the Defendant is not required to admit or deny.
10. As to the allegations of Paragraph 22, Defendant craves specific reference to the referenced Mortgage. Defendant denies any interpretation or characterization of those documents that may conflict with the actual terms and conditions set forth within those documents.
11. The allegations of Paragraph 23 are denied and strict proof demanded thereof.
12. The allegations of Paragraph 24 call for conclusions of law to which the Defendant is not required to admit or deny.
13. As to the allegations of Paragraph 25, Defendant craves specific reference to the referenced Notes and Mortgage. Defendant denies any interpretation or characterization of those documents that may conflict with the actual terms and conditions set forth within those documents.

14. Paragraphs 26, 27, and 28 are pleading paragraphs requiring no response from the Defendant.
To the extent it asserts any delict on the part of the Defendant, those allegations are denied and strict proof demanded thereof.
15. As to the allegations of Paragraph 29, Defendant craves specific reference to the referenced Notes and Mortgage. Defendant denies any interpretation or characterization of those documents that may conflict with the actual terms and conditions set forth within those documents.
16. The allegations of Paragraph 30 are denied and strict proof demanded thereof.
17. As to the allegations of Paragraph 31, Defendant craves specific reference to the referenced Deed. Defendant denies any interpretation or characterization of the document that may conflict with the actual terms and conditions set forth within the document.
18. The allegations of Paragraphs 32, 33, 34, 35, and 36 are denied and strict proof demanded thereof.
19. As to the allegations of Paragraph 37, Defendant admits that it has sold more than 100 Lots from January 1, 2005 through December 31, 2010.
20. The allegations of Paragraphs 38, 39, and 40 are denied and strict proof demanded thereof.
21. As to the allegations of Paragraph 41, Defendant craves specific reference to the Amended Declaration and denies any interpretation or characterization of the document that may conflict with the actual terms and conditions set forth within the document.

The allegations of Paragraphs 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 are denied and strict proof demanded thereof.

FOR A THIRD DEFENSE

- 22. The Defendant reiterates and re-alleges all of the foregoing allegations and defenses as if fully repeated herein.
- 23. The Complaint fails to state facts sufficient to constitute a cause of action and must be dismissed pursuant to SCRCR Rule 12 (b)(6).

FOR A FOURTH DEFENSE

- 24. The Defendant reiterates and re-alleges all of the foregoing allegations and defenses as if fully repeated herein.
- 25. Some or all of Plaintiff's causes of action and allegations are barred by the Statute of Limitations.

FOR A FIFTH DEFENSE

- 26. The Defendant reiterates and re-alleges all of the foregoing allegations and defenses as if fully repeated herein.
- 27. Defendant pleads Laches as a complete and affirmative Defense.

FOR A SIXTH DEFENSE

- 28. The Defendant reiterates and re-alleges all of the foregoing allegations and defenses as if fully repeated herein.
- 29. Defendant plead Plaintiff's unclean hands as a complete and affirmative defense.

FOR A SEVENTH DEFENSE

- 30. The Defendant reiterates and re-alleges all of the foregoing allegations and defenses as if fully repeated herein.
- 31. Defendant pleads Plaintiff's contributory negligence as a complete and affirmative defense.

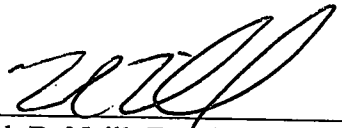
FOR A EIGHTH DEFENSE

32. The Defendant reiterates and re-alleges all of the foregoing allegations and defenses as if fully repeated herein.
33. Defendant pleads Plaintiff's comparative negligence as a complete and affirmative defense.

FOR A NINTH DEFENSE

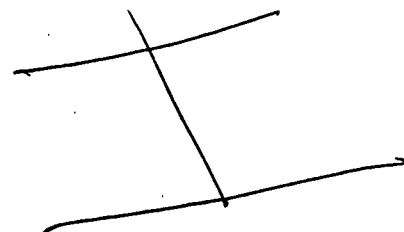
34. The Defendant reiterates and re-alleges all of the foregoing allegations and defenses as if fully repeated herein.
35. Defendant pleads payment as a complete and affirmative defense.

NEILL LAW FIRM, PA



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Dated: 5/30, 2012
Murrells Inlet, South Carolina





STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN COURT OF COMMON PLEAS
2011-CP-22-00319

Litchfield Plantation)
Associates, Inc., et al.,)
)
PLAINTIFFS,)
vs.)
)
Litchfield Planation)
Company,)
)
DEFENDANT.)
_____)

TRANSCRIPT OF RECORD

April 19, 2012
Georgetown, South Carolina

BEFORE:

The Honorable Larry B. Hyman, Jr., Judge

APPEARANCES:

BY: Robert F. McMahan, Jr, Esquire
Douglas C. Baxter, Esquire
Attorneys for Plaintiffs

BY: Mark D. Neill, Esquire
Attorney for Litchfield Planation Company

BY: Robert S. Shelton, Esquire
William H. Monckton, IV, Esquire
Attorneys for E. Scott Trotter

BRENDA R. BABB
Circuit Court Reporter

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1 The Court: Litchfield Plantation, okay, and it
2 looks like we've got nine motions on that and so that the
3 Clerk can keep up with what we're doing let's try to take
4 them in the order they're filed unless you attorneys tell
5 me that there's some that may, motions that may make other
6 motions moot.

7 Mr. McMahan: Judge, there is a mootness with
8 three motions on the same issue. Mine is the oldest which
9 was filed last June and there is my motion for summary
10 judgment. There's Mark's motion for summary judgment and
11 then I filed a separate motion for summary judgment on the
12 grounds of mootness.

13 The Court: All right, I see there's some
14 discovery motions as well. I tell you what, I see here we
15 have a motion to dismiss and a partial summary judgment due
16 to mootness, that was filed January of 2012, but you tell
17 me there's something older than that.

18 Mr. McMahan: Yes, sir, there's one filed in
19 June of 2011.

20 The Court: I see one in --

21 Mr. McMahan: That is my motion for summary
22 judgment.

23 The Court: June of 2011 that's the last one
24 that's on here, that would be number eleven, we'll take
25 that one up first then.

1 Mr. McMahan: Thank you.

2 Mr. Neill: Judge, actually if I could have just
3 one second, there's another issue, I think, that covers
4 this whole thing that we need to deal with and you may
5 remember it from the last time we were here. We have my
6 motion for summary judgment with regards to the termination
7 of the Class B voter rights and Your Honor ruled that those
8 rights had not been terminated. We presented an order
9 which we passed up to you which we haven't gotten signed
10 back yet. We had an issue between myself and Mr. McMahan -
11 --

12 The Court: How long ago was that order signed?

13 Mr. Neill: It wasn't signed, we've sent it to
14 you a couple of times, Judge. It's been probably six
15 months.

16 The Court: Well that order is lost somewhere
17 then.

18 Mr. McMahan: Your Honor, it was sent by email
19 at the end of December. I also sent an email objecting to
20 the order because it differed from what you had said in
21 Court. I believe Mr. Neill's wife, who's also an attorney,
22 sent a follow up email to you and that would have been in
23 early January of this year and there's never been a
24 response to that, any of those emails or that order.

25 The Court: Taylor is looking for it now.

1 Mr. McMahan: Late December or early January.

2 Mr. Neill: Judge, if I may?

3 The Court: Yes, you have a hard copy of it? I
4 apologize, gentlemen, somehow that has fallen through the
5 cracks. Well that's the motion that's item number 11, is
6 it not?

7 Mr. McMahan: No, sir, Your Honor, that motion
8 that I filed in June is a two-part motion and as you may
9 remember that motion was scheduled to be heard by you in
10 September; and what happened was that Scott Trotter
11 intervened in the action on a late basis solely on one
12 issue which was the board election in February of 2011.
13 You deferred hearing that motion because Mr. Trotter had
14 simply just intervened but heard one half of that motion
15 which was the Class B rights, so the remainder of one half
16 of my motion from June 2011 has never been heard and that
17 has to do with the composition of the board.

18 The Court: Okay.

19 Mr. McMahan: And that would be oldest pending
20 motion.

21 The Court: All right, have you, counsel, had an
22 opportunity to look at this order here?

23 Mr. McMahan: Yes, sir, and I essentially sent
24 you an email stating my objections to it and I think this
25 is, even though it's not on your roster certainly the

1 issues in that order you anticipated to be raised at this
2 point because you had requested that we provide an
3 accounting to the defendant which we did at your request.
4 It was in the transcript and so we went ahead and gave them
5 that and that accounting we're actually not sure what their
6 position is regarding the accounting but we don't believe
7 that that order accurately states what you ruled in Court
8 nor do we believe that that order is proper for a couple of
9 different reasons.

10 The Court: Okay, all right. Why don't we do
11 this, why don't we hear your objections to the proposed
12 order on the first half then we'll move on to the second
13 half of the, of that motion, okay.

14 Mr. McMahan: Thank you, Your Honor, if you turn
15 to tab nine ---

16 Mr. Neill: Judge, I'm sorry to interrupt, I'm
17 just trying to cut it short if I can. We've got that
18 accounting now and because we have this accounting giving
19 basically all the costs that they claim are owed what may
20 be best because obviously we don't have a dispute with
21 regards to the Class B voting rights were terminated. It's
22 clear that that's what Your Honor ordered they were not, so
23 after that took place basically the HOA, despite our
24 request, had never provided us with an accounting of what
25 we owed them. They say it was, you owe us money, you can't

1 exercise your Class B voting rights, that's the end of it.

2 We sent discovery ---

3 The Court: And you were trying to find out what
4 it was.

5 Mr. Neill: Right, so Your Honor ordered an
6 accounting, I have that accounting now, okay? What I'm
7 thinking that we could try to shortcut some of this is if
8 we can kind of go through and address this accounting, we
9 can figure out what numbers are legitimate, which numbers
10 are not, and then my clients are prepared to pay that money
11 to restore their voting rights which renders the remaining
12 portion of this case moot because then we get what we need
13 cause the rest of the case deals with who's the board and
14 whatever the board is now, That would actually set a
15 dollar figure that says this is what you owe the HOA which
16 we can finally pay to get our rights back. That's where
17 the problem is, we've been trying to exercise our rights
18 and we ask them how much do we owe you and they say well
19 we've never bothered to figure it out. Now we've got this
20 accounting that tells us, I have some issues with the
21 accounting because it doesn't comply with what's in the
22 covenants and restrictions and if we deal with those issues
23 and come up with that number we may not even have to get
24 into any of the rest of this.

25 Mr. McMahan: Well, Your Honor, there are other

1 issues in this case that don't have anything to do with the
2 accounting and the board election at the time is certainly
3 is still an issue regardless. In addition, Mr. Neill has
4 sued the board members personally and they're three motions
5 here about his counterclaim suing the board members
6 personally which is why Doug Baxter is here because there's
7 coverage in the triggered coverage and so Doug is in for
8 the carrier. So the accounting issue certainly will
9 resolve part of the case but certainly not all of the case
10 unless they're willing to drop the counterclaims against
11 the board members and the homeowners association.

12 Mr. Neill: And that may be the case. If we
13 have this figure and we have the Judge's order saying this
14 is the figure, we may not have to worry about those
15 counterclaims at this point.

16 The Court: Do you gentlemen need a status on
17 this?

18 Mr. McMahan: Yes, probably, Your Honor.

19 The Court: Is that what you need before we
20 argue your motions, ya'll need a status on it?

21 Mr. Neill: Judge, what I really need to get is
22 a number. The problem we've got is, as we talked about
23 last time, Litchfield Plantation Company is, we're doing a
24 debt restructure with this company. In order for us, this
25 is the last piece of the puzzle we need to restructure the

1 debt over there, is we need to know what is it that we owe
2 the HOA so we can get our voting rights back so that we can
3 do this debt restructuring; because a debt restructuring
4 will not go through with us not being in control of the
5 development rights for that property. So that's what I
6 really need right now is I need that number so that we can
7 go ahead and pay it and get back in control.

8 The Court: What's in dispute?

9 Mr. McMahan: I don't know, Your Honor, they
10 haven't told us.

11 Mr. Neill: And that's why I'm ready to go
12 through with it, Judge.

13 The Court: All right, well let's hear --

14 Mr. McMahan: The accounting is in tab one of
15 the notebook, Your Honor.

16 Mr. Neill: And, Judge, I can hand them up to
17 you, I've got them in order, if it makes it easier for you.

18 Mr. McMahan: My cover letter sending the
19 accounting to Mr. Neill you had requested me to do that in
20 sixty days which I did, the accounting follows that with
21 the pleading showing all the amounts that are due.

22 The Court: All right.

23 Mr. Neill: Okay, Judge, and what I'm going to
24 do is I think the easiest way to do this is go down it line
25 by, line item by line item and if you have, it looks like

1 this, Judge, it's kind of a chart, kind of breaks down what
2 they claim is owed to the HOA.

3 The Court: All right, is that in their
4 documents? Is that what I have right here?

5 Mr. McMahan: The accounting is, yes.

6 Mr. Neill: Yeah, I think it would be easier ---

7 The Court: Okay, all right, good, all right.

8 Mr. Neill: We finally have received the number
9 from the HOA as to regards to what the shortfall was. That
10 is that 119,148 number, okay? The issue, of course ---

11 The Court: And essentially that's what the
12 Class B has to pay.

13 Mr. Neill: Correct, that's right, Judge.
14 Now, the issue that we have with regards to this is they
15 did it wrong. Now luckily the accountant that they had do
16 it did it right; they just chose the wrong number. The
17 amended bylaws for Litchfield Plantation are very clear,
18 calculation of the shortfall based on a cash basis. The
19 accountant who did the deficit funding shortfall actually
20 calculated it two ways, one on accrual basis, one on a cash
21 basis. Not surprisingly the HOA picked the higher of the
22 two numbers and sent that to us as the accounting. We
23 didn't get this number initially when they sent us the
24 accounting, we had to get the backup documents behind it to
25 show it.

1 The Court: So basically you're saying that the
2 true numbers should be 102,463?

3 Mr. Neill: Correct, that's right, Judge, yeah.

4 The Court: And it's not a matter of the
5 beginning numbers so much as it is a way that you look at
6 those numbers?

7 Mr. Neill: That's right, Judge, and they, and
8 they specifically provide in the bylaws how we're supposed
9 to look at them.

10 The Court: All right, tell me about that. He
11 says that, you know, what we're looking at here is the
12 difference of less than \$17,000 and we have the, the, the
13 issue resolved?

14 Mr. McMahan: Your Honor, we don't believe this
15 was all because the accountant himself is given an opinion
16 that the proper number is the \$119,000 number.

17 The Court: Have you seen this?

18 Mr. Neill: I have, Judge.

19 Mr. McMahan: And the accountant went through,
20 and here was a problem, to calculate the shortfall on a
21 cash basis was an incredible amount of work for the
22 accountant. He had to go through a year and a half of
23 checks, receipts, payments, and everything that was done.
24 So what he did was he went through the statements that were
25 done on an accrual basis and then looked at the statements

1 and reached a determination of what actually should be
2 adjusted to take into account a cash basis which saved
3 thousands of dollars worth of accounting time in order to
4 establish how much money was actually owed. So Mr. Dietz
5 sends us a letter and says that this, if you look at the
6 last paragraph of his letter, in his professional opinion
7 based upon, and we gave him the covenants, he had
8 everything, the calculation, the sections of the covenants
9 that says how to do it and it's his opinion it's \$119,000.

10 Now if there is a factual dispute as to the
11 amount of this accounting then I'm not sure that this is
12 the proper time and place to resolve that because we have
13 witnesses that we would like to call and at this point in
14 time on a basis for summary judgment I don't think we have,
15 and we don't have the witnesses here, and it's something
16 that, you know, should be resolved. Now we have actually
17 filed a lawsuit to collect this money on behalf of our
18 homeowners association and that lawsuit is a separate
19 action and it also seeks a mortgage foreclosure. It names
20 the defendant as a party, and as with all mortgage
21 foreclosures we are seeking a reference to the Master in
22 Equity here in Georgetown County to calculate and establish
23 the amounts owed which include every element of this
24 accounting. So if they are going to raise factual disputes
25 as to the amount of the accounting or the proper way to do

1 it there has to be an evidentiary hearing for that.

2 The Court: How about that, Mr. Neill, I mean
3 how can I make a ---

4 Mr. Neill: Judge, there is no factual dispute.
5 I'm using their expert, their numbers. I'm not looking
6 behind the numbers. All I see is a chart that says on
7 accrual basis this is what it is and on a cash basis this
8 is what it is and then I look at the bylaws and the bylaws
9 says we have to do it on a cash basis. That's not a
10 factual dispute. I'm not disputing that the 102 is wrong
11 under the cash basis. I'm just saying that's what their
12 own accountant said was owed under a cash basis which is
13 exactly what the bylaws say. There's not a factual dispute
14 though, Judge.

15 The Court: You know I'm looking at Mr. Deitz's
16 letter here and he seeks to explain his reasoning behind
17 the calculation of the operating fund deficit and he says
18 on a "pure cash basis," "on a pure cash basis the
19 associates had a fund surplus of \$18,887 as of December the
20 31st of 2011", that's on a pure cash basis, and this again,
21 "surplus equals the balance in the association's operating
22 bank account at that date and was from funds accumulated
23 from the period of April 1st of 2010 through December the
24 31st of 2011." So he's saying that on December the 31st of
25 2011 the association had a surplus of almost \$19,000, okay?

1 Then he goes on and he says, however, in order to be "fair
2 the following items must be considered, \$17,627 was
3 expended before December 31st, 2011, for prepaid insurance
4 and other prepaid expenses which benefit future periods."
5 So he's saying we had paid for insurance for a future
6 period. They had paid in advance essentially,
7 "consequently this amount must be added to the surplus at
8 December 21st of 2011." So he said to that \$18,887 we
9 should add 17,627. Then he goes on to say "16,694 of the
10 2012 assessments were received before December 31st of 2011
11 and these funds properly relate to future periods." So
12 that amount should be deducted, so we should take \$18,887
13 which was the balance, add to it \$17,627 which was paid,
14 prepaid insurance, let me put it that way, but "we should
15 subtract \$16,694 which was actually 2012 assessments that
16 we had on hand on December the 31st, that were received
17 early," so we should take that back out.

18 He also says that "\$17,618 of the 2011 expenses
19 were not paid before year end and that these amounts should
20 be consequently deducted from the surplus because they're
21 going to be expenses, and then he says \$121,350 of excess
22 assessments was received," excess assessments, I have never
23 known a HOA to have excess assessments, but they had
24 "excess assessments was received from homeowners before
25 December 31st, 2011, and these funds were improperly

1 assessed to homeowners on July the 1st of 2011, and
2 consequently this amount must be deducted from the
3 surplus." So what they're doing is saying we overcharged
4 the homeowners, right?

5 Mr. McMahan: Not necessarily, not exactly, Your
6 Honor.

7 The Court: Or we've got excess.

8 Mr. McMahan: Here's what happens, these
9 documents have a cap on how much money the homeowners are
10 supposed to be allowed to be assessed in a given year.
11 When the developer ran out of money and the homeowners
12 association was faced with the prospect of having to shut
13 down all services there was a second assessment rendered to
14 the homeowners that was in excess of the cap.

15 The Court: Do they propose to return that or to
16 give a credit for it?

17 Mr. Neill: If, if the developer chooses to pay
18 something certainly that is our intention; but the excess
19 assessment was what the homeowners used to fund the
20 homeowners association because the developer admittedly, by
21 his own statements said they couldn't pay it, and rather
22 than shutting down the gate guards and the security and not
23 being able to have landscaping and insurance and all of the
24 things that homeowners association need, the homeowners
25 voluntarily, we sent an assessment out. We told them we

1 have a choice, we can either pay or we can shut them down,
2 and that was over the cap that was established by the
3 documents.

4 The Court: All right, so, Mr. Neill, if I
5 understand Mr. Deitz, what he's saying is we had \$18,887 on
6 hand and we had paid or prepaid insurance in the amount of
7 \$17,627 so that comes to about, what, about \$37,000,
8 however, however, we had received early assessments, some
9 people had paid early in the amount of 16,600 and, excuse
10 me ---

11 Mr. McMahan: I can explain that, Your Honor, if
12 you'd like me to.

13 The Court: Wait a minute, I got it in my mind
14 just give me a second.

15 Mr. McMahan: Yes, sir.

16 The Court: He says that there was \$16,694 which
17 were assessments that were received early and so you
18 shouldn't count those as your surplus, so that should come
19 off which would bring it back down to around \$20,000, ball
20 park; and also there were \$17,000, \$17,618 that have not
21 been paid that they owe and that that should come off as
22 well which, you know, you bring it down to your actual
23 surplus of about \$3,000 and in addition to that there had
24 been an excess assessment of \$21,000. So if you subtract
25 that the, the homeowners association was about \$119,000 in

1 the hole and that's what Mr. Deitz is saying.

2 Mr. McMahan: That's right.

3 The Court: So your position is it doesn't make
4 any difference what's been paid or what hasn't been paid we
5 just look at what cash is there?

6 Mr. Neill: Well, no, sir, it's the cash set of
7 accounting and I'm not, I'm not saying that there was truly
8 an \$18,000 surplus because that's not the opinion that the
9 accountant gave. He just said when he did these same
10 calculations based on a different set of rules, a cash
11 based accounting, he came up with a deficit of 102, okay?
12 The bylaws are specific, that is the method that must be
13 used in order to determine that shortfall amount, okay?

14 The Court: You know what that kind of sounds
15 like, though, it kind of sounds like you said I took the
16 excess assessment and I subtracted what cash I had left.

17 Mr. Neill: I would agree, Judge, I think that's
18 exactly what he did.

19 The Court: And that's how we get 102.

20 Mr. Neill: Because that's what the bylaws
21 provide.

22 The Court: And you're of the opinion that when
23 you say "on a cash basis" you don't consider how much you
24 still owe for that year, anything like that?

25 Mr. Neill: That's just what the IRS accounting

1 rules are, Judge, I don't make them. I just want them to
2 follow them.

3 Mr. McMahan: Your Honor, let me tell you what
4 happened, we got down to the end of the fiscal year and
5 there wasn't enough money to get us through December and so
6 we went to the homeowners and said we're going to have a
7 hard time paying the salaries for our people at December
8 unless some people who are due, supposed to pay in January
9 send their money early; and they did that because they
10 didn't want to shut down our homeowners association and
11 that's why there's this advanced payment of \$16,000..
12 That's properly not supposed to be in that year; and there
13 needs to be a factual record, if they're going to dispute
14 this accounting then we have to have a hearing where the
15 accountant gets to testify regarding how he did this; and
16 all we're saying is that we don't think this is the proper
17 forum in which to do that. There has to be some ---

18 The Court: And I agree with you, but wouldn't
19 you agree that what we're talking about here is about
20 \$17,000?

21 Mr. Neill: I would, Judge, and that's going to
22 be the next thing, depending on how we deal with these
23 other items this first item may not be a problem.

24 The Court: Well, you know, you're going, it's
25 already the subject of a separate action. If you pay too

1 much you're going to get it back. Looks to me like the
2 homeowners that ponied up an additional \$121,000, that they
3 may be entitled to get a credit back or it looks that way
4 to me.

5 Mr. Neill: They might be, but that's the
6 homeowners association's.

7 The Court: They have ponied up and you're
8 telling me that your Class B shareholders or members
9 shouldn't pony up \$17,000.

10 Mr. Neill: No, sir, I'm not telling you that;
11 I'm just telling you what the rules are ---

12 The Court: I understand.

13 Mr. Neill: --- and, and, and I want them to
14 follow the rules, that's all. I don't want to overpay if I
15 don't have to.

16 The Court: And I think that's an issue, that's
17 an issue for another day. What I'm trying to do here,
18 while this action is pending, is do what I can to make sure
19 everybody is treated fairly. I want you to have your
20 voting rights.

21 Mr. Neill: Right.

22 The Court: But I don't want the, the homeowners
23 association to suffer if, in fact, they are entitled to
24 \$121,000 as opposed to \$102,000. I'm trying to strike a
25 balance here that's the fairest thing I can do right now to

1 preserve this status quo and that's what I want to do. Now
2 ---

3 Mr. Neill: Why don't we deal with the other
4 categories, Judge, because if the other categories play out
5 that may not be a big deal.

6 The Court: Well let's look at them then.

7 Mr. Neill: The second one is a failure to fund
8 a capital reserve account per 5.18 of the covenants and
9 restrictions. That was a restriction that had a provision
10 in it whereby if a purchaser purchases a lot from the
11 developer the purchaser pays a capital contribution into
12 the HOA, okay? At this point I'm not sure whether we know
13 that that's been paid or not, whether those were collected
14 when those lots were sold regardless, but in any event ---

15 The Court: But isn't that a bulk sale
16 purchaser?

17 Mr. Neill: It's the purchaser who pays it, not
18 the developer, not the seller, it's the purchaser's
19 obligation to pay it.

20 The Court: Have there been any?

21 Mr. Neill: Well there's been 101 of them that
22 were required over the last five years, but my point is not
23 really about those. It's the obligation to pay that is on
24 the purchaser, it's not on the seller. It's not on the
25 Litchfield Plantation Company to pay that, it's on the

1 purchaser's obligation to pay it pursuant to the covenant.

2 The Court: All right, sir.

3 Mr. Neill: So that's why we're looking to
4 strike that number off because it's simply not money that
5 we owe. If the owners didn't pay it the HOA needs to get
6 it from them.

7 The Court: Talk to me about that.

8 Mr. McMahan: Yes, Your Honor, first I would
9 direct you, of course ---

10 The Court: All right, first of all let me, let
11 me ask you this, gentlemen, is there any dispute that those
12 hundred and some sales were from a "bulk" sale?"

13 Mr. McMahan: No, I don't believe any of them,
14 well some of them may have been to Mr. Trotter but it
15 doesn't matter, Your Honor. Here's the way it's supposed
16 to work, when the defendant sales real estate they're
17 supposed to collect one years assessment ---

18 Mr. Neill: No, sir, the HOA collects that.
19 Litchfield Plantation Company ---

20 Mr. McMahan: Let me finish, don't interrupt and
21 I'll show you where I'm coming with this. The HOA has no
22 ability to collect money from a real estate sale between
23 the defendant and a third party.

24 The Court: But they certainly do as to a
25 particular lot, they have a right of foreclosure.

1 Mr. Neill: They're required under the statute
2 to provide a certificate.

3 Mr. McMahan: They have admitted that they have
4 the duty to collect that money and I would direct you to
5 tab number eight of the notebook that I provided to you
6 which is the affidavit that was actually submitted by the
7 defendant Scott Trotter in connection with this case and
8 filed with this Court. In paragraph twenty-three of that
9 affidavit, which I believe if you go over on page seven,
10 states on behalf of Litchfield Plantation Company and Mr.
11 Trotter had a handout that he distributed to all of the
12 homeowners. You see where I'm from the highlighted section
13 on the top part. Now that handout, if you turn to the blue
14 tab, is a memorandum that is prepared by Charles Nations
15 [sic] who is the defendant's lawyer at the time.

16 Mr. Neill: Also the attorney for the
17 association, Your Honor.

18 Mr. McMahan: Mr. Nations [sic] and by the
19 defendant for getting this document and memorandum prepared
20 distributing it to the homeowners on behalf of the
21 defendant and filing it with this Court on behalf of the
22 defendant has adopted the contents of that memorandum and
23 that is adopted admission under 801(d)(4) of the Rules of
24 Evidence of South Carolina.

25 Now if you turn over on that memorandum from

1 Charles Nations [sic] to page eight.

2 The Court: To page what?

3 Mr. McMahan: Eight, now you see the highlighted
4 section in the middle.

5 The Court: I do.

6 Mr. McMahan: The first statement says "the
7 declarant, that is the defendant, has an obligation under
8 the covenants to fund the reserve account with deposits
9 equal to one third of the working capital assessments."

10 Now that's their attorney and their admission
11 stating that they had the obligation to fund this working
12 capital assessment and it's never been funded. It's
13 63,000, I took the number that we put in the accounting,
14 Your Honor, directly from Charles Nations' memorandum which
15 is directly from the affidavit filed by this defendant and
16 directly from the memorandum that was distributed on behalf
17 of this defendant to all of the homeowners.

18 The Court: So you're saying that this
19 highlighted section by implication requires ---

20 Mr. McMahan: It's an admission.

21 The Court: --- the collection of the working
22 capital assessment which is the twelve months --

23 Mr. McMahan: One year's assessment.

24 The Court: One year's assessment.

25 Mr. McMahan: One third of which ---

1 The Court: That's due on a bulk sale.

2 Mr. McMahan: Not on a bulk sale on any sale.
3 Any time that they sold a lot whether it would be to Mr.
4 Trotter who bought lots in bulk, I believe, or to an
5 individual homeowners the defendant sold the property, had
6 a real estate closing and the defendant was the one who had
7 the duty, I mean they were fiduciaries, Your Honor, they
8 have absolute control of the homeowners association.
9 Remember they have, they ran the board, they had the voting
10 rights. They control everything about this homeowners
11 association. The same president for the homeowners was the
12 same president for the defendant. There's not an
13 independent entity for the homeowners association to
14 protect itself. They sold 101 lots. They collected this
15 money and they didn't put it into the reserve account and
16 it's established by Charles' own memo which has been
17 adopted as an admission by the defendant. So that's why
18 it's in the accounting and the reserve account is empty
19 when we took over. IT didn't have a dime, no, I think it
20 had less than \$1,000 in it, and so we took that number from
21 their memorandum.

22 The Court: All right, what do you say about
23 that?

24 Mr. Neill: Judge, first of all this memorandum
25 is a memorandum from Charles Nations [[sic], as the

1 attorney for the Board of Governors to the Board of
2 Governors regarding Litchfield Plantation. He's not acting
3 in his capacity for Litchfield Plantation Company, okay,
4 and the last time I checked a memorandum from an attorney
5 does not have any affect whatsoever to change the
6 provisions that are provided in Covenants and Restrictions.
7 You know it's very clear as to what the Covenants provide.
8 It's the purchaser's obligation to pay that money. It's
9 the purchaser's obligation to pay it now if it wasn't paid.

10 The Court: Counsel, I just wonder, you know,
11 was the board just sitting on its hands? I mean if it was
12 entitled ---

13 Mr. Neill: And that's part of it, too, Judge,
14 if there was misconduct here remember Litchfield Plantation
15 Company is an owner, they elect, they cast votes to elect
16 people, okay? If things were done that were improper they
17 were done by the Board of Directors for the association.
18 They need to take legal action against them. We're just an
19 entity who casts votes to elect people, okay?

20 The Court: Well but let me, let me finish, what
21 was happening that the, that the board was not doing
22 anything to collect this, this assessment due, this working
23 capital assessment, from people who were buying lots? I
24 mean why wasn't it --

25 Mr. McMahan: We don't believe that's the case,

1 Your Honor. We believe they collected the money and they
2 spent it and they simply did not fund ---

3 The Court: No, I meant the board. I mean
4 doesn't it, wasn't it essentially supposed to go to the
5 Board of Directors for the benefit of the owners of the ---

6 Mr. McMahan: Your Honor, understand that the
7 board here is a fiction. The board that they say they
8 elected consisted of their president and their vice
9 president. That's the only two members of the board at the
10 end of this thing and during the context of all this all of
11 the members of the board that they put on the association
12 board, with the exception of one homeowner for a very short
13 period of time, were officers and directors of the
14 defendant. They would go out and sell real estate; they
15 would collect this money from the people that they sold the
16 real estate to. They simply did not deposit it into the
17 reserve account.

18 The Court: Well where was it supposed to go?

19 Mr. McMahan: It was one-third, the document
20 said that two-thirds of it was supposed to go into the
21 operating account and one-third of it was supposed to go
22 into the reserve account. We didn't count the two-thirds
23 that were supposed to go into the operating account because
24 they were supposed to fund the deficit and so if it went
25 into the operating account it would simply lessen their

1 obligation ---

2 The Court: It was a wash?

3 Mr. McMahan: Right, but the reserve account is
4 a different matter altogether. We have no reserve account
5 and the money that they took from those owners, we can't
6 that money back from those owners

7 Mr. Neill: Judge, there's no evidence that we
8 took any of that money.

9 Mr. McMahan: They collected every bit, we
10 understand, and we've alleged that in the complaint that we
11 filed that will be referred to the Master, that they
12 collected that money and spent it.

13 Mr. Neill: And, Judge, that's a claim.

14 Mr. McMahan: This is a fiduciary duty.

15 Mr. Neill: We'll get to it later.

16 Mr. McMahan: I understand,

17 Mr. Neill: It doesn't affect our voting rights
18 now.

19 The Court: And we're not litigating that, he's
20 just telling me what their claim is, okay?

21 Mr. Neill: And there will be a chance for them
22 to litigate that and if they get a judgment against that
23 and then that actually becomes monies that we owe, then
24 we'll have sixty days to pay it and our voting rights will
25 be suspended again.

1 The Court: What do we need to do to get this
2 association back on track ---

3 Mr. Neill: Let me tell you what we're willing
4 to do.

5 The Court: --- during the pendency of this
6 action,

7 Mr. Neill: Let me tell you what we're willing
8 to do, Judge, okay? Right now we've got a shortfall, we're
9 willing to pay that. I'm pretty sure my clients would say,
10 okay, we'll pay the 119,148, okay.

11 The Court: Okay.

12 Mr. Neill: We've got two notes right now that
13 are due for payment, the two notes on the bottom, 17,887.72
14 and 12,946.48, okay, plus, plus interest.

15 The Court: If you pay that shortfall it should
16 take care of it, shouldn't it?

17 Mr. Neill: That's what we'll do. We'll do it
18 within thirty days and if we do it within thirty days we
19 have an new election, we have a new vote. These other
20 notes that they've got here they don't come due till 2014,
21 but guess what, it benefits the homeowners, too, because if
22 we get in there, get our voting rights back, restructure
23 the cost of our lots they have a chance to actually get
24 that money back to be paid that money. It's a win-win
25 situation for everybody, you know? They've got these other

1 claims that they say we owe the money for. It's not
2 established that those funds are owed. That's the same
3 thing with this beach house. If their litigation is good
4 on that they'll get a judgment against us and if they get
5 it we'll have to pay it or lose our voting rights again.

6 Mr. McMahan: Your Honor, if they get control of
7 the homeowners association the litigation that I have filed
8 will be dismissed because we filed it on ---

9 Mr. Neill: That's not true, so we would have
10 fiduciary obligations.

11 Madam Court Reporter: One at a time, please.

12 The Court: Well wait a minute, wait a minute,
13 wait a minute, did you get everybody's name, Ms. Babb?

14 Madam Court Reporter: I figured it out.

15 The Court: You did, okay, you had asked me to
16 do that and then I was remiss in making sure that was done.

17 Mr. McMahan: And, Your Honor, Mr. Neill's said
18 that the notes are not in default, what I've handed up is a
19 mortgage that they gave us to secure all four of the notes
20 and it states a default in either of the promissory notes
21 shall constitute a default in the notes and a default in
22 the mortgage. This mortgage controls all four of these
23 notes. It's a cross default provision. So when they
24 allowed the two of them to go into default all four of them
25 went into default and that's why the notes amount is on the

1 accounting as amounts due; and remember, Your Honor, with
2 the Court when we ---

3 The Court: But doesn't that get taken care of
4 if they pay up and they pay up the whole amount ---

5 Mr. McMahan: \$900,000.

6 The Court: Well I thought it was 119.

7 Mr. McMahan: That's only one element, that's
8 just the shortfall calculation, Your Honor.

9 The Court: Okay, the \$900,000, I mean are the
10 notes called, are the notes in foreclosure?

11 Mr. McMahan: Yes, sir, and if you look at
12 paragraph one, exhibit number one of my submission to you
13 was a letter that I sent to them calling the notes. All of
14 that has been done and the foreclosure is pending on those
15 notes and the collection action on those notes.

16 The Court: Did you foreclose it?

17 Mr. McMahan: Well we've started the action ---

18 Mr. Neill: This is where we're going to get
19 even more complicated here, okay?

20 First of all these notes were not called until
21 after this accounting had been done, February 6th, okay?
22 We got declaratory judgment action pending as to who the
23 board is, who do we pay to put those, to pay those notes
24 off, who do we pay to protect ourselves. We've got Scotty
25 Trotter who's there saying he's the board. We've got them

1 who say they're the board. I've got to be careful who I
2 pay, so obviously I want to pay that amount and that's what
3 I'm here today to offer. I want to pay those amounts. I
4 want to take those notes out of default and pay them in
5 full, pay them off.

6 The Court: And that's the \$900,000?

7 Mr. Neill: No, just the two notes that are due
8 right now. The other two notes aren't due until 2014. The
9 problem is they want to say, oh, they're cross
10 collateralized. First of all, I don't read that language
11 in here. There's no cross default clauses in any of these
12 notes, okay, none of them, okay, but ---

13 The Court: So you want to pay that in addition
14 to the 119?

15 Mr. Neill: Yes, I want to pay the 17,887 ---

16 The Court: Goodness gracious.

17 Mr. Neill: --- and I want to pay the 1296 and I
18 want to pay the 19, and then if we do that, guess what, the
19 homeowners win because they'll have a chance to collect the
20 rest of the money.

21 The Court: Do you want him to send you a ham
22 with the, with the payment?

23 Mr. McMahan: Your Honor, all we want them to do
24 is to comply with the documents. If you look at tab nine,
25 which is what you based your ruling on when we were in

1 Court last December, they don't get their voting rights
2 back until they have paid all amounts owed to the
3 association.

4 Mr. Neill: All in arrears, Judge, owed in
5 arrears.

6 Mr. McMahan: In this case every amount on this
7 accounting is owed in arrears.

8 Mr. Neill: Here's the next problem, Judge.

9 Mr. McMahan: And then, you know, before we go
10 through and parse it out and distribute there has to be
11 some type of evidentiary hearing about the accounting to
12 figure out what is in arrears. We believe that that
13 accounting, and I bear-boned it, Your Honor, I took only
14 the things that they admitted to or my accountant said,
15 every other item on there were a couple of lines there
16 about the beach house where we had a factual dispute
17 probably; however, in the document that they handed up at
18 the last hearing that said that controlled when they get
19 their money, their voting rights back is when they pay all
20 amounts and that was what you based your ruling on. All
21 amounts is more than the shortfall. All the amounts
22 includes the money they took from us, cause remember these
23 notes, these notes were money that they took from our
24 homeowners association to use to spend to fund up their own
25 business. When all, everything that was on here this

1 reserve the loans that they took, was money that they took
2 that should have gone into our reserve account that they
3 used to fund and spend their own business.

4 The Court: Let's look at this, by your
5 accountant's calculation, and it is disputed I understand,
6 at least as to about \$17,000 of it, by your accountings
7 calculation and they say that they're willing to pay that
8 up, \$119,148 was the shortfall calculated January, excuse
9 me, December 31st of 2011; is that correct?

10 Mr. McMahan: Yes, Your Honor, April through
11 2011.

12 The Court: All right, so and at the end of each
13 year, if I understand it, they're to make up the shortfall,
14 okay, so that's due, right?

15 Mr. McMahan: That's due and actually for this
16 year there will be another shortfall because ---

17 The Court: But that's due in December, correct?

18 Mr. McMahan: Well we had ---

19 The Court: Or whatever your fiscal year is.

20 Mr. McMahan: Right, right. Well there's some
21 dispute about that, too, but I won't go into that now.

22 The Court: Okay, but right now on their, their
23 assessment there's a shortfall and you have a document
24 here, it says "calculation of operating fund deficit
25 funding shortfall \$119," okay, and you're telling me that

1 there are two notes that are presently due. One was due in
2 February of 2012 and has a balance of \$17,887.72 and the
3 other one was due again February 6th of 2012 of \$12,946.48.

4 Mr. Neill: Judge, I think that was the amount
5 due on February 6th. There would be some per diem interest
6 that would be added.

7 The Court: No, no, you're telling me, Mr.
8 Neill, that those are the two notes that are presently due?

9 Mr. Neill: Correct, Your Honor.

10 The Court: Okay, so we're looking at \$30,000?

11 Mr. Neill: Correct. There would be some per
12 diem interest added on between the February 6th and the
13 date that we paid off.

14 The Court: About \$30,000, in the ball park,
15 30,000 may be with change or less. Now but you're saying
16 that you are of the opinion that you're calling a \$621,000
17 note and a \$88,000 note and those notes were dated May of
18 2009 and June of 2009 and you're saying they were due on
19 February the 6th of 2012.

20 Mr. Neill: No, sir, they're not, they're not
21 due until May and June of 2014.

22 The Court: Now were they due or is that the
23 call? Okay, all right ---

24 Mr. Neill: They're not due yet.

25 Mr. McMahan: If you look at the mortgage that

1 they gave us, they wrote it, they drafted it, they say that
2 if one note goes in default they all go into default.

3 Mr. Neill: Judge, here's the other problem.
4 Those two notes right now they don't own them.

5 Mr. McMahan: Well we'll get to that in a
6 minute.

7 Mr. Neill: Those notes ---

8 Mr. McMahan: You stole them from us.

9 Mr. Neill: No, no, no, those notes, those notes
10 were assigned from LPA to the Litchfield Plantation buy out
11 group. I have no opinion at this point whether those notes
12 are, whether those assignments are valid or they are not.
13 All I know is with the Register of Deeds office there are
14 assignments of those notes recorded. I know in this action
15 there has been no contest that those notes are, that those
16 assignments are invalid. They filed a lawsuit last week
17 where he's challenging that, but as of now I get the right
18 to rely on the county documents.

19 The Court: Who owns them?

20 Mr. McMahan: There's a criminal action.

21 Mr. Neill: Rob is going to get to that here
22 when we get done with this, Judge.

23 Mr. McMahan: Your Honor, we believe the
24 assignment was invalid and there's a criminal action
25 pending because of that. There is a General Sessions

1 charge against Rob's individual client for grand larceny.

2 The Court: Well, Mr. McMahan, now do I know
3 somehow your client had the cash?

4 Mr. McMahan: One of these notes is actually the
5 subject of that action.

6 Mr. Neill: And, Your Honor, we filed a motion
7 under Rule 67 to deposit those notes into the Court so they
8 would be kept safe until there is a final determination of
9 who is the rightful owner of those notes.

10 The Court: Well that's a wonderful idea, but
11 let me ask you this, were the two smaller of the notes
12 actually due February 7th?

13 Mr. Neill: No.

14 The Court: Of 2012?

15 Mr. Neill: One, one was due January or, no,
16 January 1st, I believe, of 2010 and the other was due in
17 June of this year, 2012, so they're both past due, Judge.
18 The two smaller notes are past due.

19 The Court: June of this year hasn't arrived
20 yet.

21 Mr. Neill: June of last year, I'm sorry, Judge,
22 June of last year.

23 The Court: Okay, all right, well, counsel, what
24 I want to do is let's get this business continuing here.
25 You know, they're telling me, okay, you should have

1 anticipated receiving the two smaller notes by now.

2 Mr. McMahan: Clearly in default.

3 Mr. Neill: But we don't know who to pay.

4 The Court: They're clearly in default, clearly,
5 clearly. Okay, so let's do what's clearly. They're saying
6 that they're willing, in order to get this thing at least
7 on a temporary basis, resolved and back operating they're
8 willing to pay the notes and the disputed \$119,000,
9 disputed as to the difference between 119 and 102 which
10 they admit they do owe, right?

11 Mr. Neill: Correct, Your Honor.

12 The Court: Okay, all right.

13 Mr. Neill: We're willing, if the ruling of the
14 Court is that we have to pay those two notes plus the 119
15 we'd stipulate to that.

16 The Court: Okay, now tell me what we have
17 before me? You fellows must have read the rule book last
18 week in order to file all of these motions, under, what are
19 you asking me to do here today?

20 Mr. McMahan: Frankly, Your Honor, I don't think
21 this is in the rule book, this is as an occasion of your
22 verbal ruling in December. There's nothing that is in the
23 rule book about the accounting but we believe that if there
24 is a factual dispute as to the accounting there has to be
25 some evidentiary hearing to work this out.

1 The Court: You want me to make the payment of
2 some amount that I deem to be appropriate, a condition upon
3 restoration of the Class B voting rights?

4 Mr. Neill: That's right, that's right, Your
5 Honor, using their numbers, using their numbers.

6 The Court: I just made that ruling. I want you
7 to pay \$17,887.72 for the note that was, that was January
8 note of this year?

9 Mr. Neill: Yes, sir, I'll tell you exactly what
10 they are, that is the July, the 17,887 is the July 21st,
11 2009 note in the original amount of \$20,000.

12 The Court: All right, and then there's a note
13 that was June 1st.

14 Mr. Neill: 2010.

15 The Court: 2000 --

16 Mr. Neill: In the original amount of \$50,000
17 and that balance is 12,000.

18 The Court: You know I don't have a, I'm
19 looking, counsel, at your documents and I have a note dated
20 June 11 or June 1, 2011 being \$12,946.40, is that a
21 misprint?

22 Mr. McMahan: Your Honor, that's just a balance,
23 the face amount of notes were due, the face amount of the
24 notes were and that was just the balance as of the date of
25 the accounting.

1 The Court: All right, so that I clearly
2 understand, the anticipation when all the notes were signed
3 was that the 17,887 would be paid by this date and the
4 12,946.48 would be paid as of this date; is that correct?

5 Mr. Neill: Yes, sir.

6 The Court: Those are the ones that when they
7 were signed there was an expectation on the part of all
8 parties that they would be paid by now, okay, so what I'm
9 going to do is a condition of the restoration of the Class
10 B is require that those to be paid up and the \$119,148 be
11 paid up, okay, and I think what that does is it puts us on
12 a sort of square footing at least as to what was
13 anticipated and expected by everyone as of this date.

14 Mr. McMahan: Your Honor, may we also address
15 the other items in the accounting?

16 The Court: Okay.

17 Mr. McMahan: All right, when you, and I've
18 just, I'm trying to find the capital reserve contribution
19 that they were required to make of the \$63,000 when they
20 collected the money from the property owners and they
21 didn't pay it into the reserve account, is that something
22 that should also be paid?

23 The Court: But doesn't that also go back ---

24 Mr. McMahan: It's already in the other action,
25 Judge, to be dealt with later; it's already in the action.

1 The Court: I understand that, but doesn't it
2 all also wash out eventually if, if it's a, if it's a
3 capital reserve account and there's a shortfall don't they
4 have to pay it up anyway?

5 Mr. McMahan: No, sir, it's a completely
6 separate fund of money. The reserve account is there for
7 capital and a maintenance, not routine maintenance, but
8 major items which is why that account exists and the
9 operating account which funds the day to day operations of
10 the association is a completely separate section.

11 The Court: All right, so that may be funds that
12 on some sort of emergency or major issue basis might be
13 required in the future, okay, and we can revisit that and
14 it's already a part of cause of action.

15 Mr. Neill: We'd have to make that shortfall,
16 Judge.

17 The Court: In fact until an event like that
18 would occur even your folks would not be able to invade
19 that account.

20 Mr. McMahan: Well actually, Your Honor, we have
21 sent, we have just had to make major repairs to a beach
22 house and funded out of the homeowners pockets because of
23 the fact that it was in such poor shape and that also gets
24 down to the next section of the accounting ---

25 The Court: Was that part of that excess

1 assessment?

2 Mr. McMahan: Yes, sir, it came out of the
3 homeowners money, we all did.

4 The Court: Okay, and that was sort of
5 calculated in the ---

6 Mr. McMahan: It was, well we had a budget for a
7 certain amount of money for maintenance and we used it on
8 the beach house this year.

9 The Court: All right, so that was again, part
10 of that calculation where we came up with the 119?

11 Mr. McMahan: But it should have come out of the
12 reserve account.

13 The Court: I understand, I understand.

14 Mr. McMahan: And so that money, the reserve
15 account is there for any unusual expense, whatever,
16 actually I don't do a lot of homeowner association work but
17 they're supposed to have reserve accounts for unusual
18 events and they didn't fund it the way they were supposed
19 to.

20 The Court: And, counsel, what I'm trying to do
21 is make sure the homeowners association can continue to
22 operate. There's going to be all sorts of issues that are
23 going to come up about reserve account. There's going to
24 be issues about whether or not the other notes are due.
25 There are all sorts of other things. I see here about the

1 beach house repairs. There are things like that that we're
2 going to have to talk about, but for right now I just want
3 to establish a baseline, a status quo, if you will, that
4 will allow everything to continue to work until those
5 issues can be resolved at another day, okay?

6 Mr. McMahan: Yes, sir, but, Your Honor, the
7 documents require that they pay all amounts due before they
8 get their voting rights back.

9 Mr. Neill: Amounts due in arrears, Judge, these
10 amounts ---

11 Mr. McMahan: These amounts are in arrears.

12 Mr. Neill: They're not owed, they're claims.

13 The Court: I understand, I understand what
14 arrears means and that's what I'm trying to do. We can
15 wait two years and try to find out what is really arrears
16 and in the meantime if they don't have their voting rights
17 I don't blame them, I wouldn't pay anything if I don't have
18 it. I'm trying to strike a balance here so that we can
19 have them pay up and make a good faith payment of what I
20 consider to be due as of this date, if we had no litigation
21 what, where would we be right now and that's how I'm trying
22 to calculate these amounts so that they can get their
23 voting rights, they can pay in, and then we can proceed
24 with whatever else we have.

25 Mr. McMahan: Your Honor, may we also address

1 the beach house repairs of the accounting?

2 Mr. Neill: And, Judge, going back to the
3 accounting part there's one thing that I left out, it's
4 kind of a no brainer. There was a closing that occurred
5 recently that paid monies back towards what was owed on
6 that, that shortfall that they called, \$18,562.50 was paid
7 out of that closing. There was a homeowner that hadn't
8 paid their dues. They sold some lots and then they back
9 paid those dues, so obviously that would come off of that
10 119 surplus.

11 Mr. McMahan: No, Your Honor, it doesn't because
12 as Mr. Neill says, this is a cash basis accounting, that
13 cash was received this year, not last year.

14 Mr. Neill: They can't ---

15 Mr. McMahan: --- and it's not ---

16 The Court: You kind of asking for it both ways,
17 cash basis, cash accrual.

18 Mr. McMahan: Well in Mr. Neill's own, by Mr.
19 Neill's own argument that money counts towards this year's
20 assessments. They're all sorts of past due assessments
21 there, Your Honor, which is ---

22 The Court: I understand, Mr. McMahan, let's
23 keep it as simple as we can. Let me hear you on the beach
24 house renovation.

25 Mr. McMahan: Going back to the Nation's

1 memorandum, if you look at paragraph nine the blue tab,
2 when what happened was this. Litchfield Plantation Company
3 owns the beach house but it is a common amenity of
4 Litchfield Plaintiff Association. There became a large
5 dispute with Georgetown County about the property taxes
6 that were supposed to be paid on that amenity; and the
7 Georgetown County basically said if it's a common amenity
8 they will reduce the property taxes significantly. If it's
9 a privately owned house then they're going to be sky high.
10 So at the time of that ---

11 The Court: Well you folks know that in
12 Georgetown County the beach front funds the rest of the
13 county.

14 Mr. McMahan: Well, Judge, I tell you we didn't
15 mind working this deal out with Georgetown County because
16 they lowered the taxes dramatically but that required
17 Litchfield Plantation Company to then deed the property
18 over to the homeowners association immediately and before
19 the end of 2010. Well the law in South Carolina requires
20 that if a property is deeded over to a homeowners
21 association as a common element that it has to be in a
22 state of good repair. There's a South Carolina Supreme
23 Court case on that; and it was not in a state of good
24 repair. It needed significant repair and what happened was
25 is that the prior owner of Litchfield Plantation Company

1 hired an estimator to go out and figure out how much money
2 was required to actually bring it up to a good state of
3 repair. That's in the Charles Nations [sic] memo, that
4 number is in the accounting. It's \$42,000 and, I'm sorry,
5 \$42,556. The South Carolina Supreme Court says that money
6 has to be paid or reserve given at the time of the
7 transfer. The time of the transfer was December of 2010,
8 so and that money has never been paid.

9 Now the homeowners, we went out there and we
10 looked at it and we don't think they give us a proper
11 estimate. We think there's more to it than what they said,
12 so there is a factual dispute. We think it's more like
13 \$60,000 as opposed to 42 which is what's in the accounting.
14 We got estimates; we've provided all the estimates to Mr.
15 Neill. I don't know what his position is regarding that
16 but there's no doubt that that is currently owed because
17 that beach house was transferred a long time ago and the
18 law requires them to make that payment or bring it to a
19 proper state of repair at the time of transfer.

20 The Court: But isn't that part, I mean that
21 money has been paid, has it not?

22 Mr. McMahan: No, it has not.

23 The Court: Have the repairs been made?

24 Mr. McMahan: No, to some extent. What we did
25 was we hired a painter to go out there and to, we couldn't

1 fix the wood work because we didn't have the money to do
2 that, so we caulked up the holes in the wood work, put a
3 coat of paint on two sides of the house. The repairs still
4 need to be done. We just don't have the money to do it
5 right and so, you know, all of this is ongoing but we don't
6 have that money and that money is due and that money under
7 the accounting should be paid because, of course, you know,
8 the documents say all amounts in arrears. That is clearly
9 in arrears by the South Carolina Supreme Court's --

10 The Court: Who did you buy the property from?

11 Mr. McMahan: The property was not, well the
12 property would have been bought by Litchfield Plantation
13 Company in the late sixties, I have no clue. They held
14 title to it.

15 The Court: Who did you get it from, who did the
16 homeowners association?

17 Mr. McMahan: From the defendant and the
18 defendant is required to have it in a good state of repair
19 at the time of transfer and it wasn't and their own
20 admission here is that it's 40, whatever, their number is
21 42,000 and change. Our number is about 60 and change or
22 close to that, it's in the accounting, but there's no doubt
23 that that money was owed and that money was owed a year and
24 a half ago.

25 The Court: So you get ---

1 Mr. Neill: Judge ---

2 The Court: --- your homeowners association,
3 somebody gives you a beach house you get to look the gift
4 horse in the mouth, so to speak.

5 Mr. McMahan: Well if the wood is rotting and
6 the appliances don't work and the roof is in bad shape and
7 you have to take out, do major repairs on it, it's not me
8 that says that, that's the Supreme Court of the State of
9 South Carolina that says that.

10 The Court: Okay, all right.

11 Mr. Neill: Judge, there's no allegations in his
12 action at all about the beach house, not about the first
13 thing in those pleadings that addresses it. It is in the
14 second lawsuit that was filed last week. It's going to be
15 addressed; it's going to be dealt with. Obviously we
16 contest at this point how the repairs are made. Just
17 because the Supreme Court says one thing in one case
18 doesn't necessarily mean they'll do it again in the second
19 case, you know, but it's a decision that will be made later
20 on. At some point if they get a judgment we'll owe it.

21 The Court: It's a disputed matter that you have
22 chosen to raise in a subsequent lawsuit? How many lawsuits
23 do ya'll have?

24 Mr. McMahan: We have two, Your Honor, and last
25 year you told me to sue for what they're owed ---

1 The Court: If ya'll keep filing lawsuits and
2 paying recording, I mean filing fees we can cut the
3 insurance, I mean the taxes out on that building.

4 Mr. McMahan: Well that might be the case, Your
5 Honor, but there's only two cases, but the Supreme Court
6 said that was due in December of 2010 and there's no doubt
7 that, I mean their own document say it's 42,000. We think
8 it's more like 59.

9 The Court: All right, well, you know, that's a
10 matter that's involved in another lawsuit. Obviously you
11 anticipated it being a separate issue because you filed a
12 separate lawsuit about it, so what I'm going to do is I'm
13 going to require, and someone is going to have to submit
14 another order, require Mr. Neill in order to have, I'll
15 clarify my prior order, in order to exercise his Class B
16 voting rights he's going to have to pay the 17,887.72 and
17 the 12,946.48 as well as the \$119,148 in order ---

18 Mr. Neill: Do we get any type of offset for
19 that eighteen five that was paid?

20 The Court: I'm not going to address that here,
21 I'm just not going to address that. He says you owe him
22 more; you say you owe him less. I'm going to split the
23 baby right here and try to get a figure that I, I determine
24 not to be a real issue and all these other matters can be
25 determined finally at trial. I just want to make sure that

1 the homeowners association can operate smoothly from this
2 point forward, okay?

3 Mr. McMahan: Your Honor, if this money is paid
4 and you have it put in the order that the homeowners
5 association is going to refund to the homeowners any excess
6 assessments that they paid, those were the cap.

7 Mr. Neill: Whoa, Judge, we got parties that
8 aren't here, that's a whole another issue.

9 The Court: That would be a matter actually for
10 your homeowners association I think to vote on or whatever.
11 I think your individual homeowners are certainly entitled
12 to a credit or rebate or something if they paid in excess
13 depending on how the money was assessed, but that's
14 something for you to address. I mean the Court is not
15 going to make that determination.

16 Mr. McMahan: Your Honor ---

17 Mr. Neill: And that's not before the Court
18 anyway.

19 The Court: Homeowners may have just wanted the
20 make a eleemosynary gift to the homeowners association and
21 just for the betterment of the community.

22 Mr. McMahan: Your Honor ---

23 The Court: I doubt it but maybe so.

24 Mr. McMahan: Your Honor, we understand your
25 ruling. We believe that is contrary to the plain language

1 of the documents, and we believe that if you intend to do
2 that then maybe a receiver ought to be appointed to this
3 homeowners association to manage it so that, cause what
4 we're concerned about is they're going to put this money in
5 and take control and take this money right back out and
6 they're going to draw any and all monies ---

7 The Court: You need to come back and see me and
8 then we would talk very seriously about that.

9 Mr. McMahan: Because if they take control of
10 this homeowners association they will simply dismiss this
11 other case that I have filed. I won't be the attorney any
12 more.

13 The Court: I don't even believe Mr. Neill, Mr.
14 Shelton got the nerve to do that.

15 Mr. McMahan: But how am I going to get the
16 expenses paid for it, Your Honor, if they're not willing to
17 pay the cost of the lawsuit? I mean I'm handling it pro
18 bono but it puts me in a very uncomfortable position
19 because ---

20 The Court: What a wonderful thing for you to
21 do.

22 Mr. McMahan: I am handling it pro bono, Your
23 Honor. But it puts me in a position as an attorney
24 representing the homeowners association trying to collect
25 this money answering to the defendant in the action and I

1 don't know how it's possible to proceed forward with that
2 case if in fact the defendant is calling the shots and
3 that's why we think maybe a receiver should be appointed.

4 The Court: I'm really kind of calling the
5 shots.

6 Mr. McMahan: Excuse me?

7 The Court: I'm really kind of calling the shots
8 cause I ---

9 Mr. McMahan: Yes, sir, which is fine.

10 The Court: --- have exclusive jurisdiction in
11 this case and I'm going to maintain and if anything like
12 that happens I'd be extremely upset and I can do all sorts
13 of things. That's a great thing about my job, it takes
14 about two years for somebody to correct me.

15 Mr. McMahan: Yes, sir, I understand.

16 The Court: Now what else do we have in
17 reference to this ---

18 Mr. McMahan: Pretty much everything.

19 The Court: --- and I'm reluctant to appoint a
20 receiver because it seems like every time I appoint a
21 receiver at the end of the day the receiver walks away with
22 the pot and everybody else is left with the empty space. I
23 mean, the receiver ends up with all the money when they
24 start accessing fees and things of that nature so I'm
25 reluctant to do it and in this case I'm going to be

1 monitoring this case anyway.

2 All right, now you have all sorts of motions
3 here. I don't even know which one we just heard.

4 Mr. McMahan: We didn't hear any of them, Your
5 Honor, that really wasn't even a motion.

6 The Court: We hadn't even started yet, okay.
7 We clarified my prior order; is that right?

8 Mr. McMahan: That's correct, Your Honor.

9 The Court: Okay, well which one do you want to
10 do now?

11 Mr. McMahan: I think the proper one would be
12 the oldest which would be the board election which that
13 would resolve three of them, Your Honor, and in fact
14 there's one of them that might make it real quick which is
15 a mootness.

16 The Court: Is that the summary judgment motion?

17 Mr. McMahan: Yes, sir, there's two of those and
18 then, actually three of those.

19 Let me tell you what happened so you'll
20 understand. Our homeowners documents require that there be
21 an annual meeting of the homeowners held in November of
22 every year in which there is an election of a board. The
23 homeowners association was controlled by Mr. Neill's
24 client, the president, being he is president as well,
25 refused to have meetings. There went a period of time,

1 there was one in 2008 and he refused to have one in 2009.
2 He refused to have one in 2010. He at that point was down
3 to two board members which was himself and a man named
4 Jeffrey Van Trese who is also a vice president of Mr.
5 Neill's company.

6 At the end of 2011 that's when they told, in
7 2010, they told us they were going broke and they couldn't
8 pay anything and so the homeowners went to these, the
9 directors and asked them to, please, have the homeowners
10 board have an annual meeting with an election for a board.
11 The board is supposed to have five members; it only had
12 two. They refused. They would not have a meeting and so
13 the homeowners availed themselves of a provision in the
14 bylaws which allowed for the calling of a special meeting
15 and for a special meeting and there was a notice and the
16 notice put in there that the purpose of the meeting was to
17 remove the two directors who we believe were running it
18 improperly and to allow a vote for a new board of
19 directors. That was done and that special meeting resulted
20 in the board that are the plaintiffs in this particular
21 case which was the real reason we filed this thing to begin
22 with.

23 Now my motion for summary judgment is to validate
24 the fact that they were the board from February 26th up
25 till the end of last year, cause at the end of last year we

1 had an annual meeting like the documents required and
2 there's a whole nother board now that's on the, that runs
3 the place. There is some carry over between them but the
4 question is who is the board between February of 2010 and
5 basically November of last year, December of last year.

6 The Court: And your move for summary judgment
7 of that issue partial summary judgment, okay.

8 Mr. McMahan: Yes, Mr. Neill has also moved for
9 summary judgment on that issue and then after we had the
10 new board election I filed a motion saying really all this
11 is moot now because the new board went back and ratified
12 the actions of the board that was elected back in February.
13 So I'm not really sure it matters right now, but as a
14 practical matter those motions are the ones that are before
15 you now and Mr. Neill has some question about the notice --

16 -

17 The Court: Are they not moot?

18 Mr. Neill: They're not, Judge, because I think,
19 first of all, I haven't seen any affidavits or any
20 documents from the new board saying that they ratified
21 anything, but no affidavits have been produced that says
22 that that happened.

23 The Court: Is that all you need?

24 Mr. Neill: No, I wish it was, Judge. The
25 issues that we've got it's real simple. The bylaws, and we

1 covered this a little bit the last time ---

2 The Court: There you go.

3 Mr. Neill: We covered this, well but this
4 isn't, this wasn't served to me prior to it, this is a
5 summary judgment motion, Judge, I got ten days. The bylaws
6 are simple. They require a specific notice provision on
7 how they can have these special meetings, okay? They
8 called the special meetings; they got enough signatures, I
9 agree with that, but then it also states that they have to
10 mail notice to all the homeowners at least fourteen days
11 but no more than thirty days prior to having this hearing.
12 There's numerous emails that or affidavits submitted with
13 their summary judgment motion that specifically state that
14 they were emailing these notices to people, they were
15 delivering them within the fourteen-day period. By doing
16 those actions they rendered their meeting invalid and the
17 action that they took there invalid. Now I know their
18 argument is going to be that Mr. Trotter, who was there on
19 behalf of LPC, waived that right when he appeared at the
20 meeting, but the problem is Mr., Mr. Trotter left a notice
21 on everybody's chair prior to the meeting that they had a
22 problem with the meeting, they didn't agree with it, and,
23 and then he didn't participate in the meeting. There's a
24 whole, some case laws in South Carolina that's says how you
25 protect your rights is you may appear at the meeting, that

1 you have to object and you can't participate. He did
2 exactly what he was supposed to. If anything there is a
3 question of fact as to whether he properly objected to the
4 meeting, whether he waived it ---

5 The Court: But does it make any difference if
6 it was ratified ---

7 Mr. Neill: It may not, Judge.

8 The Court: --- by the subsequently elected
9 board which everybody seems to agree was properly ---

10 Mr. Neill: Here's the problem, so the first
11 meeting doesn't happen, okay? They're not the right board
12 for the first year, okay? They then call an annual meeting
13 for the second year, okay? The problem is they're not a
14 board, they don't have the authority to call an annual
15 meeting, so what do we do. We turn back to the bylaws
16 again because the bylaws give us all these rules. The
17 bylaws state that the annual meeting must be held on the
18 second November of, on the second Tuesday of November of
19 every single year. In that case it was November 8th and
20 that no notice is required for that meeting. So
21 technically a meeting was held on that date, obviously no
22 one appeared, and no action gotten taken care of. What
23 they called was a special meeting, a group of homeowners,
24 they're not the board, they were never proper, they were a
25 group of homeowners, they needed to meet the five percent

1 requirement and they have to give notice to everybody.

2 The Court: That's the 2010 meeting.

3 Mr. Neill: This is the new, this is the new
4 board.

5 The Court: Okay.

6 Mr. Neill: So they didn't do that meeting
7 properly either under the bylaws so technically we're
8 caught in this crazy situation right now where we've got
9 these five individuals who are seeking declaratory
10 judgment, they haven't had any meetings correctly to get
11 themselves a proper vote ---

12 The Court: Has anybody challenged the board?

13 Mr. Neill: Yes.

14 Mr. McMahan: No.

15 Mr. Neill: We have, Judge, we've ---

16 The Court: That's no.

17 Mr. Neill: This action started as a declaratory
18 judgment asking them to approve ---

19 Mr. McMahan: Not the first board, Your Honor.

20 Mr. Neill: And we've counterclaimed the same,
21 Judge, and Scotty Trotter intervened to do the exact same
22 thing again saying he was, he was the only board member
23 because there hadn't been any proper election since he was
24 elected.

25 Mr. McMahan: It's worse than that, Your Honor.

1 The Court: There couldn't be.

2 Mr. McMahan: Because their documents not only
3 require that there be an annual meeting, there was an
4 annual meeting in late of last year. Mr. Neill sent a
5 subpoena to K. A. Diehl in December of last year seeking to
6 have all the balance and notices delivered to him for that
7 board election. They've had those documents sitting there
8 in their office waiting on him for the last three months
9 and he's never bothered to go pick them up.

10 The Court: So you don't believe his position is
11 correct?

12 Mr. Neill: There's a question of fact ---

13 The Court: You don't believe his position is
14 correct, that creates a substantial issue of fact so I will
15 deny the summary judgment motions both ways.

16 Mr. McMahan: Including the mootness motion,
17 Your Honor?

18 The Court: Yes, he says there's an issue with
19 the new board so --

20 Mr. McMahan: Thank you, Your Honor.

21 The Court: All right, it has just has to be
22 flushed out and beaten up at a trial, okay? So we don't
23 even agree with that we have a board now, well you say yes,
24 you say no.

25 Mr. McMahan: Put it this way, they've taken no

1 actions to contest the current board.

2 Mr. Neill: Judge, this is a declaratory
3 judgment action.

4 The Court: Okay, all right, okay, all right,
5 what else do we have?

6 Mr. Baxter: I'll jump in and ---

7 Mr. Neill: Doug, I think I can given what's
8 happened so far, Judge, I'll go ahead and voluntarily
9 dismiss the counterclaims that I brought that his motion to
10 strike as well and, of course, we do that without prejudice
11 pursuant to the rules so that takes care of that. That
12 also takes care of his discovery motion as well and I'll --
13 -

14 The Court: Mr. Baxter, I'll miss you so today.

15 Mr. Baxter: And I'll also withdraw that motion
16 against Bob to have him disqualified as counsel.

17 Mr. Baxter: Your Honor, one other thing I think
18 and I just want to make the record clear ---

19 The Court: You're ahead of the game now, they
20 just consented to your motion.

21 Mr. Baxter: While I got a chance I'm going to
22 say something, they have also filed a motion to compel
23 requesting certain, they've gotten everything. The only
24 thing we've not produced is they asked for ---

25 The Court: They dismissing as to you.

1 Mr. McMahan: No, but there's a motion, I want
2 to make sure their motion to compel goes away as well
3 because they're asking for financial records from the
4 individuals that they're suing.

5 The Court: You're out of the lawsuit.

6 Mr. Baxter: That, that motion ---

7 The Court: You're out.

8 Mr. Baxter: Okay.

9 Mr. Neill: That's withdrawn.

10 The Court: Okay, what else?

11 Mr. McMahan:: I think Rob Shelton has one.

12 Mr. Shelton: Your Honor, we've got, Mr. Trotter
13 has filed a motion to Rule 67 to deposit to the Clerk of
14 Court those notes and, and the notes and mortgages that
15 are, that are in dispute and what we've been arguing back
16 and forth about. They are, they're the secondary lawsuit
17 that's been discussed this morning that was not in place
18 when we filed this motion, to that secondary lawsuit seeks
19 to foreclose them and alleges that the assignment is void
20 for lack of consideration and is void for lack of authority
21 to execute the assignment. In any event either way Mr.
22 Trotter wants to tender those notes to the Clerk of Court
23 for safekeeping until there's a final determination as to
24 who should receive them and Mr. Trotter has this entire
25 time brought all these motions and under this criminal

1 charge. He has, I've got Billy Monckton here with me this
2 morning, Billy Monckton represents Mr. Trotter in the
3 criminal case. Mr. Trotter is, in order to satisfy the
4 demands of the Solicitor's office, desperately trying to
5 hand those notes over to somebody to safeguard them until
6 Your Honor can determine ---

7 The Court: For safekeeping or for
8 determination, is he divesting himself of the notes or is
9 he ---

10 Mr. Shelton: The problem, he will pursuant to
11 your order, the problem he has is he doesn't know who to
12 divest them to. If he can assign them to the Clerk and the
13 Clerk can when there's a final, an appealable order in this
14 case or the other case or whichever case Your Honor chooses
15 to caption it under, when there's an order in place that
16 the Clerk can determine who the rightful owner of them, is
17 they can be assigned to that person. Mr. Trotter is
18 seeking to safeguard them to satis -- first of all that's
19 been his goal ---

20 The Court: Who claims the notes?

21 Mr. Shelton: --- and, secondly, that's what the
22 Solicitor is demanding of him. That's what he wants to do.

23 Mr. McMahan: Your Honor, once Mr. Neill is
24 going to stand up and state that his client is laying claim
25 to those notes there is no dispute that they were taken

1 from our homeowners association. Mr. Neill?

2 Mr. Neill: Well, Judge, we don't have a claim
3 to them. We owe the money under the notes so ---

4 Mr. McMahan: They should be reassigned over to
5 the homeowners association, Your Honor.

6 Mr. Shelton: Divesting them is in the second
7 lawsuit there are allegations that pertain to those notes.

8 The Court: Does Mr. Trotter take the position
9 that as far as he knows they belong to the, to the
10 homeowners association?

11 Mr. Shelton: There's great dispute as to who
12 owns, because Mr., Mr., the bottom man has alleged that the
13 assignments are improper.

14 The Court: Who are they assigned to?

15 Mr. McMahan: If you look at tab twelve of the
16 notebook in front of you, Your Honor, that is the
17 assignment.

18 The Court: I mean someone assigned them to
19 someone.

20 Mr. McMahan: Here's what happened ---

21 Mr. Shelton: --- and Mr. Trotter will tender
22 them to the Clerk of Court pending further instructions
23 from Your Honor and Mr. Trotter doesn't lay claim to them
24 after that. It's up to Your Honor to decide who they go to
25 at the end of either this lawsuit or the other lawsuit or

1 however Your Honor wishes to safeguard those notes. There
2 is obviously a dispute as to who has control now and, and,
3 and Mr. Trotter's goal simply is to safeguard the
4 documents.

5 Mr. McMahan: Your Honor, there is apparently no
6 dispute between Litchfield Plantation Association and
7 Litchfield Plantation Company according to what Mr. Neill
8 just said. The only dispute is between Litchfield
9 Plantation Association and Mr. Trotter.

10 Mr. Trotter took it upon himself after he left as
11 president of the company to take these notes and give them
12 not to himself, Your Honor, but to give them to one of his
13 corporate entities, Litchfield Plantation Buyout Group,
14 which is not a party to this litigation and is not the
15 moving party. There is no evidence that Litchfield
16 Plantation buy out group has ever assigned them to Mr.
17 Trotter who does not have any personal assignment that
18 we've ever seen that says that he has them and now moreover
19 these notes are not an issue in this particular case. As a
20 matter of fact these notes, one of these notes is not an
21 issue in the other case.

22 The Court: Let me ask Mr. Shelton this, has the
23 buy out company or buy out group ever given any
24 consideration for the notes or was this ---

25 Mr. Shelton: Yes, \$1,000 was paid for the, for

1 the transfer, for the assignment of the notes and Mr.
2 Trotter, the Buyout Group is a party in that second
3 lawsuit, Your Honor. Mr. Trotter can assign them from the
4 Buyout Group to the Clerk of Court in that second action
5 pending further and final order of you, of, of Your Honor.

6 The Court: And you don't object to that, do
7 you?

8 Mr. McMahan: Well, Your Honor, but there's a
9 problem because there are five notes and what Mr. Trotter
10 took for his buy out group was one of the notes that is at
11 issue in the other action and one note that's not even in
12 default yet, that's not at issue in that case. That note
13 doesn't mature until 2014 so if that note is assigned to
14 the Clerk of Court in that action then whether the
15 enforcement rights as the Clerk of Court is supposed to
16 enforce it; how are we supposed to handle it let them hold
17 on to it. We don't even know if Mr. Trotter has the
18 originals.

19 The Court: I think, I think, I think it's to be
20 turned over to the Clerk of Court pending a determination
21 of ownership.

22 Mr. McMahan: But there's no dispute as to
23 ownership unless Mr. Neill says that he thinks he owns it
24 because Mr. Trotter took them from us.

25 The Court: Is it true that there's just one

1 that even is ---

2 Mr. Shelton: How many notes are in the
3 affidavit for the indictment?

4 Mr. Baxter: There are four or five.

5 The Court: I'll hear from you, Mr. Monckton.

6 Mr. Monckton: Your Honor, all we want to do is
7 in the assignment there's something in the assignment that
8 says if Mr. Trotter is not deemed to be the proper owner of
9 the board actions then they should be assigned to the
10 proper authorities. All we're trying to do is safekeep
11 them with you. You decide if somebody, if they need to do
12 something with them can come to you.

13 The Court: I can't keep up with my cell phone.
14 Let's do it with the Clerk perhaps.

15 Mr. McMahan: If they get reassigned they ought
16 to go back to the homeowners association they got taken
17 from. That's not in this assignment with Mr. Monckton
18 said, I think it's in the separate document.

19 The Court: What I'd like for someone to tell
20 me, is there anyone else who really says I own them? The
21 obligation is ---

22 Mr. Shelton: Well they're assigned to
23 Litchfield Plantation Buyout Group and Mr. McMahan claims
24 that that assignment is ineffective; that is not
25 determined. There is dispute as to that because no one has

1 even answered the lawsuit where he said that. It's not
2 even, no one has even signed an acceptance of service.
3 That has, that has its day in court later. Mr. Trotter
4 seeks to divest himself of these notes so that they can be
5 kept safe until the Clerk is instructed by a judge as to
6 who should receive them.

7 Mr. McMahan: Mr. Trotter doesn't have the
8 notes, according to the assignment they belonged to the
9 Buyout Group. Mr. Trotter ---

10 The Court: He has physical possession of the
11 notes.

12 Mr. McMahan: I don't even know that.

13 The Court: Okay, well they're saying they do.

14 Mr. McMahan: Do they have physical possession?

15 Mr. Shelton: Charles Nation I'm told does have
16 physical possession of the notes.

17 Mr. McMahan: Mr. Trotter doesn't apparently.
18 so, you know, this has been a difficult situation but
19 really what they're trying to do is get an advantage over
20 the Solicitor's office. But the notes here, if you assign
21 the notes to any case they should be assigned in the other
22 case not in this case because this case does really not
23 have anything to do with collection on those notes and if
24 you decide in this case there's going to be a title problem
25 because what we have is a filed assignment saying that

1 those notes went from the homeowners association to a
2 buyout group and then we'll have an order saying they went
3 from Mr. Trotter individually to the Court. The gap
4 between what happened between the buy out group and Mr.
5 Trotter will be unfilled ---

6 The Court: No, we can address it in an order.
7 We can say that he has physical possession. We don't have
8 to say he has ownership; that he has physical possession;
9 that there is a dispute pending in the Court of Common
10 Pleas as to the ownership and that the notes for
11 safekeeping are to be turned over to the Clerk of Court for
12 safekeeping. That's all we got to say.

13 Mr. Shelton: That's all we're asking, Your
14 Honor.

15 Mr. McMahan: It would be very appropriate in a
16 interpleader but not appropriate in this particular case,
17 or it would be appropriate in the case in collection.

18 The Court: Counsel, what would be your
19 objection to that?

20 Mr. McMahan: Because it's going to make it
21 difficult, we're going to have two different actions, a
22 pending, and you've got this gap in the chain of title,
23 unless it is assignment from the Buyout Group to Mr.
24 Trotter individually ---

25 The Court: There again, what I'm doing is

1 saying if he only has physical possession, not legal
2 possession or ownership; that he simply has physical
3 possession or if I found the note on the sidewalk, I means
4 it's the same thing, you know. I just want to give it to
5 someone else.

6 Mr. McMahan: But he's ---

7 The Court: We're not making determination
8 whatsoever that he has a right to have them; that he's in
9 possession of them legally; that he has any ownership of
10 these notes. We're not making any determination
11 whatsoever. The alternative is just let him keep them,
12 that's not what you want, is it?

13 Mr. McMahan: No, sir, but nor do we want him to
14 have legal title to them. If there is ---

15 The Court: We're going to make sure that it
16 doesn't speak legal title.

17 Mr. McMahan: So he's still going to claim legal
18 title to these notes after this assignment?

19 Mr. Shelton: We're going to have to wait and
20 see what the Court determines as to who receives the legal
21 title to these notes and mortgages. Mr. Trotter doesn't
22 have any interest in that. He'll assign them to the Clerk
23 if you want him to and there will be a recorded assignment
24 to the Clerk. He wants to divest himself of the possession
25 of these notes to safeguard them. At the end of the ---

1 The Court: And again I don't want to assign
2 them to anyone. I just want to have the possession turned
3 over to the Clerk for safekeeping. That's what I want to
4 see, so that we are not affecting anyone's rights at all.

5 Mr. McMahan: And so to make sure I'm clear,
6 Your Honor, under that order Mr. Trotter is still claiming
7 a legal right to the notes, is that basically what you
8 saying?

9 The Court: Why do we even have to address that?

10 Mr. Shelton: It doesn't have to be addressed,
11 Your Honor. I have not been retained to answer this second
12 lawsuit for him. I don't know how his attorney will answer
13 that.

14 The Court: It says that there is a dispute as
15 to ownership and without finding whether he has any
16 ownership rights at all the Court determines that he is in
17 physical possession of the notes.

18 Mr. McMahan: And so will he relinquish the
19 physical possession to the Clerk?

20 The Court: And he is simply relinquishing
21 physical possession of the notes for safekeeping ---

22 Mr. Shelton: That's right.

23 The Court: --- that's what I'm hearing to the
24 Clerk of Court ---

25 Mr. Shelton: That's right.

1 The Court: --- until, until such time as
2 there's a determination of ownership.

3 Mr. McMahan: Well from what Rob just said he
4 doesn't have physical possession, they're in the possession
5 of Charles Nation.

6 Mr. Shelton: Well for me to record that order
7 I would have to get physical possession of them and record
8 them with that order, that's my goal.

9 The Court: Okay, I mean, you know, you can have
10 your attorney, you can have possession of something and
11 your attorney actually hold it for you. I mean I don't, I
12 don't, that's just semantics. I don't see where there's
13 any problem with that. If you'll prepare an order ---

14 Mr. Shelton: I'll prepare it today.

15 The Court: --- to that regard, share it with
16 counsel before we get it, let's make sure that we're not
17 saying that anybody owns it legally. It's just a matter
18 being in someone's possession, okay. What else?

19 Mr. McMahan: That may be it, Your Honor.

20 Mr. Neill: That's all, Judge.

21 The Court: Okay, I am sure that the Clerk is
22 over there scratching her head as to exactly what she needs
23 to do. Let's sort of go down the list of these, cause I'm
24 going to do some Form 4's orders.

25 The motion to compel filed by Litchfield, which

1 is number two, was that abandoned?

2 Mr. Neill: That was withdrawn, Your Honor, yes.

3 The Court: Withdrawn, okay. The motion to
4 dismiss and partial summary judgment due to mootness that
5 was yours, Mr. McMahan, is that right?

6 Mr. McMahan: That's correct, Your Honor.

7 The Court: Okay, I dismissed both of them, did
8 I not?

9 Mr. McMahan: You denied that motion.

10 The Court: Okay, denied both of them, okay.

11 Mr. McMahan: All three of them.

12 The Court: The motion, notice of motion and
13 motion to compel discovery by Mr. Baxter was withdrawn,
14 right?

15 Mr. Baxter: Based upon the dismissal of the
16 counterclaim.

17 The Court: Dismissal, okay. The Litchfield
18 Company's motion for summary judgment again was likewise
19 denied.

20 Trotter's motion to deposit monies, I think we're
21 talking about depositing the note was granted, Mr. Shelton
22 to prepare an order.

23 The motion for temporary injunction I don't think
24 we even ---

25 Mr. Neill: We just withdraw that, Judge.

1 The Court: Was withdrawn. Motion to join
2 parties or dismiss the action --

3 Mr. Neill: That one we'll withdraw as well,
4 Judge.

5 The Court: Withdrawn. Motion to disqualify
6 counsel was withdrawn; is that right?

7 Mr. Neill: Yes, Your Honor.

8 The Court: And finally the motion for summary
9 judgment, that's your second motion for summary judgment?

10 Mr. McMahan: Actually that was my first one,
11 Your Honor, mootness was the second one.

12 The Court: And that was denied, but I'm going
13 to, we use that to sort of clarify my order, put in there
14 that there would be an order forwarded by, who is going to
15 prepare that order?

16 Mr. Neill: I'll prepare it, Judge, we prepared
17 the first order so --

18 The Court: And you're going to get it to Mr.
19 McMahan, okay.

20 Mr. Neill: Of course.

21 The Court: Okay, all right, gentlemen, I hope
22 that what we accomplished here today was ---

23 Mr. Neill: The only other thing, Judge, is I
24 don't think we talked about cause Doug had a motion to
25 strike my amendment but I was just ---

1 Mr. Baxter: Well what I was going to request if
2 you need a form order reflecting that the counterclaims had
3 been withdrawn then that would make that motion moot, too.

4 The Court: Why don't you prepare an order to
5 that as well.

6 Mr. Neill: I was, can I do a separate order for
7 that, that will make it a whole lot clearer.

8 The Court: Certainly.

9 Mr. Baxter: And we just ask that it be done
10 without prejudice pursuant to the rules.

11 The Court: All right, okay, you just get that
12 to me, Mr. Baxter, and we'll take care of it. All right,
13 gentlemen, thank you for your cooperation. I hope that we
14 can move along with this matter, okay.

15 Mr. Baxter: Thank you, Your Honor.

16 The Court: Have a good day.

17 End of Requested Transcript....

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CERTIFICATE OF REPORTER

I, the undersigned Brenda R. Babb, Official Court Reporter for the South Carolina Court Administration, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal in the Court of Common Pleas for Georgetown County, South Carolina.

I do further certify that I am neither kin, counsel nor interest to any party hereto.

August 11, 2012

Brenda R. Babb

Brenda R. Babb, CVR-Master

OFFICIAL REPORTER

II

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

Litchfield Plantation Association, Inc., Joseph E. Johnston, Thomas Eckard, Carol E. Kirby, Robert F. McMahan, Jr. and Thomas Martin Phillips,

Plaintiff(s),

vs.

Litchfield Plantation Company, Inc.,

Defendant(s)

And

E. Scott Trotter,

Intervenor.

Civil Action No. 2011-CP-22-00319

**ANSWER TO INTERVENOR'S
COMPLAINT**

The plaintiffs, Litchfield Plantation Association, Inc., Joseph E. Johnston, Thomas Eckard, Carol E. Kirby, Robert F. McMahan, Jr. and Thomas Martin Phillips (hereinafter collectively the "Plaintiffs") hereby answer the Intervenor, E. Scott Trotter's, Complaint as follows:

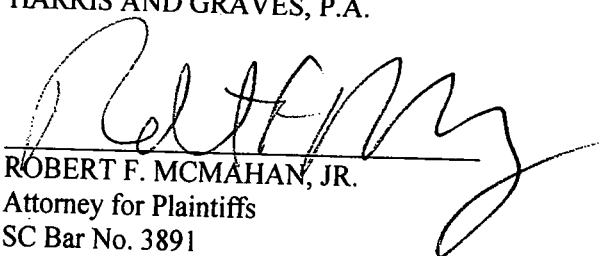
1. The plaintiffs admit the allegations of paragraph 1 of the Complaint.
2. The plaintiffs deny the allegations of paragraphs 2, 3, 4 and 5 of the Complaint.
3. Answering the allegations of paragraphs 6 and 7 of the Complaint the plaintiffs admit that the Class B period was in effect up until December 31, 2010 but deny it was in effect from and after January 1, 2011.
4. Plaintiffs deny the allegations of paragraph 8, 9 and 10 of the Complaint ..

FOR AN AFFIRMATIVE DEFENSE

5. The Intervenor comes to this Court with unclean hands due to his intentional disregard of the Covenants and Bylaws of Litchfield Plantation Association and therefore his claim for relief should be denied.

WHEREFORE having fully answered the Intervenor's complaint the Plaintiffs pray that it be dismissed with prejudice and for the Plaintiffs to be awarded their attorneys fees and costs and for such other and further relief as the Court deems proper.

HARRIS AND GRAVES, P.A.



ROBERT F. MCMAHAN, JR.

Attorney for Plaintiffs

SC Bar No. 3891

Post Office Box 2277

Conway, SC 29528

(843) 234-2390

rfm@harrisgraves.com

Conway, South Carolina

Dated: October 25, 2011

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

Litchfield Plantation Association, Inc., Joseph E.
Johnston, Thomas Eckard, Carol E. Kirby, Robert
F. McMahan, Jr. and Thomas Martin Phillips,

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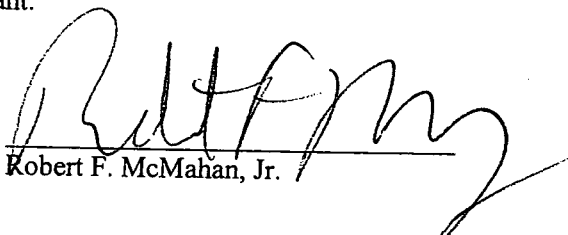
Civil Action No. 2011-CP-22-00319

**CERTIFICATE OF SERVICE
BY HAND DELIVERY**

Robert F. McMahan, Jr. says that he is a the Attorney for the Plaintiff, with offices at Conway, SC, and that on October 25, 2011, he hand delivered a copy of Answer to Intervenor's Complaint to:

Howell V. Bellamy
Bellamy Law Firm
P.O. Box 357
Myrtle Beach, SC 29578

the name and address of counsel for the Defendant.

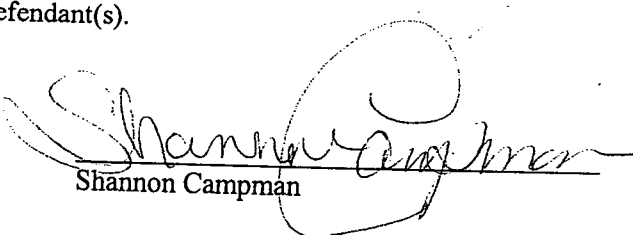

Robert F. McMahan, Jr.

CERTIFICATE OF SERVICE

Shannon Campman says that she is the Paralegal for the Attorney for the Plaintiff, with offices at Conway, South Carolina, and that on October 25, 2011, she mailed in a sealed envelope, postage prepaid, a copy of **Answer to Intervenor's Complaint** to:

Mark D. Neill, Esquire
Post Office Box 2810
Murrells Inlet, SC 29576

the name and address of counsel for the defendant(s).


Shannon Campman