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SC Court of Appeals

STATE OF SOUTH CAROLINA
The South Carolina Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Letitia H. Verdin, Judge of Circuit Court

Appellate Case No. 2021-000511

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

v.

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

RECORD ON APPEAL - VOLUME I

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ATTACHMENT IB.12 - Order Denying Motion to Dismiss, C6301 01/23/2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	THIRTEENTH JUDICIAL CIRCUIT
Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc.	)	Civil Action No.
	)	2017-CP-23-06301
Plaintiff(s)	)	
vs.	)	ORDER DENYING MOTION TO
	)	DISMISS, AND IN THE ALTERNATIVE
Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of the Woodington Homeowners' Association, Inc.	)	MOTION TO STRIKE OR FOR A
	)	MORE DEFINITE STATEMENT
and,	)	
Association Management Group SC, Inc.,	)	
Defendants	)	

This matter came before me on January 3, 2018, for a hearing regarding a Motion to Dismiss, or in the Alternative, to Strike or for a More Definite Statement on behalf of Defendants Benjamin Acord, William Craigo, Denis Esteve and Brian James, (the "Board Defendants"). The aforementioned motion was heard following approval by this Court of a settlement between Plaintiff and Defendant Association Management Group SC, Inc. ("AMG"). Upon the Court's approval of the settlement between Plaintiff and AMG, counsel for Plaintiff and AMG entered a stipulation on the record that all claims against the Board Defendants relating to AMG, including all claims relating to or arising out of AMG's contract(s) with Woodington Homeowners' Association, Inc. were dismissed. Such Stipulation did not include Plaintiff's request for the Court to interpret the By-Laws with regard to voting requirements for management contracts and renewals thereof. After hearing oral argument of counsel, and following review of Plaintiff's

Complaint, the Board Defendants' Motion, Board Defendants' Memorandum in Support and related Affidavits and Exhibits, and Plaintiff's Memorandum in Opposition and related Affidavits and Exhibits, I find in favor of Plaintiff, denying Board Defendants' Motion in all respects.

THEREFORE, IT IS ORDERED, that Board Defendants' Motion to Dismiss, and, in the alternative, to Strike or for a More Definite Statement is **DENIED**. Further, by stipulation of counsel, all claims against the Board Defendants relating to AMG, including all claims relating to or arising out of AMG's contract(s) with Woodington Homeowners' Association, Inc. are dismissed

IT IS SO ORDERED.

Robin B. Stilwell, Circuit Court Judge

Date: _____



Greenville Common Pleas

Case Caption: Raymond A Wedlake , plaintiff, et al vs. Benjamin Acord , defendant,
et al
Case Number: 2017CP2306301
Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2018-01-23 10:18:06 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 13 TH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C/A No.: 2017-CP-23-06301
	)	
Raymond A. Wedlake, individually and	)	
derivatively, on behalf of all Members of	)	
the Woodington Homeowners'	)	
Association, Inc.,	)	
	)	ORDER OF JUDGMENT
Plaintiff(s),	)	
	)	
v.	)	
	)	
Benjamin Acord, William Craig, Denis	)	
Esteve, and Brian James in their capacity as	)	
the current Board of Directors of the	)	
Woodington Homeowners' Association,	)	
Inc.,	)	
	)	
and,	)	
	)	
Association Management Group SC, Inc.,	)	
	)	
Defendant(s).	)	
	)	

This matter came before me on April 20, 2018, for a non-jury/bench trial. At the trial, Plaintiff was represented by attorney Grant H. Gibson. Defendants Benjamin Acord, William Craig, Denis Esteve, and Brian James (collectively, ***"Defendants"***) were represented at the trial by attorney Ely O. Grote. Association Management Group SC, Inc. had previously been dismissed from the case and was no longer a party at the time of the trial.

FACTS AND BACKGROUND

Plaintiff, Raymond Wedlake, is a homeowner in the Woodington subdivision and is a member of the Woodington Homeowners' Association, Inc. (the ***"Association"***), a South Carolina nonprofit corporation. On October 5, 2017, Plaintiff filed this lawsuit against the

Defendants, primarily relating to various corporate governance matters, legal principles applicable to nonprofit corporations and their directors, and interpretation of the bylaws for the Association.

Defendants are four out of the five directors that were elected to the board of directors at the Association's annual meeting held on January 10, 2017. Stacey Krause was the fifth director elected to the board of directors at the same annual meeting, but she subsequently resigned. The vacancy on the board of directors created by Stacey Krause's resignation had been filled prior to the time of trial. At the time of the trial, Defendants were serving in their first terms, rather than serving in consecutive terms. At the time of the trial, Defendants constituted four out of the five directors serving on the board of directors for the Association.

STIPULATED ISSUES

Prior to trial, the parties stipulated to the issues for trial and filed a Stipulation of Issues for Trial on March 29, 2018. The stipulated issues for trial are as follows:

1. Plaintiff seeks a declaratory judgment and declaratory relief as follows:
 - a. A declaration that the Board of the Association must comply with, and enforce in accordance with their terms, the Association's bylaws.
 - b. That the court construe the Bylaws of the Association and declare that the bylaws place a duty on the Board of Directors to fill a vacancy on the Board of Directors and the Board of Directors must make reasonable efforts to do so.
 - c. That the court construe the Bylaws of the Association and declare that the bylaws require a majority of all members to both enter into, and to renew, a management contract.
 - d. That the court construe the Bylaws of the Association and declare that the bylaws do not permit a Director to remain beyond a five-year term, and in any event, for not more than one additional year beyond such five-year period.

- e. That the court declare that the Bylaws of the Association do not permit delegation of the role or authority of the Board.
 - f. That the court construe the Bylaws of the Association and declare that the Bylaws require the Board of Directors to send out a ballot to the membership for voting if a proposed amendment to the Bylaws is submitted by an eligible member.
2. Plaintiff seeks an award of Nominal Damages against Defendants.
 3. Plaintiff seeks an award of court costs and legal fees if such costs and fees are paid by the Association's insurance carrier.
 4. Defendants preserve all defenses to Plaintiff's claims and nothing herein shall be construed to infer a waiver of any defenses by Defendants or that Defendants in any way stipulate that the matters raised by Plaintiff or the relief sought by Plaintiff are proper matters before the Court or proper matters to be heard by the Court.

DISCUSSION/ANALYSIS

Plaintiff was presented as the only witness in Plaintiff's case in chief. Plaintiff was subject to direct examination and was also cross-examined by defense counsel. Plaintiff did not call any further witnesses and then rested his case. At the conclusion of Plaintiff's case, Defendants moved for directed verdict, which the Court deemed to be and treated as a motion for involuntary non-suit under Rule 41(b), SCRCP. Rule 41(b), SCRCP, provides in relevant part:

After the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief.

The court as trier of the fact may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all evidence.

"Under Rule 41 in a nonjury trial, the trial judge clearly may dismiss the action even though the plaintiff may have established a *prima facie* case." Johnson v. J.P. Stevens & Co., 308 S.C. 116,

118, 417 S.E.2d 527, 529 (1992). “Rule 41(b) allows the judge as the trier of facts to weigh the evidence, determine the facts and render a judgment against the plaintiff at the close of his case if justified.” *Id.* See also, Waterpointe I Prop. Owner's Ass'n, Inc. v. Paragon, Inc., 342 S.C. 454, 458, 536 S.E.2d 878, 880 (Ct. App. 2000).

After considering the evidence and applicable law, I GRANT Defendant’s motion for involuntary non-suit under Rule 41(b), enter judgment against Plaintiff, and specifically find and conclude as follows:

I. Plaintiff’s request that the court construe the Bylaws of the Association and declare that the bylaws require a majority of all members to both enter into, and to renew, a management contract (Stipulated Issue 1(c))

During the trial, the parties stipulated in open court and on the record that they mutually agreed to an interpretation of the bylaws in substance as follows:

Approval by a majority vote of the members of the Association is not needed for the Board of Directors of the Association to renew a contract with an association management company that was previously approved by a majority vote of the members of the Association, as long as the contract contains provisions for automatic renewal. Likewise, approval by a majority vote of the members of the Association is not needed for changes in the amount of consideration or rate paid to an association management company under a contract with an association management company that was previously approved by a majority vote of the members, as long as the contract contains provisions providing for such rate/consideration adjustments.

I find that the stipulation is binding pursuant to Rule 43(k), SCRCF, and it is also hereby incorporated into and made part of the Court’s ruling and order by consent of the parties.

II. Plaintiff’s request for a declaration that the Board of the Association must comply with, and enforce in accordance with their terms, the Association’s bylaws (Stipulated Issue 1(a))

Before a court may render a declaratory judgment, an actual, justiciable controversy must exist. Pee Dee Elec. Co-op., Inc. v. Carolina Power & Light Co., 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). Courts “will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.” Byrd v. Irmo High Sch., 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). Further, South Carolina courts “will not issue advisory opinions for which no meaningful relief can be granted.” In Interest of Kaundra C., 318 S.C. 484, 486, 458 S.E.2d 443, 444 (Ct. App. 1995). Further, “[q]uestions of statutory interpretation, by themselves, do not rise to the level of actual controversy.” Tourism Expenditure Review committee v. City of Myrtle Beach, 403 S.C. 76, 81-82, 742 S.E.2d 371, 374 (2013).

I find that the evidence presented shows that Defendants had already admitted or stipulated pre-suit that they have an obligation to follow the law and the bylaws. Specifically, by email dated June 17, 2017, Defendants admitted to Plaintiff that “The law must be followed” and that “By election to the Board we did agree to abide by the By-Laws.” Based on the admission or stipulation of Defendants, there really appears to be no actual, justiciable controversy as to this issue. Nonetheless, in light of the Defendants’ admission, the Court does recognize and order that the board of directors of the Association must act in compliance with the bylaws unless inconsistent with law or unless otherwise provided by law. However, as set forth more fully below, except as stated above regarding the parties’ stipulation as to Stipulated Issue 1(c), no other specific finding or determination is made as to the specific terms of the Bylaws and/or the specific meaning of the terms of the Bylaws for the Association, nor is any finding made as to whether Defendants have violated the terms of the bylaws.

III. Plaintiff’s Remaining Requests for Declaratory Relief (Stipulated Issues 1(b), 1(d), 1(e), and 1(f))

It appears that Plaintiff has attempted to bring claims derivatively on behalf of the Association and all of its members. Defendants have asserted as a defense that Plaintiff cannot maintain a derivative action because Plaintiff's claims do not comply with the requirements of Rule 23(b)(1), SCRCF. Specifically, Defendants have asserted that Plaintiff does not fairly and adequately represent the interests of the other members of the community that are similarly situated. Rule 23(b)(1), SCRCF, provides, in relevant part that: "The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association."

After considering the evidence, I find that there is simply a lack of evidence to support a claim that Plaintiff is acting derivatively on behalf of the Association and its members. The record is devoid of any evidence that Plaintiff is actually acting in any representative capacity or representing the interests of the members of the Association. Instead, based on the evidence presented, it appears that Plaintiff's views and interests are significantly different from and are in conflict with the views and interests of the majority of the members. Additionally, the evidence indicates that Plaintiff lacks the support of a majority, if any, of the other members of the Association. Plaintiff did not provide any evidence tending to suggest that any other members of the Association supported this action or supported Plaintiff in pursuing this action, but rather, there was evidence to the contrary. Consequently, I find that the Plaintiff does not fairly and adequately represent the other members of the Association that are similarly situated. As a result, to the extent Plaintiff's claims were brought derivatively or must be brought derivatively, such claims must be dismissed.

In addition to the foregoing, I also find that Stipulated Issues 1(b), 1(d), 1(e), and 1(f) are moot, advisory in nature, or otherwise fail to present actual justiciable controversies as to the Defendants, therefore, I decline to issue those requested declarations on this ground as well.

I also find that the evidence admitted at trial nonetheless lacks sufficient information to allow the Court to issue the declarations requested by Plaintiff per Stipulated Issues 1(b), 1(d), 1(e), and 1(f). Bylaws are construed in the same manner as a contract. Shuler v. Tri-Cty. Elec. Co-op., Inc., 374 S.C. 516, 523, 649 S.E.2d 98, 101 (Ct. App. 2007), aff'd, 385 S.C. 470, 684 S.E.2d 765 (2009). “The purpose of all rules of contract construction is to ascertain the intention of the parties and that intention must be gathered from the entire agreement and not from any one particular phrase thereof.” Reyhani v. Stone Creek Cove Condo. II Horizontal Prop. Regime, 329 S.C. 206, 212, 494 S.E.2d 465, 468 (Ct. App. 1997). See also, Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 498, 649 S.E.2d 494, 502 (Ct. App. 2007) (noting that the parties’ intentions must be gathered from the contents of the entire agreement and not from any particular clause thereof and also noting that documents will be interpreted so as to give effect to all of their provisions, if practical); and Koon v. Fares, 379 S.C. 150, 155, 666 S.E.2d 230, 233 (2008) (the purpose of the rules of contract construction is to ascertain the intention of the parties as gathered from the contents of the entire document and not from any particular provision within the contract). Additionally, in an action for declaratory judgment, “the burden of proof rests with the party seeking the declaration, and that party must meet its burden by a greater weight or preponderance of the evidence.” SPUR at Williams Brice Owners Ass’n, Inc. v. Lalla, 415 S.C. 72, 82, 781 S.E.2d 115, 121 (Ct. App. 2015).

In this case, I find that Plaintiff did not admit into evidence a true, accurate, authentic, and complete set of the bylaws. While there may be some testimony or evidence at trial as to

what Plaintiff asserts that certain clauses or phrases of the bylaws mean or say, without a true, accurate, and authentic set of the bylaws, the Court is simply without sufficient information to evaluate the truth, veracity, or accuracy of such contentions. In other words, based on the trial evidence, the Court is simply without sufficient information to independently assess whether the bylaws actually say or mean what Plaintiff contends they say or mean. Further, without a complete set of the bylaws being admitted into evidence, the Court would be forced to view particular phrases or clauses in isolation, and is deprived of the ability to independently review and construe the contents of the entire bylaws as a whole, contrary to contract construction principles. Without a complete set of the bylaws, the Court is deprived of the ability to independently evaluate and determine what provisions of the bylaws are the relevant and controlling provisions, and is deprived of the ability to otherwise construe the provisions of the bylaws in light of the terms of the entire document. Based on the foregoing, at the close of Plaintiff's case, insufficient evidence was presented as to the terms and contents of the bylaws to allow the Court to independently evaluate, interpret, and construe the bylaws. However, even had the bylaws been introduced, from what the record does show, Plaintiff would still not be entitled to the relief he seeks. Therefore, the Court grants judgment against Plaintiff and declines to issue the declarations requested by Plaintiff per Stipulated Issues 1(b), 1(d), 1(e), and 1(f) for this reason as well.

Based on all of the foregoing, except as stated above regarding the parties' stipulation as to Stipulated Issue 1(c), no other specific finding or determination is made as to the specific terms of the Bylaws and/or the specific meaning of the terms of the Bylaws for the Association, nor is any finding made as to whether Defendants have violated the terms of the bylaws.

Based on all of the foregoing, the Court declines to award the relief sought by Plaintiff as to the declarations requested per Stipulated Issues 1(b), 1(d), 1(e), and 1(f) and declines to issue those requested declarations.

IV. Plaintiff's request for an award of Nominal Damages against Defendants (Stipulated Issue 2)

I find that Plaintiff is not entitled to an award of any damages against Defendants and I deny Plaintiff's request for an award of nominal damages.

V. Plaintiff's requests for award of court costs and legal fees if such costs and fees are paid by the Association's insurance carrier (Stipulated Issue 3)

I find that Plaintiff is not entitled to an award of attorney's fees and costs. First, Plaintiff is not the prevailing party in this action, as judgment is granted against Plaintiff pursuant to Defendants' motion for involuntary non-suit under Rule 41(b), SCRCF. Further, the "general rule is that attorney's fees are not recoverable unless authorized by contract or statute." Seabrook Island Prop. Owners' Ass'n v. Berger, 365 S.C. 234, 238, 616 S.E.2d 431, 434 (Ct. App. 2005). "In South Carolina, the authority to award attorney's fees can come only from a statute or be provided for in the language of a contract." Id. at 238-239, 616 S.E.2d at 434. "There is no common law right to recover attorney's fees." Id. at 239, 616 S.E.2d at 434. The Court is unaware of any statute providing for attorney's fees in this case, nor was any evidence presented that attorney's fees are provided by contract. Further, Plaintiff did not provide any evidence that that such costs and attorney's fees would be paid by the Association's insurance carrier, and Plaintiff testified that he is not asking that his attorney's fees be paid by Defendants. Based on the foregoing and the evidence presented, I find that Plaintiff is not entitled to an award

of attorney's fees and costs and therefore deny the Plaintiff's request for attorney's fees and costs.

CONCLUSION

Based on the all of the foregoing, I GRANT Defendant's motion for involuntary non-suit under Rule 41(b) and enter judgment as set forth herein.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE TO FOLLOW]



Greenville Common Pleas

Case Caption: Raymond A Wedlake , plaintiff, et al vs. Benjamin Acord , defendant,
et al
Case Number: 2017CP2306301
Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2018-05-29 08:42:19 page 11 of 11

The South Carolina Court of Appeals

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

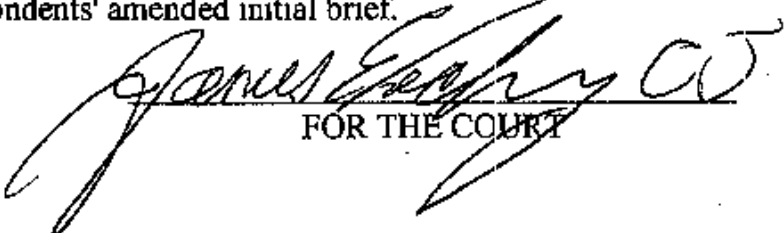
v.

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

Appellate Case No. 2018-001209

ORDER

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


FOR THE COURT

Columbia, South Carolina

cc:

Grant Henry Gibson, Esquire
Ely Owen Grote, Esquire

FILED

November 8, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2019-CP-23-01501
Raymond A. Wedlake, as a Member of the	)	
Woodington Homeowners' Association,	)	
Inc.	)	
	)	
Plaintiff,	)	ORDER GRANTING DEFENDANTS'
	)	SCOTT BASHOR, WILLIAM CRAIGO,
v.	)	CHRISTOPHER EDWARDS, DENNIS
	)	ESTEVE AND CHARLES KOSHIS IN
	)	THEIR CAPACITY AS MEMBERS OF
Scott Bashor, William Craigo, Christopher	)	THE CURRENT BOARD OF
Edwards, Denis Esteve and Charles Koshis	)	DIRECTORS OF WOODINGTON
in their capacity as Members of the current	)	HOMEOWNERS' ASSOCIATION,
Board of Directors of Woodington	)	INC.'S MOTION FOR SUMMARY
Homeowners' Association, Inc.	)	JUDGMENT
	)	
and	)	
	)	
Doe Entities 1-10, and John & Jane Does	)	
1-10	)	
Defendants.	)	

This matter is before the Court on the Motion of Defendants, Scott Bashor, William Craigo, Christopher Edwards, Dennis Esteve and Charles Koshis in their capacity as Members of the current Board of Directors of Woodington Homeowners' Association, Inc. ("Defendants") for Summary Judgment. A hearing was held on February 27, 2020, with counsel for defendant and the Pro-Se plaintiff present. The Court has reviewed and considered all legal memoranda, exhibits, and oral arguments submitted by the parties. For the reasons stated below, the Court **GRANTS** Defendants' Motion for Summary Judgment.

FACTS

This lawsuit is the fourth lawsuit plaintiff has filed against the WHOA Board and its members. Plaintiff brought this lawsuit alleging that the defendants had breached their fiduciary

duty as board members by accepting a legal invoice from the law firm of McCabe, Trotter and Beverly, P.C., who provided legal services for the WHOA in defending a lawsuit brought by the plaintiff Raymond Wedlake.¹

In April 2018, the WHOA, elected its 2018 Board, in which Chris Edwards, Chip Koshis, Denis Esteve, William Craigo, and Mike Keels were duly elected. On July 13, 2018, the 2018 WHOA Board received a legal bill from McCabe, Trotter and Beverly, P.C. in the amount of \$53,684.50 for legal services rendered in the defense of plaintiff's lawsuit against the 2017 WHOA Board. (*C.A. No.: 2017-CP-23-06301.*)

On July 27, 2018, the WHOA Board prepared and sent a letter to all WHOA members giving the, notice of a Special Meeting that was to take place on August 21, 2018. On August 21, 2018, the Special Meeting was held to update all members on events affecting the WHOA, including the pending lawsuits brought against the WHOA Board by the plaintiff. Mr. Wedlake was present at this meeting.

On October 11, 2018, the WHOA Board sent a mailing to all members of the WHOA which included:

- Minutes from the Special Meeting held 8/21/18
- Cover sheet explaining each ballot with information as to the required number of responses/votes in order for the balloted item to be accepted by the Association

¹ *Raymond A. Wedlake, individually and derivatively, on behalf of all Members of The Woodington Homeowners' Association, Inc., v. Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of the Woodington Homeowners' Association, Inc., and, Association Management Group SC, Inc., C.A. No.: 2017-CP-23-06301.* On May 29, 2018, following plaintiff's presentation of his case at trial, the Honorable Judge Simmons issued an Order granting the WHOA Board's motion for an involuntary non-suit under rule 41(b) and dismissed plaintiff's case.

- Separate ballots for indemnification and a proposed 'Payment Plan' for the legal services owed to McCabe, Trotter and Beverly, P.C. for their representation of the WHOA Board in the first lawsuit brought by plaintiff and a third ballot which proposed an amendment to the bylaws as it relates to lawsuits brought by WHOA members.
- An article from an industry expert explaining Indemnification as it relates to Directors of Non-Profits Corporations in South Carolina (Woodington Homeowner's Association, Inc. is a South Carolina Non-Profit Corporation)

On October 30, 2018, a Special Meeting was held to discuss current events, detail the ballots and their purpose, and answer any questions WHOA members had as it related to the Ballots. The due date for the ballots was that were sent out October 11, 2018. Fifty One (51) total ballots were returned. :

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

These ballots were counted as per Article 17, Section 3, of the Woodington HOA Bylaws. This section states:

“Any and all issues may be resolved per the simple majority result of vote by ballot by all Association Members. The Board Secretary shall deliver a ballot to every Member, with a specified return date determined by the Board. The return date shall be no earlier than twenty-one (21) days from date of delivery. The voting period shall include at least three Saturdays and three Sundays, where end of the voting period shall be neither Saturday nor Sunday. Ballots of members not returned by the specified return date shall be voted by the Board. The Board's vote for non-returned ballots shall be clearly specified on ballots at the time they are delivered to Members.”

On December 6, 2018, a Special Meeting was held in which the ballot results were provided to all WHOA members. On January 11, 2019, the WHOA Board sent a letter out to all WHOA members which detailed the ballot results and advised of the annual meeting scheduled for January 24, 2019.

On January 24, 2019, the Annual Meeting of the Woodington HOA was held. The annual WHOA budget was presented in detail by the Treasurer, Denis Esteve. The budget included line items matching the additional funds to be collected by the approved Payment Plan and corresponding payments of Legal Fees. The Budget was passed by verbal vote of those in attendance. It is believed that the plaintiff, Raymond Wedlake was the only WHOA member present who voted against the proposed budget.

Plaintiff then subsequently filed this lawsuit against the named defendants in their capacity as Board members, claiming that the defendants breached their fiduciary duty to the WHOA by first accepting the invoice for legal services rendered by McCabe, Trotter & Beverly, P.C., and further violated their fiduciary duty by counting the ballots that had been sent out to the community in October of 2018 (ballots pertaining to indemnification and payment plan for legal fees) that were not returned by WHOA members as proxy “Yes” votes in favor of the proposed plan. Upon the filing of this lawsuit, plaintiff moved this Court for an Emergency Injunction to force the WHOA to stop payment on a due and owing debt. A hearing was held before this Court on May 23, 2019 in which the Court denied plaintiff’s motion for an Emergency Injunction.

LEGAL STANDARD

Summary judgment is appropriate where, as here, there is “no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.” *Cunningham v. Anderson Cty.*, 414 S.C. 298, 302, 778 S.E.2d 884, 886 (2015); *see also* Rule 56(c), SCRPC. “The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *Wright v. PRG Real Estate Mgmt., Inc.*, 426 S.C. 202, 211, 826 S.E.2d 285, 290 (2019) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Summary judgment is “completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *Rawlinson Rd. Homeowners Ass’n v. Jackson*, 395 S.C. 25, 33, 716 S.E.2d 337, 342 (Ct. App. 2011) (quoting *David v. McLeod Reg’l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006)). Where a party makes a properly supported motion for summary judgment, the non-moving party cannot survive the motion by resting on unsupported allegations. *Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Rule 56, SCRPC).

CONCLUSIONS OF LAW

The plaintiff asserts that Defendants breached their fiduciary duty to the WHOA members by accepting a legal invoice from a law firm that provided the WHOA Board legal services to defend a lawsuit that plaintiff brought against the 2017 WHOA Board. Additionally, plaintiff asserts that the Defendants breached their fiduciary duty to the WHOA members by not abiding by the WHOA Bylaws and South Carolina Non-Profit Corporation Act. To establish a claim for breach of fiduciary duty, [a claimant] must prove (1) the existence of a fiduciary duty (2) a breach of that duty owed to the [claimant] by the defendant and (3) damages proximately resulting from the wrongful conduct of the defendant.” *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322,

335–36, 732 S.E.2d 166, 173 (2012). In the present case, there is no evidence showing that the Defendants breached their fiduciary duties to the members of the WHOA.

A. The Defendants’ Actions Were Proper Under the WHOA Bylaws

The Board properly counted the ballots both returned and not returned in accordance with the WHOA Bylaws, and in no way breached its fiduciary duty to WHOA members. Article 17, Section 3, which is the applicable section of the Bylaws states the following:

Ballots: Ballots are only mentioned in **Article XVII (3) of the Woodington By-Laws**. Article XVII (3) of the Woodington By-Laws states:

“Any and all issues may be resolved per the simple majority result of vote by all Association Members. The Board Secretary shall deliver a ballot to every Member, with a specified return date determined by the Board. The return date shall be no earlier than twenty-one (21) days from date of delivery. The voting period shall include at least three Saturdays, and three Sundays, where end of the voting period shall be neither Saturday nor Sunday. Ballots of Members not returned by the specified return date shall be voted by the Board. The Board’s vote for non-returned ballots shall be clearly specified on ballots at the time they are delivered to Members.”
(See Exhibit “J”)

All balloting by the 2018 Board was done strictly by the procedure detailed in this section of the Bylaws. Each ballot sent to members contained the following disclosure as required by the bylaws:

“ THE BOARD’S VOTE OF “FOR” SHALL BE CAST IN THE EVENT
THIS BALLOT IS NOT RETURNED BY FRIDAY, NOVEMBER 9TH**”**
(See Exhibit “H”)

On the Indemnification ballot that was sent out to WHOA members, the Board received 29 returned ballots in favor of indemnification and 12 ballots against indemnification. 24 ballots were not returned and as per the bylaws, were counted as “For” votes for indemnification, giving the Board a total of 53 votes in favor of indemnification. It should be noted that a total of 34

votes is needed for a majority. As clearly evidenced, and as per the bylaws, the Board received 53 votes in favor of indemnification, well over the majority. As such, plaintiff has failed to establish that the Board violated its fiduciary duty by accepting the legal invoice by McCabe, Trotter & Beverly, P.C. and assessed payments on WHOA members for the incurred legal fees without a majority of votes from the community needed to pass the indemnification.

In regard to the second ballot on the proposed payment plan for the legal fees incurred by the Board, the Board received 32 returned ballots in favor of the payment plan and 9 returned ballots against the payment plan. 24 ballots were not returned and as per the Article 17, Section 3 of the Bylaws, the ballots not returned were voted on by the Board in support of the payment plan, giving the Board a total of 56 votes in favor of implementing the proposed payment plan. Again, it is reiterated that a total of 34 votes is needed for a majority. As per the Bylaws, the Board received 56 votes in favor of indemnification of the Board Members legal fees, well over the majority. As such, plaintiff has failed to establish that the Board did not receive a majority of votes needed to pass the payment plan proposal and thus cannot show that the defendants violated their fiduciary duty to the WHOA members.

Based on the plain language of the Bylaws, it appears that the defendants acted in accordance with the WHOA Bylaws, specifically Article 17, Section 3, when counting the votes (all returned and non-returned votes) for indemnification and payment plan for legal fees incurred from a previous lawsuit brought against the Board by the plaintiff. Defendants have done nothing improper, have acted in accordance to the WHOA Bylaws, and did not violate their fiduciary duty to its members. There appears to be no issue of fact when it comes to the plain

language of the Bylaws, and as such, the plaintiff has failed to establish that Defendants breached the fiduciary duty owed to WHOA members.

B. Plaintiff Was On the WHOA Board in 2001 When Article 17, Section 3 was approved by the WHOA members and adopted by the Board.

Plaintiff held the position of Secretary on the WHOA Board in 2001 when Article 17, Sections 1 and 3 were proposed and approved by the Board to the WHOA members. The plaintiff, as Secretary of the Board in 2001, wrote a letter to all WHOA members, dated July 5, 2001, in which he advised members of the results of the vote. In his letter, the plaintiff proclaimed, “Results from the meeting were very positive, as all proposed “By-Laws” amendments were accepted!” The letter further states that “The Board will commit resources, if necessary, to defend the By-Laws” if a legal challenge is brought forth.”

The plaintiff was aware of Article 17, Section 3 of the WHOA Bylaws in 2001. It also appears, that plaintiff supported the adoption and implementation of Article 17, Section 3. Now, approximately 19 years later, the plaintiff is challenging the validity of Article 17, Section 3 of the Bylaws, and alleging that the defendants are in breach of its fiduciary duty to the WHOA members because the defendants counted votes in accordance with the Bylaws that the plaintiff himself approved and implemented back in 2001. Plaintiff’s contention that the defendants were in breach of their fiduciary duty by approving the indemnification and payment plan initiatives based on Bylaws that plaintiff himself approved and implemented 19 years ago, is misguided.

C. Defendants’ Actions Were Proper Under the South Carolina Non-Profit Act

The defendants were not in violation of the South Carolina Non-Profit Act as it pertains to the approval for the proposed ballots for indemnification and payment of legal fees. Section 33-31-708 of the South Carolina Non-Profit Act states the following:

SECTION 33-31-708. Action by written or electronic ballot.

(a) Unless prohibited or limited by the articles or bylaws, any action that may be taken at *any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written or electronic ballot to every member entitled to vote on the matter.*

(b) *A written or electronic ballot shall:*

(1) set forth each proposed action; and

(2) provide an opportunity to vote for or against each proposed action.

(c) Approval by written or electronic ballot pursuant to this section is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) All solicitations for votes by written or electronic ballot shall:

(1) indicate the number of responses needed to meet the quorum requirements;

(2) state the percentage of approvals necessary to approve each matter other than election of directors; and

(3) specify the time by which a ballot must be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles or bylaws, a written or electronic ballot may not be revoked.

As per the WHOA bylaws, a quorum is one quarter $\frac{1}{4}$ of the membership, which currently requires 17 members needing to be present at a meeting to satisfy the quorum requirements. As previously stated, the votes cast by ballot pertaining to the proposal for

indemnification and the payment plan clearly exceeded the quorum (17) required to be present at a meeting authorizing such actions. Further, the number of votes approving the proposed initiatives, which was 53 and 56 respectively, clearly exceeded number of votes that would be required to approve the matter at a meeting, (9 votes would be required for majority for a 17 member quorum), at which the total number of votes cast was the same as the number of votes cast by ballot. Moreover, the voting on indemnification and the payment plan passed even without the required Board votes of unreturned ballots. (29 and 32 votes “For”) returned respectively). As such, Defendants clearly adhered to the South Carolina Non-Profit Act, and did not violate their fiduciary duty to the WHOA members by adhering the Bylaws and South Carolina Non-Profit Act.

CONCLUSION

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendants’ Motion for Summary Judgement is GRANTED and Plaintiff’s claims are dismissed with prejudice.

IT IS SO ORDERED.

The Hon. Edward W. Miller
Presiding Judge
Court of Common Pleas
13th Judicial Circuit

Greenville, SC

_____, 2020



Greenville Common Pleas

Case Caption: Raymond A Wedlake , plaintiff, et al vs. Scott Bashor , defendant, et al
Case Number: 2019CP2301501
Type: Order/Summary Judgment

So Ordered

s/ Edward W. Miller

Electronically signed on 2020-03-13 09:54:16 page 11 of 11

EXHIBIT NOA.2

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE MAGISTRATE'S COURT

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

Plaintiffs,

vs.

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

Defendants.

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

C.A. No. 2020CV2310201384

RECEIVED

Aug 09 2021

SC Court of Appeals

THIS MATTER IS BEFORE the court on the defendants' motions to dismiss the plaintiffs' amended complaint. A hearing on these motions was held before me on November 24, 2020. Present at the hearing were Raymond A. Wedlake, appearing *pro se*; Stephanie Kellahan of the firm McCabe, Trotter & Beverly, P.C., attorneys for McCabe, Trotter & Beverly, P.C.; Chris Smith of the firm Clarkson Walsh Coulter, attorneys for the Board of Directors of Woodington Homeowners' Association, Inc., comprised of Mona Craigo, Edward Decker, and Sandra LaCroix, and Nicholas A. Farr of the firm Gallivan, White & Boyd, P.A., attorneys for State Farm Fire and Casualty Company. Based upon the arguments of the parties, pleadings, exhibits, applicable law and the record in this case, the court hereby orders that the defendants' motions to dismiss be GRANTED with prejudice.

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Background

The genesis of this lawsuit and the multiple other lawsuits plaintiff has filed against the WHOA Board, stem from a 2016 dispute plaintiff had with the Woodington Homeowners Association (“WHOA”) Architectural Committee over a sailboat that plaintiff had painted on his garage door. Plaintiff filed a lawsuit against the WHOA Board titled: *Raymond A. Wedlake, individually and derivatively, on behalf of all Members of The Woodington Homeowners' Association, Inc., v. Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of the Woodington Homeowners' Association, Inc., and, Association Management Group SC, Inc., C.A. No.: 2017-CP-23-06301*. On May 29, 2018, following plaintiff's presentation of his case at trial, the Honorable Judge Simmons issued an Order granting the WHOA Board's motion for an involuntary non-suit under rule 41(b) and dismissed plaintiff's case. Plaintiff's lawsuit was for a declaratory judgment as it pertained to the interpretation of the WHOA bylaws. Plaintiff also sought nominal damages and attorney's fees. Following plaintiff's presentation of his evidence at the trial of this case, the Court granted defendants' motion to dismiss plaintiff's case. Plaintiff appealed the Court's decision, and this matter is currently pending in the Court of Appeals. The WHOA board retained the services of the law firm of McCabe, Trotter & Beverly, P.C. to represent them in that action. The WHOA Board in that action is still being represented by the law firm of McCabe, Trotter & Beverly, P.C. (“MTB”) in the pending appeal of that action.

In April 2018, the WHOA elected its 2018 Board, in which Chris Edwards, Chip Koshis, Denis Esteve, William Craigo, and Mike Keels were duly elected. On July 13, 2018, the 2018 WHOA Board received a legal bill from MTB in the amount of \$53,684.50 for legal services rendered in the defense of plaintiff's lawsuit against the 2017 WHOA Board.

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On July 14, 2018, the plaintiff filed a defamation lawsuit against individual WHOA board members, Kristine Lynch and Dawn Vonderbecke, in the Greenville County Court of Common Pleas, titled: *Raymond A. Wedlake, as a Member of the Woodington Homeowners' Association, Inc. vs. Kristine Lynch and Dawn Vonderbecke and John Does & Jane Does numbers 1-10 and Doe Legal Entities numbers 1-10, C.A. No.: 2018-CP-23-03758*. The Clarkson Walsh Coulter law firm defended the individually named defendants in that case.

On January 24, 2019, the Annual Meeting of the Woodington HOA was held. The annual WHOA budget was presented in detail by the Treasurer, Denis Esteve. The budget included line items matching the additional funds to be collected by an approved Payment Plan and corresponding payments of Legal Fees. The Budget was passed by verbal vote of those in attendance. It is believed that the plaintiff, Raymond Wedlake was the only WHOA member present who voted against the proposed budget.

On January 17, 2019, the plaintiff filed a complaint against the WHOA Board that consisted of Christopher Edwards, Charles Koshis, Denis Esteve, Michael Keels and William Craigo in their capacity as Board of Directors of the Woodington Homeowners' Association, Inc., Case No. 2019-CP-23-00269.

On March 23, 2019, the plaintiff filed a lawsuit against the 2019 WHOA Board entitled: *Raymond Wedlake, as a Member of the Woodington Homeowners' Association, Inc. v. Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve and Charles Koshis in their capacity as members of the current Board of Directors of Woodington Homeowners' Association, Inc., CA No.: 2019-CP-23-01501*. The lawsuit claimed that the defendants breached their fiduciary duty to the WHOA by first accepting the invoice for legal services rendered by MTB and further violated their fiduciary duty by counting the ballots that had been sent out to


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the community in October of 2018 (ballots pertaining to indemnification and payment plan for legal fees) that were not returned by WHOA members as proxy "Yes" votes in favor of the proposed plan. These are the same exact claims that plaintiff has brought before the Magistrate's Court in this lawsuit in an attempt to re-litigate the issues that have already been decided in previous actions.

State Farm Fire and Casualty Company ("State Farm") is the liability insurer for WHOA. Upon the filing of this lawsuit, State Farm agreed to provide the HOA Board with a defense in this action under a reservation of rights. The plaintiff subsequently filed the amended complaint in this action. In the amended complaint, the plaintiff amends his allegations against WHOA in an attempt, based on the plaintiff's interpretation of the State Farm policy, to remove any potential insurance coverage afforded WHOA. Likewise, in the amended complaint, the plaintiff asserts a breach of contract claim against State Farm for providing a defense to WHOA on the grounds that the amended complaint allegedly no longer triggers coverage under the State Farm policy.

Legal Standard

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the court may dismiss a claim when the defendant demonstrates the plaintiff's "failure to state facts sufficient to constitute a cause of action" in the pleadings filed with the court. *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct. App. 2002). When ruling on a motion to dismiss for failure to state facts to constitute a cause of action, the court must base its decision solely upon the allegations set forth on the face of the complaint. *Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987). The court must grant the motion if the facts

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

Discussion

I. Collateral Estoppel

“Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.” *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). In the instant case Plaintiff alleges that, due to the alleged bad acts of MTB, WHOA improperly and involuntarily paid an invoice for legal fees related to Case 2017-CP-23-06301. However, Plaintiff filed a lawsuit under that same theory in March 2020 in Case 2019-CP-23-01501¹. Specifically, Plaintiff alleged:

COMES NOW, Raymond A. Wedlake (Plaintiff), in his capacity as a member in good standing of Woodington Homeowners' Association, Inc. (WHOA), and by and through his undersigned legal counsel, Grant H. Gibson, Esq., hereby asserts a breach of covenants and breach of fiduciary duty by Defendants arising from acceptance of an improper invoice from the law firm of McCabe, Trotter, and Beverly, P.C. (McCabe), coupled with disbursement of WHOA funds to McCabe, or any partner or associate thereof.

In Case 2019-CP-23-01501 Plaintiff laid out almost identical facts to allege that several directors of WHOA improperly accepted a bill from MTB, held an improper vote to attempt to approve payment of that bill, miscounted votes in determining the membership approved the vote, demanded the court require WHOA seek recovery of over \$6,000 from MTB, and suggested any funds owed to MTB should be held in escrow until the appeal in case 2017-CP-

¹ MTB was not a named party to Case 2019-CP-23-01501. However, this does not prevent MTB or any other party from asserting collateral estoppel as a bar to this suit because “modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009).

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23-06301 has been decided. These claims were all dismissed via Summary Judgment on March 13, 2020. Specifically, The Honorable Edward Miller held the following:

- “The Board properly counted the ballots both returned and not returned in accordance with the WHOA Bylaws, and in no way breached its fiduciary duty to WHOA members.” (Order, p. 6.)
- “[P]laintiff has failed to establish that the Board did not receive a majority of votes needed to pass the payment plan proposal . . .” (Order, p. 7.)
- “Based on the plain language of the Bylaws, it appears that the [board members] acted in accordance with WHOA Bylaws . . .” (Order, p. 7.)
- “[The board members] have done nothing improper, have acted in accordance with the WHOA Bylaws, and did not violate their fiduciary duty to its members.” (Order, p. 7.)
- “[The board members] were not in violation of the South Carolina Non-Profit Act as it pertains to the approval for the proposed ballots for indemnification and payment of legal fees.” (Order, p. 9.).

Judge Miller’s Order in Case 2019-CP-23-01501 unequivocally found that membership of WHOA voted indemnify the individual defendants from Case 2017-CP-23-6301 and such vote was properly held and valid. He further held the membership voted to pay the legal fee invoice submitted by MTB through a payment plan. Plaintiff cannot seek to collaterally attack Judge Miller’s holding by seeking relief from this Court. For that reason, Plaintiff’s claims related to invoicing and payment of legal fees for Case 2017-CP-23-06301 must be dismissed.

II. Casting Plaintiff in False Light

Plaintiff’s amended complaint fails to state a claim and fails to state facts sufficient to constitute a cause of action against MTB pursuant to Rule 12(b)(6), SCRPC because South Carolina does not recognize a cause of action for “Casting in a False Light.” Even if the court were to interpret this claim as a cause of action for defamation, said claim is barred by the statute of limitations. A claim for libel or slander must be brought within two years. S.C. Code §15-3-

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550. The statute of limitations begins running at the time of the allegedly defamatory statement because "South Carolina has not adopted the discovery rule in libel and slander cases." *Jones v. City of Folly Beach*, 326 S.C. 360, 369, 483 S.E.2d 770, 775 (Ct. App. 1997). Plaintiff's amended complaint states on its face that the allegedly defamatory statement was made September 20, 2016. While Plaintiff's amended complaint alleges the statute of limitations cannot begin to run until Plaintiff learned MTB "acted on [its] own initiative," Plaintiff does not, and cannot, cite any authority for this position. Instead, the case law of this state is clear that the statutory period began on September 21, 2016 and expired on September 21, 2018. Plaintiff did not bring this suit until almost 2 years after that time. For these reasons Plaintiff's claim for defamation must be dismissed.

III. Conspiracy

Plaintiff's claim for conspiracy must also be dismissed pursuant to Rule 12(b)(6) because Plaintiff has failed to state with specificity what special damages he suffered as a result of an alleged conspiracy. Special damages are an essential element in proving a claim for conspiracy. *LaMotte v. Punchline of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988). Specifically, damages alleged in a civil conspiracy claim must go beyond those alleged in other causes of action. *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006). However, in this case the damages sought by Plaintiff, a refund of legal fees allegedly paid in violation of the WHOA's covenants, are the same damages sought by Plaintiff for its Breach of Contract claim. Additionally, Plaintiff has failed to specifically state the special damages allegedly suffered as required by Rule 9(g), SCRPC. As such, the conspiracy claim must be dismissed.

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IV. Plaintiff Lacks Standing to Bring a Derivative Suit

Plaintiff has failed to meet the requirements of Rule 23, SCRCF, and therefore lacks standing to bring a derivative suit. Plaintiff does not fairly and adequately represent the members of WHOA, and Plaintiff's amended complaint fails to allege that he does. In fact, there is currently pending before the Court of Common Pleas for Greenville County a class action lawsuit brought by other members of WHOA alleging ²:

1. This case is about Defendant's actions of harassing his neighbors, eroding community camaraderie, and subjecting the Woodington residents to unnecessary legal expenses, using the Court system and its inherent authority to give credence to his bullying tactics. Defendant has engaged in a clear pattern of harassment through the use of the Court system and its elements through his frivolous lawsuits.

In 2019 The Greenville News published a story outlining Mr. Wedlake's harassment of his neighbors. <https://www.greenvilleonline.com/story/news/2019/04/02/sc-hoa-says-lawsuits-bankrupting-their-greenville-community/2919200002/>. Specifically, at least nine members met with the newspaper to discuss the endless lawsuits filed by Mr. Wedlake. Additionally, Plaintiff's own complaint shows that 29 members of WHOA returned ballots indicating they voted for indemnification and 32 members of WHOA returned ballots indicating they voted for the payment plan. This alone demonstrates Plaintiff's amended complaint is not representative of the position of the WHOA members. As such, he is not allowed to bring this suit derivatively.

Additionally, plaintiff cannot bring a derivative suit on behalf of a non-profit corporation as a *pro se* litigant. In a derivative suit the shareholder bringing the suit is only a nominal plaintiff and the corporation is the real party in interest. *Johnson v. Baldwin*, 69 S.E.2d 585, 588

² 2020-CP-23-01458 was filed March 9, 2020 against Defendant Raymond A. Wedlake. A trial court may take judicial notice of previously entered, related court documents and consider them when ruling on a Motion to Dismiss under Rule 12(b)(6), SCRCF. See *Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n. 2, 754 S.E.2d 494, 497 n. 2 (2014).



221 S.C. 141, 149 (1952). In the instant action plaintiff is attempting to represent the corporate entity and “six similarly situated HOA members.” State law prohibits an individual from practicing law without first possessing a law license. S.C. Code § 40-5-310. While a non-lawyer is allowed to represent a corporation before the magistrate court, the corporation must first give the non-lawyer “written authorization from the entity’s president, chairperson, general partner, owner, or chief executive officer.” *In re Unauthorized Practice of Law Rules Proposed by SC Bar*, 422 S.E.2d 123, 124, 309 S.C. 304, 306 (1992). Such written authorization must be submitted to the magistrate at the time the initial pleading in the case is filed. S.C. Code § 33-1-103. Plaintiff is not a licensed lawyer and therefore may not represent his fellow HOA members in this suit. Additionally, plaintiff has not submitted written authorization from the WHOA’s chief executive officer and therefore cannot represent the corporation before this court. For these reasons I find plaintiff’s derivative claims must be dismissed.

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

In this matter, Plaintiff has asserted a breach of contract claim against State Farm, disputing whether the claims he has asserted against WHOA are covered by the terms and conditions of the State Farm policy. The State Farm policy at issue was issued to WHOA. The plaintiff is not a party to the insurance contract. Under South Carolina law, an injured person who is not a party to the insurance contract has no standing to litigate a dispute between an insurer and an insured unless he has first established liability against the insured. *Park v. Safeco Ins. Co. of America*, 251 S.C. 410, 162 S.E.2d 709, 711 (1968); *see also Erwin v. Universal Underwriters Ins. Co.*, 2007 WL 30288 (holding that injured motorcyclist lacked standing to pursue claims against tortfeasor’s insurer without obtaining judgment against tortfeasor). Here, the plaintiff has not established liability on the part of WHOA. In addition, the court is not

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aware of any dispute between State Farm and its insured, WHOA. As he is not an insured under the State Farm policy, the plaintiff has no standing to bring a breach of contract claim as to the available coverage under the policy. As such, his claims must be dismissed,

CONCLUSION

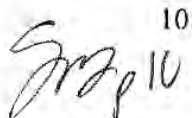
For the foregoing reasons, the Court GRANTS the defendants' motions to dismiss. IT IS HEREBY ORDERED that the plaintiff's amended complaint be dismissed in its entirety with prejudice.



The Honorable Laura M. Saunders
Judge, Fairview/Austin Summary Court

Greenville, South Carolina

December 28, 2020



**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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

v.

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

Appellate Case No. 2018-001209

Appeal From Greenville County
Charles B. Simmons, Jr., Master-in-Equity

Unpublished Opinion No. 2021-UP-113
Submitted February 1, 2021 – Filed April 7, 2021

AFFIRMED

Grant Henry Gibson, of G. Gibson & Associates, LLC, of
St. Augustine, Florida, for Appellant.

Ely Owen Grote of McCabe, Trotter & Beverly, P.C., of
Columbia for Respondent.

PER CURIAM: Raymond Wedlake appeals the Master-in-Equity's grant of the Woodington Homeowner Association (WHOA) Board's Rule 41(b), SCRCF motion for involuntary non-suit on seven stipulated issues for trial as to whether Wedlake, on behalf of WHOA: (1) was entitled to a declaration the Board must comply with and enforce WHOA's By-Laws; (2) was entitled to a declaration the By-Laws place a duty on the Board to fill a vacancy on the Board and the Board must make reasonable efforts to do so; (3) was entitled to a declaration the By-Laws require a majority of all members to both enter into and to renew a management contract; (4) was entitled to a declaration the By-Laws do not permit a Board member to remain beyond a five-year term; (5) was entitled to a declaration the By-Laws do not permit delegation of the role or authority of the Board; (6) was entitled to a declaration the By-Laws require the Board to send out a ballot to the membership for voting if a proposed amendment to the By-Laws is submitted by an eligible member; and (7) whether Wedlake, in his individual capacity, was entitled to nominal damages if it was found the Board improperly failed to appoint him to the Board. Wedlake also asserts the Master erred in failing to take judicial notice of a copy of the WHOA By-Laws or to allow Wedlake to admit the By-Laws into evidence after the close of his case. We find the Master did not err in granting an involuntary non-suit, in refraining from taking judicial notice of the By-Laws, or in declining to reopen to record to allow the By-Laws to be admitted at trial. Accordingly, we affirm.¹

1. The Master did not err in refraining from taking judicial notice of the copy of the By-Laws Wedlake attached to his complaint. *See* Rule 201(b), SCRE ("A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."). First, the content of the WHOA By-Laws is not general common knowledge, nor can the accuracy of the version Wedlake included in the complaint be ascertained or authenticated by "readily available sources of indisputable reliability." *Eadie v. H.A. Sack Co.*, 322 S.C. 164, 172, 470 S.E.2d 397, 401 (Ct. App. 1996) ("A fact is not subject to judicial notice unless the fact is either of such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability."). Instead, the proper

¹ Nothing in this opinion shall be construed as a comment on the appropriateness of the attorneys' fees accrued by the Board's counsel during the trial and appeal of this case, or on the actions and assessments of the Board in order to pay the attorneys' fees while this case was on appeal.

avenue for proving what the WHOA By-Laws stated was to introduce and authenticate a copy of the By-Laws at trial. *See State v. Green*, 427 S.C. 223, 229, 830 S.E.2d 711, 714 (Ct. App. 2019) ("All evidence must be authenticated."); *see also Moss v. Aetna Life Ins. Co.*, 267 S.C. 370, 377, 228 S.E.2d 108, 112 (1976) (holding judicial notice could not be taken of the fact business was sold, as proof of the sale could only be ascertained from the records of the corporation or from someone with personal knowledge of the sale).

2. The Master did not abuse his discretion in declining Wedlake's request to admit a copy of the By-Laws into evidence immediately following the Board's motion for non-suit. *See Brenco v. S.C. Dep't of Transp.*, 377 S.C. 124, 127, 659 S.E.2d 167, 169 (2008) (stating "the trial judge is endowed with considerable latitude and discretion in allowing a party to reopen a case"); *id.* at 128, 659 S.E.2d at 169 (holding trial court did not abuse its discretion by refusing to allow the party who had the burden of proof a second opportunity to present evidence when it had ample opportunity to do so during trial).

3. Stipulated issue three—whether Wedlake, on behalf of WHOA, is entitled to a declaration that the By-Laws require a majority of all members to both enter into and to renew a management contract—was dropped at trial by agreement, and the Master found in his order that it was properly dismissed under Rule 43(k), SCRPC. Wedlake does not appeal this finding, and it is the law of the case. *See Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("An unappealed ruling is the law of the case and requires affirmance.").

4. As to stipulated issues one, two, four, and five, the Master did not err in finding they were moot at the time of trial. As to stipulated issue one, the Board admitted into evidence at trial the June 17, 2017 email from the president of the Board, stating, "The law must be followed. By election to the Board, we did agree to abide by the By-Laws." Accordingly, there was no controversy between the parties over the issue of whether the Board must comply with the WHOA By-Laws. *See S.C. Pub. Interest Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 121, 804 S.E.2d 854, 860 (2017) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy." (quoting *Sloan v. Greenville Cnty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009))). As to stipulated issue two, Wedlake admitted at trial there was no current vacancy on the Board, and he did not assert the matter was of public interest, had future or collateral consequences for the parties, or that the issue would truly evade review if it occurred again in the future. *See id.* (noting party bringing action has burden to show moot issues fall into an exception to the mootness doctrine); *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001) (explaining the three exceptions to

the mootness doctrine occur when an issue is of important public interest, when it effects future events or has collateral consequences for the parties, or when it is capable of repetition but evading review); *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430–31, 468 S.E.2d 861, 864 (1996) ("A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character."). Accordingly, issue two was moot at the time of trial. As to stipulated issue four, Wedlake admitted the members of the 2017 Board were elected to their position at the 2017 WHOA annual meeting and were serving the first year of their term. Wedlake did not assert that one of these Board members would be serving past the expiration of his term or that the hypothetical situation of a member serving past his term was a matter of public interest, had future or collateral consequences for the parties, or that the issue would truly evade review if it occurred again in the future. *See S.C. Pub. Interest*, 421 S.C. at 121, 804 S.E.2d at 860; *Curtis*, 345 S.C. at 568, 549 S.E.2d at 596; *Byrd*, 321 S.C. at 430–31, 468 S.E.2d at 864. Accordingly, we agree with the Master that issue two was moot at the time of trial. As to stipulated issue five, Wedlake testified he perceived that the Board secretary's delegation of minute keeping to the Board's management company was improper. However, at the time of trial, the management company in question no longer served as WHOA's management company and the secretary was no longer serving on the Board. Wedlake did not allege any other improper delegation of duty, and any declaration from this court on some other hypothetical delegation of authority would be advisory in nature and would have no practical legal effect on an existing controversy. *See Curtis*, 345 S.C. at 567, 549 S.E.2d at 596 ("An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy."). Accordingly, issue five was moot at the time of trial.

5. As to stipulated issue six, we find the issue was not moot at the time of trial, as it affected an on-going controversy—namely whether the Board was required to submit a ballot to the WHOA membership on Wedlake's proposed addition of an alternative-dispute resolution provision to the By-Laws. During his case in chief, Wedlake testified he helped draft the WHOA By-Laws, which included a "ballot provision" requiring the WHOA Board to send a ballot to all members of WHOA when an eligible WHOA member proposed an amendment to the By-Laws. Wedlake explained he had proposed an amendment to the By-Laws allowing for alternative dispute resolution when disputes arose between members and the Board, but the vote for his amendment had "been blocked by the current Board." On cross-examination, the Board asked Wedlake about this issue, and specifically, whether Wedlake was required to "force a special meeting" under the By-Laws in

order to have his amendment voted upon. Wedlake disagreed this was the necessary course to take; however, on re-direct, he did not further comment on the issue, did not produce any other evidence in support of his position, and no version of the WHOA By-Laws was admitted into evidence at trial. Because the Master may weigh evidence in a non-jury trial on a motion for non-suit after the plaintiff has rested its case, we find the record supports the Master's determination that Wedlake did not prove he was entitled to a declaration, on behalf of WHOA, that the WHOA Board must send a ballot to all members of WHOA when an eligible WHOA member proposed an amendment to the By-Laws. *See Johnson v. J.P. Stevens & Co.*, 308 S.C. 116, 118, 417 S.E.2d 527, 529 (1992) ("Under Rule 41 in a nonjury trial, the trial judge clearly may dismiss the action even though the plaintiff may have established a *prima facie* case. Rule 41(b) allows the judge as the trier of facts to weigh the evidence, determine the facts and render a judgment against the plaintiff at the close of his case if justified."); *id.* at 117, 417 S.E.2d at 528 (stating that on appeal from the grant of a motion for involuntary non-suit, this court must affirm the Master's findings if there is any evidence to support them).

6. As to stipulated issue seven, the Master made no specific findings of fact in denying Wedlake's individual action for damages resulting from the Board's failure to appoint him to the Board upon the secretary of the Board's resignation, stating only: "I find [Wedlake] is not entitled to an award of any damages against [the Board]." However, in granting involuntary non-suit on Wedlake's derivative action, the Master found Wedlake failed to satisfy his burden of proving he was entitled to a declaration "the Board had a duty to fill a vacancy." There is evidence in the record to support this finding. Specifically, during Wedlake's cross-examination, the Board introduced the Board president's June 17, 2017 email to Wedlake in which the president described the actions the Board took at WHOA's second-quarter meeting to assign the resigned member's duties to another Board member and provided several references to By-Law provisions in support of the Board's actions in this regard. Because this evidence indicates Wedlake's interpretation of the By-Law provisions regarding replacement of a Board member was not the only plausible interpretation of the By-Laws, we affirm the Master's grant of involuntary non-suit on Wedlake's individual action for nominal damages against the Board. *See Johnson*, 308 S.C. at 117, 417 S.E.2d at 528 (stating that on appeal from the grant of a motion for involuntary non-suit, this court must affirm the Master's findings if there is any evidence to support them).

7. The Master also granted involuntary non-suit on other grounds. Because we affirm on the issues above, we decline to address the remaining issues on appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518

S.E.2d 591, 598 (1999) (providing that an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

WILLIAMS, THOMAS, and HILL, JJ., concur.

AFFIRMED.²

² We decide this case without oral argument pursuant to Rule 215, SCACR.

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

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2305996

Raymond A Wedlake et al
PLAINTIFF(S)

Woodington Homeowners Association Inc et al
DEFENDANT(S)

Aug 09 2021

SC Court of Appeals

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

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

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

See Pg. 2

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

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

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

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

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

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

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



Greenville Common Pleas

Case Caption: Raymond A Wedlake , plaintiff, et al VS Woodington Homeowners Association Inc , defendant, et al
Case Number: 2020CP2305996
Type: Order/Electronic Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2021-05-08 09:27:41 page 3 of 3

ELECTRONICALLY FILED - 2021 May 10 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2305996

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	THIRTEENTH JUDICIAL CIRCUIT
Raymond A. Wedlake, individually, and	)	
derivatively, on behalf of all Members of the	)	Civil Action No.
Woodington Homeowners' Association, Inc.	)	
	)	-CP - -
Plaintiff(s)	)	
vs.	)	
Benjamin Acord, William Craigo, Denis Esteve,	)	SUMMONS
and Brian James in their capacity as the current	)	(NON-JURY)
Board of Directors of the	)	
Woodington Homeowners' Association, Inc.	)	
and,	)	
Association Management Group SC, Inc.,	)	
	)	
Defendants	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint to the subscriber at his office: 1200 Woodruff Road, Bldg A-3, Greenville, SC, 29607, within thirty (30) days after service hereof, exclusive of the day of such service. 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.

Respectfully Submitted,
G. GIBSON & ASSOCIATES, LLC
By: s/Grant H. Gibson, Esq.
Grant H. Gibson, Esq., SC Bar # 9269

1200 Woodruff Rd. – Bldg. A-3, Greenville, SC 29607
(864) 630-7471

e-mail: atty@ggibsonassociates.com

Greenville, South Carolina
October 5, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	THIRTEENTH JUDICIAL CIRCUIT
Raymond A. Wedlake, individually, and	)	
derivatively, on behalf of all Members of the	)	Civil Action No.
Woodington Homeowners' Association, Inc.	)	
	)	-CP - -
Plaintiff(s)	)	
	)	COMPLAINT
vs.	)	
	)	DECLARATORY JUDGMENT
Benjamin Acord, William Craigo, Denis Esteve,	)	
and Brian James in their capacity as the current	)	AND
Board of Directors of the	)	
Woodington Homeowners' Association, Inc.	)	<u>INJUNCTIVE RELIEF</u>
	)	
and,	)	
	)	
Association Management Group SC, Inc.,	)	
	)	
Defendants	)	

COMES NOW, Raymond A. Wedlake ("Plaintiff"), and brings this action for Declaratory Judgment, derivatively on behalf of the Woodington Homeowners' Association, Inc. ("WHOA") , and seeking injunctive relief, based upon the allegations below.

PARTIES

1. Plaintiff: Raymond A. Wedlake is, and at all relevant periods, has been, a resident of Greenville County (Affidavit 7).
2. Defendants: Benjamin Acord, Denis Esteve, William Craigo, and Brian James, who constitute the four members of the current Board of Directors of the WHOA, in their capacity as Board members ("Board Defendants"), and Defendant: Association Management Group, SC, Inc. ("AMG") the management company for the WHOA, have each been and continue to be, residents of Greenville County (Affidavit 8, 10).

3. Defendant, AMG, is a South Carolina management company, with a principal place of business in Simpsonville, S.C., in Greenville County (Affidavit 10).

NATURE OF THE CONTROVERSY

4. Genuine disputes exist, and are ongoing, between Plaintiff, Raymond Wedlake individually, and the members of the WHOA collectively, and the Board Defendants regarding proper interpretation of the By-Laws of the WHOA on several issues.
5. Plaintiff is a dues-paying member, in good-standing of the WHOA, has suffered injury personally, and also collectively, as a member of the WHOA, and accordingly has standing to bring this action derivatively on behalf of the WHOA.
6. Board Defendants have apparently interpreted the By-Laws of the WHOA (Exhibit A), and the South Carolina Nonprofit Corporation Act ("NPCA"), to preclude Plaintiff from receiving various documents ("Requested Information"), including a request for the insurance policy, or policies, and for 2015 and 2016 payments made to AMG and to the law firm for the WHOA: McCabe, Trotter, and Beverly ("McCabe"), despite Plaintiff having submitted his request in writing, and stating a proper purpose (Exhibit B, Affidavit 11).
7. There has been no explanation from the Board Defendants as to the basis for refusing Plaintiff such Requested Information (Exhibit B, Affidavit 12).
8. There is a dispute between Plaintiff and the Board Defendants with regard to the duty of the Board Secretary under the By-Laws, to send a ballot, following submission by an eligible Member of a proposed amendment for adding an "Alternative Dispute Resolution (ADR)" process to the By-Laws (Exhibit C, Affidavit 13).
9. The Board Defendants have apparently interpreted the By-Laws to empower the Board of Directors ("Board") of the WHOA to increase the fees paid to AMG unilaterally, without

approval of all the members of the WHOA ("Members") and in violation of an existing Management Agreement ("Contract"), which interpretation Plaintiff disputes (Exhibit D, Affidavit 51 - 56).

10. Plaintiff disputes the Board Defendants' authority under the By-Laws Article VIII, Section 1(d), to renew the Contract with AMG without approval of a majority of Members (Exhibit A, Affidavit 46 - 49).
11. The Plaintiff and the Board Defendants are in dispute as to the proper interpretation of the WHOA By-Laws regarding the term limits of members of the Board of the WHOA. Plaintiff's position is that the By-Laws, when read together with the applicable NPCA, limits the Board of the WHOA to a maximum term of five years (Affidavit 32 – 33).
12. The parties dispute whether a current vacancy must be filled or not; it being the position of the Plaintiff that the provisions of the By-Laws clearly mandate that vacancies on the Board be filled and that the express language of the By-Laws prevails on this issue and not the language of the NPCA (Exhibit E, Affidavit 41 - 45).
13. The parties further dispute whether the WHOA Board may delegate duties at all, including delegation of duties to AMG; it being the position of Plaintiff that since it is not provided for in the Articles of Incorporation of the WHOA, such delegation is not permitted (Affidavit 59, Exhibit F).
14. The Parties disagree as to whether an action taken at the last Annual Meeting, at the request of the 2016 Board and McCabe, in which all prior actions of the 2016 Board and of AMG were ratified and approved without explanation or discussion, was valid; it being Plaintiff's position that implicit in the By-Laws is a duty of good faith and a duty of loyalty, which the 2016 Board breached by taking such action (Affidavit 22, Exhibits G, H & L).

15. The Board Defendants and the 2016 Board before them, have engaged in continuing violations of the By-Laws despite clear and repeated notification and explanation by Plaintiff, and will continue to do so to the detriment of Members without confirmation of violations as claimed by Plaintiff, and without clear direction from this Court that the By-Laws must be followed (Affidavit 14 – 23, 49, 61 – 63, 66).

JURISDICTION AND VENUE

16. This is an action for declaratory judgment pursuant to S.C. Code Ann. Title 15, Chapter 53, Section 15-53-10. *et.seq.*, as amended, known as the “Uniform Declaratory Judgment Act.” It arises out of a “contract,” namely the By-Laws of the WHOA, and interpretation and assertion of rights pursuant to such contract and, accordingly, falls directly under the auspices of Code Section 15-53-30.

17. This Court has jurisdiction of the subject matter of this complaint and personal jurisdiction of the parties.

18. Venue is proper.

FACTS

19. This action is being brought before this Court by Plaintiff, for Declaratory and Injunctive relief, derivatively, on behalf of Plaintiff and Members, to resolve disputes regarding interpretation of the By-Laws and to make clear that the Board of the WHOA are required to abide by the By-Laws (Affidavit 3).

20. Plaintiff is a Member in good standing of the WHOA (Affidavit 4).

21. WHOA is a South Carolina Nonprofit Corporation, initially formed in 1993 (Exhibit F, Affidavit 5).

22. The WHOA consists of 66 voting units (Affidavit 6).

23. Plaintiff is a long-time resident of Greenville, having lived in the Woodington Community, and been a Member of the WHOA, since 1999 (Affidavit 7).
24. These four Board members remain from five who were elected at a January 10, 2017 Annual Meeting of Members, and are in their first elected term (Affidavit 8 - 9).
25. In late 2016 and early 2017, due to disputes between Plaintiff and the 2016 Board about proper interpretation of the By-Laws, and after several efforts by Plaintiff to have the Board address and seek to resolve such disputed matters, Plaintiff requested his Attorney, Grant H. Gibson, Esq. to proceed with an action seeking Declaratory Judgment and Injunctive relief (Affidavit 14).
26. Plaintiff requested Mr. Gibson to advise counsel for the WHOA, Ely Grote, Esq., of McCabe, that he was preparing such an action to seek a resolution of disputed interpretations of the By-Laws and seeking an injunction to forestall the Annual Meeting of Members, which Mr. Gibson did (Affidavit 15).
27. The purpose of forestalling the Annual Meeting was because the 2016 Board, in Plaintiff's interpretation had violated the By-Laws in several respects, including by remaining beyond the five-year term provided by law, as set forth in various e-mails Plaintiff sent to the 2016 Board (Affidavit 16, Exhibit G).
28. Plaintiff agreed to not file such action on the basis that Plaintiff's appearance at the Annual Meeting would not constitute a "waiver" of his objections to holding such meeting and to the authority of the 2016 Board, and that a written statement of objections would be attached to the minutes of such Meeting (Affidavit 17, Exhibit I).
29. McCabe agreed in writing to Plaintiff's proposal to attach his objections, and to appear at the meeting without waiving any objections (Affidavit 18, Exhibit J)

30. Plaintiff's attorney, Mr. Gibson, also submitted a similar letter of understanding (Affidavit 19, Exhibit K).
31. Such statement(s) included objections to the authority of the 2016 Board to act, and all actions taken by such 2016 Board, as well as objections to the retention of AMG as not being in accordance with the By-Laws, and to any alleged renewals of the contract between the 2016 Board and AMG (Affidavit 20, Exhibit I).
32. Plaintiff gave a copy of such objections prior to the meeting to McCabe attorney Mr. Ely Grote (Affidavit 21, Exhibit I).
33. Mr. Gibson gave a copy of his letter to Mr. Grote prior to the meeting (Exhibit K).
34. At such Annual Meeting, the 2016 Board permitted the McCabe firm to take over the meeting to solicit votes seeking blanket ratification of "all actions" taken by the 2016 Board, as well as "all actions" taken by the Management Company, AMG, and ratification of the contract with AMG and any and all renewals (Affidavit 22, Exhibits G, H & L).
35. Such "ratification" was voted upon without explanation or discussion (Affidavit 23).
36. The Minutes from the 2017 Annual Meeting which were disseminated, were filled with inaccuracies, untrue and disparaging comments about Plaintiff, and also, improperly contained comments from non-member third parties; all in violation of the Board Secretary's duties under the By-Laws (Affidavit 24).
37. Board Defendants refused Plaintiff's request to hold off dissemination of a revision to minutes to allow time for his further review, but they disseminated such minutes promptly after his request, still containing objectionable verbiage, which was sent out without attaching the agreed upon "Objections of Plaintiff" (Affidavit 25 - 26).
38. Although the Board Defendants promised to consider Plaintiff's revision to such transmitted

Minutes at a July 8, 2017 meeting, another such meeting for further review of minutes has never been scheduled despite Plaintiff's follow-up inquiries (Affidavit 27 - 31).

39. On March 12, 2017, Plaintiff sent questions to the Board Defendants, including asking the Board to confirm that they agreed with Plaintiff's interpretation of the By-Laws regarding term limits (Affidavit 32 - 33, Exhibit M) .
40. Board Defendant Acord, who serves as President of the Board, refused to review or respond to any of the questions posed, stating that they were a "distraction" to the Board. (Affidavit 34 - 35, Exhibits M & N).
41. On March 29, 2017, Plaintiff proposed mediation or, in a "last ditch effort to resolve differences", to simply meet to resolve such disputes, and no response has ever been received to the idea of mediation; after one short meeting the Board Defendants put off meeting despite the disputes being unresolved (Affidavit 36 -40, Exhibits O, P & Q).
42. On May 9, 2017, the Board Secretary resigned as a member of the Board, creating a vacancy on the Board (Affidavit 41).
43. The By-Laws state that a vacancy on the Board must be filled if an eligible Member is available, as specified in Article VIII, Section 2(f) (Affidavit 42, Exhibit A).
44. On May 9, 2017, Plaintiff informed the Board Defendants of his eligibility and desire to serve on the Board to fill the vacancy created by resignation of a member of the Board (Affidavit 43, Exhibit E).
45. The Board Defendants informed Plaintiff that one of the remaining Board members was appointed to fill the position of Board Secretary, mistakenly believing that a filling of an officer's position resolved the Board vacancy issue (Affidavit 44, Exhibit E).
46. On July 8, 2017, the Board Defendants were informed they had misinterpreted the By-Laws,

and violated the By-Laws by not appointing an eligible Member to serve on the Board to fill such vacancy, and that the By-Laws also do not permit combining of offices when an eligible Member is available and willing to serve; one of the Board Defendants cannot be appointed to fill such vacancy per By-Laws Article IX, Sections 1 and 6 (Affidavit 45, Exhibits A & E).

47. To Plaintiff's knowledge and belief, prior to 2017, AMG Contract renewals were not approved by a majority vote by Members (Affidavit 46).
48. It is Plaintiff's position, as disputed by the Board Defendants, that such renewals are required to be approved by Members pursuant to the By-Laws, Article VIII, Section 1(d) (Affidavit 47, Exhibit A).
49. There currently exists disagreement between Plaintiff and the Board Defendants regarding:
- (i) the failure of the Board Defendants to abide by the By-Laws; (ii) the delegation of fundamental Board duties to AMG by the Board Defendants; and (iii) whether a renewal of a contract is the same under the law as a formation of a contract (Affidavit 48).
50. Plaintiff's positions are that the Board Defendants: (i) have not abided by the By-Laws; (ii) have acted improperly and in violation of NPCA Section 33-31-801(c) for their own self-interest to the detriment of WHOA; and (iii) that formation or renewal of a contract are both the same under the law (Affidavit 49, Exhibit R).
51. Such disputes and positions are known to the Board Defendants (Affidavit 50).
52. On May 26, 2017, the Board Defendants were asked by Plaintiff to: 'Please provide a most recent, signed, copy of WHOA's "Management Agreement" contract with AMG. ...', and were also informed by Plaintiff: '... In my possession is a contract from 15 Jan 2008, which was signed by Starr Hammond and Brian James. This contract shows a "Management Fee" of \$250/month. ...' (Affidavit 51, Exhibits B & D).

53. In the meeting of July 8, 2017, the Board Defendants stated to Plaintiff that no other contract showing more than \$250/month fee to be paid to AMG is known to exist (Affidavit 52).
54. In a document presented at the 2017 Annual Meeting, management company fees paid by WHOA to AMG were shown: "Fees: Initial fee \$275.00/month. \$250.00/month 2008-2012. \$285.00/month 2013-2016." (Affidavit 53, Exhibit S).
55. Based on Plaintiff's knowledge and belief, a fee increase to \$285/month was never disclosed to Members at the time of the fee increase, nor was any approval for such increase voted upon by Members as required by the By-Laws (Affidavit 54).
56. Plaintiff demanded that the Board Defendants take action to recoup the excess, and while the Board Defendants agreed to do so, no such action has taken place (Affidavit 55 - 56).
57. It is Plaintiff's position, in contrast to that of the Board Defendants, that the Board may not delegate duties since it is not specifically permitted in the WHOA Articles of Incorporation (Affidavit 57 - 59, Exhibit F).
58. The NPCA Section 33-31-801 provides a Board may delegate "... some or all of the powers which would otherwise be exercised by a board ..." in subsection "(c)", where the Act reads: "... articles [of incorporation] ..." (the Act does **not** say By-Laws) (Affidavit 60, Exhibit R)
59. The WHOA By-Laws state in pertinent part: "Each Board member must be elected every year" in Article V, Section 2 (Affidavit 61, Exhibit A).
60. In both years of 2015 and 2016 no elections to elect Board members were held (Affidavit 62).
61. Based upon information and belief, Plaintiff believes that this precedent of wrongdoing has influenced the Board Defendants to continue to ignore, and to violate, the By-Laws (Affidavit 63).

62. The Board Defendants have repeatedly ignored educational materials from HOA industry experts sent to them by Plaintiff, (Affidavit 64, Exhibit T).
63. Plaintiff has acted in good faith on behalf of Members in his dealings with the Board Defendants (Affidavit 65).
64. The Board Defendants have repeatedly shown a lack of good faith through their actions or inaction:
- (i) ignoring without explanation, my inquiries, requests, including those specifically authorized under the NPCA, and suggestions, such as asking why only closed Board meetings are held, without invitation to Members to attend (Exhibits U & V);
 - (ii) refusing to publish a Board-meeting schedule, or provide a Board meeting agenda;
 - (iii) failing to inform Members of committees which they appointed;
 - (iv) failing to comment upon, or to send a July 9, 2017, all-Member ballot which proposed an "ADR" process to be included as an addition to By-Laws(Exhibit C);
 - (v) Return of Certified Mail sent by Plaintiff to Board Defendants (Exhibit W);
- and,
- (vi) misstating facts by Board Defendant Ben Acord concerning the number, and content, of e-mails sent by Plaintiff (Exhibit X) (Affidavit 66).
65. Because of the refusal of the Board Defendants to respond to Plaintiff's requests for information and to provide answers to questions and to give explanations about their rationale for their positions involving the WHOA, Plaintiff has been disenfranchised and his dignity, integrity, and reputation within WHOA have been severely damaged (Affidavit 67).

FOR A FIRST CAUSE OF ACTION

DECLARATORY JUDGMENTS

66. The allegations in the preceding paragraphs are incorporated as if repeated verbatim herein.

67. Interpretation of the By-Laws in this case is the very essence of why the legislature enacted Title 15, Chapter 53 Sections 20, *et. seq.*, which provides in pertinent part:

“Any person interested under a ...written contract....may have determined any question of construction or validity arising under the ...contract...and obtain a declaration of rights, status or other legal relations thereunder.”

68. That there are disputes that have not been able to be resolved surrounding interpretation of the By-Laws of WHOA, despite efforts to do so as clear from the facts in this case, as supported by Plaintiff’s Affidavit.

69. The Plaintiff, both individually, and as a member of the WHOA collectively, has tangible legal interests that have been abridged by the Defendants.

70. The actions and failure to act where a duty is imposed pursuant to the By-Laws is opposed to Plaintiffs’ tangible legal interests.

71. The nature of the disputes is, in each case, distinct and subject to full resolution, by an immediate and definitive resolution by this Court of the parties’ rights, thereby avoiding the necessity of litigation.

72. Pursuant to the South Carolina Code of Laws, Title 15, Chapter 53, Section 15-53-70, AMG has been added as a party (Defendant) since AMG has a “interest which would be affected by the declaration.”

73. We seek Declaratory Judgments regarding each of the following matters:

- (i) That Plaintiff is entitled to the Requested Information;
- (ii) That Board Defendants do not have unilateral authority to increase the fees for AMG;
- (iii) That previous years' Contracts with AMG are null and void since they were never

properly authorized by Members;

- (iv) That the purported “ratification” of all prior acts by the 2016 Board at the Annual Meeting of the WHOA on January 10, 2017 was improper and ineffective, and a breach of duty of good faith as implied in the By-Laws;
- (v) That the purported ratification of prior AMG Contracts at such Annual Meeting was improper and ineffective, and a breach of duty of good faith as implied in the By-Laws, and also based upon the facts such Contract was not provided to Members for review and the increase in fees to AMG not disclosed at the time of the increase;
- (vi) In the event the contract with AMG is upheld, that the fees paid to AMG in excess of the amount provided for in the Contract with AMG were improper and must be disgorged by AMG;
- (vii) That the Board Defendants are incorrect in their interpretation of the By-Laws provision regarding filling a vacancy on the Board, and must fill the vacancy if a Member is willing to serve.

FOR A SECOND CAUSE OF ACTION

INJUNCTIVE RELIEF

- 74. The allegations set forth in the preceding paragraphs are incorporated as if repeated verbatim by Plaintiff.
- 75. The Facts clearly evidence repeated efforts by the Plaintiff, Raymond Wedlake, to obtain compliance by the Board Defendants with the By-Laws, which efforts were either ignored or rejected, including improper payments made by the Board Members and received by Defendant AMG.
- 76. Should the Board Defendants and, in the case of such payments, AMG, be allowed to

continue violating the By-Laws, the Plaintiff, individually, and the members of the WHOA collectively will continue to be harmed.

77. This Court has jurisdiction to declare rights, status and to grant injunctive relief pursuant to the South Carolina Uniform Declaratory Judgment Act.
78. Plaintiff requests this Court to enjoin any future delegation of duties by the Board Defendants unless and until such delegation is authorized by an amendment to the Articles of Incorporation of the WHOA.
79. Plaintiff seeks an injunction prohibiting the Board Defendants from paying AMG any amount in excess of the amount specified in the Contract.
80. Plaintiff asks this Court, upon a finding that amounts in excess of the AMG Contract have been paid, to require AMG to disgorge immediately all such amounts in excess of the amount provided for in the Contract.
81. Plaintiff asks this Court to require the Board Defendants to provide Plaintiff's Requested Information within 20 days of its Order;
82. Plaintiff requests that the Court require the Board Defendants to send out a ballot to Members containing Plaintiff's proposed Amendments to the By-Laws requiring ADR, within 20 days of the Order.
83. Plaintiff requests that the Court require the Board Defendants to fill the open vacancy on the Board within 20 days of the Order, since there is an eligible member willing to serve.
84. Plaintiff further requests the Court to require the Board Secretary to assure accuracy of the Minutes, including those relating to the 2016 Annual Meeting; and to permit Members reasonable opportunity to provide input on such Minutes before transmitting them as final (Exhibits Y & Z).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Raymond A. Wedlake, prays for judgment on behalf of Members of the WHOA, as follows:

- A. That this Court immediately issue an Injunction to restrain the Board Defendants from making payments to AMG in excess of the amount contractually provided for unless and until a majority of Members have approved such increase after full disclosure of such contract terms.
- B. That this Court require an accounting by the Board Defendants of the amounts paid to AMG since inception of the contract.
- C. That this Court require AMG to disgorge any and all funds received from the WHOA Board, whether from the current or past Board(s), in excess of the amount provided for in the Contract.
- D. That this Court issue a Declaratory Judgment confirming the right of Plaintiff to the previously Requested Information, including the WHOA insurance policy, and require the Board Defendants to provide the Requested Information.
- E. That this Court tender a Declaratory Judgment confirming Plaintiff's position that the Board may not extend its term beyond five years, even where their successor has not been elected or appointed, without first seeking nominees for such position, and, failing such, soliciting a vote by ballot or special meeting.
- F. That this Court confirm Plaintiff's position that the By-Laws require a majority of all Members to renew a management contract.
- G. That the Court confirm the Plaintiff's understanding that the Board Defendants must fill any open Board vacancies, pursuant to the By-Laws.

- H. That this Court adjudge, declare and decree the rights and other legal relations with the subject matter here in controversy, in order that such declaration shall have the force and effect of a final judgment.
- I. That this Court retain jurisdiction of this matter for the purpose of enforcing this Court's order.
- J. That this Court award Plaintiff nominal damages.
- K. That this Court award Plaintiff the reasonable costs and expenses of this action, including reasonable attorney's fees, if paid for by WHOA insurance.
- and,
- L. That this Court grant such other and further relief as this Court deems equitable and just under the circumstances.

Dated this 5th day of October, 2017.

Respectfully Submitted,

G. GIBSON & ASSOCIATES, LLC

By: s/Grant H. Gibson, Esq.
Grant H. Gibson, Esq.

1200 Woodruff Rd. – Bldg. A-3
Greenville, SC 29607
(864) 630-7471
SC Bar # 9269

e-mail: atty@ggibsonassociates.com

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

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

Plaintiff(s)

vs.

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

and,

Association Management Group SC, Inc.,

Defendants

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

VERIFICATION

I, Raymond A. Wedlake, appearing first before the Notary Public, state that I am the Plaintiff in
this matter. I have read the attached Complaint and know or believe the contents and allegations
are true to the best of my knowledge, except for those matters stated which are alleged on
information and belief.

Sworn to before me this

5 day of October, 2017

Martha Rogers

Notary Public of South Carolina

My Commission expires: May 30, 2024

Raymond A. Wedlake

Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

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

Plaintiff

vs.

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

and

Doe Entities 1-10, and John & Jane Does 1-10

Defendants

)
) **IN THE COURT OF COMMON PLEAS**
)
) **THIRTEENTH JUDICIAL CIRCUIT**

Civil Case No. 2019-CP-23-

SUMMONS

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint to the subscriber at his office: 1200 Woodruff Road, Bldg A-3, Greenville, SC, 29607, within thirty (30) days after service hereof, exclusive of the day of such service. 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.

Respectfully Submitted,
G. GIBSON & ASSOCIATES, LLC

By: s/Grant H. Gibson, Esq.
Grant H. Gibson, Esq., SC Bar # 9269
1200 Woodruff Rd. – A-3, Greenville, SC 29607
Tel: (864) 630-7471
e-mail: atty@ggibsonassociates.com
March 21, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	THIRTEENTH JUDICIAL CIRCUIT
Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc.	)	
	)	Civil Case No. 2019-CP-23-
Plaintiff	)	
	)	
vs.	)	VERIFIED COMPLAINT FOR
	)	
Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve, and Charles Koshis, in their capacity as Members of the current Board of Directors of	)	BREACH OF COVENANTS, AND
Woodington Homeowners' Association, Inc.	)	BREACH OF FIDUCIARY DUTY
	)	
and	)	
	)	
Doe Entities 1-10, and John & Jane Does 1-10	)	
	)	
Defendants	)	

COMES NOW, Raymond A. Wedlake (Plaintiff), in his capacity as a member in good standing of Woodington Homeowners' Association, Inc.(WHOA), and by and through his undersigned legal counsel, Grant H. Gibson, Esq., hereby asserts a breach of covenants and breach of fiduciary duty by Defendants arising from acceptance of an improper invoice from the law firm of McCabe, Trotter, and Beverly, P.C. (McCabe), coupled with disbursement of WHOA funds to McCabe, or any partner or associate thereof.

PARTIES

1. Plaintiff: Raymond A. Wedlake is, and at all relevant periods has been, a resident of Greenville County.

2. Defendants: Scott Bashor, William CRAIGO, Christopher Edwards, Denis Esteve, and Charles Koshis, have each been and continue to be, residents of Greenville County at all relevant times.

JURISDICTION AND VENUE

3. This Court has jurisdiction of the subject matter of this complaint and personal jurisdiction of the parties.
4. Venue is proper, as all parties and witnesses, if any, are within Greenville County.

NATURE OF THE CONTROVERSY

5. This suit for breach of covenant and fiduciary duty and is supported by the following “Statement of Facts”, along with the Affidavit of Plaintiff (Affidavit) and Exhibits hereto.
6. As set forth in detail in Affidavit and Exhibits, and in the “Statement of Facts” below, Defendants act currently as the 2019 Board of Directors (Board) of WHOA.
7. Based upon information and belief, Defendants breached their duty to abide by the By-Laws and the South Carolina Nonprofit Corporation Act of 1994 (NPCA).
8. Specifically, Plaintiff alleges that Defendants, as members of WHOA Board, have a fiduciary duty to its members, including the duty of care and the duty of loyalty, pursuant to S.C. Code Ann. Section 33-31-830.
9. Defendants breached such duties, and as a result, Plaintiff has suffered individualized injury, giving Plaintiff standing to bring this suit.
10. Plaintiff alleges, moreover, that with respect to the duty of care, Defendants did not act in good faith and indeed their misconduct was knowing and intentional, and thus Defendants are subject to personal liability pursuant to Section 33-31-830.

11. Moreover, WHOA is a mutual benefit corporation, and thus, Plaintiff asserts that Defendants are not insulated by S.C. Code Section 33-31-834 since it does not apply to mutual benefit corporations.
12. Plaintiff asserts further that if protections afforded by such statute applied then in any event the actions of the Defendants constituted “gross negligence or willful or wanton conduct” which denies Defendants from such protection.
13. Such breach of fiduciary duty and the need for a Preliminary Injunction arises from improper actions by Defendants regarding acceptance of an invoice for legal fees, and apparent agreement to pay fees, improperly billed to WHOA by McCabe.
14. Such improper billing and acceptance arises from Plaintiff's action for Declaratory Judgment, and the appeal therefrom, Case 2018-001209, as set forth in detail below.
15. Defendants refused to enter into an agreement committing not to pay any such fees without first providing Plaintiff at least ten-days-written notice in advance of making any payment, thus requiring this judicial action.
16. Payment of any such fees would be improper since they were not only improperly incurred but also, contrary to the position of Defendants, do not qualify as payments for “indemnification” for several reasons.
17. Such reasons include, inter alia:
 - (a) the requisite steps required for indemnification pursuant to the SC NPCA were not met;
 - (b) the wrong party was billed; and

(c) the fact that there has been no “final judgment” as this case is pending at this time before the Court of Appeals, and thus, acceptance of the McCabe invoice and any such payments are premature.

18. Based on information and belief, and based upon the specified arguments below, Defendants have already improperly made a \$6,600 payment to McCabe.

STATEMENT OF FACTS

19. Plaintiff is a member in good standing of WHOA (Affidavit).
20. Plaintiff is a former two-term member of the WHOA Board (Affidavit).
21. The legal fees in question arise from an action by Plaintiff for declaratory relief requesting interpretation of the By-Laws of WHOA, brought by Plaintiff, both derivatively on behalf of WHOA, and individually for particularized harm, against the 2017-WHOA Board (2017-CP-23-06301) (Affidavit).
22. Final resolution is currently pending before the Court of Appeals (2018-001209 (Affidavit).
23. McCabe represented individual members of the 2017 Board yet billed the 2018-WHOA itself, although WHOA was a co-Plaintiff (derivatively) in the action with the Plaintiff (Affidavit).
24. The 2018 WHOA President continues as 2019-Board President (Affidavit).
25. A typical-WHOA-full-year-annual budget totals a mere \$13,000 (Affidavit).
26. For over a year, as this McCabe legal bill mounted to a total of \$53,684.50, the 2017 Board withheld disclosure of accumulation of legal-expense amounts from members of WHOA, including Plaintiff (Affidavit, Exhibit 1).

27. For towards a year, despite repeated requests by Plaintiff, the 2017 Board and 2018 Board refused to provide a copy of the unredacted legal bill showing the party billed, which previously had been redacted (Affidavit, Exhibit 2).
28. 2017 Board sought insurance which was denied based upon the Declaratory nature of the action (Affidavit, Exhibit 3).
29. On February 2, 2018, Plaintiff repeated a demand that the legal invoice not be paid since to do so would:
- a) be a direct violation of By-Laws-indemnification requirements (Exhibit 4);
 - b) be a direct violation of indemnification specifications found in the NPCA (Exhibit 5);
 - c) force an action for breach of covenants and fiduciary duty (Exhibit 6) (Affidavit).
30. Article X, Section 4 of WHOA By-Laws (Exhibit 7), requires Member approval for large expenditures:
- “The non-budgeted expenditure of corporate funds in excess of One Thousand Five Hundred Dollars (\$1,500.00) for any individual project must be approved by a majority vote of the membership ...”
- (Affidavit)
31. As of February 20, 2019, no approval from Members was requested by any of 2017, 2018, nor 2019 Board to incur nor to accumulate legal fees far in excess of a By-Laws-required limit of \$1,500 (Affidavit).
32. Based on information and belief Defendants did not acknowledge in writing the Board's position as requested (Affidavit, Exhibit 8).
33. In two ballots due November 22, 2018, the Board sought to ratify such misconduct by sending out ballots to Members (Exhibits 9 and 10) asking for them to approve indemnification payments resulting from a McCabe invoice, by way of a substantial increase

in dues plus an assessment of a one-time-Member fee, based on information and belief (Affidavit).

34. Neither ballot received a majority of Member votes (Affidavit).
35. Based upon information and belief, Defendants claimed both ballots passed based upon their breach of fiduciary duty by voting “For” as applied to ballots not returned by Members (Affidavit).
36. Plaintiff again objected (Exhibit 5), noting that in no event could the Board lawfully assess anyone who voted against such proposal, nor could the Board lawfully assess those not casting a ballot, based upon information and belief (Affidavit).
37. Based upon information and belief, Defendants proceeded to improperly make indemnification payments for 2017 Board legal expenses from WHOA funds to McCabe (Affidavit, Exhibit 11).
38. Defendants rejected a proposal by Plaintiff to commit to suspend such payments by refusing to sign an agreement from Plaintiff that 10-days’ notice be given before any future payment is made to McCabe (Affidavit, Exhibit 12).
39. Defendants elected instead to force Plaintiff to bring this action as shown in a message to Counsel which stated: “... will no longer negotiate ...” (Affidavit, Exhibit 13).
40. Plaintiff is one of a majority of Members who either:
 - (a) voted against ballots seeking approval of the special assessment and increase in dues; or,
 - (b) did not submit ballots approving such special assessment and increase in dues(Affidavit).

41. Plaintiff faces imminent individualized harm in the form of a massive increase in assessment and dues, coupled with the threat of a lien being placed upon his home if he rightfully refuses to pay (Affidavit, Exhibit 11).
42. On February 15, 2019, Plaintiff informed Defendants of a new homeowner, and they were asked to provide Plaintiff with an updated list of WHOA Members, but in direct violation of the NPCA which requires a Board to supply a Member list on request, Defendants continue to breach their duty by ignoring Plaintiff's request (Affidavit, Exhibit 14).
43. Since March 9, 2019, when Defendants were asked to provide results from a ballot of February 22, 2019, they continue to breach their duty to respond to Plaintiff's request for information by ignoring it (Affidavit, Exhibit 15).
44. On March 11, 2019, Defendants received Plaintiff's message which implored them to act in good faith and agree to action to defer this case from being filed:
- "Please accept this last-chance notice and reply affirmatively."
- but further breached their duty by choosing to ignore it, and did not reply (Affidavit, Exhibit 16).
45. By refusing to make a commitment and agree not to pay McCabe until after a final judgment results from 2018-001209, Defendants have left Plaintiff no option other than to bring this action judicially, based on information and belief (Affidavit).
46. WHOA is a mutual-benefit-nonprofit corporation, and thus is subject to the NPCA, based on information and belief (Affidavit).

PRAYER FOR RELIEF

- A. Plaintiff prays for the Court to find in favor of Plaintiff's claim against Defendants for Breach of Covenant of Good Faith and Breach of Fiduciary duty;
 - B. Plaintiff prays for the Court to order that Defendants demand recovery from McCabe to WHOA for any and all monies already paid, resulting from 2017-CP-23-06301 or 2018-001209; or, in any event that such funds be placed and held in escrow, until after a final judgment is rendered;
 - C. That this Court award Plaintiff "Nominal Damages" of \$1;
 - D. That this Court award Plaintiff the reasonable costs and expenses of this action;
- and,
- E. That this Court grant such other and further relief as this Court deems equitable and just under the circumstances.

Dated this 21st day of March, 2019.

Respectfully Submitted:

Grant H. Gibson, Esq.

Grant H. Gibson, Esq. Bar # 9269
G, Gibson & Associates, LLC
1200 Woodruff Rd. A-3
Greenville, SC 29607
atty@ggibsonassociates.com
Tel: 864-630-7471

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

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

Plaintiff

vs.

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

and

Doe Entities 1-10, and John & Jane Does 1-10

Defendants

)
) **IN THE COURT OF COMMON PLEAS**
)
) **THIRTEENTH JUDICIAL CIRCUIT**
)

Civil Case No. 2019-CP-23-_____

VERIFICATION

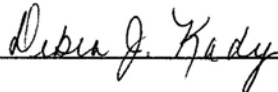
OF

**VERIFIED COMPLAINT FOR
BREACH OF COVENANTS, AND
BREACH OF FIDUCIARY DUTY**

I, Raymond A. Wedlake, appearing first before the Notary Public, state that I am the Plaintiff in this matter. I have read the attached "VERIFIED COMPLAINT FOR BREACH OF COVENANTS, AND BREACH OF FIDUCIARY DUTY" and know or believe the contents and allegations are true to the best of my knowledge, except for those matters stated which are alleged on information and belief.

Sworn to before me this

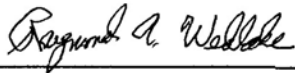
21st day of March, 2019



Notary Public of South Carolina

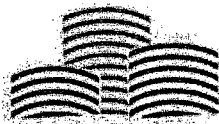
My Commission expires: 5/30/2024





Raymond A. Wedlake, Plaintiff

Raymond A. Wedlake, Plaintiff



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

Invoice as of 7/13/2018
Invoice no 69210

Woodington Homeowners' Association, Inc.
Chris Edwards
16 Southfield Dr.
Greenville, SC 29607

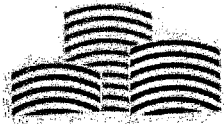
017402.00009: Raymond Wedlake v. Woodington Homeowners' Association, Inc., et al.

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10/13/2017 I	0.40	175.00	70.00
10/16/2017	0.20	125.00	25.00
10/25/2017	0.30	175.00	52.50
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McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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11/03/2017 EG	4.60	175.00	805.00
11/05/2017 EG	2.10	175.00	367.50
11/06/2017 DP	0.50	125.00	62.50



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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11/09/2017 DP	0.50	125.00	62.50



McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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11/14/2017 EG	2.10	175.00	367.50
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11/16/2017 EG	0.70	175.00	122.50



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

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11/22/2017 EG

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11/27/2017 EG

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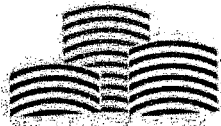
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McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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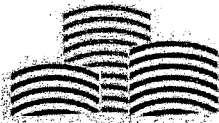
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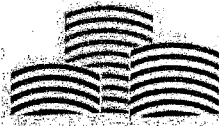
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COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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12/05/2017 EG

2.70 175.00 472.50



McCabe Trotter & Beverly, PC

TION LAW

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McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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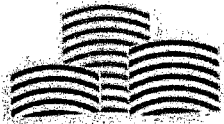
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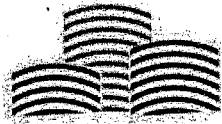
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McCabe, Trotter & Beverly, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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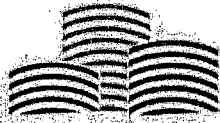
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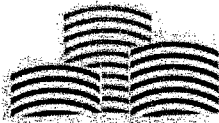
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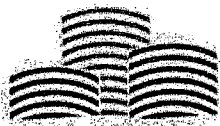
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COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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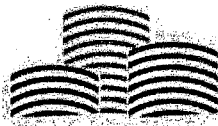
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COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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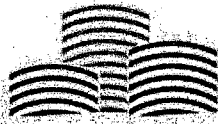
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COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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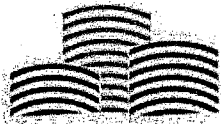
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COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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

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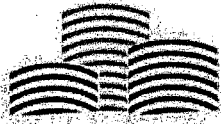
McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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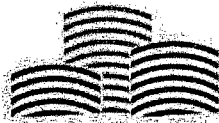
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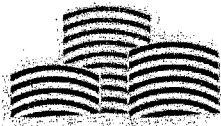
McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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McCabe, Trotter & Beverly, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

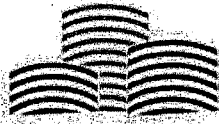
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McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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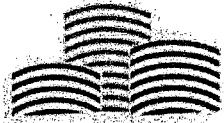
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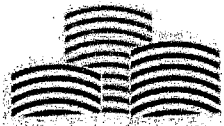
McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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04/13/2018	0.20	125.00	25.00



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

04/13/2018 E	2.90	175.00	507.50
04/13/2018 JD	0.20	175.00	35.00
04/15/2018 EG	3.30	175.00	577.50
04/16/2018 EG	4.70	175.00	822.50



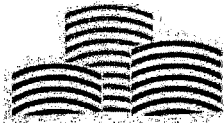
McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

04/17/2018 EG	8.30	175.00	1,452.50
04/18/2018 DP	.10	125.00	137.50
04/18/2018 EG	3.80	175.00	1,540.00
04/19/2018 DP	2.20	125.00	275.00
04/19/2018 EG	8.60	175.00	1,505.00



McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

04/20/2018 EG	3.90	175.00	682.50
04/23/2018 DP	0.10	125.00	12.50
04/23/2018 EG	1.80	175.00	315.00
04/23/2018 JD	0.40	175.00	70.00
04/24/2018 DP	0.10	125.00	12.50
04/24/2018 EG	0.10	175.00	17.50
04/25/2018 EG	0.20	175.00	35.00
04/26/2018 EG	6.60	175.00	1,155.00
04/27/2018 EG	2.90	175.00	507.50
05/02/2018 EG	2.60	175.00	455.00
05/10/2018 EG	2.20	175.00	385.00



McCabe, Trotter & Beverly, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

05/11/2018 EG	0.10	175.00	17.50	
05/14/2018 EG	.90	175.00	857.50	
05/15/2018 EG	.80	175.00	840.00	
05/16/2018 DP	.30	125.00	37.50	
05/16/2018 EG	.10	175.00	17.50	
05/22/2018 EG	.80	175.00	315.00	
05/24/2018 DP	.10	125.00	12.50	
05/24/2018 EG	.50	175.00	87.50	
05/30/2018 EG	0.60	175.00	105.00	
06/01/2018 JR	0.50	125.00	62.50	
06/06/2018 EG	0.30	175.00	52.50	
06/19/2018 DP	0.00	125.00	0.00	No Charge

	PC ON LAW		
06/27/2018 EC	0.10	275.00	27.50
06/28/2018 DE	0.10	125.00	12.50
06/28/2018 EC	0.10	275.00	27.50
06/29/2018 EC	0.20	275.00	55.00
	Fees:		<u>\$52,860.00</u>

Victoria Cockfield	1.60 hours at \$125.00/hr	200.00
Joel Deason	1.30 hours at \$175.00/hr	227.50
Valerie Giovanoli	2.20 hours at \$175.00/hr	385.00
Ely Grote	287.60 hours at \$175.00/hr	50,330.00
Ely Grote	0.40 hours at \$275.00/hr	110.00
Ryan McCabe	0.80 hours at \$275.00/hr	220.00
Deanne Peele	10.40 hours at \$125.00/hr	1,300.00
John Roberts	0.50 hours at \$125.00/hr	62.50
Hayley Simmons	0.20 hours at \$125.00/hr	25.00
Total hours:	<u>305.00</u>	

Expenses	Units	Price	Amount
02/20/2018 POSTAGE.	1.00	2.89	2.89
04/04/2018 POSTAGE.	1.00	0.47	0.47
04/06/2018 POSTAGE.	1.00	20.01	20.01
04/30/2018 POSTAGE.	1.00	0.47	0.47
11/06/2017 E-Filing Fee.	1.00	31.74	31.74
11/06/2017 E-Filing Fee.	1.00	31.74	31.74
11/06/2017 E-Filing Fee.	1.00	31.74	31.74
12/12/2017 Mediation Cost.	1.00	250.00	250.00
12/15/2017 Travel to/from office for: meeting/hearing/mediation.	1.00	103.79	103.79
12/19/2017 E-Filing Fee.	1.00	31.74	31.74
12/19/2017 E-Filing Fee.	1.00	31.74	31.74

P.O. Box 212069
Columbia, South Carolina 29221
803-724-5000

04/12/2018	Travel to/from office for: meeting/hearing/mediation.	1.00	127.53	127.53
04/18/2018	Witness Fee.	1.00	35.90	35.90
04/18/2018	Witness Fee.	1.00	36.12	36.12
04/18/2018	Witness Fee.	1.00	35.90	35.90
04/18/2018	Witness Fee.	1.00	36.12	36.12
04/19/2018	Witness Fee.	1.00	(36.12)	(36.12)
04/19/2018	Witness Fee.	1.00	(36.12)	(36.12)
04/27/2018		1.00	14.59	14.59
05/14/2018	Transcripts.	1.00	74.25	74.25
Sub-total Expenses:				<u>\$824.50</u>
Total Current Billing:				<u>\$53,684.50</u>
Previous Balance Due:				\$0.00
Total Payments:				<u>\$0.00</u>
Total Now Due:				\$53,684.50

Please remit payment in the amount listed above. The Total Now Due reflects the balance due after any available payments have been applied. Such payments include any cost retainer you've paid, any payments made by the property owner, and payments you've previously submitted. If you have any questions please contact Glenda Murphy at glenda.murphy@mccabetrotter.com or 803-724-5000. Thank you!

P.O. Box 212069
Columbia, South Carolina 29221
803-724-5000

[REDACTED]

Sub-total Expenses:	\$824.50
Total Current Billing:	\$53,684.50
Previous Balance Due:	\$0.00
Total Payments:	\$0.00
Total Now Due:	\$53,684.50

Please remit payment in the amount listed above. The Total Now Due reflects the balance due after any available payments have been applied. Such payments include any cost retainer you've paid, any payments made by the property owner, and payments you've previously submitted. If you have any questions please contact Glenda Murphy at glenda.murphy@mccabetrotter.com or 803-724-5000. Thank you!

P.O. Box 212069
Columbia, South Carolina 29221
803-724-5000

August 29, 2018

Raymond Wedlake
703 Creekview Drive
Greenville SC 29607

CERTIFIED MAIL: RETURN RECEIPT REQUESTED AND REGULAR MAIL

RE: Claim Number: 40-1711-G27
 Date of Loss: October 6, 2017
 Our Insured: Woodington Homeowners Association
 Claimant: Raymond Wedlake
 Policy: 99-BH-4620-8

Dear Mr. Wedlake:

As we discussed, we have completed our coverage investigation regarding your claim for the above loss. A review of the claim indicates there is no coverage available to our Insured for this incident. We have advised our Insured accordingly and we have closed our claim file. Please feel free to contact us should you wish to discuss further.

Sincerely,

Aimee Rowe
Claim Specialist
844 458 4300 ext 6103587371
E-mail statefarmfireclaims@statefarm.com
State Farm Fire and Casualty Company

703 Creekview Drive
Greenville, SC 29607
February 7, 2019

Woodington Homeowners' Association, Inc.
16 Southfield Drive
Greenville, SC 29607

cc: Mr. Scott Bashor
105 Woodside Crossing
Greenville, SC 29607

[Via Priority Mail]

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

[Courtesy e-mail to Board]

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

Woodington Board:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



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

cndesteve@gmail.com, cwedwards2018@gmail.com, woodingtonhoa@gmail.com, woodingtonvp@gmail.com
 Bcc: atty@ggibsonassociates.com

703 Creekview Drive
 Greenville, SC 29607
 February 17, 2019

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

[Courtesy e-mail to Board]

Subject: Please Comply with the Law - Indemnification Requirements

Woodington Board:

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

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

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

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

Sincerely,



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

APPENDIX

SECTION 33#31#851. Authority to indemnify.

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

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

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

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

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

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

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

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

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

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

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

SECTION 33#31#853. Advances for expenses.

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

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

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

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

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

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

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

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

(b) The determination must be made:

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

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

(3) by special legal counsel:

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

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

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

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

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

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

Please be Informed 022119
 cwedwards2018@gmail.com, woodingtonvp@gmail.com
 atty@ggibsonassociates.com

Dear Mr. Edwards and Mr. Koshis:

With full knowledge that a reply to Grant's request, as excerpted below, is not due until Friday, 22 Feb 2019, please accept this "heads up" for what otherwise will be coming; see as attached. Please note the attached is a preliminary, working draft, only, and note this disclaimer:

"ROUGH OUTLINE- NOT APPLICABLE IF WRITTEN AGREEMENT IS REACHED
 REGARDING NON-PAYMENT TO MCCABE 2-21-2019"

To reiterate, this is a working draft, not a completed document. However, please be informed. Thank you.

File: <RAYMOND WEDLAKE-GG REVISED OUTLINE OF PRELIM INJ RE MCCABE PAYMENTS - 2-21-2019.doc>

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

----- Excerpted Message - Grant's Request -----

Date: Tue, 12 Feb 2019 09:50:05
 From: Grant Gibson <atty@ggibsonassociates.com>
 To: Chris Edwards <cwedwards2018@gmail.com>
 Cc: Grant Gibson <atty@ggibsonassociates.com>, Chip Koshis <woodingtonvp@gmail.com>
 Subject: Follow - Up from Grant

Good Morning -

Wanted to keep you informed. ...

... passed on to me the reply from the New Board advising that the Board has "suspended" payments to the McCabe Firm. I would really appreciate discussing that with you as well. ... hold off any action to block such payments if we can get a commitment ... of the decision to suspend such payments. ...

Grant

BY-LAWS OF WOODINGTON HOMEOWNERS ASSOCIATION, INC.

Revision 3 15 August 2012 - Articles 1 thru 20

ARTICLE 1 - NAME AND LOCATION

The name of the Corporation shall be called "Woodington Homeowners Association, Inc. ", hereinafter referred to as the "Association". The principal office of the Corporation shall be located at the home of the current President of the Association, but meetings of Members and directors may be held at such places within the State of South Carolina as may be designated by the Board of Directors.

ARTICLE II - PURPOSE

This Association does not contemplate pecuniary gain or profit to the Members thereof, and the purpose of the Association, as provided in the Certificate of Incorporation, is as follows:

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

ARTICLE III - DEFINITIONS

Section 1: "Association" shall mean and refer to Woodington Homeowners Association, Inc., a non-profit corporation organized and existing under the laws of the State of South Carolina.

Section 2: "Member" shall mean and refer to those persons owning lots or homes in Woodington Subdivision, or their designated representative, providing they pay the initial annual dues of \$175.00, and future dues to be established annually by the Board of Directors as well as any special assessments that may be levied.

Section 3: "Vote" shall mean there will be one (1) vote per lot owned.

ARTICLE IV - MEETINGS OF MEMBERS

Section 1 - ANNUAL MEETINGS: The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular Annual Meeting of the Members shall be at a time, date, and place as designated in advance by the Board.

Section 2 - SPECIAL MEETINGS: Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of one-fourth (1/4) of the Members.

Section 3 - NOTICE OF MEETINGS: A sign posted at the neighborhood entrance shall be sufficient notice for each meeting of Association Members, to those who normally reside in the neighborhood. Meeting notice shall be given by, or at the direction of the Secretary, or person authorized to call the meeting, at least twenty-one (21) days before such meeting to each Member entitled to vote thereat. For any Member who does not normally reside in the neighborhood, or for any Member who may so petition the Secretary, written notice shall be delivered by US Mail, postage prepaid, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Meeting notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4 - QUORUM: The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one quarter (1/4) of the votes of membership shall constitute a quorum for any action except as otherwise provided in the "Covenants" (Reference 1) or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5 - PROXIES: At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his residence.

ARTICLE V - BOARD OF DIRECTORS, SELECTION, AND TERM OF OFFICE

Section 1 - NUMBER: The association shall be governed by a Board of Directors, normally five (5) in number, each of whom shall serve until his or her successor is elected and shall qualify as provided in these By-Laws. No more than one (1) representative of any single distinct membership may serve as a director of the Association at one time.

Section 2 - SELECTION AND TERM OF OFFICE: Annually, the membership shall normally elect five (5) directors from the membership for the term of one (1) year. Each Board Member must be elected every year. When a Board Member has served for five (5) consecutive terms, that person will not be permitted to seek a sixth consecutive term, unless the Board of Directors has been unable to find another eligible Association Member who is willing to serve on the Board. When this is true, the current Board by simple majority vote may waive the five (5) consecutive term limit. Any waiver is valid for only one year. After a Member has been off the Board of Directors for at least one term, that Member can seek re-election to the Board of Directors with the same rights of any other Member.

Section 3 - REMOVAL: Any director may be removed from the Board, with or without just cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4 - COMPENSATION: No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for actual expenses incurred in the performance of his/her duties.

Section 5 - ACTION TAKEN WITHOUT A MEETING: The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE VI - NOMINATION AND ELECTION OF DIRECTORS

Section 1 - NOMINATION: Nomination for election to the Board of Directors shall be made by the current Board of Directors. At least 90 days prior to the annual meeting, the current Board of Directors will request volunteers to fill expected vacancies on the Board. A notice will be sent to the membership advising them of the open positions and asking for volunteers to fill the positions. An election slate for members of the Board of Directors will be prepared to include incumbent members who are seeking re-election and new candidates. The election slate will be presented to the Members at the annual meeting. Nominations may also be made from the floor at the annual meeting. Such nominations must be made from among the Members who have voting privileges.

Section 2 - ELECTION: Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies may cast one vote for each vacancy on the Board. The person receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VII - MEETINGS OF DIRECTORS

Section 1 - REGULAR MEETINGS: Meetings of the Board of Directors shall be held on call of the President, minimum quarterly.

Section 2 - SPECIAL MEETINGS: Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) directors, after not less than three (3) days notice to each director.

Section 3 - QUORUM: A majority of the number of directors shall constitute a quorum for the transaction of business. Every act of decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VIII - POWERS AND DUTIES OF BOARD OF DIRECTORS

Section 1 - POWERS: The board of Directors shall have power to:

- Exercise for the Association all powers, duties, and authority vested in or delegated to this association and not reserved to the membership by other provisions of these By-Laws, or the "Covenants" (Reference 1).
- Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.
- Nothing in these By-Laws shall be construed to permit the Board of Directors to borrow or pledge the credit of the Association or sell or transfer all or part of the assets of the Association without the specific approval of a majority of the Members attending and voting at a duly held meeting.
- With the approval of a simple majority vote of the Members, the Board of Directors may enter into a contract with an association management company to assist in carrying out the duties and responsibilities specified below for the Board of Director positions

Section 2 - DUTIES: It shall be the duty of the Board of Directors to:

- Cause to be kept a complete record of all its acts and corporate affairs, and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote.
- Transact, either personally or through a management company, all Association business and make and amend rules and regulations for the use of the Association property.
- Supervise all officers, agents, and employees of the Association, and to see that their duties are properly

performed.

d. Fix, impose and remit penalties for violations of these By-Laws and rules of the Association.

e. Select from the Board of Directors a representative to fill the position of President, Vice President, Secretary, Treasurer, and Maintenance Director.

f. Fill any vacancy in the membership of the Board of Directors to serve until the next annual meeting of active Members at which time a permanent director will be elected by a simple majority vote of the membership.

g. The Board of Directors may delegate to a management company the responsibility to select a financial institution(s) to act as depositories of the funds of the Association and determine the manner of receiving, depositing, and distributing the funds of the Association and the form of checks to be used.

ARTICLE IX - OFFICERS AND THEIR DUTIES

Section 1 - ENUMERATION OF OFFICES: The officers of the Association shall normally be a President, Vice President, Secretary, Treasurer, and Maintenance Director, all of whom shall at all times be members of the Board of Directors. In addition, the Association may have such other officers as the Board may from time to time by resolution create. Similarly, the Board may combine one or more offices, for example those of Secretary and Treasurer.

Section 2 - INSTALLATION OF OFFICERS: The installation of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3 - SPECIAL APPOINTMENTS: The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine. The Board may elect members of the community to serve as architectural committee members. These individuals will serve the community by upholding architectural guidelines. The Architectural Committee will report all activity to the Board.

Section 4 - RESIGNATION AND REMOVAL: Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5 - VACANCIES: A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6 - MULTIPLE OFFICES: The Board of Directors may combine one or more offices when necessary due to a lack of eligible Association Members who are willing to serve on the Board. No person shall simultaneously hold more than two offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 7 - DUTIES: The duties of the officers are as follows:

a. **PRESIDENT:** The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; keep the corporate seal, if any, of the Association and affix it on all papers requiring said seal, shall sign all written instruments and shall co-sign all checks and promissory notes except when these functions are to be performed by an association management company. The President shall serve as the Board Liaison with the management company, if a contract is established for this service.

b. **VICE PRESIDENT:** The Vice President shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

c. **SECRETARY:** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; and keep appropriate current records showing the Members of the Association together with their addresses. These responsibilities may be delegated to an association management company. The Secretary shall perform such other duties as required by the Board.

d. **TREASURER:** The Treasurer shall receive and deposit in appropriate bank accounts all moneys of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall co-sign all checks and promissory notes of the Association; and keep proper books of account, except when a management company is under contract to provide these services. When a management company performs these services, the Treasurer shall monitor the receipt and disbursement of moneys by reviewing financial statements provided by the management company. The Treasurer shall prepare an annual budget or review and modify as necessary a budget prepared by an association management company, when used, A Balance Sheet and a Statement of Income and Expenditures shall be prepared by either the Treasurer or a management company for presentation to the membership at its regular annual meeting.

ARTICLE X - EXPENDITURE OF FUNDS

Section 1: The President and Treasurer are empowered to co-sign checks, drafts, or other instruments of payment of money drawn in the name of the Association, however, this function may be performed by a management company when this service is under contract.

Section 2: The President or Vice President, in the President's absence, is authorized to approve non-budgeted expenditures up to One Hundred Dollars (\$100.00) for any individual project.

Section 3: The Board of Directors, by a majority vote, must approve non-budgeted expenditures up to One Thousand Five Hundred Dollars (\$1,500.00) for any individual project.

Section 4: The non-budgeted expenditure of corporate funds in excess of One Thousand Five Hundred Dollars (\$1,500.00) for any individual project must be approved by a majority vote of the membership at a duly held meeting at which a quorum is present.

ARTICLE XI - MEMBERS

Section 1: An active membership is one in which the holder thereof has purchased a residence in Woodington Subdivision and is current in all dues, including annual and special assessments.

Section 2: Every person who is a record owner of a fee or undivided fee interest in any lot which is subject to the Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision (Reference 1), said covenants recorded in Book 1373 at Pages 912-922 in the office of the Register of Deeds for Greenville County, State of South Carolina. When more than one person holds interest in any lot, all such persons shall be Members.

Section 3: The vote for such lot shall be exercised as the owners determine, but in no event shall more than one vote be cast with respect to any lot, and further, no fractional vote shall be cast with respect to any lot.

Section 4: Any Member aggrieved by any disciplinary action by the Board of Directors may appeal to the membership at a special meeting called for such purpose upon a minimum of ten (10) days notice to the Members and at such meeting, a majority of the Members present in person shall be controlling.

Section 5: In voting for Directors, each lot may cast one (1) vote for each vacant seat to be filled without accumulation. Each lot may cast one (1) vote only upon each issue.

ARTICLE XII - DUES AND ASSESSMENTS

Section 1: The annual dues and the budget shall be presented to the membership at its annual meeting. Dues must be paid in full each year before a date which the Board shall specify.

Section 2: The annual dues assessment shall be based upon the residence only.

Section 3: Consistent with the "Covenants" Article V.5 and V.6 (Reference 1), if any dues or assessments are not paid within thirty (30) days of its due date, then such dues or assessments shall become delinquent and shall (together with interest thereon at the rate of Ten (10) percent per annum from the due date and the cost of collections as hereinafter provided) become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made. The amount of such dues or assessments, together with interest and reasonable attorney fees as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment became due. In the case of co-ownership, all such co-owners shall be jointly and severally liable for the entire amount of the dues or assessments. If the assessment or dues are not paid within thirty (30) days after the due date, the Homeowners Association may bring an action at law against the owner or owners personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessments or dues, all attorney fees and costs of collection and in the event a judgment is obtained, such judgment shall include prejudgment interest as hereinabove provided together with reasonable attorney fees as may be fixed by the court together with the costs of the actions. In addition, the Board may impose a \$15.00 late fee. Non-payment of dues and/or special assessments as specified shall bar a Member and his family from voting privileges until such dues or special assessments are paid. **Section 4:** Special assessments may be authorized by the Board of Directors and collected as contributions for the specific projects of the Association which were approved by a quorum of the membership of the Association at a duly held meeting. Consistent with the "Covenants" Article V.4 (Reference 1), in the event the Associations' Board of Directors and Officers shall deem it necessary to expend any sum of money for the maintenance and upkeep of any improved or unimproved lot, the Board shall be empowered to levy a special assessment applicable to that lot, but only in an amount equal to any sum or sums which had to be expended for that purpose. Such special assessments will be maintained in a separate fund from the annual dues.

ARTICLE XIII - SUSPENSION OR REVOCATION OF MEMBERSHIP

Any person against whom an action is taken under this Article shall be given at least ten (10) days advance notice of the proposed action and shall be provided an opportunity to be heard at a meeting of the Board.

ARTICLE XIV - COMMITTEES

The Board of Directors shall appoint those committees as deemed appropriate in carrying out its purpose. Each year, committees may be appointed for one year. In a year where the Board does not appoint an "Architectural Review Committee", or does not appoint other committees whose services may be required, all Directors of the Board shall be recognized as serving on these committees. (Reference to an "Architectural Review Committee" may be noted as coming from the "Covenants", Reference 1.)

ARTICLE XV - BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The "Covenants" (Reference 1) and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, or at the offices of the Management Association, where copies may be purchased at a reasonable cost.

ARTICLE XVI - CORPORATE SEAL

The Association has a seal, having within its circumference the words: "Woodington Homeowners Association, Inc." This Corporate seal is to be located at the home of the Association President or at the offices of an Association Management Company.

ARTICLE XVII - AMENDMENTS AND VOTING

Section 1: These By-Laws may be amended at a regular or special meeting of the Members, by a vote of 75% of Members of the Association, either in person or by proxy. Additionally, these By-Laws may be amended per the result of vote by ballot; see Section 3.

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

Section 3: Any and all issues may be resolved per the simple majority result of vote by ballot by all Association Members. The Board Secretary shall deliver a ballot to every Member, with a specified return date determined by the Board. The return date shall be no earlier than twenty-one (21) days from date of delivery. The voting period shall include at least three Saturdays, and three Sundays, where end of the voting period shall be neither Saturday nor Sunday. Ballots of Members not returned by the specified return date shall be voted by the Board. The Board's vote for non-returned ballots shall be clearly specified on ballots at the time they are delivered to Members.

ARTICLE XVIII - DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than 75% of the Members. Disposition of assets will be recommended by the Board and must be approved in writing and signed by a majority of the Members.

ARTICLE XIX - MISCELLANEOUS

Section 1: The fiscal year of the Association shall begin on the first day of January, and end on the last day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 2: Consistent with the "Covenants" Article VI,(1) (Reference 1), no signs shall be permitted on any lots except that a single sign offering the property for sale or rent may be placed on such lot providing such sign is approved by the Architectural Committee. The Board may also approve one "For Sale" or "For Rent" sign offering a property for sale or for rent to be posted on Association property at the entry to Woodington from Tanner Road. No other "personal signs" are allowed on Association property, except as may be approved by the Board. The Board shall retain the right to remove any sign posted on Association property that is not related to business of, nor in the interest of, all members of the Association.

ARTICLE XX - INDEMNIFICATION**Section 1 - INDEMNIFICATION OF DIRECTORS AND OFFICERS:**

a. **ELIGIBLE PERSONS:** Under the conditions listed in this section, the Association must

indemnify certain persons and hold them harmless who are parties to an "eligible proceeding" or are threatened to be parties. The persons eligible for indemnification are:

1. Directors, officers, employees, or agents of the Association; and
2. People requested by the Association to serve as directors, officers, employees, or agents of another Association, partnership, joint venture, trust or other enterprise.

A person is not eligible, however, unless the person is a party to the proceeding because the person had a relationship to the Association described in this paragraph.

b. **ELIGIBLE PROCEEDINGS:** Eligible persons may be indemnified in any civil, criminal, administrative or investigative proceeding that is threatened, pending, or completed; but the indemnification rules are not the same if the Association is not a party to the proceeding.

c. **WHEN THE ASSOCIATION IS NOT A PARTY:** Indemnification is available only if the eligible person acted in a manner that person reasonably believed to be in the best interests of the Association. If it is a criminal prosecution, the eligible person must have no reasonable

cause to believe that the conduct was unlawful. A judgment, order, settlement, conviction, or plea of nolo contendere (or the equivalent of any of those) will not alone create a presumption that the person seeking indemnification acted unlawfully or against the Association's best interests.

d. **WHEN THE ASSOCIATION IS A PARTY:** Indemnification is available only if the eligible person acted in a manner that the person reasonably believed to be in the best interests of the Association. There may be no indemnification if the eligible person is adjudged negligent or liable for misconduct in performing duties to the Association. If a court determines that the person is entitled to indemnity for certain expenses, however, the Association must indemnify that person to the extent the court required.

e. **WHEN THE ELIGIBLE PERSON IS SUCCESSFUL:** If a suit is brought as an eligible proceeding and the eligible person successfully defends the claim on the merits, the eligible person must be indemnified against expenses (including reasonable attorney's fees) actually and reasonably incurred in connection with the defense.

f. **WHEN THE PERSON IS NOT SUCCESSFUL:** Unless indemnification is ordered by a court, indemnification may be paid only if the eligible person has met the standards of conduct set forth in this section. If these standards of conduct are met, indemnification must include reasonable defense expenses actually incurred, judgments or fines. A finding of proper conduct may be made:

1. By the Board of majority vote of a quorum consisting of the directors who are not parties to that proceeding;
2. With or without such quorum, if directed by a quorum of disinterested directors, by the Association's independent legal counsel in a written opinion; or
3. By the affirmative vote of a majority of the shares entitled to vote on this issue.

g. **PREPAID DEFENSE EXPENSES:** The Association may pay an eligible person's expenses in defending an eligible proceeding before the final disposition of that proceeding if the Board authorized the early payment. However, early payment may not be made unless the eligible person agrees to repay any amounts advanced if it is found that the person is not entitled to be indemnified by the Association.

h. **OTHER PROVISIONS AND RESOLUTIONS:** Other provisions of these By-Laws or a resolution approved by the affirmative vote of the holders of the majority of the shares entitled to vote on this issue may specify their rights of indemnification. If indemnification is approved at a shareholders' meeting, the notice of that meeting must state that the issue of indemnification will be discussed. The notice must also state whether indemnification will continue for a person who has ceased to be a director, officer, employee or agent and that it will inure to the benefit of the heirs, executors, and administrators of that person.

i. **INSURANCE:** Even if the Association would not have the power to indemnify a director, officer, employee or agent, the Association may purchase insurance on behalf of a person for liability asserted against that person while acting in an official capacity connected with the Association or a related partnership, joint venture, trust or other enterprise.

j. **SPECIAL NOTICE:** In some circumstances, notice must be given to shareholders if a person is indemnified. The notice does not apply if amounts are paid under a court order or by an insurance carrier for insurance maintained by the Association. The notice must be sent by first-class mail to each shareholder of record who at that time was entitled to vote for the election of directors. The notice must be sent no later than the next annual meeting of the shareholders, unless that meeting is held within three (3) months from the date of the indemnification payment; in any event, the notice must be sent within fifteen (15) months from the date of the indemnification payment. The notice must list the persons paid, the amounts paid, the nature and statute at the time of the payment of the litigation or threatened litigation.

Section 2 - REIMBURSEMENT: The Association may deduct from its income for income tax purposes, payments to employees in the form of salaries, commissions, bonuses, reimbursements, or deductible employee benefits. If the Internal Revenue Service or the appropriate state taxing authority disallows one of these deductions, the benefited employee must reimburse the Association to the full extent of the disallowance when the disallowance becomes final. The disallowance becomes final when the Association agrees to the disallowance or when it is made final by the Internal Revenue Service, the appropriate taxing authority, or by final judgment of a court of competent jurisdiction.

when no appeal is taken or any longer available. The Association must give reasonable notice to any employee of an attempt to disallow the deduction so that the employee may protect his or her interests. However, a good-faith settlement by the association of the amount to be disallowed binds the employee, unless the employee requests in writing that additional measures be pursued, agrees to pay the additional costs of those measures (including reasonable attorney's fees), and furnishes security to the Association satisfactory in the opinion of the Board to cover those additional costs and also any potential liability for disallowance. It is the duty of the Board to enforce the repayment. To secure repayment, the Board may withhold payments to the employee until the amount owed is recovered. If the employee sells shares of the Association to the Association at the time when the issue is unresolved or the amount due the Association has not been paid, the price otherwise payable for those shares may be reduced by a reserve to cover that contingency or obligation. The reserve must be paid to the employee or the employee's estate or heirs or it will be retained by the Association when the issue is settled.

IN WITNESS WHEREOF, we, being all of the Directors of Woodington Homeowners Association, Inc., have hereunto set our hands this 22nd day of July, 2012.

Kristine Lynch, President

Dawn Vonderbecke, Vice-President

Richard LaCroix, Treasurer

Dawn Vonderbecke, Secretary

Vacant, Maintenance

Reference 1: State of South Carolina, County of Greenville, "Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision", recorded in Book 1373 Page 912" through "Book 1373 Page 922 in the office of the Register of Deeds. A survey entitled Woodington and dated April 5, 1989, is recorded in the Register of Deeds Office for Greenville County, South Carolina, in Plat Book 17-E at Page 56.

cndesteve@gmail.com, cwedwards2018@gmail.com, woodingtonhoa@gmail.com, woodingtonvp@gmail.com
 Bcc: atty@ggibsonassociates.com

703 Creekview Drive
 Greenville, SC 29607
 February 20, 2019

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

[Courtesy e-mail to Board]

Subject: Woodington Homeowners' Association, Inc. - Please Acknowledge Board Positions

Woodington Board:

It is no secret there are disputes between the Board and me over several governance and operational issues within WHOA. Two very key disputed issues are:

- A. a \$1500 expenditure limit was ignored by both 2017 and 2018 Boards;
- B. no more than \$2500 for legal fees related to my Appeal will ever become my responsibility - see Rule 222, South Carolina Appellate Court Rules.

Please acknowledge in writing with Board positions for these two issues, and if I am correct that either or both issues are in dispute, please reply with explanations of why the Board refuses to abide by By-Laws provisions related to the first, and disagrees with the second. Your response is requested **before February 28, 2019 !**

At the Special Meeting of December 6, 2018, it was indicated the Board was aware of \$5000 "attorney's fees" in support of 2017 Board Defendants as related to my Appeal. The 2018 Board did **NOT** get approval from Members to take on more than \$1500, which was taken on in **VIOLATION** of the By-Laws! The Board needs to be **absolutely clear** **THE BOARD IS TAKING ON LIABILITY FOR ALL ATTORNEY COSTS, AND PARTICULARLY COSTS ABOVE \$2500 !** Only if the Board intends to bring WHOA to bankruptcy would it make sense to accumulate attorney's fees up to \$20,000 (as was also stated in the Special Meeting). To continue to allow the McCabe Law Firm to "run up their bill" is a ridiculous position for the Board to take, and most **CERTAINLY DOES NOT REPRESENT A BEST INTEREST FOR WHOA !**

Many disputes continue merely because of attitudes held by the Board, which cause problems. It is a Board's duty to resolve disputes (as I believe I so informed the Board via educational messages from HOA-Industry Experts). Also included below are excerpts from another educational article: "Difficult People: How Do You Deal with Them?".

Four numbered items as below seem to be wrongful attitudes held by the Board, leading to questionable positions:

1) that my interpretation of the By-Laws is a problem. So, why has no action been taken to fix disputed-By-Laws provisions, to make them clear, understood, and agreed to by everyone? (I remind the Board I hired two attorneys, both of whom **agree with my By-Laws interpretations!** The Board has also ignored many "lessons learned" from prior Boards' misconduct!);

Please reply in writing that you will be appointing a By-Laws Review Committee, and if not, please explain why this requested, and needed, action will not be done.

2) the Board has no duty to recognize issues or disputes, nor attempt to resolve them before they become matters for a Court (and has never made any attempt to discuss issues and disputes with an intent to resolve). Was the Board acting in good faith, or merely playing games in prior meetings with Mr. Gibson? I know he was acting in good faith, and continues to make overtures to settle matters to this day. Given the failure by the Board to move forward, it appears clear the Board had no true intent to "negotiate" nor to try to "resolve". Further, this was made clear by the Board's refusal to publish "Board Resolutions" for items to which all agreed, after discussions with Mr. Gibson.

Please explain why the Board breaches its duty to act to resolve disputes.

3) the Board stands in defiance of improvements to WHOA because the Board is dead set against any possibility for me to "... further my political agenda ...". Oops, the Board is fully informed such needed improvements are **NOT** my agenda, but are aspects related to proper Board governance as espoused by HOA-Industry Experts (all of which, to date, the Board has completely, totally, and utterly **IGNORED!**)!

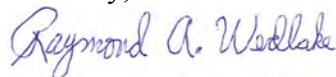
Please explain why the Board has no desire nor intent to bring improvements to WHOA.

4) the Board appears to justify ignoring needed improvements to WHOA because it is inconvenient, and the Board "does not have to" deal with inconvenient issues. This is a totally inappropriate attitude for any Board to hold. A Board is the governing body for every HOA; a Board should act accordingly. All our actions should be about bringing improvements to WHOA, not about "convenience"!

Please explain why the Board does not accept its duty to act to improve WHOA.

Please clarify the truth of matters from your perspective. A show of "good faith" by the Board would be much appreciated. However, a lack of good-faith conduct by the Board will **not** go unnoticed. Thank you.

Sincerely,



Raymond A. Wedlake 864-254-9262

wedlakera@mail.com

Forwarded Message (excerpted) - Board Education

communityassociationmanagement.com/c25-dispute-resolution/c28-preventing-disputes/difficult-people-how-do-you-deal-with-them

Difficult People: How Do You Deal with Them?

How do we as humans deal with people who yell and scream at us or refuse to be rational? You know the type, adversarial, manipulative, inflexible, unreasonable, irrational. For most people, the answer is "We don't". If given the choice, most of us choose not to work with people like this. We don't socialize with them, we avoid them at work if possible, and we make our own lives easier by simply ignoring them whenever we can.

But what happens when you do not have a choice? In homeowner associations, we often find there is at least one person who refuses to listen to anything the board has to say. Unfortunately, because associations are also businesses, it is often not possible to simply ignore the person. So how do associations handle these types of situations? How should they handle them? The same way you would at work when you have no choice. You remain professional and you follow the rules.

First, try to empathize with the "opposition". In other words, try to understand {not agree} with the difficult person's position. Understanding the basis for their position may lead to a quicker resolution. See the below example:

.

Situation Three

... remain calm and follow the rules. Your conduct of meeting policy should state that homeowners may comment on issues ...

... the board addresses these as complaints. Each violation must be reviewed ...

... No matter how long the list is, the board needs to investigate the allegations. ... the issues still must be reviewed. ...

The urge to ignore people ... will not help associations. While it is difficult, it is the job of the board of directors ... to investigate complaints and to enforce covenants. Associations and their representatives need to follow their own policies each time an issue arises. Difficult people live within our communities and the only way to address the situations that they cause is to remain professional and follow the rules.

By: Debra J. Oppenheimer

Due by Friday, November 9th

ELECTRONICALLY FILED - 2019 Mar 23 9:42 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2301501

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

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

☐ FOR

☐ AGAINST

SIGNATURE OF MEMBER:

PRINT NAME OF MEMBER:

PROPERTY ADDRESS:

DATE:

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

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

Due by Friday, November 9th

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

Should Ballot 1 pass, the proposed payment plan shall be utilized to pay the current legal bill of \$33,000 (\$500 per lot) associated with the lawsuit (only up to the appeal) in which the 2017 Board Members were named as Defendants. The proposed payment plan is contingent upon no unanticipated expenses to the Association arising during the term of the payment plan. The proposed payment plan is as follows:

- \$500 per lot becomes immediately due and payable, but the following payment plan will be followed, so long as the funds are available:
 - \$6600 to be paid immediately from cash-on-hand.
 - \$50 increase in 2019 dues. Upon collection, \$6600 will be paid.
 - A one-time assessment of \$100 per lot due 5/1/2019. Upon collection, \$6600 will be paid.
 - \$6600 to be paid from cash-on-hand at the end of 2019.
 - \$50 increase in 2020 dues. Upon collection, \$6600 will be paid.
- Upon each payment of \$6600, each Member, currently in compliance with this plan, shall have their obligation to pay satisfied by \$100.
- Failure to pay at any of these times will result in a lien being placed on the individual's property for the full remaining balance.
- The remaining balance shall be collected at closing for any outstanding balances of this payment plan.

☐ FOR

☐ AGAINST

SIGNATURE OF MEMBER: _____

PRINT NAME OF MEMBER: _____

PROPERTY ADDRESS: _____

DATE: _____

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

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

ELECTRONICALLY FILED - 2019 Mar 23 9:42 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2301501

Woodington Homeowner's Association, Inc.
1754 Woodruff Rd - Number 209
Greenville, SC 29607

ELECTRONICALLY FILED - 2019 Mar 23 9:42 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2301501

ANNUAL MEETING OF THE WOODINGTON HOA

JANUARY 24, 2019 @ 6:30PM

**FIVE FORKS LIBRARY
104 SUNNYDALE DRIVE
SIMPSONVILLE, SC 29681**

*******2019 DUES NOTICE INCLUDED*******

Woodington Homeowner's Association, Inc.
1754 Woodruff Rd - Number 209
Greenville, SC 29607

January 11, 2019

RE: Annual Meeting, Ballot Results, and Updates

Dear Homeowner,

Notice of the Annual Meeting of the Woodington Homeowner's Association was provided by a sign placed at the entrance of our community. It is very important that all members of the community attend this meeting, as there continues to be major issues facing our Association. **If you are unable to attend the meeting, you will find enclosed a Proxy that will allow you to appoint someone to cast your vote in your absence.**

On December 6th, there was a Special Meeting of the Woodington HOA. The purpose of that meeting was to provide the results of the three ballots that were presented to the community and to update the community on issues currently facing the Association. Below you will find a list of those results along with new issues.

- Ballot #1 (Indemnification): This ballot passed with 53 For votes and 12 Against.
- Ballot #2 (Payment Plan): This ballot passed with 56 For votes and 9 Against votes.
 - The first payment of \$6600.00 has been made.
- Ballot #3 (By-law Amendment) : This ballot passed with 62 For votes and 3 Against votes.
- Litigation :
 - In a recent email, Raymond Wedlake presented the 2018 Board with a draft complaint for a third legal action. The current Board made every effort to avoid this litigation, but we were recently notified that the complaint would be filed. Mr. Wedlake made several requests for information. The Board sought guidance from an attorney due to the fact that some of these requests could violate Attorney/Client privilege or compromise the confidentiality of the members as it relates to voting. The Board proceeded based on the legal advice we received. This will be discussed further at the Annual Meeting.
 - Both lawsuits against former Board members are still active and moving forward.
- Department of Consumer Affairs Complaint: Mr. Wedlake filed a fifth complaint with the Department of Consumer Affairs. That complaint was read at the December 6th meeting.

ELECTRONICALLY FILED - 2019 Mar 23 9:42 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2301501

Woodington Homeowner's Association, Inc.
1754 Woodruff Rd - Number 209
Greenville, SC 29607

- **Annual Meeting:**
 - The annual meeting will take place on January 24th.
 - At this time, only Raymond Wedlake has expressed his intention to run for a position on the Board. The current Board members are undecided as to whether they will seek re-election. If you wish to be added to the ballot, please let the Board know of your intention to seek a position on the Board. Nominations will be taken from the floor.
- **Ballot:** There is a ballot included within. The South Carolina Non-Profit Act requires that a Non-Profit Corporation have a minimum of three (3) Directors. With a sixty-six (66) unit HOA, the Board feels that a three-person Board would suffice and could potentially help avoid issues our Association has faced in the past. Further reasoning behind this will be discussed at the Annual Meeting. Please note all ballots are **Due February 22nd**.
- **Dues:** Your 2019 dues notice is included. **Please note that dues must be paid by March 1st to avoid the late penalty.**

Sincerely,

Chris W. Edwards, President

Mike Keels, Secretary

Woodington Homeowner's Association, Inc.
woodinghoa@gmail.com

Enclosures

ELECTRONICALLY FILED - 2019 Mar 23 9:42 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2301501

Woodington HOA

1754 WOODRUFF ROAD - NUMBER 209
GREENVILLE, SC 29607

DUE UPON RECEIPT

1/15/19

BILL TO

Woodington Homeowner

FOR

2019 Dues

Details

AMOUNT

2019 Woodington HOA Dues

\$200.00

2019 Woodington HOA Dues - Temporary Dues Increase

\$50.00

**PAST DUE - LATE FEE FOR 2019 TO BE APPLIED IF NOT
PAID**

BY 3/1/2019

SUBTOTAL \$250.00

TAX RATE 0.00%

OTHER \$0.00

TOTAL \$250.00

Make all checks payable to Woodington HOA

If you have any questions concerning this invoice, use the following contact information:

Chris Edwards, Woodington HOA President, woodingtonhoa@gmail.com

THANK YOU!

Due by Friday, February 22nd

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

The following Amendment to the By-Laws shall be immediately adopted and incorporated into the current By-Laws (underlined language is new language and struck language is to be removed):

Article V Board of Director, Selection, and Term of Office

Section 1 – Number: *The association shall be governed by a Board of Directors, ~~normally five (5) in number~~ having a minimum of three (3) Directors and a maximum of five (5) Directors, each of whom shall serve until his or her successor is elected and shall qualify as provided in these By-Laws. No more than (1) representative of any single distinct membership may serve as a director of the Association at one time.*

Section 2 – Selection and Term of Office: *Annually, the membership shall ~~normally~~ elect a minimum of three (3) and a maximum of five (5) directors from the membership for the term of one (1) year.... (Remainder of Article V remains unchanged)*

Article VI- Nomination and Election of Directors

Section 1 – Nomination: *Nomination for the election to the Board of Directors shall be made by the current Board of Directors. At least ~~90~~ thirty (30) days prior to the annual meeting, the current Board of Directors will request volunteers to fill expected vacancies on the Board. If applicable, a notice will be sent to the membership advising them of open positions and asking for volunteers to fill the positions. An election slate for members of the Board of Directors will be prepared to include incumbent members who are seeking re-election and new candidates.... (Remainder of Section 1 remains unchanged)*

Section 2 – Election: *Election to the Board shall be by secret written ballot. At such election, the Members or their proxies may cast one vote for each ~~vacancy~~ seat on the Board, with the maximum number of votes being five (5). A ballot containing more than five votes shall be null and void. The three persons receiving the largest number of votes shall be elected. In the event the person with the 4th highest number of votes receives a majority vote from those members or their proxies casting ballots, that person shall be elected to the Board. In the event the person with the 5th highest number of votes receives a majority vote from those Members or their proxies casting ballots, that person shall be elected to the Board. Cumulative voting is not permitted.*

☐ FOR (Board shall Vote "FOR" if not returned by 2/22/19)

☐ AGAINST

SIGNATURE OF MEMBER: _____

PRINT NAME OF MEMBER: _____

PROPERTY ADDRESS: _____

DATE: _____

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

WOODINGTON HOMEOWNERS ASSOCIATION

Revocable Proxy

Please complete this revocable proxy if you think that you will not attend the upcoming annual meeting of the Woodington Homeowners Association. You can revoke this proxy by attending the meeting. The proxy must be signed by the Property Owner and must designate the individual authorized to vote on your behalf. We would like all homeowners to attend, but if you cannot, your proxy is required to ensure that a quorum can be obtained and that the business of the Association can be conducted.

REVOCABLE PROXY

I/We _____ being the owner(s) of
_____ in Woodington Subdivision, and a Member
of the Woodington Homeowners Association, do hereby authorize and appoint
_____ to be my/our proxy to represent me/us on the
issues to be discussed at the Annual Meeting of the Woodington Homeowners
Association, to be held on Thursday, January 24, 2019 at 6:30pm at the Five
Forks Public Library , to vote on my/our behalf on the issues submitted to vote
for this meeting, or in the event a quorum shall fail to attend or be represented,
at such time and place as the adjourned meeting shall be resumed.

SIGNATURE OF OWNER: _____

SIGNATURE OF OWNER: _____

DATE: _____

**AGREEMENT BY AND BETWEEN RAYMOND A. WEDLAKE
AND
THE BOARD OF DIRECTORS OF THE WOODINGTON
HOMEOWNERS' ASSOCIATION, INC.
("WHOA BOARD")**

The purpose of this agreement ("Agreement") is to resolve, or at least defer, legal action by Mr. Wedlake, designed to stop any payments by the WHOA Board to the law firm of McCabe Trotter, and Beverly, P.C., arising from, or relating to, the Declaratory Judgment Action (Case: 2017-CP-23-06301), whether arising from the Trial, the Appeal or otherwise.

Mr. Wedlake agrees not to request the Court to order a preliminary injunction, or take any similar action, against the WHOA Board to stop any such payments and the WHOA Board agrees not to make any such payments without first providing at least ten days advance written notice to Mr. Wedlake.

To be effective, this Agreement must be signed no later than February 27, 2019.

Agreed:

Raymond A. Wedlake

President,

Woodington Homeowners'
Association, Inc.

Dated as of:

February 27, 2019

Board “... will no longer negotiate ...” ; Thus, they will not sign any agreements

On Feb 19, 2019, at 4:52 PM, Chris Edwards <woodingtonhoa@gmail.com> wrote:

[excerpted to relevant part]

Grant:

The 2018 Board contacted you about trying to reach resolution to many of the issues that are currently facing our great neighborhood. Please know that we will no longer negotiate with you or Ray on any issues.

For these reasons and others not specifically included herein, it is in the best interest of the Association that time and resources not be wasted negotiating with you or your client.

WHOA Board

Member List Request - New Neighbors on Creekview Drive 021519

cndesteve@gmail.com, cwedwards2018@gmail.com, woodingtonhoa@gmail.com, woodingtonvp@gmail.com

Woodington Board:

Please provide an updated Member list to me. If you are not yet informed, I had occasion to meet new neighbors on Creekview Drive:

Belk Jason & Annagrace 603 Creekview Drive

Thanks in advance!

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

Results from Ballot of 22 Feb 2019 030919

cndesteve@gmail.com, cwedwards2018@gmail.com, woodingtonhoa@gmail.com, woodingtonvp@gmail.com

Woodington Board:

Thank you for a letter informing me of cancellation of the March 11, 2019, Special Meeting, which was received on March 9, 2019.

Since there will be no meeting, please convey to me results from the ballot which had a return date of February 22, 2019. Kindly provide this information:

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

Kindly provide this requested information **before March 15, 2019**.

Thank you.

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

Last-Chance Notice Before Court Filing 031119

cndesteve@gmail.com, cwedwards2018@gmail.com, woodingtonhoa@gmail.com, woodingtonvp@gmail.com

Woodington Board:

A nearly complete draft Complaint is attached, which may be filed soon, hopefully this week. This working draft is sent in advance of filing, but I would hope the Board will reconsider the prior proposal to sign a simple, confidential agreement. No reply before Friday, March 15, 2019, will mean efforts to file will proceed.

Please accept this last-chance notice and reply affirmatively.

File: <breach-ofduty-mccabe-nopay-gg3-3-2019rev6.pdf>

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

ATTACHMENT IB.1 - Case 2020-CV-23-10201384

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF GREENVILLE	)	
	)	CIVIL CASE NUMBER
Raymond A. Wedlake, as a Member of	)	
Woodington Homeowners' Association, Inc.	)	IN THE MAGISTRATE'S COURT
and on behalf of other-similarly-situated Members	)	
of Woodington Homeowners' Association, Inc.	)	
PLAINTIFFS	)	
VS.	)	
Board of Directors of Woodington Homeowners'	)	SUMMONS
Association, Inc., comprised of Mona Craigo,	)	
Edward Decker, and Sandra LaCroix	)	
at the time of filing	)	
AND	)	
McCabe, Trotter, and Beverly, P.C.	)	
DEFENDANTS	)	

TO THE DEFENDANTS

YOU ARE SUMMONED and required to answer the allegations of the attached complaint and present any appropriate counterclaims/crossclaims to the attached Complaint within thirty (30) days from the first day after receipt of this summons. Your answer must be received by the Magistrate's Court located at:

Magistrate Courts - Fairview/Austin Summary Court
205 N. Maple Street Suite 4
Simpsonville, SC 29681

If you fail to answer within the prescribed time, a judgment by default may be rendered against you for the amount or other remedy requested in the attached complaint, plus interest and costs. If you desire a jury trial, you must request one within five (5) days before the date of trial. If no jury trial is timely requested, the matter will be heard and decided by the Judge.

Given under my hand, this _____ day of June, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Raymond A. Wedlake, as a Member of)
Woodington Homeowners' Association, Inc.)
703 Creekview Drive)
Greenville, SC 29607)
864-254-9262 wedlakera@mail.com)
and on behalf of other-similarly-situated Members)
of Woodington Homeowners' Association, Inc.)
) **PLAINTIFFS**)
VS.)
Board of Directors of Woodington Homeowners')
Association, Inc., comprised of Mona Craigo,)
Edward Decker, and Sandra LaCroix at the time)
of filing)
18 Southfield Drive)
Greenville, SC 29607)
864-346-7352 woodingtonhoa@gmail.com)
) **AND**)
McCabe, Trotter & Beverly, P.C.)
P.O. Box 212069)
Columbia, SC 29221)
803-724-5000 ryan.mccabe@mccabetrotter.com)
) **DEFENDANTS**)

CIVIL CASE NUMBER
IN THE MAGISTRATE'S COURT
COMPLAINT

BREACH OF CONTRACT
BY THE BOARD; PLUS
CONSPIRACY BY McCABE TO
EXTORT CORPORATE FUNDS,
AND CASTING PLAINTIFF
IN A FALSE LIGHT

I, Raymond A. Wedlake , the Plaintiff (*Pro Se*) in this action do make the following claims:

1. All of the Board of Directors (Board) of Woodington Homeowners' Association, Inc. (WHOA), reside in Greenville County, and I believe the defendant: McCabe, Trotter & Beverly, P.C. (McCabe), practices law in Greenville County, which is within the Judge's magisterial jurisdiction and this Complaint is properly filed in Greenville County at address:

Clerk of Magistrate's Court, 205 North Maple Street. # 4, Simpsonville, SC 29681, pursuant to Rule 4, SCRMC, which says:

(a) A civil action may be filed in any magistrates court in the county in which at least one defendant resides or where the most substantial part of the cause of action arose, except that civil actions against domestic corporations may be filed in the county where such corporation shall have its principal place of business.

and also comes under the jurisdiction of this Court as stated by the South Carolina (SC) Code of Laws, "HOA Act" :

SECTION 27-30-160. Jurisdiction of magistrates court.

Pursuant to Section 22-3-10, the magistrates court shall have concurrent jurisdiction to adjudicate monetary disputes arising under this article, provided the dispute meets the jurisdictional requirements of Section 22-3-10.

where Section 22-3-10 affirms jurisdiction of this Court:

SECTION 22-3-10. Concurrent civil jurisdiction. [as excerpted]

Magistrates have concurrent civil jurisdiction in the following cases:

(I) in actions arising on contracts for the recovery of money only, if the sum claimed does not exceed seven thousand five hundred dollars;

(II) in any action to recover the possession of personal property claimed, the value of which, as stated in the affidavit of the plaintiff, his agent, or attorney, does not exceed the sum of seven thousand five hundred dollars;

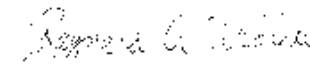
2. I make this complaint based upon the following "Supplement to Complaint", as appears below.

3. I believe, because of information herein, that I am entitled to and do request a judgment for \$7493 against McCabe, who conspired with the 2018 Board, and later-year Boards, to extort payments from WHOA who was not their client. I believe that I am entitled to and do request an award for Nominal Damages of \$1, as well as \$1 awarded to six-other-known-

similarly-situated-WHOA members (Members, Figure 1), and/or other relief as requested below. I waive all and any right or claim to other costs resulting in this action, to allow this case to qualify under the \$7500 Magistrate's-Court limit.

I state under penalty of perjury that the above, and content as found in the "Supplement ...", is correct and truthful, except those based on my information and belief.

Dated this 10th day of June, 2020.



Raymond A. Wedlake, Plaintiff (*Pro Se*)

SCCA/701 (Amended 05/08) [as modified]

SUPPLEMENT TO COMPLAINT

OVERVIEW

Plaintiff comes before this Court as a *Pro-Se* party, citing Defendant McCabe, Trotter, and Beverly, P.C. (McCabe) for unethical and alleged-unlawful billing, directing their invoice (Exhibit 1) to Woodington Homeowners' Association, Inc. (WHOA), who was not a client of McCabe. Plaintiff alleges Defendant McCabe conspired with all Boards since 2017 to extort payments from WHOA, since McCabe did not render legal services to WHOA, and therefore WHOA has no obligation to pay what Plaintiff contends is an illegitimate bill.

Plaintiff also cites WHOA Board of Directors (Board), for first accepting McCabe's invoice (Exhibit 1) when no Member approval was given prior to accumulation of nearly \$54,000 in legal fees (Fees), which was done undercover and kept secret from Members. Second, for making payment, and continuing to make payments to McCabe, which the Board has no authority nor power to do, under the original-governing document for WHOA, therefore making payments by the Board to McCabe unlawful. May it please the Court to know that Plaintiff has

tried continuously to negotiate, and/or mediate, and most recently arbitrate alleged-unlawful actions by the Board, but no Board to date has made any-substantive attempt to address disputed issues, preferring to simply ignore most all issues, with a “take-a-hike attitude” towards Plaintiff. Denial by the Board to address issues of unlawful actions by the Board has left Plaintiff not other option but to seek redress of grievances via judicial action, where Plaintiff believes denial by the Board results from personal dislike, and/or discriminatory feelings towards Plaintiff, based on information and belief.

This great country was founded upon democratic principles, a main tenant known to all resulting from the “Boston Tea Party” being: “No taxation without representation”. The Board in all recent years forces me to pay dues, bnt then does not represent Plaintiff, nor any of his views, nor honor his attempts to bring improvement to WHOA and benefits to its Members. Plaintiff contends and believes the Board's attitude is improper, leading to actions which are done in violation of the “Declaration of Conditions, Covenants, and Restrictions for Woodington Snbdivision” (Covenants, Exhibit 2) as filed with the “Register of Deeds” (Book 1373), which is the original-governing-and-controlling document for WHOA. Actions perpetrated upon Members by the Board in violation of the Covenants are unlawful, as alleged herein.

Declaratory Judgment (DJ) is sought on several questions of interpretation of law.

ADMINISTRATIVE HISTORY

Plaintiff filed a Complaint in October 2017: 2017-CP-23-06301 (Case), which came to Trial on April 20, 2018, seeking Declaratory Judgment on six-simple questions of law as related to interpretation of WHOA By-Laws (Exhibit 3), as agreed and given by “Stipulation of Issues for Trial” (Exhibit 4) as filed on March 29, 2018 in the “Public Index”. Members who comprised

the 2017 Board engaged the services of McCabe to act as their Counsel for Case, where billable hours began to accumulate on October 9, 2017.

Both of 2017 and 2018 Boards, as well as McCabe, kept such Fees hidden from Members. McCabe's invoice (Exhibit 1, filed in the Public Index on March 23, 2019, for 2019-CP-23-01501) for \$53,683.50 was not presented until July 13, 2018. Invoice was billed to WHOA, directed to 2018-Board-President Chris Edwards, who was not a party in Case. With Appeal (2018-001209) of Case still pending at this date of filing, as done by 2018 and 2019 Boards, the 2020 Board continues to allegedly embezzle WHOA funds to comply with McCabe's-alleged conspiracy and alleged extortion, based on information and belief.

STATUTE GIVES POWER TO THE COURT TO RENDER DECLARATORY JUDGMENT

Statutory excerpts justify this Court to provide DJ under Title 15, Chapter 53, of the South Carolina Code of Laws "Uniform Declaratory Judgments Act", where Sections 15-53-20 and 15-53-30 apply directly, and where Plaintiff believes and contends under 15-53-70 that DJ will terminate the uncertainty and controversy giving rise to this proceeding, and where under 15-53-130, Plaintiff prays for relief from uncertainty and insecurity with respect to his rights, status and other legal relations, and for the Court to liberally construe and administer statutory provisions (emphasis added):

SECTION 15-53-20. Courts of record may declare rights, status
and other legal relations.

Courts of record within their respective jurisdictions **shall have power to declare rights, status and other legal relations** whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

SECTION 15-53-30. Determination of questions under deed, will, written contract, statute, municipal ordinance, contract or franchise. Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

SECTION 15-53-70. Declaratory judgment may be refused. The court may refuse to render or enter a declaratory judgment or decree when such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

SECTION 15-53-130. Chapter shall be construed liberally. This chapter is declared to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. It is to be liberally construed and administered.

STANDING

1. Plaintiff is a Member with individualized-personal injury due to inflated dues and assessments being used to accrue funds to pay McCabe, done in violation of WHOA's original-governing document: Covenants, which forms a contract (Contract) between Plaintiff and WHOA, to which the Board must abide per contractual obligations. An increase in dues is in actuality effectively part of, and in addition to, the alleged-unlawfully-imposed assessment, since such increase in dues is directly coupled to McCabe's-alleged extortion, proven by the Board's-"payment plan"-Ballot-2 vote to pay for Fees (Exhibit 5).

2. Plaintiff is a law-abiding citizen, and expects the Board to act in a law-abiding manner. When they perpetrate unlawful actions upon Members, Plaintiff has specific-Covenants-given authority to: "... prosecute any proceeding at law or in equity against the person or persons violating ...", as stated in the Covenants (p. 913) (emphasis added):

... If the undersigned, its successors or assigns, or any owner of any lot, their heirs or assigns, **should violate** or attempt to violate any of the **covenants, conditions and restrictions** herein contained, it **shall be lawful for any person or persons owning any of the real estate described above to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate same, to either prevent his or them from so doing, or to recover damages for such violations, ...**

LEGAL STANDARD AND ARGUMENTS

3. Plaintiff states that alleged-unlawful-Board actions can be resolved by no other means, since they will not negotiate with Plaintiff. An opinion published by the SC Attorney General (AG) to Sottile of January 3, 2017 (Exhibit 6) suggests that every Member has an: "... ability to hold their associations accountable ...", and says: "... push back ..." (**emphasis added**):

... We hasten to add that we are mindful of the real and **legitimate concerns that constituents may have regarding the conduct of their HOAs**, and the cost of pursuing judicial remedies. But because **homeowners have both the incentive and the ability to hold their associations accountable**, we have not prioritized investigations of these organizations over other organizations which do not have built-in watchdogs. **Homeowners' associations are uniquely self-policing** among nonprofit corporations, and are capable of robust self-government. ... a homeowner has a strong vested interest in monitoring the actions of their association closely, and **to actively push back against any improper action**. Where homeowners are **elected to the boards** of associations through a vote by the members, the homeowners are democratically represented, ... if the **association abuses their power** so as to overstep the governing **covenants** and bylaws, then all members generally have the incentive and the ability to **discover those abuses, and may resort to the courts for a remedy** if the matter cannot be resolved internally. ... "

4. An AG opinion confirms the Covenants as the controlling document, states amendment of By-Laws cannot be used to extend HOA power, and shows By-Laws supposedly "approving" the payment of Fees was invalid, since By-Laws cannot be used in the manner desired by the Board without specific granting of authority stated in restrictive Covenants. On August 5, 2016 an AG opinion to Goldfinch showed (Exhibit 7, excerpted, **emphasis added**):

... 2. Do by-laws prevail over covenants?

... court generally would find that restrictive covenants prevail over bylaws adopted pursuant to those covenants if there is a conflict between them. ... both South Carolina law and authority from other jurisdictions point to restrictive covenants as the constitutional document of a homeowners' association ("HOA") which generally takes precedence over any bylaws ...

... appellate court held that the HOA could not "circumvent the intent of the Declaration [Covenants], the enabling document, by subsequently amending the Bylaws." ... where the bylaws of an HOA purport to restrict the use of property further than contemplated in the covenants, there is a conflict and the covenants will control. ...

... Restrictive covenants ... grant it [HOA] authority to manage common areas, ... Homeowners' associations are contractually limited by the restrictive covenants establishing them.

... fundamental inquiry centered on whether and to what extent a property right could be restricted by subsequent amendments to bylaws or rules contemplated in the enabling document; and in both cases, the decision that the covenants controlled ruled on the supremacy of that document. ...

5. A HOA is an autonomous entity, where no arguments can be brought against a claim that the Board is the governing entity. Plaintiff contends as brought in this case that a Board's autonomy and governing authority are based upon contractual obligations, as found in governing documents. Governing documents in precedence order are generally comprised of: "Articles of Incorporation", "Covenants" (or CCR's), and "By-Laws" as required pursuant to the "South Carolina Nonprofit Corporation Act of 1994" (NPCA). For WHOA, "Articles of Incorporation" do not exist. A "Declaration and Petition for Incorporation" (Exhibit 8) was filed with the Secretary of State on August 27, 1993, is deficient under the law and states:

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

which is similarly reflected, where it should be noted that WHOA is a mutual-benefit-not-for-profit corporation, as stated in By-Laws:

ARTICLE II - PURPOSE

This Association does not contemplate pecuniary gain or profit to the Members thereof, and the purpose of the Association, as provided in the Certificate of incorporation, is as follows: "The purpose of the said proposed Corporation is to provide for an association for the betterment of the property and homeowners of Woodington Subdivision, Greenville County, South Carolina."

6. Perpetration of alleged-unlawful actions by the Board upon Members is easily recognized as contrary to the purpose of WHOA. Actions by the Board are guided by, must be limited to, and must always remain consistent with the purpose for which WHOA was incorporated.

7. By-Laws cannot be used to overrule the law as stated by the NPCA (emphasis added):

SECTION 33-31-206. Bylaws.

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

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

Plaintiff claims that the counting method as specified in By-Laws, Article XVII, Section 3, is an error of law pursuant to NPCA Section 33-31-206, because this By-Laws provision is "inconsistent with law", and thus must be deemed null and void.

8. The lawful meaning of "Approved by the members" is defined by the NPCA Section 140 which shows (emphasis added):

SECTION 33-31-140. Definitions.

Unless the context otherwise requires;

(1) "Approved by the members" or "approval by the members"

means approved or ratified by the **members entitled to vote** on the issue through either:

- (a) the affirmative vote of a **majority of the votes of the members** represented and voting at a duly held meeting at which a quorum is present or the affirmative vote of the greater proportion including the votes of any required proportion of the members of any class as the articles, bylaws, or this chapter may provide for specified types of member action; or
- (b) a written ballot or written consent in conformity with this chapter.

9. By-Laws are invalid when inconsistent with law, particularly as applied to "Board Proxies" being used by the Board to claim a vote "Passed", when a vote did not receive a required number of **Member** votes, where additional content (Exhibit 9) starting on p. 3 clarifies:

5d1. ...

the Board breached the NPCA Section 33-31-140 by denying the definition "Approved by the members"; they cannot act to:

"... vote as Proxy for non-voting Members, and then to claim "Member Approval" to further their own, personal interests for their own personal gain;

5d2. That counting as a vote in favor of such payments of ballots not submitted was improper, and that in fact, the requisite number of members (50 [votes for approval of a By-Laws amendment; 34 votes for approval by a majority]) did not cast ballots in favor of making such payments, where only 41 Member-ballots were returned as shown by WHOA Minutes of December 6, 2018 (Exhibit 2 [10 herein]):

F. Questions

- 1. Member - "How many ballots were returned?"
 - a) 41 total ballots returned.

10. Further, lawful requirements were not met to vote proxies, since the Board does not possess a single-requisite-"appointment of Proxy"-signed form as related to ballots due November, 2018. WHOA as "the corporation" must have an appointment form, under the law, in order to act as Proxy for a Member. Thus, the By-Laws Article XVII, Section 3, allowing "Proxy by default" must be recognized as null and void since it is "inconsistent with law". Excerpts from the NPCA show (emphasis added):

SECTION 33-31-724. Proxies.

(a) Unless the articles or bylaws prohibit or limit proxy voting, a member may **appoint a proxy** to vote or otherwise **act for the member** by **signing an appointment form** either personally or by an attorney-in-fact.

(b) An appointment of a **proxy is effective when received** by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided in the appointment form. However, no proxy is valid for more than three years from its date of execution.

(f) Subject to Section 33-31-727 and any express limitation on the proxy's authority **appearing on the face of the appointment form**, **a corporation is entitled to accept** the proxy's vote or other action as that of the member making the appointment.

11. Per NPCA Section 33-31-831, the Board cannot use their control for ballots not voted by Members, which nullifies "Board Proxies" as voted to claim "PASSED". The NPCA is specific in its statement that: "... voted under the control of a director ... may **not** be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (c)(2)" where excerpts from the NPCA show (emphasis added):

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

(a) A **conflict of interest transaction** is a transaction with the corporation in which a **director** of the corporation has a **direct or indirect interest**. A conflict of interest transaction is not voidable [f]or [on] the basis for imposing liability on the director if the transaction was fair to the corporation at the time it was entered ...

(c) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if:

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

(f) For purposes of subsection (c)(2), a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a **majority** of the votes entitled to be counted under this subsection. **Votes cast by or voted under the control of a director who has a direct or indirect interest**

in the transaction, ... may **not** be counted in a vote of members to **determine whether to authorize, approve, or ratify a conflict of interest transaction** under subsection (c)(2). ...

and therefore the By-Laws provision which allows: "... Ballots of Members not returned by the specified return date shall be voted by the Board. ...", is "inconsistent with law", and must be cited as null and void (emphasis added):

ARTICLE XVII - AMENDMENTS AND VOTING

Section 3: Any and all issues may be resolved per the simple majority result of vote by ballot by all Association Members. The Board Secretary shall deliver a ballot to every Member, with a specified return date determined by the Board. The return date shall be no earlier than twenty-one (21) days from date of delivery. The voting period shall include at least three Saturdays, and three Sundays, where end of the voting period shall be neither Saturday nor Sunday. **Ballots of Members not returned by the specified return date shall be voted by the Board.** The Board's vote for non-returned ballots shall be clearly specified on ballots at the time they are delivered to Members.

12. Contrary to the Covenants, the Board made payments to McCabe which were distributed, and therefore McCabe is legally obligated to contribute back to WHOA per the NPCA : "... director held liable for an unlawful distribution ...", where the NPCA shows :

SECTION 33-31-833. Liability for unlawful distributions.

(a) Unless a **director complies** with the applicable **standards for conduct** described in Section 33-31-830, a **director who votes for or assents** to a **distribution** made in violation of this chapter or the articles of incorporation **is personally liable** to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

(b) A **director held liable** for an unlawful distribution under subsection (a) is **entitled to contribution**:

(1) from every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in Section 33-31-830; and

(2) from **each person who received an unlawful distribution** for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter.

13. The Covenants do not give power to the Board to assess Members for Fees. Plaintiff contends that any claim of "betterment" as related to assessment of Fees is tacitly ridiculous. Fees in no stretch of imagination can be correlated to: "... betterment of property ...". Similarly, imposition of unwanted-Fees heap an additional financial burden upon Members, which in no stretch of imagination can be termed: "... betterment of ... homeowners ...".

14. To date, Fees stemming from "business judgment" applied by the Board were unlawfully accumulated, since no Board sought nor received prior-Member approval to incur Fees in excess of \$1500 (Affidavit), which is required pursuant to By-Laws:

ARTICLE X - EXPENDITURE OF FUNDS

Section 4: The non-budgeted expenditure of corporate funds in excess of One Thousand Five Hundred Dollars (\$1,500.00) for any individual project must be approved by a majority vote of the membership at a duly held meeting at which a quorum is present.

15. The Covenants give authority to the Board to collect dues and to assess Members for expenses incurred to maintain a lot, but Covenants do not authorize a Board to assess a Member, nor to assess Members, for Fees; an assessment can not be used as related to unnecessary expenses for the operation of the Homeowners' Association, where on pp. 918-919 (Book 1373) Covenants show (emphasis added):

ARTICLE V: ASSOCIATION OF OWNERS

(3) The Homeowners Association shall be entitled to collect dues, on an annual basis, assessed against each lot in an amount to be determined by the Board of Directors. These dues shall be administered by the officers of the Association and used for the payment of necessary expenses for the operation of the Homeowners Association and for the maintenance of any vacant and untended lot or unkempt improved lot and for the payment of any common utility expenses and for the maintenance of any property deeded to the Homeowners Association.

16. Covenants specify other limitations to restrict the use of dues. Assessing Members for Fees is not a power, nor an authority, given to the Board by the Covenants. Consequently, perpetration by the Board to assess Members for Fees is unlawful, as alleged by Plaintiff. The Board has power and authority to assess for fees related to maintenance and upkeep of a **LOT**, which is limited to an amount expended for that purpose, **ONLY**, pursuant to the Covenants (emphasis added):

ARTICLE V: ASSOCIATION OF OWNERS

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

17. Under the "Business Judgment (BJ) Rule", the Board is obliged to exercise "Duty of Loyalty" to Members, and has no duty to be "loyal" to McCabe. The Board's bad faith in paying McCabe is an outlandish extension of power and authority not given to the Board by the Covenants; that is: an unlawful action. Unlawful conduct can in no stretch of imagination be construed as: "... acting rationally and in good faith ...". In violation of law, BJ cannot be exercised, nor does BJ apply. Given this violation of conduct by the Board, its decisions become subject to review by a Court. The: "... interests of the corporation and its shareholders over the interests of others ..." means Members desire not to be assessed for unnecessary Fees must come before McCabe, and before McCabe's desire to allegedly-extort funds from WHOA. This Complaint shows evidence that the Board has acted in bad faith, due to:

17a) creating a conflict of interest for the Board as Members versus as the Board, and

17b) failing to investigate unethical corporate behavior that was obvious when committed.

18. A conflict of interest exists because the Board, who are Members of WHOA, have also assessed themselves in order to pay McCabe. It is from their perspective not as Members, but as a Board only, that a desire exists to allegedly embezzle (due to unlawful disbursement under the Covenants) WHOA funds to comply with McCabe's-alleged-extortion demands.

Notwithstanding this conflict of interest, payments to McCabe are easily be recognized as unlawful due to arguments herein.

19. No Board has investigated this obviously-unethical-corporate behavior since it was committed. The fact that an amount far in excess of the \$1500 limit as required by the By-Laws was expended by the Board, without Member approval, speaks to the obvious nature of this unethical corporate behavior.

20. The opinion of one-legal authority follows:

These[BJ] fiduciary standards include the "duty of care" and the "duty of loyalty." The first is an obligation to act on an informed basis. The second requires directors to put the interests of the corporation and its shareholders over the interests of others.

Unless it's clear that directors have violated the law or acted against the interests of shareholders, courts will not question their decisions.

... As long as a court believes that directors are acting rationally and in good faith, it will take no action against them.

Exemptions to the Business Judgment Rule

In order to challenge the presumption that is the heart of the rule, plaintiffs must show evidence that directors have acted in bad faith. This might include engaging in fraud, committing a breach of trust or creating a conflict of interest, abdicating corporate responsibility, or failing to

investigate unethical corporate behavior that is obvious when committed
(excerpts from “Business Judgment Rule”, by Will Kenton,
www.investopedia.com/terms/b/businessjudgmentrule.asp)

21. Plaintiff contends and believes that ample arguments and evidence are presented herein to prove BJ exercised did **not** show the Board acted in compliance with any of 1, 2, nor 3, below, and asks this Court to recognize the **burden of proof** “... that the process and the substance of the transaction was fair.”, must be shifted to the Board, as given by opinion of a legal expert:

... (1) in good faith, (2) with the care that a reasonably prudent person would use, and (3) with the reasonable belief that the director is acting in the best interests of the corporation.

... However, if the court finds that the presumption does not apply, then the board needs to prove that the process and the substance of the transaction was fair. (“Business Judgment Rule”, www.law.cornell.edu/wex/business_judgment_rule)

22. With bad faith by the Board having been shown by Plaintiff as contained herein, due to primarily violation of the Covenants, a claim of: “... exercising its business judgment, ...”, cannot stand:

Therefore, the circuit court stated it would not review the *intra vires* corporate action of the Club, where it was exercising its business judgment, and there was no evidence suggesting self-dealing, fraud, or bad faith on the part of the board; see: *The Callawassie Island Members Club, Inc. v. Dennis* (December 18, 2019) , Court of Appeals of South Carolina. Opinion No. 5696.

23. No legitimate argument can be brought to claim that BJ: “... precludes the existence of a fiduciary relationship ...”, so both the “Duty of Care” and the “Duty of Loyalty” still apply in the face of alleged-unlawful actions by the Board:

Therefore, we reject Appellants' argument that the business judgment rule precludes the existence of a fiduciary relationship between a developer in control of a homeowners association and the association's members.; see: *Walbeck v. Pon Company, LLC* (May 22, 2019) Court of Appeals of South Carolina. Opinion No. 5588.

CONSPIRACY BY MCCABE / FALSE LIGHT

24. The Board and McCabe conspiring to allegedly commit fraud, and McCabe's alleged extortion of WHOA funds is misconduct manifested with direct violation of the Contract, which caused damage to Plaintiff:

Conspiracy

An agreement between two or more persons to engage jointly in an unlawful or criminal act, or an act that is innocent in itself but becomes unlawful when done by the combination of actors.

conspiracy

n. when people work together by agreement to commit an illegal act. A conspiracy may exist when the parties use legal means to accomplish an illegal result, or to use illegal means to achieve something that in itself is lawful. (legal-dictionary.thefreedictionary.com/conspiracy)

25. Conspiracy exists when actions taken are not based upon the Contract. Under the guise of protecting themselves as a Board, they acted to injure Plaintiff and other-similarly-situated Members by imposing alleged-unlawful assessments:

For example, Petitioners' allegation that Respondents possibly conspired with Willis and others to commit fraud is misconduct that does not arise from the contract; see: *Wilson v. Willis*, Opinion No. 27879, Supreme Court of South Carolina.

To prove civil conspiracy, a plaintiff must prove the defendant acted "for the purpose of injuring the plaintiff." *City of Hartsville v. S.C. Mun. Ins. & Risk Fin. Fund*, 382 S.C. 535, 546, 677 S.E.2d 574, 579 (2009), as seen in *Wilson v. Willis, Id.*

"A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff." *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). A plaintiff need not allege an unlawful act to state a cause of action;

lawful acts may become actionable as a civil conspiracy if the objective is to ruin or damage the business of another. *LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 70, 370 S.E.2d 711, 713 (1988). Therefore, the primary inquiry in civil conspiracy is whether the principal purpose of the combination is to injure the plaintiff. *Pye v. Estate of Fox*, 369 S.C. 555, 567, 633 S.E.2d 505, 511 (2006). "Conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances." *Peoples Fed. Sav. & Loan Ass'n of S.C. v. Res. Planning Corp.*, 358 S.C. 460, 470, 596 S.E.2d 51, 57 (2004). "Civil conspiracy involves acts that are by their very nature covert and clandestine and usually not susceptible of proof by direct evidence." *McMillan*, 367 S.C. at 564, 626 S.E.2d at 386; as taken from: *Allegro v. Scully*, 418 S.C. 24 (2016), 791 S.E.2d 140, Opinion No. 27662, Supreme Court of South Carolina.

26. McCabe took specific measures to conceal evidence of their conspiracy by not billing WHOA for "services" which began in October 2017, until July 2018, which this delay itself then became an overt act attesting to practice of conspiracy. Withholding from Members the knowledge of accumulated-exorbitant-Fees was done with intent to make Members believe that Plaintiff had wrongfully "cried wolf", in order to paint Plaintiff in a false light before Members, based on information and belief. McCabe with malicious, and conspirative intent, instructed the 2017 Board to state: "... no legal fees; what legal fees ...", to Members at the 2018 Annual Meeting, to further conceal evidence from Members, and to hide from Members their nearly \$54,000 dollars which they later billed to WHOA. This action was taken with specific intent to smear and discredit Plaintiff's honesty and integrity, to further their-conspirative intent to cast Plaintiff in a false light before Members, based on information and belief.

27. Plaintiff cites McCabe for unethical and unlawful billing of WHOA, who was not their client in Case, which is currently pending Appeal (2018-001209), and hereby asserts a violation of Covenants and breach of Contract by the Board arising from acceptance of an improper invoice (Exhibit 1) from McCabe, with subsequent alleged-unlawful imposition of such invoice

for Fees assessed against Members, coupled with alleged-unlawful disbursement of WHOA funds by the Board to McCabe.

FACTS

28. This Complaint is supported by these “Facts”, along with an Affidavit of Plaintiff (Affidavit) and Exhibits hereto.

29. Plaintiff is a Member who has paid dues and is in good standing (Affidavit).

30. Plaintiff is a former two-term member of the WHOA Board (Affidavit).

31. Named-Board Defendants are the 2020 Board of WHOA (Affidavit).

32. Original Fees in question arise from a declaratory judgment action requesting interpretation of WHOA By-Laws (Exhibit 3), brought by Plaintiff, both derivatively on behalf of WHOA, and individually for particularized-personal harm, against the 2017-WHOA-Board members (2017-CP-23-06301) (Affidavit).

33. The Board has continued to assess Members (Exhibit 11) to make payments from WHOA funds to McCabe for Fees, in violation of the Covenants as alleged. As arguments herein, the Court is asked to recall in Exhibit 11, that the: “... \$50 approved assessment ...” is misstated; neither of Ballot 1 nor Ballot 2 were approved by Members.

34. The entity: “Board of Directors”:

34a) is a legitimate party to a judicial action as proven over history by myriads of cases in many courts (Exhibit 12); any contention to the contrary is tacitly ridiculous and must be discounted by the Court;

34b) is defined in the the "South Carolina Nonprofit Corporation Act of 1994" (NPCA) in a manner consistent with usage in this case, which further verifies legitimacy of a Board as a party in a judicial action (emphasis added):

SECTION 33-31-140. Definitions.

(3) "Board" or "board of directors" means the individual or individuals vested with overall management of the affairs of the domestic or foreign corporation, **irrespective of the name by which the individual or individuals are designated, ...**

34c) is cited under the NPCA as the responsible party to exercise and to manage all corporate powers, and is therefore responsible for their actions:

SECTION 33-31-801. Requirement for and duties of board.

(b) Except as provided in this chapter or subsection (c), all corporate powers must be exercised by or under the authority of and the affairs of the corporation managed under the direction of its board.

35. The Board committed breach of Contract by applying an unlawful-By-Laws amendment, which is in conflict with the Contract, and failing to act per the Contract, based on information and belief.

36. By-Laws conflict with the Covenants as regards authority to asses for Fees, and thus the Covenants must control; this is confirmed by the By-Laws themselves:

ARTICLE XVII - AMENDMENTS AND VOTING

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

37. Plaintiff alleges that the Board breached their duty to Members, including the "Duty of Care" and the "Duty of Loyalty", by not acting in good faith, and indeed their misconduct was knowing and intentional, nor did they act with the care an ordinarily-prudent person would

exercise, nor in a manner reasonably believed to be in the best interests of the corporation, nor in compliance with this section, and thus are subject to personal liability pursuant to NPCA Section 33-31-830 where excerpts show:

SECTION 33-31-830. General standards for directors.

(a) A director shall discharge his duties as a director, including his duties as a member of a committee:

- (1) in good faith;
- (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) in a manner the director reasonably believes to be in the best interests of the corporation.

(d) A director is not liable to the corporation, a member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.

39. A conflict of interest exists, and paying for Fees was not approved by Members:

39a) since the Board as Members would seek to avoid Fees imposed upon themselves, but yet want to continue to prematurely pay on Fees to McCabe, under the guise of "indemnification for the Board", because of their positions on the Board;

39b) since material facts of the transaction were not known to Members since they were not disclosed by the Board, who similarly did not disclose their interest, before ballots of November 2018 were disseminated (Exhibit 13, Exhibit 5, Exhibit 14);

40. On February 7, 2018, Plaintiff made a demand (Exhibit 15) that Fees not be paid, as to pay would:

40a) be a direct violation of By-Laws-indemnification requirements (Exhibit 3, Article XX);

40b) be a direct violation of indemnification specifications found in the NPCA (Exhibit 16);

41. The Board failed to recognize the Covenants must control when the By-Laws are in conflict with the Covenants, thus leading to an unlawful claim that both ballots passed, based

upon information and belief.

42. The Board does not possess signed-Proxy authorizations from any Member.

43. A majority (34) of Member votes did not approve Ballot 1 nor Ballot 2, where in violation of the NPCA Section 33-31-831(f), the Board used assumed-Proxy votes to erroneously contend "PASSED", where only 29 Member-votes were counted "FOR" on Ballot 1, and 32 Member-votes were counted "FOR" on Ballot 2, as seen in Paragraph 10 of: "Affidavit of Christopher Edwards" (Exhibit 17, p. 3, par. 10), filed in the Greenville-County-Circuit-Court-Public Index on May 21, 2019, which shows:

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

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

44. Payment of Fees would be improper since they were not only improperly assessed in violation of the Covenants, they were also improperly incurred in violation of the \$1500 By-Laws limit without Member approval. Also, contrary to the position of the Board, disbursements do not qualify as payments for "indemnification" for several reasons, based on information and belief, which include, *inter alia*:

44a) the requisite steps required for indemnification pursuant to the NPCA were not met (Exhibit 16);

44b) the wrong party was billed by McCabe;

44c) the fact that there has been no “final judgment” since Case is pending at this time before the Court of Appeals (2018-001209), and thus, acceptance of the McCabe invoice and any such payments are premature.

45. Moreover, Plaintiff asserts that the Board are not “immune from suit” by NPCA Section 33-31-834(a) since WHOA does not possess the requisite tax status of 501(c)(3), (c)(6), or (c)(12) (Exhibit 18, IRS Pub 557) under NPCA 33-31-834(b) to qualify the Board as immune, based on information and belief. Plaintiff also contends that any-such-presumed immunity is removed because the Board's conduct in violation of Contract amounts to willful, wanton, and gross negligence. Further per NPCA 33-31-834(a): “... Nothing in this section may be construed to grant immunity to the not-for-profit ... corporations, associations ...”, as shown in the NPCA (emphasis added):

SECTION 33-31-834. Immunity from suit.

(a) All directors, trustees, or members of the governing bodies of not-for-profit cooperatives, corporations, associations, and organizations described in subsection (b) are immune from suit arising from the conduct of the affairs of these cooperatives, corporations, associations, or organizations. **This immunity from suit is removed when the conduct amounts to wilful, wanton, or gross negligence. Nothing in this section may be construed to grant immunity to the not-for-profit cooperatives, corporations, associations, or organizations.**

(b) Subsection (a) applies to the following:

- (1) electric cooperatives organized under Chapter 49, Title 33;
- (2) **not-for-profit corporations, associations, and organizations, as recognized in and exempted from taxation under Federal Income Tax Code Section 501(c)(3), (c)(6), or (c)(12).**

46. No “Articles of Incorporation” for WHOA are filed with the Secretary of State, which makes legitimacy of WHOA as an incorporated entity questionable. Though WHOA has a “Declaration and Petition for Incorporation” (Exhibit 8), the Declaration does not comply with

law per NPCA Section 33-31-202(a)(2)(ii), (a)(5), nor (a)(6), where this section shows (excerpted, emphasis added):

SECTION 33-31-202. Articles of incorporation.

(a) The articles of incorporation must set forth:

(2) one of the following statements:

- (i) This corporation is a public benefit corporation.
- (ii) This corporation is a mutual benefit corporation.
- (iii) This corporation is a religious corporation;

(5) whether or not the corporation will have members;

(6) provisions not inconsistent with law regarding the distribution of assets on dissolution; and ...

(b) Unless the articles provide otherwise, no director of the corporation is personally liable for monetary damages for breach of any duty to the corporation or members. However, this provision shall not eliminate or limit the liability of a director:

(1) for any breach of the director's duty of loyalty to the corporation or its members;

(2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

(3) for any transaction from which a director derived an improper personal benefit; or

(4) under Sections 33-31-831 through 33-31-833.

47. A recent-WHOA invoice (Exhibit 11) received by Plaintiff proves the Board's breach of Contract by imposing an allegedly-unlawful assessment, where the invoice clearly shows:

Past Due Amounts	
2019	\$150

and also erroneously states a dues amount, but then admits the \$250 amount includes the alleged-unlawful imposition of an assessment (which leaves required dues at \$200), which has caused and continues to cause damage to Plaintiff and to Members, showing on page 1:

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

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

48. Plaintiff alleges McCabe is guilty of conspiracy and extortion, where indeed threats of subsequent judicial action were used to induce an unsuspecting-and-vindictive-against-Plaintiff Board to cave in to McCabe's demands for payment on their invoice, based on information and belief. McCabe most probably used all of: coercion, intimidation, psychological pressure, compel, coerce, and compulsion, based on information and belief, as taken from a typical definition of "extort" (emphasis added):

ex-tort (ik-stôrt') v. ex-tort-ed, ex-tort-ing, ex-torts
v.tr.

1. To **obtain** (something) by the criminal offense of extortion.
2. To **obtain** by **coercion, intimidation, or psychological pressure** ...

(www.thefreedictionary.com/extort)

To **compel or coerce** ... by any means serving to **overcome** the other's power of resistance, thus making the confession or admission involuntary. To **gain by wrongful methods**; to **obtain** in an unlawful manner, as in to **compel payments by means of threats** of injury to person, property, or **reputation**. To exact something wrongfully by threatening or putting in fear. The natural meaning of the word **extort** is to obtain **money** or other valuable things by **compulsion**, by actual force, or by the force of motives applied to the will, and **often more overpowering and irresistible than physical force**. (legal-dictionary.thefreedictionary.com/extort)

49. WHOA is listed as a co-Plaintiff, not as a Defendant, in Case; that is: Plaintiff represented WHOA in Case; McCabe did not represent WHOA in Case.

50. Relative to Case, McCabe did not represent WHOA, yet much later unethically and unlawfully billed the 2018-WHOA itself, based on information and belief. McCabe [Mr. Grote asking question "Q.", as answered "A." by Plaintiff] acknowledged this fact during the Trial of Case (emphasis added):

- Q. Why is it that you've insisted that you've -- you have to name these Board members as **parties rather than actually the corporation**?
- A. I believe that was the appropriate course of action.

- Q. And you want some, I guess, determination that these things will, I guess, affect future Boards; right?
- A. The intent, again, is to clarify what the Bylaws say and mean for this Board, for the members and for future Boards.
- Q. I mean, isn't that more appropriate for the **corporation itself to be named rather than** having to sue what amounts to four out of five **current Board** members?
- A. I believe the **standing Board is responsible for the actions of the Association** in their duties as a Board.

(Transcript of Record, April 20, 2018, p. 88 - 89, ll. 15 - 25, 1 - 8; 2017CP2306301)

the Transcript contains no comments from the Judge related to McCabe's claim that the corporation must be a named party.

51. Additionally, in their "Respondents' Motion to Dismiss and Supporting Memorandum" (Exhibit 19) filed with the Court of Appeals on August 8, 2019 (2018-001209), McCabe themselves admit: "... WHOA ... was never made a party ...", with this fact as stated on Page 6 (emphasis added):

This action was instituted against Respondents in their capacity as the current Board of Directors of the Association. Notably, **Woodington Homeowners' Association, Inc., the corporate entity itself, was never made a party to this proceeding.** Because none of the Respondents are currently serving as directors or officers of the Association, the Respondents no longer individually or collectively possess the managerial authority of the Association or the decision making capacity of the board of directors for the Association. Likewise, since all of the Respondents are no longer serving as directors or officers, they no longer serve in any corporate capacity. As such, they no longer possess a material interest in the matters alleged by Plaintiff/Plaintiff, and no longer serve in the capacity in which they were named in this suit (they were named in their capacity as directors).

Respondents' Motion to Dismiss was **DENIED** by Order filed November 8, 2019 (Exhibit 20).

52. The Greenville Circuit Court also gave judgment favorable to Plaintiff relative to a "wrong party" argument in Case, as stated during its hearing on January 3, 2018:

[for McCabe, MR. GROTE:] [REDACTED] are the current board of directors for the homeowners association. And they've been named as the Defendants and the association management group is the other Defendant. I would classify the individual Defendants as just the board and board members and that's who I'll be referring to.

(Transcript of Record, p. 5, ll. 5 - 12)

[MR. GROTE:] Some of these issue in the complaint by and large relate to conduct not current of the board of directors. ...

(Transcript of Record, p. 25, ll. 19 - 21)

[MR. GROTE:] That kind of claim should be brought against the corporation not the board of directors. And if he continues to pursue that, it's our position that that claim needs to be bought against the corporate name rather than the individual board members

(Transcript of Record, p. 29, ll. 7 - 12)

[THE COURT:] ... The remaining causes of action, with regard to all the other Defendants are respectfully denied.

(Transcript of Record, p. 42, ll. 2 - 3)

[THE COURT:] ... So, again, I'm going to respectfully deny it with respect to all the claims with the exception of AMG. ...

(Transcript of Record, p. 43 - 44, ll. 24 - 25, 1)

53. No Board, nor has McCabe, to date disclosed to Members any other invoices from McCabe, but more than a total of \$100,000 in Fees will be forthcoming from McCabe, based on information and belief, as shown by: "Potential Additional Legal Fees as of This Date: 2017 Appeal: \$63,000" (Exhibit 21), as handed out as "Budget 2020" at the WHOA Annual Meeting of January 30, 2020.

54. McCabe most likely withheld information about their accumulating legal bill from both the 2018 and 2019 Boards, based on information and belief, where no information about billing was disclosed to Plaintiff, who alleges this additional act of conspiracy.

55. Plaintiff sought Nominal Damages of \$1 in Case, where McCabe's-alleged extortion is about a ratio of 50000:1 in damages that have been billed to WHOA, who was not their client in Case based on information and belief, and where no Court Order gave McCabe the privilege to bill a party who was not their client.

56. McCabe is lawfully obligated to pay back to WHOA Board, who are personally liable for alleged-unlawful distributions of WHOA funds because McCabe: "... received an unlawful distribution ...", pursuant to the "South Carolina Nonprofit Corporation Act of 1994" (NPCA), Section 33-31-833(b)(2), based upon information and belief.

57. An officer of the law admitted in open Court that it was: "... the Board's decision ... to pay the Fees ..." which Plaintiff alleges is an unlawful action on their part, contrary to Plaintiff's advice and suggestion to Boards that no payments should be made, which in no stretch of imagination can be attributed to Plaintiff as having forced the Board to make any payment as clarified by Court testimony:

And now this current suit is challenging **the Board's decision** through the community to pay the legal fees they incurred from fighting his suit. So he's causing them to incur more legal fees to fight this suit. And at some point it's just got to stop and he's got to quit filing suits.
(2019-CP-23-01501 Hearing of 02/27/20, Transcript p. 4, ll. 1-19)

MR. WEDLAKE: No attorney's fees have been imposed by me on any member of this association. The reference to my lawsuits, although valid, all those costs have been incurred by the board. And, again, the case cited by defense counsel was for declaratory judgment. There's absolutely no need for the board to have brought in attorneys and/or incurred any legal fees whatsoever.

Furthermore, all of my cases have been brought for one dollar in nominal damages. So the fact that the board had decided that they were going to fight against questions that were just about, look, here's what the bylaws say, I say they mean this, you say they mean that, that was utterly absurd and was indeed willful, wanton and gross negligence on their part to run up, which in addition to the fees claimed by defense counsel, they have actually now totaled up to about one-hundred-thirty-thousand dollars (\$130,000.00) against my cases where three dollars (\$3.00) were asked for the Court to award to me.

Again, no attorney's fees whatever have been imposed by me upon the members of the association. Those fees represent responsibility of the board in their wrongful actions to defer resolutions of disputes which would help improve the association and help everyone to move forward and to put this behind us. (Transcript pp. 12-13, ll. 16-25, 1-14)

58. The Board will not meet with Plaintiff, nor another appointed representative, to resolve disputed issues, forcing issues to be brought into Court.

59. To date, the Circuit Court of Greenville County has not given Declaratory Judgment on questions of interpretation of law that Plaintiff brought before it, and thus denied Plaintiff's-United-States-Constitutional rights to due process, and also from enjoyment of "... equal protection of the laws."

60. All recent Boards have ignored stipulations found in a "... Code of Ethics ..." (Exhibit 22) as published by a long-recognized-HOA-industry expert: Community Associations Institute, and acted contrary to the stated purpose of WHOA which is: "... betterment of the property and homeowners ..." particularly with discrimination towards and against Plaintiff as a homeowner, as alleged, based on information and belief. A law firm engaged by the 2020 Board recently brought two cases, both of which are unfounded based on information and belief, in which Plaintiff was cited as a Defendant in direct contradiction to: "Board members should not: ... Harass, threaten or attempt through any means to control or instill fear in any board member, owner, resident, employee or contractor", where a few-other-selected-"Ethics" excerpts show:

Board members should:

Act within the boundaries of their authority as defined by law and the governing documents of the association.

Perform their duties without bias for or against any individual or group of owners or non-owner residents.

Board members should not:

Advocate or support any action or activity that violates a law or regulatory requirement.

Spend unauthorized association funds for their own personal use or benefit.

Harass, threaten or attempt through any means to control or instill fear in any board member, owner, resident, employee or contractor.

61. On February 8, 2020, presented here: a) as a sample of Board-bad faith as no affirmative action was taken by the Board, and: b) as a sample of lack of appreciation of their duties under the NPCA or under the Contract, where the Board has never invited me to meet with them, Plaintiff asked the Board to: "Please Agree to Avoid More Legal Fees" [for WHOA] (Exhibit 23); this message showed (as excerpted):

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

My request of 02 Feb DID:

- a) ask Board to sign a proposed agreement, where signers were:
Mona Craigo, Edward Decker, Sandra LaCroix, Raymond Wedlake;

At/after the Annual Meeting of 30 Jan:

- b) Board have a fiduciary duty to act in a best interest for WHOA Members - that is: to avoid more-unnecessary-legal fees
- c) Board are the ONLY governing entity (nobody else)
- d) Board must assume responsibility for WHOA

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

Please invite me to a special Board meeting, if that might help to facilitate understanding by everyone. ...

62. On February 28, 2020, presented here: a) as a sample of Board-bad faith as no affirmative action was taken by the Board, and: b) as a sample of lack of appreciation of their duties under the NPCA or under the Contract, Plaintiff asked the Board to: "Please plan a meeting to meet with me to discuss to whom legal fees belong" (Exhibit 24), where no rebuttal of agreement for: "... Member approval for more than \$1500 ..." Fees has ever been stated by the Board; this message showed (as excerpted):

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

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

63. On February 29, 2020, presented here: a) as a sample of Board-bad faith as no affirmative action was taken by the Board, and: b) as a sample of lack of appreciation of their duties under the NPCA or under the Contract, Plaintiff asked the Board to: "Please Provide Special Meeting Information" (Exhibit 25), where no reply from the Board was ever received; this message showed (as excerpted):

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

64. On March 1, 2020, presented here: a) as a sample of Board-bad faith as no affirmative action was taken by the Board, and: b) as a sample of lack of appreciation of their duties under the NPCA or under the Contract, Plaintiff asked the Board to: "... be sure that no attorney nor law firm "runs up their bill" without your PRIOR APPROVAL!" (Exhibit 26), where no reply from the Board was ever received; this message showed (as excerpted):

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

At this time, you must be sure that no attorney nor law firm "runs up their bill" without your PRIOR APPROVAL! Please be sure to forward

to me all such approvals that you grant to anyone regarding authorizations to disburse WHOA funds for legal fees.

65. On March 9, 2020, presented here: a) as a sample of Board-bad faith as no affirmative action was taken by the Board, and: b) as a sample of lack of appreciation of their duties under the NPCA or under the Contract, Plaintiff documented that the Board: "... may be interested in mediation. ..." regardless of their: '... (paraphrase) "We will not meet with you", stance' (Exhibit 27), where no reply from the Board was ever received nor was there any movement on a: '... "going forward" plan ...'; this message showed (as excerpted):

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

May I hope your clients disclosed to you what I asked them to do? I asked them to first negotiate. Negotiation is a first requirement to define issues that remain in dispute. ...

... Should your clients decide, with me, about what are the important issues for mediation, then I will agree to pay for mediation costs, up to a \$900 limit.

I also asked the Board to agree to arbitrate, in the event of mediation "failure". ...

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

66. On March 13, 2020, presented here: a) as a sample of Board-bad faith as no affirmative action was taken by the Board, and: b) as a sample of lack of appreciation of their duties under the NPCA or under the Contract, Plaintiff forwarded to the Board an educational note from a long-recognized-HOA-industry expert: HOA Member Services, which highlighted the Board's duty of care (Exhibit 28); this message showed (as excerpted):

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

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

67. On March 23, 2020, presented here: a) as a sample of Board-bad faith as no affirmative action was taken by the Board, and: b) as a sample of lack of appreciation of their duties under the NPCA or under the Contract, Plaintiff reiterated to the Board that they: "... **DID NOT TAKE ANY GOOD-FAITH ACTION ON THIS PROPOSAL TO WORK TOGETHER!** ..." , nor had they answered five questions - and still to date have not answered (Exhibit 29); this message showed (as excerpted):

... Unfortunately, Reply neither answered questions raised, nor addressed several important points. These points are reiterated, again, below ...

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

THE BOARD DID NOT TAKE ANY GOOD-FAITH ACTION ON THIS PROPOSAL TO WORK TOGETHER! ...

... feedback on all of these five things:

1. A **FIRST REQUIRMENT** is **NEGOTIATION!**
Will the Board agree to negotiate?
2. Will the Board agree that the By-Laws require Member approval before the Board can authorize disbursement of legal fees in excess of \$1500?
3. Will the Board agree that a list of issues must be defined, with mutual consent, before mediation can occur?
4. Will the Board agree to arbitrate, in the event of mediation "failure"?
5. May we all agree to a "going forward" plan?

68. On April 1, 2020, presented here: a) as a sample of Board-bad faith as no affirmative action was taken by the Board, and: b) as a sample of lack of appreciation of their duties under the NPCA or under the Contract, Plaintiff reminded the Board: 'RE: Need to Meet ... no answers have been received. ... "... please pay ...". This needs discussion in a meeting.'

(Exhibit 30). A very important question was asked: "Will you plan to comply with the By-Laws?". This message showed (as excerpted):

However, yes, the Board received my letter of March 23 ... This letter asked for questions to be answered. Still to date, no answers have been received.

Recently I received notice from the Board about "... please pay ...". This needs discussion in a meeting. With suspicion of what the Board is about, I request: "... to be heard at a meeting of the Board", pursuant to By-Laws Article XIII. ...

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

69. On April 8, 2020, presented here as a sample of Board-bad faith as no affirmative action was taken by the Board, and lack of appreciation of their duties under the NPCA or under the Contract, after the Board claimed they would: "... abide by the By-Laws ...", Plaintiff asked the Board: '... is this a "talk the talk" (meaningless) statement, or is this a "walk the walk" promise to action? ...' (Exhibit 31). To date, the Board's inaction and lack of response to abiding by the By-Laws attests to their talk-the-talk-only-false claim. That is: "They talk the talk, but they do not walk the walk". Reiterating that Member approval is required before extensive Fees can be incurred, this message showed (as excerpted):

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

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

... You engaged your law firm. There are legal fees. Please disclose to me how much your firm will be billing you, whether or not to date they have sent an invoice.

70. On April 15, 2020, presented here: a) as a sample of Board-bad faith as no affirmative action was taken by the Board, and: b) as a sample of lack of appreciation of their duties under the NPCA or under the Contract, Plaintiff informed the Board: "... no homeowner within WHOA has any obligation to pay an unlawful assessment. ..." (Exhibit 32); this message showed (as excerpted):

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

... As I have also made known to the Board, votes to "approve" indemnification payments, as well as to "approve" a payment plan, did not "PASS" with approval from a majority of Member votes. ...

71. On April 17, 2020, presented here: a) as a sample of Board-bad faith as no affirmative action was taken by the Board, and: b) as a sample of lack of appreciation of their duties under the NPCA or under the Contract, Plaintiff reminded the Board: "Board Has Not Answered Questions, nor Taken Requested Actions" (Exhibit 33), and reiterated: "... We need to work together ...". This message showed (as excerpted):

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

THIS IS A QUESTION TO WHICH NO ANSWER WAS GIVEN!

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

THESE ARE QUESTIONS TO WHICH NO ANSWERS WERE GIVEN!

72. On April 24, 2020, presented here: a) as a sample of Board-bad faith as no affirmative action was taken by the Board, and: b) as a sample of lack of appreciation of their duties under

the NPCA or under the Contract, Plaintiff stated to the Board: "By-Laws Revisions and Amendments - Invalid ...", and: "... Mona Craig is not eligible to be on the 2020 Board ...", and: "... per original By-Laws, that both [REDACTED] and myself [Plaintiff] were elected to the 2020 Board ..." (Exhibit 34), where no meaningful explanation with rationale for their claims from the Board was replied; this message showed (as excerpted):

It has become clear that By-Laws revisions and amendments are invalid. A requisite majority vote by Members was not met for any revision nor amendment. ...

Consequently, no By-Laws revision is valid under law, after an original signing of By-Laws ... Particularly, Rev 3 is invalid. This means that since William Craig served for a consecutive-two years on the Board during 2018 and 2019, that Mona Craig is not eligible to be on the 2020 Board. ... Thus, I ask the Board to have a 2020 election to supply a Board of 5 Members. Alternatively, I ask the Board to recognize, per original By-Laws, that both [REDACTED] and myself were elected to the 2020 Board. We four (with Decker and LaCroix) on the Board will seek to fill the vacancy for a fifth Director of the Board, if no election will be planned.

73. On May 1, 2020, presented here: a) as a sample of Board-bad faith as no affirmative action was taken by the Board, and: b) as a sample of lack of appreciation of their duties under the NPCA or under the Contract, Plaintiff asked the Board: 'Question to Board ? Transparency Position Statement ? ... Would you be so kind, please, to explain why one Board member wants to remain isolated from knowing about WHOA issues, particularly those which require a reply ... one Board member: - returns my posted-Member+Board-business mail unopened, and marked: "Return to Sender" ' (Exhibit 35). This Board member did not attend the Annual Meeting where she was elected, and has not indicated any interest in serving as a Board member, based on information and belief. This Board member is the Secretary, but has never made a single reply relative to any WHOA issues or business to Plaintiff. After the Annual Meeting, Plaintiff suspects this Board member agreed to "serve" with intent to be sure to keep Plaintiff from being elected to the Board, based on information and belief. Without reply from the Board, this message showed (as excerpted):

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

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

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

To clarify, one Board member:

- returns my posted-Member+Board-business mail unopened, and marked: "Return to Sender"

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

74. On May 1, 2020, presented here: a) as a sample of Board-bad faith as no affirmative action was taken by the Board, and: b) as a sample of lack of appreciation of their duties under the NPCA or under the Contract, Plaintiff reviewed with the Board: '... please accept discussion below relative to what appears to be misunderstanding of law ... Please inform both myself and [REDACTED] about the next-planned Board meeting. ... Previous correspondence also asked the Board to hold an election to fill the vacancy that exists ...' (Exhibit 36), but no reply from the Board relative to these topics was received. This message showed (as excerpted):

... In general, I believe the fact of the matter is this Board would be derelict in it's duty Members, because of refusal to meet and negotiate on any topic(s), mediate, and arbitrate (if necessary), ...

So, please accept discussion below relative to what appears to be misunderstanding of law ... as explained by my comments (RW).

RW: ...

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

Consequently, the action to assess Members for legal fees is IMPROPER, since Covenants do not give this power, nor authority, to the Board.

Additionally, where By-Law provisions conflict with the Covenants:
“... **THE COVENANTS SHALL CONTROL.**”

RW: If the Board would agree to meet and discuss current issues, then it certainly can do so, since the Board has authority as the governing body for WHOA. ...

RW: Prior correspondence made it clear that no By-Laws revision can lawfully be considered as valid. ...

RW: The Board's references to By-Laws Article 5, Sections 1 and 2 are irrelevant, immaterial, ... where By-Laws Rev 3 cannot be cited since it was NOT approved by Members. ...

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

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

75. On May 2, 2020, presented here: a) as a sample of Board-bad faith as no affirmative action was taken by the Board, and: b) as a sample of lack of appreciation of their duties under the NPCA or under the Contract, Plaintiff asked the Board to provide information: “... results from the ballot ... Other requested information is itemized as listed in the Appendix”, (Figure 2) but no reply from the Board relative to these topics was received. This message showed (as excerpted):

Please provide to me, as has been previously requested (Exhibit), results from the ballot with a due date of February 22, 2019. Other requested information is itemized as listed in the Appendix.

Additionally, please recall a Board makes themselves ineligible for indemnification when conduct, under the law, does not comply with **GOOD FAITH** and **BEST INTERESTS** ...

Kindly provide requested information. I believe **GOOD FAITH** demands, as the law requires, information to be provided. Thank you.

where it may be noted the Appendix asked for simple information, such as below, but no information to date was provided by the Board:

- * a schedule of planned Board meetings
- * confirmation of your commitment to publish agendas 3 days before all scheduled meetings
- * an explanation of how meeting minutes will be made known to Members
- * has the Board created an "Office" file containing a By-Laws "official version", and if so, can it be provided to me?
- * who is serving on a By-Laws Review Committee (BLRC)?
- * what plans does the Board have to fill the recent vacancy on the Board? On what date will the vacancy will be filled? Please provide a timetable for all steps.

Vacancy - Please recall the Board has a duty to fill a vacancy. Is it correct understanding the 2018 Board agreed this is a required duty?

May it please the Court to be aware of the opinion showing: "filling of vacancies ... term of the Board ... records being kept, minutes being provided ... proper and appropriate ...", of a Master In Equity (emphasis added):

[THE COURT:] ...

In looking at the stipulated issues for trial, and I think this has already been established, but the Court will issue an Order stating that the Board must act in compliance with the Bylaws. ... And that **certainly includes the criteria and the time frames for filling of vacancies on the Board of Directors, as well as the term of the Board of Directors.** I think in here is the Board -- there may or may not be some delegable duties. But as a general rule the Board has the role and the authority to act in accordance with the Bylaws. And I think also, in accordance with the rules and Bylaws, you know, as far as the ballots being sent out for membership and **records being kept, minutes being provided; I think all those are proper and appropriate.**

... But at the same time, you do have the right to ask that the Board operate within the confines of the Bylaws, which is certainly what the order of this Court will be. (Transcript of Record, April 20, 2018, p. 97, ll. 2 - 24; 2017CP2306301)

76. On May 10, 2020, presented here: a) as a sample of Board-bad faith as no affirmative action was taken by the Board, and: b) as a sample of lack of appreciation of their duties under the NPCA or under the Contract, Plaintiff asked the Board to provide information: "Request for Information Relative to Legal Fees" (Exhibit 37), but no reply from the Board relative to this topics was received. Plaintiff asks the Court to be informed that the Board intentionally wants to "run up the legal bill" (Exhibit 37), since they will want and fully desire to assess all such expenditures against Plaintiff, based on information and belief. At this time, a lawsuit (2020-CP-23-01458) against Plaintiff is pending, whose intent is for a Court to order Plaintiff to pay all legal fees that have been incurred by the Board. As the Appendix highlights the disregard in which the Board holds Plaintiff, this message showed (as excerpted):

Please provide to me all information pertaining to status of legal fees of which the Board is aware. ... plan to convey this information to me.

Please plan to give prior approval for legal fees on a per instance, and per hour basis, and make it plain to your law firm (and all legal advisers), that no fees will be paid by the Board except for those where prior approval was given. ...

... The Board's stated position of: "... we hope they [law firm] run up their bill a lot more ...", cannot possibly be viewed as complying with the Board's fiduciary duty, nor as a best interest for WHOA!

... I expect the Board to act in my interest, and in the interest of similarly-situated-other Members, to protect the Association from unnecessary fees, and expenditures. May I ask the Board to confirm this aspect of your fiduciary duty? ...

77. On May 17, 2020, presented here: a) as a sample of Board-bad faith as no affirmative action was taken by the Board, and: b) as a sample of lack of appreciation of their duties under the NPCA or under the Contract, Plaintiff thanked the Board and pointed out: "Thank You, but Your Reply is Deficient" (Exhibit 38), which reiterated lots of questions the Board has not

answered, spoke of some new issues, and unlawful actions by the Board as alleged by Plaintiff; this message showed (as excerpted):

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

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

78. On May 18, 2020, presented here: a) as a sample of Board-bad faith as no affirmative action was taken by the Board, and: b) as a sample of lack of appreciation of their duties under the NPCA or under the Contract, Plaintiff asked the Board: "Please Disclose Your Authorization for Appeal-Legal Fees" (Exhibit 39), but no disclosure was received; this message showed (as excerpted):

... Work associated ... is likely to cost upwards of ten-thousand dollars.

As I think we agreed, the Board may not authorize expenditure of WHOA funds, in excess of \$1500, without prior approval from Members. ... If no authority was given, the Board will be duty bound to reject any invoice presented to WHOA for Appeal-legal fees.

MCCABE PAINTING PLAINTIFF IN A FALSE LIGHT

79. McCabe conspired with WHOA Boards to cast Plaintiff in a false light in order to brainwash Members into believing that Plaintiff, who has consistently sought to bring improvements to WHOA and to bring benefits to its Members, is an "Enemy" upon whom scorn, rejection, belittlement, and denigration among other negative associations, should be

heaped. Subjugation of Plaintiff's honesty, integrity, and the impugning of Plaintiff's law-abiding character and uprightness, was and continues to be a conspirative intent.

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

Thank you for forwarding a Woodington Sep 12, 2016 letter from WHOA members ...

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

81. Transmittal of McCabe's September 20 letter (Exhibit 41) was clearly directed at disparaging and painting Plaintiff in a false light, with knowingly falsely statements that Plaintiff had engaged in improper activity in asking a question seeking Member opinions about dissolution of WHOA, and making untrue statements placing Plaintiff in a false and disparaging light, such as a knowingly false claim Plaintiff had engaged in a "legal action" against WHOA, based on information and belief.

82. McCabe engaged in a "smear campaign" against Plaintiff in the community in advance and at the Annual Meeting in order to subject Plaintiff to animus of Members, and to paint Plaintiff in a false light in order that he be disrespected and not be given credence at such Annual Meeting, based upon information and belief.

83. On September 25, 2016, in Plaintiff's "Reply to McCabe's Defamatory Letter" (Exhibit 42), Plaintiff counts at least five "Statement S:" that were erroneously and falsely brought by Mr. Oates with obvious intent to paint Plaintiff in a false light, based on information and belief, all of which were truthfully countered in reply with "Fact F:", as contended by Plaintiff; these five excerpts from message are:

- 83.1. S: "... vote by confidential electronic ballot ..."
F: All Members received a paper ballot with the question:
"dissolve", ...
- 83.2. S: "... not only is the information contained in the individual's correspondence incorrect ..."
F: No incorrect information, per our By-Laws, was contained in my correspondence.
- 83.3. S: "... the Member does not possess the authority to initiate such an action ..."
F: ... a vote to discern Member's thoughts and desires does not, and did not, initiate any "legal action" ...
- 83.4. S: "... Member has failed to meet this prerequisite to take action ..."
F: No action has been taken to begin dissolution.
- 83.5. S: '... "confidential electronic vote" method is invalid under the Association's By-Laws.'
F: No electronic vote was proposed, nor done.

84. A Mr. Oates' letter to Plaintiff sought to deny his-US-Constitutional right to "Freedom of Speech" with an instruction violating Mr. Oates' vow to uphold the Constitution, made as an "Officer of the Law":

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

[F:] This suggestion is a violation of my US Constitutional **right** to "Freedom of Speech" ! (as contained in Exhibit 42)

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

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

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

86. On November 26, 2019, Plaintiff’s letter to McCabe (Exhibit 45) made a “... clear welcome ...” that “... mediation or arbitration ...” would be helpful for resolution, but this suggestion was ignored by McCabe; letter excerpts show:

My letter of November 4 asked:

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

May we, please, agree to binding mediation to resolve this dispute pursuant to Rule 1(b), SCRADR? ...

CAUSES OF ACTION

87. The allegations in the preceding paragraphs are incorporated as if repeated verbatim herein.

88. Pursuant to contractual requirements, the Covenants are the controlling document, as admitted by the By-Laws, themselves, such that the Board has no legal right to impose any assessment upon Members to pay for Fees, since it is not a power granted to them in the Contract. Hence, this Court must prohibit the Board from assessing Members to pay for Fees.

89. Pursuant to limited contractual requirements as found in the Covenants, the Board has claimed they possess extended powers and authority not specifically given to them by the Covenants, and used By-Laws and recent amendments in an attempt to give credence to their actions. Hence, this Court must annul and void any and all extended powers added in the By-Laws, which were not granted to the Board in the Covenants.

90. Pursuant to NPCA Section 33-31-206, By-Laws provisions that are "inconsistent with law" are therefore null and void. Also per NPCA Section 31-33-724 the Board must possess a signed-proxy-appointment form to act as Proxy for a Member. Hence, this Court must annul and void the Board's claim that Ballot 1 and Ballot 2 were "approved by Members", contrary to the definition found in NPCA Section 33-31-140. This Court must disallow the Board to vote ballots not returned by a Member, particularly when the Board does not possess a signed-proxy-appointment form for a Member, recognizing By-Laws Article XVII, Section 3, as a provision that is inconsistent with law.

91. Pursuant to evidence and arguments herein presented, Plaintiff contends conspiracy perpetrated by McCabe and the Board exists, and thus this Court must find that McCabe extorted WHOA funds.

92. McCabe admitted that WHOA was not their client, and WHOA by McCabe's own admissions was "... never a party ...", but yet violated their "South Carolina Lawyer's Oath" (Exhibit 46) which shows (emphasis added):

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

by sending an invoice to WHOA, to whom they provided no legal services as related to their defense of 2017-Board-members in Case. Thus, Plaintiff suggests this Court find McCabe's bill to WHOA was illegitimate, so funds paid to McCabe to date from WHOA are properly held in escrow at this time until after resolution of pending Appeal 2018-001209.

93. McCabe is legally obligated to "... contribute back ..." to WHOA pursuant to NPCA Section 33-31-833(b)(2), and thus this Court must so order McCabe to "pay back".

94. Pursuant to NPCA 33-31-834(a and b), the Board has no immunity from suit. This Court must confirm that immunity cannot be granted..

95. Pursuant to NPCA Section 33-31-830, Plaintiff alleges with a preponderance of evidence the Board did not act in good faith, nor with the care an ordinarily-prudent person would exercise, nor in a manner reasonably believed to be in the best interests of the corporation. This Court must declare, based upon the evidence, that the Board did not act in good faith.

96. Under the Contract, the Covenants require financial obligations imposed upon Members to be limited to "... necessary expenditures ...". This Court must find the increase of financial obligations as related to payment of Fees are not authorized under the Contract, because imposed financial obligations are being used to pay for unnecessary expenses.

CAUSES OF ACTION - PAINTING IN A FALSE LIGHT

97. The allegations in the preceding paragraphs are incorporated as if repeated verbatim herein.

98. Evidence presented show through its written and verbal statements, as attested to in the Affidavit and as set forth in Exhibits, McCabe intentionally disparaged Plaintiff in verbal and written communications to Members, in a concerted effort to disparage and undermine the reputation of Plaintiff in the Community. Through such a actions, McCabe was successful in exerting serious damage to Plaintiff's previously excellent reputation, resulting in his being shunned and treated with disrespect by many Members. McCabe's painting Plaintiff in a false light undermined his efforts to become a member of the WHOA-Board of Directors in all subsequent years after 2016. This Court must find McCabe's actions did misrepresent true facts, and thereby confirm that McCabe did paint Plaintiff in a false light before Members, which has caused irreparable damage to Plaintiff's reputation.

PRAYER FOR RELIEF

A. Plaintiff prays for the Court to find in favor of Plaintiff against the Board for actions shown herein to be unlawful under the Contract and under the NPCA:

A1. Construe the Contract and provide Declaratory Judgment (DJ) for breach of contract, confirming no authority nor powers are given to the Board under the Covenants to assess Members for Fees;

A2. Construe the Covenants and By-Laws and provide DJ that the By-Laws conflict with the Covenants regarding authority and powers to assess Members for Fees, and thus the Covenants must control;

- A3. Construe opinions issued by the Attorney General, and provide DJ that the Board cannot use the By-Laws, nor any “governing” document which came after the Covenants, to give to themselves extended or additional authority or powers that were not specifically granted by the Covenants;
- A4. Declare that whether or not the Board’s actions were proper under the By-Laws is immaterial, because By-Laws provisions cannot be applied to override statute when By-Laws are “inconsistent with law”, and By-Laws Article XVII, Section 3 is thus null and void under the NPCA 33-31-206, making the Board’s claims of “PASSED” for Ballot 1 and Ballot 2 also null and void;
- A5. Declare that whether or not the Board’s actions were proper under the By-Laws is immaterial, because where By-Laws provisions are in conflict with the Covenants, it is the Covenants which must control;
- A6. Declare that By-Laws provisions that were used to claim “Passed” for recent Ballot 1 and Ballot 2, plus recent By-Laws amendments, are contrary to NPCA Section 33-31-831, and “Passed” was applied to extend the Board’s powers beyond powers and authorities given by the Covenants, which cannot be done under the contract, nor under Attorney General opinions, and must be reversed.
- B. Plaintiff prays for the Court to find in favor of Plaintiff against McCabe:
- B1. conspiracy and extortion;
- B2. casting Plaintiff in a false light.

- C. Plaintiff prays for the Court to issue an Order with directives for the Board:
- C1. to pay back to other-similarly-situated Members any-and-all assessments paid to date by Members for Fees;
 - C2. that under the Contract, the Board must cease and desist from inflated dues, and collection of assessments, in order to procure funds to pay McCabe;
 - C3. to create a "By-Laws Revision 4" with a modified Article XVII, Section 3, which does not conflict with the Covenants, and to complete such revision within 90 days after the Order is given;
 - C4. to seek and to obtain Member approval for "By-Laws Revision 4", and upon approval being granted, to record Revision 4 with the Register of Deeds;
 - C5. to remove By-Laws Revision 3 and separately filed amendments, which were not approved by Members, that were previously recorded with the Register of Deeds;
 - C6. to declare null and void all of By-Laws Revisions 1, 2, and 3, since no By-Laws revision to date was approved by Members as defined and required by NPCA Section 33-31-140;
- D. Plaintiff prays for the Court to issue an Order with directives for McCabe:
- D1. to pay back \$7493 to WHOA Board;
 - D2. in the alternative, to set aside and hold in escrow such WHOA funds possessed by McCabe, until after a final judgment is rendered from pending Appeal 2018-001209;

- E. That this Court award Plaintiff and six-other-known-similarly-situated Members
Nominal Damages of \$1;
- F. That this Court grant such other and further relief as the Court deems equitable and just
under the circumstances.

Dated this 10th day of June, 2020.

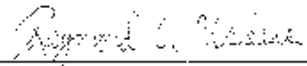

Raymond A. Wedlake, Plaintiff (*Pro Se*)
703 Creekview Drive
Greenville, SC 29607
864-254-9262 wedlakera@mail.com

EXHIBIT 11

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

March 13, 2020

Dear Homeowner:

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

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

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

Sincerely,

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

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

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

2020 ANNUAL HOMEOWNERS DUES

DUE BY APRIL 15, 2020

INVOICE TO:

WHOA MEMBER Raymond & Nancy Wedlake
703 Creekview DR

Greenville, SC 29607

Billing Details:

2020 Woodington HOA Dues **\$250**

Past Due Amounts

2019

\$150
\$

TOTAL NOW DUE:

\$400.⁰⁰

Please send payment to:

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

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

STATE OF SOUTH CAROLINA	)	2020-CV-23-10201384
	)	CIVIL CASE NUMBER
COUNTY OF GREENVILLE	)	
	)	IN THE MAGISTRATES'S COURT
Raymond A. Wedlake, <i>et. al.</i>	)	
Plaintiff(s)	)	
vs.	)	AMENDMENT TO COMPLAINT
Board of Directors of Woodington Homeowners'	)	
Association, Inc., <i>et. al.</i>	)	
Defendants	)	

To the Court and to the Defendants:

Since filing the original Complaint against the Defendants, I have become aware of certain facts that existed at the time of the original filing but which were not known to me. As a result I now wish to amend the original Complaint to include the following facts, allegations and issues as follows:

1. as included in the attached "First Amended Complaint ..."
2. addition of a third Defendant: State Farm Fire and Casualty Company

I request the Court include these allegations and issues in my action against the Defendants and to note a "Certificate of Service" for copies of the attached "First Amended Complaint ..." and its Exhibits A - Q, served to all Defendants.

As a result of this Amended Complaint, I request the Court grant to me a judgment against the "Board of Directors ..." Defendant in the amount of \$0 = zero dollars, and without any costs, such that monetary damages against the Board Defendant do not exist. For "McCabe" Defendant, no changes from the initial Complaint are desired. For "State Farm" Defendant, no monetary damages are sought, but a Declaratory Judgment citing Breach of Contract by State Farm, and other relief, are desired.

Dated this 28th day of September, 2020

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

SCCA/707 (Amended 05/2008) [as modified]

FILED - SUMMARY COURT
 GREENVILLE CO., S.C.
 JUDGE DEAN E. FORBES
 2020 SEP 28 PM 4:17

ATTACHMENT IB.3 - FIRST AMENDED COMPLAINT
Addendum to Complaint plus Supplement

STATE OF SOUTH CAROLINA	)	<u>2020-CV-23-10201384</u>
	)	CIVIL CASE NUMBER
COUNTY OF GREENVILLE	)	
	)	
Raymond A. Wedlake, as a Member of	)	
Woodington Homeowners' Association, Inc.	)	IN THE MAGISTRATE'S COURT
and on behalf of other-similarly-situated Members	)	
of Woodington Homeowners' Association, Inc.	)	
703 Creekview Drive	)	
Greenville, SC 29607	)	
864-254-9262 wedlakera@mail.com	)	FIRST AMENDED COMPLAINT
PLAINTIFFS	)	
vs.	)	
Board of Directors of Woodington Homeowners'	)	
Association, Inc., comprised of Mona Craigo,	)	
Edward Decker, and Sandra LaCroix	)	
at the time of filing	)	BREACH OF CONTRACT
18 Southfield Drive	)	
Greenville, SC 29607	)	BY THE BOARD
864- 346-7352 woodingtonhoa@gmail.com	)	
and	)	AND BY STATE FARM; PLUS
McCabe, Trotter & Beverly, P.C.	)	CONSPIRACY BY McCABE TO
P.O. Box 212069	)	EXTORT CORPORATE FUNDS,
Columbia, SC 29221	)	
803-724-5000	)	AND CASTING PLAINTIFF
stephanie.kellahan@mccabetrotter.com	)	
and	)	IN A FALSE LIGHT
State Farm Fire and Casualty Company	)	
One State Farm Plaza	)	
Bloomington, Illinois 61710	)	
(877) 734-2265	)	
DEFENDANTS	)	

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*) and requests that: a) another Defendant "State Farm Fire and Casualty Company" (SF) be recognized, and b) new evidence be admitted and filed via this "First Amended Complaint ..." (FAC), pursuant to

Rule 14, SCRMC:

RULE 14 AMENDMENT OF COMPLAINTS, ...

The court shall be lenient in the allowance of changes or amendments to complaints, answers, and counterclaims, and in granting continuances ...

The Board of Directors (Board) of Woodington Homeowners' Association, Inc. (WHOA) are noted as a first Defendant, as the caption of this case. Plaintiff cites Defendant SF for "Breach of Contract" (BOC) also, where evidence shows what Plaintiff believes to be misconduct on the part of SF, in addition to their BOC.

PREAMBLE AND REVIEW

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

2. In review, CPS cited aspects of why WHOA exists, where its purpose is "... the betterment ... of homeowners ...", as stated in By-Laws:

ARTICLE II - PURPOSE

This Association does not contemplate pecuniary gain or profit to the Members thereof, and the purpose of the Association, as provided in the Certificate of incorporation, is as follows: "The purpose of the said proposed Corporation is to provide for an association for the betterment of the property and homeowners of Woodington Subdivision, Greenville County, South Carolina."

Comments related to "betterment" are spelled out in CPS paragraphs 5, 13, and 60, and as contained herein, where many Board actions, and inaction, contradict this basic purpose under which WHOA, via its Board, are obliged to operate.

3. New evidence brought shows SF to be acting in BOC to provide “coverage” to allow the Board to enjoy “insured” legal services supplied by Clarkson, Walsh & Coulter, P.A. (CWC). In Plaintiff’s case, “... no monetary damages ...” are claimed against the Board (who is a “WHOA insured party”) under the insurance contract (ICO). Herein as amended, a former clam for \$1 against the Board in CPS is changed to \$0 (zero), to clarify what Plaintiff believes is misconduct by SF in their contention that \$1 constitutes “damages”. The ICO gives no leeway for SF to exercise an “option” allowing SF to provide coverage to pay a law firm, when “... no monetary damages ...” exist. Plaintiff waives as applied against the Board any and all monetary damages, which therefore verifies “... no monetary damages ...” exist, and consequently SF must cease and desist from paying CWC to represent the Board in Plaintiff’s case.

FACTS BREACH OF CONTRACT BY SF

4. On August 10, 2020, Plaintiff sent a letter to Michael Tipsord, Esq., CEO of SF, informing them that paying CWC represents a BOC. To date, other than a brief phone conversation where SF denied BOC, and where Plaintiff asked for a response in writing, no reply was received. The letter showed (excerpted, emphasis added):

... I allege as **related to an insurance contract** that is involved, **SF’s payments represent a “Breach of Contract” (BOC).**
... By providing “coverage” in this instance, **SF is enabling legal malpractice!**
... Please be advised that no response ... may very well **elicit a BOC suit against SF.** (Exhibit A “Alleged Breach of Contract by State Farm Enabling Legal Malpractice”)

5. SF to date has ignored Plaintiff’s letter of October 1, 2018 (Exhibit B - “Improper Claim Filed, Please Correct Your Records”), and continues to accept claims with Plaintiff listed

as "Claimant", based upon information and belief. SF also did not, nor did CWC, reply to provide requested information about filed claims, where excerpts from Exhibit B show:

Please take notice that Claim 40-1711-G27 was an improperly filed claim because it listed me as "Claimant". I did not file this claim; I did not ask for this claim to be filed; I gave no permission for this claim to be filed listing me as Claimant; ... please correct your records to amend 40-1711-G27 to remove me as Claimant! ...

Please accept this request for information for both claims, about:

- 1) claim statements
- 2) parties cited – particularly who is/are (the) Claimant(s)
- 3) statement of response(s) from State Farm
- 4) current status

where for response and status, please include rationale explaining why. ...

May I expect your reply to this letter confirming proper, affirmative action and supplying requested information before October 8, 2018? (Exhibit B)

6. Plaintiff's case as related to damages is little different from the situation described in a letter to SF of May 10, 2019. Without monetary damages, SF has no duty to provide coverage and are in BOC if coverage is provided. Excerpts from Exhibit C "State Farm has no duty to provide any coverage" show:

It is my understanding upon a lack of monetary damages being sought, that State Farm **HAS NO DUTY** (as Appendix 1) to provide any coverage, as related to my case.

----- Appendix 1 -----

State Farm letter to Benjamin Acord of November 6, 2017

[excerpts; emphasis added]

Under the CMP-4814 Directors & Officers Liability endorsement, the **COMPLAINT IS NOT SEEKING SUMS** that the insured would be legally obligated to pay. ... therefore, **STATE FARM HAS NO DUTY** to defend. ... the **EXCLUSIONS ... NON - MONETARY RELIEF** will apply.

----- Appendix 2 -----

State Farm letter to WHOA of October 30, 2018

[excerpts; emphasis added]

The D&O Liability coverage of the **POLICY REQUIRES** there to be a wrongful act and **MONETARY DAMAGES** resulting from the wrongful act. There are no such damages ... (Exhibit C)

7. SF is contractually bound by the ICO not to supply "coverage" to the Board, and not to pay CWC, where excerpts from the ICO (Exhibit D – "Directors and Officers Liability") confirm SF's "... endorsement does not apply ...", further confirmed by "... No other obligation or liability to pay ... is covered unless explicitly provided for under Section II - Supplementary Payments ...". Both of these also confirm statements as Appendix 1 and Appendix 2, above, where the ICO shows (excerpted, emphasis added):

1. The following coverage is added to **SECTION II - LIABILITY:**
DIRECTORS AND OFFICERS LIABILITY

a. When a Limit Of insurance is shown in the Declarations for Directors And Officers Liability, **we will pay** those sums that **the insured becomes legally obligated to pay as damages** because of a "wrongful act" to which this endorsement applies.

... However, we will have no duty to defend the insured against any "suit" seeking damages to which this endorsement does not apply. ...

No other obligation or liability to pay sums or perform acts or services **is covered unless explicitly provided for under Section II - Supplementary Payments.** (Exhibit D)

8. The ICO contains a specific exclusion, which places SF in BOC in the event that coverage continues to be provided via payments to CWC, where the ICO shows (excerpted, emphasis added):

Section II - Exclusions

This coverage provided under Directors And Officers Liability **does not apply to:**

b. Actual Knowledge Or Intent

"Wrongful act" by an insured with **actual knowledge of its wrongful nature or with intent to cause injury or damage.** (Exhibit D)

because Plaintiff made it plain to the Board their actions are unlawful so they are aware of a wrongful nature, where additionally they intend to cause injury or damage to Plaintiff as retribution against his lawsuit, based upon information and belie?

9. The ICO contains a specific exclusion, which places SF in BOC in the event that coverage continues to be provided via payments to CWC, where the ICO shows (excerpted, emphasis added):

Section II - Exclusions

This coverage provided under Directors And Officers Liability does not apply to:

g. Personal Profit Or Advantage

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

because the insured gains a personal advantage by having a "freely supplied" law firm, contrasted against Plaintiff being a *Pro Se* party, who obviously as a member of the organization is not sharing equitably.

10. The ICO contains a specific exclusion, which places SF in BOC in the event that coverage continues to be provided via payments to CWC, where the ICO shows (excerpted, emphasis added):

Section II - Exclusions

This coverage provided under Directors And Officers Liability does not apply to:

i. Non-Monetary Relief

Any costs incurred to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief. (Exhibit D)

because Plaintiff modified this FAC to seek non-monetary relief, exclusively.

LACK OF GOOD FAITH BY THE BOARD

11. Under law, a Board must act with good faith, where to review, CPS showed (excerpted, emphasis added):

37. Plaintiff alleges that the Board breached their duty to Members, including the "Duty of Care" and the "Duty of Loyalty", by not acting in

good faith, and indeed their misconduct was knowing and intentional, nor did they act with the care an ordinarily-prudent person would exercise, nor in a manner reasonably believed to be in the best interests of the corporation, ... pursuant to NPCA [South Carolina Nonprofit Corporation Act of 1994] Section 33-31-830 where excerpts show:

SECTION 33-31-830. General standards for directors.

(a) A director shall discharge his duties as a director, including his duties as a member of a committee:

- (1) in good faith;
- (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) in a manner the director reasonably believes to be in the best interests of the corporation.

12. On January 31, 2020, Plaintiff asked the Board "... to verify my list of Members who attended the [annual] meeting is correct? ...". With lack of good faith, no response to date was given. Thus, the fact that "... a majority of Members did not attend ..." is apparently confirmed by the Board (Exhibit E).

13. On February 2, 2020, Plaintiff contacted the Board and suggested:

... which contains a settlement proposal, whose intent is to AVOID MORE LEGAL FEES being incurred by WHOA ...
... would you be so kind, please, to affirm that you will sign the agreement ... therefore to AVOID MORE LEGAL FEES?
(Exhibit F)

With lack of good faith, the Board would neither sign the proposal, nor to negotiate any aspect of the proposal.

14. On February 8, 2020, Plaintiff again asked the Board "Please Agree to Avoid More Legal Fees":

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

With lack of good faith, the Board made no attempt to address the issue.

15. On February 10, 2020, Plaintiff again asked the Board "... save WHOA Members from more legal fees ...", and asked to be invited to a Board meeting (excerpted, emphasis added):

... The TRUTH: the 2020 BOARD MUST ACT in order to save WHOA Members from more legal fees. I did not ask the Board: "... to make decisions in those lawsuits ...". I asked the Board to act to save WHOA Members from more legal fees!

... Only the 2020 Board can act to produce savings - NOBODY ELSE CAN!

Review of 8 Feb will also show I asked:

" Please invite me to a special Board meeting, if that might help to facilitate understanding by everyone. ... " (Exhibit H)

With lack of good faith, the Board made no attempt to act, nor to invite me to a special Board meeting.

16. On February 14, 2020, Plaintiff asked the Board to answer questions about legal fees:

Would you be so kind, please, to tell me if the Board authorized these additional legal fees? Or, is this being done by non-Board members without Board permission? Or, is this be[ing] done by non-Board members behind the Board's back?

... unless the Board authorized these additional legal fees, they are not owned by WHOA, and must be rejected if/when Campbell Teague may bill WHOA for these fees. (Exhibit I)

With lack of good faith, the Board gave no feedback.

17. On March 9, 2020, Plaintiff suggested reasonable prerequisites that would enhance mediation, and asked "... may all agree to a "going forward" plan? ...":

... I asked them to first negotiate. Negotiation is a first requirement to define issues that remain in dispute. To mediate without mutual consent about which issues are important, and disputed, would be a waste of everyone's time. ... Still, issues to mediate must be defined by mutual consent.

... Final resolution of disputed issues is what is important for the benefit of WHOA. Game playing, posturing, and other non-productive use of time, without intent to resolve basic-disputed issues, will be wasted effort.

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

With lack of good faith, the Board would not comment to help facilitate mediation, nor to participate to form an agreement for a going forward plan, and gave no feedback.

18. On June 4, 2020, Plaintiff reminded members of the Architectural Committee (AC) that WHOA is a "Post No Signs" neighborhood, and reiterated a request from October 2018 for the AC to define "what is a sign" :

... As you should be fully aware as an AC member, we are a:
"Post No Signs" neighborhood.

For years I have asked the AC to define: "What is a sign?". To date, the Board will not appoint me to the AC ... Consequently, there are several "signs" that have been displayed in various lots against the "Post No Signs" directive.

... Will the AC respond to my request to define: "What is a sign?".
Thank you. (Exhibit K)

With lack of good faith and with breach of their contractual duty under the "Covenants", the Board has made no attempt to rid the WHOA community of illegally posted signs, nor has the AC made attempt, with neither party responding to my original-2018 request to define what is a sign, where Covenants: Exhibit 2 as attached to CPS, showed (emphasis added):

ARTICLE VI: MISCELLANEOUS

(1) **No signs shall be permitted** on any lots **except that a single sign** offering the **property for sale** may be placed on such lot providing such sign is approved by the Architectural Committee.

19. On July 29, 2020, Plaintiff cited to the Board that only one document, filed with the "Office of the Register of Deeds" (ROD) from a list the Board provided, qualifies as a governing document, and suggested to the Board that a new, clean and complete, revision of the By-Laws is required, which necessitates a "By-Laws Review Committee" be formed:

At this time, if the Board does not understand why none of these are Governing Documents, please ask me to clarify, and I will do so at some future time. A new, complete, and updated revision of the By-Laws is

sorely needed, which should be viewed as a required action by the Board. An "Office" file containing a By-Laws "official version" would help to facilitate this action. (Exhibit L)

With lack of good faith, and contrary to Plaintiff's claim of alleged-unlawful filing of non-governing documents with ROD, the Board has done nothing to rectify the situation by removing all but governing documents from ROD files. Neither did the Board appoint a necessary committee as required by the By-Laws (CPS Exhibit 3, Article XIV Committees).

20. On August 10, 2020, Plaintiff made known to the Board several "... calls for action ..." which were listed in a summary section:

Several calls for action by the Board are below, which are in summary:

1. to create a new revision of By-Laws:
... key issues are missing entirely, such as Mandatory Alternative Dispute Resolution (ADR) being required prior to a Member bringing a judicial action.
2. to remove "Architectural Guidelines" and ... other ... from Register of Deed's file;
3. to find ballot results as requested [ballot of Feb 22, 2019];
4. to acquire affidavits from those-involved-and-responsible-former-Board members;
5. to fill Board vacancies, as required by the By-Laws. (Exhibit M)

With lack of good faith, the Board has not responded to calls for actions, nor given any indication they would be willing to act as requested.

21. On August 21, 2020, a Board member posted a sign which is not a "For Sale" sign, with a contention that the posted display is "... not a sign ...". This sign displays and states a socio-political viewpoint, advertising a belief apparently held by the poster. Neither the AC nor the Board have proffered a definition giving "what is a sign", to date. No AC documentation showing approval for posting was provided, as requested:

... a Board Member posted a sign ... This sign reads:
"BE KIND BE BRAVE".

The Board said you would comply with the By-Laws, but do not - another action in breach of contract. Is there contention [about] that we are a "Post NO Signs" neighborhood? In the event that it exists, please send me AC documentation showing approval for this sign ...

I once again request for the Board to order all signs to be removed ...
(Exhibit N)

With lack of good faith, the Board has not responded, and to date the sign is still displayed.

22. On August 29, 2020, Plaintiff contended that Board actions/inaction are based upon personal interests, and do not reflect a **Best Interest** for WHOA:

Thank you for your reply of August 24, 2020. As with all of your replies, the Board refuses to recognize a "... best interest for WHOA ...", but rather sticks to a story line reflecting your "... personal interest ...". Indeed, the Board's story line is inaccurate, often untruthful, and sometimes unlawful.

... Lawfully under the NPCA, the Board CANNOT CAST 48 VOTES "FOR", and then thereafter claim "65 in favor". Such UNlawful action by the Board represents a **Breach of Contract** !
(Exhibit O)

With lack of good faith, the Board remains committed to allegedly-unlawful claims related to "PASS" for all recent ballots, based upon information and belief. Evidence has proven that a majority of Member votes did **not** approve any recent ballot.

23. On September 24, 2020, Plaintiff informed the Board that their "Motion to Dismiss" was denied, and this could mean tens-of-thousands-of dollars in additional legal fees. The Board was asked to "... Please Attempt to **Mitigate Damages** per Your Fiduciary Duty to WHOA ...":

... These fees do not, and cannot, belong to WHOA.

The Board needs to take action to attempt to "**Mitigate Damages**" that may otherwise occur to WHOA.

Experience has shown that the Board will try to impose financial liability upon WHOA Members, as related to legal fees. Such gross negligence by the Board manifests the Board's "Breach of Contract", and

is also a "Breach of Fiduciary Duty" of both the "Duty of Care" and "Duty of Loyalty" to WHOA and its Members. ... (Exhibit P)

With lack of good faith, no reply from the Board was received.

24. On September 25, 2020, Plaintiff asked the Board to recall 13 of his attempts to mitigate damages that may accrue to WHOA, highlighting again a need to mediate:

Please recall a selected 13 of my previous attempts to "**Mitigate Damages**" that were proposed, but which have been ignored. Inaction by the Board in this regard is a breach of your contractual duty, as well as a breach of your fiduciary duty to WHOA and to its Members. ...

Of these, many are still without answers but all of these are still "on the table" for the Board to consider, particularly **MEDIATION**! But, the Board continues to breach your contractual duty to act as the governing body of WHOA, and to breach your fiduciary duty to act to protect WHOA and to protect its Members from legal fees, in particular!

With lack of good faith, no reply from the Board was received.

CAUSES OF ACTIONS - AMENDED FOR DEFENDANT STATE FARM

25. Allegations in preceding paragraphs related to SF are incorporated as if repeated verbatim herein.

26. SF has violated provisions and exclusions found in the ICO, and all such actions contrary to their ICO with WHOA, which is a matter of record, leave SF in BOC.

27. BOC by SF, who is contractually obligated to comply with the ICO, is an actionable status upon which this Court can grant requested relief.

28. By providing "coverage" to the Board in this instance, contrary to contractual obligations as found in the ICO which prohibit coverage, SF is enabling legal malpractice on the part of CWC, based upon information and belief.

29. Plaintiff's FAC takes away "monetary damages", and thus SF is contractually bound by the ICO not to provide coverage to the Board, and thus not to continue to pay CWC.

PRAYER FOR RELIEF - AMENDED

Plaintiff reiterates and affirms all prayers for relief: A – F found in CPS, where however, the amount of "Nominal Damages" needs to be amended to zero dollars in "E" :

E. That this Court award Plaintiff and six-other-known-similarly-situated Members

Nominal Damages of \$0 = zero dollars;

In addition, Plaintiff requests addition of amended prayers as below:

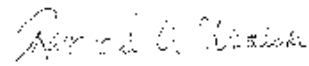
G. Plaintiff prays for the Court to find in favor of Plaintiff against SF, giving Declaratory Judgment for Breach of Contract;

H. Plaintiff prays for the Court to issue an Order with directives for SF :

H1. to request return to SF of all payments made to CWC for Plaintiff's case;

H2. pursuant to the ICO that SF is contractually bound not to provide "coverage" to the Board because no monetary damages are sought in Plaintiff's case.

Dated this 28th day of September, 2020.



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

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

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

Plaintiff,

v.

Board of Directors of Woodington
Homeowners' Association, Inc., comprised of
Mona Craigo, Edward Decker, and Sandra
LaCroix at the time of filing; and McCabe
Trotter & Beverly, PC,

Defendants.

IN THE MAGISTRATE'S COURT

2020-CV-23-10201384

**ANSWER OF DEFENDANT MCCABE
TROTTER & BEVERLY, PC**

20073.47

The Defendant, McCabe Trotter & Beverly, PC ("MTB"), answering the Complaint of the Plaintiff, would respectfully allege and show unto the Court as follows:

FOR A FIRST DEFENSE

1. In response to the allegations of Paragraph 1, MTB admits that it conducts business in Greenville County. MTB denies the remaining allegations of Paragraph 1.
2. MTB denies Paragraphs 2-3.
3. MTB denies the allegations contained in the "Supplement to Complaint."
4. MTB denies each and every allegation of the Complaint not specifically admitted, modified, or explained herein above.

FOR A SECOND DEFENSE

5. MTB incorporates herein the allegations of its previous defenses which are consistent with this defense.
6. MTB alleges Plaintiff failed to properly mitigate his damages and such failure is a complete bar to any recovery.

FOR A THIRD DEFENSE

7. MTB incorporates herein the allegations of its previous defenses which are consistent with this defense.

8. MTB pleads the equitable doctrines of waiver, estoppel, laches and unclean hands as affirmative defenses to the Plaintiff's allegations.

FOR A FOURTH DEFENSE

9. MTB incorporates herein the allegations of its previous defenses which are consistent with this defense.

10. MTB alleges Plaintiff's Complaint is barred by the applicable statute of limitations.

WHEREFORE, having fully answered the Complaint of the Plaintiff, MTB prays that the Complaint be dismissed, for the costs and disbursements of this action, and for any such other and further relief as this court shall deem just and proper.



Stephanie Trotter Kellahan (SC Bar 77680)

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**ATTORNEY FOR MCCABE TROTTER &
BEVERLY**

Columbia, South Carolina
August 24, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 13 TH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C/A No.: 2017-CP-23-6301
	)	
Raymond A. Wedlake, individually and	)	
derivatively, on behalf of all Members of	)	
the Woodington Homeowners'	)	
Association, Inc.,	)	
	)	
Plaintiff(s),	)	MOTION TO DISMISS BY DEFENDANTS
	)	BENJAMIN ACORD, WILLIAM
v.	)	CRAIGO, DENIS ESTEVE, AND BRIAN
	)	JAMES, AND ALTERNATIVELY TO
Benjamin Acord, William Craigo, Denis	)	STRIKE FOR A MORE DEFINITE
Esteve, and Brian James in their capacity as	)	STATEMENT
the current Board of Directors of the	)	
Woodington Homeowners' Association,	)	
Inc.,	)	
	)	
and,	)	
	)	
Association Management Group SC, Inc.,	)	
	)	
Defendant(s).	)	

017402.00009

TO: GRANT GIBSON, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorneys for the Defendants Benjamin Acord, William Craigo, Denis Esteve, and Brian James will move before the Presiding Judge of the Greenville County Court of Common Pleas at the Greenville County Courthouse at 10:00 a.m. on the 10th day after service hereof or as soon thereafter as possible for an Order dismissing Plaintiff's Complaint against them pursuant to Rule 12, SCRCP, and if the Complaint is not dismissed, to strike portions of the Complaint pursuant to Rule 12(f), SCRCP, and to make a more definite statement pursuant to Rule 12(e), SCRCP, as set forth herein. The grounds for dismissal include, but are not limited to the following:

any management contract with Association Management Group SC, Inc., including any funds paid pursuant thereto, is not allowed under South Carolina law and must be dismissed.

- d. Many of the issues alleged in Plaintiff's Complaint have been ratified by the membership, as acknowledged in Plaintiff's Complaint. Such ratifications were voted upon by the membership and not solely done by the Board or Directors.¹ Further, these Defendants were not even serving as directors when the ratifications occurred, as acknowledged by Plaintiff's Complaint.² An action against the current board of directors for Woodington Homeowners' Association, Inc. cannot set aside a ratification that was done by the membership as a whole and also one that occurred while these Defendants were not even directors of the Woodington Homeowners' Association, Inc. These Defendants are not proper parties to such claims and Plaintiff has failed to name proper parties and/or necessary parties to seek the relief requested. See also, Rule 12(b)(7), SCRPC.
- e. Plaintiff's Complaint purports to seek relief against these Defendants for alleged actions and conduct that was allegedly performed by other persons, including the actions of prior board members for Woodington Homeowners' Association, Inc. For example, the ratifications that Plaintiff seeks to set aside were voted upon by the membership as a whole and solely not by the directors of Woodington Homeowners' Association, Inc. and such ratifications took place prior to these Defendants' terms as directors.³ By way of further example, Plaintiff seeks to challenge contract renewals and conduct at meetings that occurred prior to these

¹ See Paragraph 34 of Plaintiff's Complaint.

² See Paragraph 34 of Plaintiff's Complaint stating that it was the 2016 Board that permitted the membership vote on the ratifications.

³ See Paragraph 34 of Plaintiff's Complaint.

Defendants' tenure as directors. These Defendants were not directors at the time of the ratifications, nor has Plaintiff alleged that they were.⁴

- f. These Defendants are not the proper parties as to all of the claims and relief requested by Plaintiff, and Plaintiff has failed to name the proper parties and/or necessary parties to seek all of the relief requested.⁵
- g. Plaintiff's Complaint fails to allege a justiciable controversy as to these Defendants. Many of the issues alleged by Plaintiff are moot and/or cannot be redressed by an action against these Defendants. For example, Plaintiff appears to challenge prior contract renewals that have been fully performed as well as actions and matters clearly prior to these Defendants terms as directors and also beyond the statute of limitations. Further, some claims are unripe as to these Defendants, such as the requested declaration that these Defendants (the current board of directors) do not have unilateral authority to increase management company fees, when there is no allegation that these defendants have made such a unilateral increase. By way of further example, Plaintiff appears to seek redress over annual meeting minutes that are not yet final and have not been placed before the membership for approval and adoption. Additionally, there is no allegation that these Defendants have served terms in excess of five years, therefore, such a claim against them is unripe. Further, to the extent such claim involves terms of prior directors, these Defendants are not proper parties for such claims and such claims would be moot in any event.
- h. The hiring of a management company to assist the board of directors is authorized by the bylaws asserted by Plaintiff in his Complaint to be controlling, and

⁴ See Paragraph 34 of Plaintiff's Complaint.

⁵ Including pursuant to Rule 12(b)(7), SCRCP.

Plaintiff's Complaint acknowledges the same.⁶ Plaintiff fails to allege any specific duties or authority that have been improperly delegated to Association Management Group SC, Inc. Further, any functions that have been performed by Association Management Group SC, Inc. do not constitute an improper delegation as a matter of law.

- i. Plaintiff's Complaint fails to state legally cognizable claims against these Defendants in several respects. As an example, upon information and belief, there is no legally cognizable claim to require the directors of a nonprofit corporation to send out a ballot on a bylaw amendment proposed by a member. Plaintiff has failed to allege that he has fulfilled the necessary requirements for calling a special meeting for a vote upon such proposed amendment.
 - j. Such further grounds as may be set forth in a memorandum of law in support of this motion.
2. As set forth above, Plaintiff lacks standing to bring a derivative claim for failing to meet the requirements of Rule 23, SCRCF. Therefore dismissal is proper under Rule 12(b)(1), SCRCF, for lack of subject matter jurisdiction and pursuant to Rule 12(b)(6), SCRCF.
 3. These Defendants are not proper parties for the relief sought by Plaintiff. Plaintiff has failed to name proper parties to seek the redress requested and has failed to include necessary parties pursuant to Rule 12(b)(7).
 4. Upon information and belief, these Defendants have not been properly served with the Summons and Complaint that was filed with the Court, thus, upon information and belief, dismissal is appropriate under Rule 12(b)(2) and Rule 12(b)(5), SCRCF for insufficiency of service of process and lack of personal jurisdiction.

⁶ See, e.g., Paragraphs 47-48 of Plaintiff's Complaint.

5. Such further grounds as may be set forth in a memorandum of law in support of this motion.

Based on the foregoing, Plaintiff's Complaint should be dismissed. Should Plaintiff's Complaint not be dismissed in its entirety, these Defendants move to strike the exhibits to Plaintiff's Complaint pursuant to Rule 12(b)(f), SCRPC on the grounds that such exhibits contain improper evidentiary matters, unofficial versions of records, impertinent matters, excerpted documents, and otherwise inadmissible matters. Further, Plaintiff's complaint contains numerous allegations that are immaterial and impertinent to the requested relief and asserted causes of action, and such immaterial and impertinent allegations should be stricken.

Further, Plaintiff's Complaint is vague, ambiguous, and conflicting as to the relief sought against these Defendants, and is vague and ambiguous as to which claims are being asserted individually versus derivatively. Should Plaintiff's Complaint not be dismissed in its entirety, these Defendants move pursuant to Rule 12(e) to require Plaintiff to make a more definite statement to clarify the relief sought and which claims Plaintiff is seeking to assert individually as to those that he is purporting to assert derivatively.

This motion may be further supported by a memorandum of law. These Defendants further seek an award of attorney's fees and costs.

Columbia, South Carolina
November 6, 2017

s/ Ely O. Grote

Ely O. Grote (SC Bar No.: 75379)
McCabe, Trotter & Beverly, PC.
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Attorney for Defendants

90504

EXHIBIT 19

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

AUG 08 2019

SC Court of Appeals

Charles B. Simmons, Jr., Master In Equity

Appellate Case No. 2018-001209

Common Pleas Case No. 2017-CP-23-6301

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

v.

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

RESPONDENTS' MOTION TO DISMISS AND SUPPORTING MEMORANDUM

Ely O. Grote
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Attorney for Respondents

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

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

Appellant, Raymond Wedlake, is a homeowner in the Woodington Subdivision and is a member of the Woodington Homeowners' Association, Inc. (the "Association"), a nonprofit corporation. (R. p. 7)¹. On October 5, 2017, Appellant filed this lawsuit, primarily relating to various corporate governance matters, legal principles applicable to nonprofit corporations and their directors, and interpretation of the bylaws of the Association. (R. pp. 19-34). Prior to trial, Appellants and Respondents stipulated to the issues for trial and filed a Stipulation of Issues For Trial on March 29, 2018. (R. pp. 178-179). Per the Stipulation of Issues for Trial, the stipulated issues were as follows:

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

1. *Plaintiff seeks a declaratory judgment and declaratory relief as follows:*

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

- a. *A declaration that the Board of the Woodington Homeowners' Association, Inc. (the "Association") must comply with, and enforce in accordance with their terms, the Association's bylaws.*
 - b. *That the court construe the Bylaws of the Association and declare that the bylaws place a duty on the Board of Directors to fill a vacancy on the Board of Directors and the Board of Directors must make reasonable efforts to do so.*
 - c. *That the court construe the Bylaws of the Association and declare that the bylaws require a majority of all members to both enter into, and to renew, a management contract.*
 - d. *That the court construe the Bylaws of the Association and declare that the bylaws do not permit a Director to remain beyond a five-year term, and in any event, for not more than one additional year beyond such five-year period.*
 - e. *That the court declare that the Bylaws of the Association do not permit delegation of the role or authority of the Board.*
 - f. *That the court construe the Bylaws of the Association and declare that the Bylaws require the Board of Directors to send out a ballot to the membership for voting if a proposed amendment to the Bylaws is submitted by an eligible member.*
2. *Plaintiff seeks an award of Nominal Damages against defendants.*
 3. *Plaintiff seeks an award of court costs and legal fees if such costs and fees are paid by the Association's insurance carrier.*

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

(R. pp. 178-179). On April 20, 2018, a nonjury/bench trial was held before the Honorable Charles B. Simmons, Jr., Greenville County Master in Equity. (R. p. 7). Appellant was the Plaintiff, and at the close of Appellant's case, the Honorable Charles B. Simmons, Jr. granted involuntary nonsuit in favor of Respondents pursuant to Rule 41(b), SCRPC, and an Order of Judgment was filed on May 29, 2018. (R. pp. 7-17). Appellant has appealed the Order of Judgment filed on May 29, 2018. With respect to Appellant's requests for declaratory relief identified in the Stipulation of Issues for Trial above, this appeal appears to only involve the trial court's rulings concerning those declarations requested in items 1(b), 1(d), 1(e), and 1(f), as Appellant does not appear to contest the trial court's findings in the Order of Judgment as to items 1(a) and 1(c).

At the time of the filing of Appellant/Plaintiff's Complaint in this action, the Board of Directors for the Association consisted solely of the four Respondents, Brian James, William Craigo, Denis Esteve, and Benjamin Acord. (Affidavits of Brian James, Benjamin Acord, William Craigo, and Denis Esteve -- attached hereto as Exhibits A, B, C, and D). At the time of trial on April 20, 2018, all of the Respondents were still serving as directors and constituted four out of the five directors for the Association. (*Id.*) However, since the time of trial, the

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

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

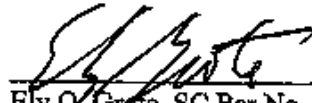
In addition to any other mootness, ripeness, and/or justiciability issues previously existing (as found in the Order of Judgment and as addressed in Respondents' brief), this case and this appeal are now also moot and further nonjusticiable in light of the post-trial intervening event of the turnover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

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

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

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

Respectfully submitted,



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ATTORNEY FOR RESPONDENTS

August 6, 2019
Columbia, South Carolina

**ATTACHMENT IB.14 - Motion to Reconsider an Order Denying Plaintiffs'
Motion for ADR; or Alternately, Renewal of Motion for ADR**

STATE OF SOUTH CAROLINA	)	
	)	2020-CV-23-10201384
COUNTY OF GREENVILLE	)	
	)	CIVIL CASE NUMBER
Raymond A. Wedlake, as a Member of	)	
Woodington Homeowners' Association, Inc.	)	IN THE MAGISTRATE'S COURT
and on behalf of other-similarly-situated Members	)	
of Woodington Homeowners' Association, Inc.	)	
PLAINTIFFS	)	MOTION TO RECONSIDER AN
VS.	)	
Board of Directors of Woodington Homeowners'	)	ORDER DENYING
Association, Inc., comprised of Mona Craigo,	)	
Edward Decker, and Sandra LaCroix at the time	)	PLAINTIFFS'
of filing	)	
AND	)	MOTION FOR ADR;
McCabe, Trotter & Beverly, P.C.	)	
AND	)	OR ALTERNATELY, RENEWAL OF
State Farm Fire and Casualty Company	)	
DEFENDANTS	)	MOTION FOR ADR

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*) requesting reconsideration of an Order which denied his "Motion for ADR" (MADR) of 07/13/20, that was issued to Plaintiff on 10/05/20 (Exhibit R15.2). Or alternately, Plaintiff requests renewal of MADR. Plaintiff believes the simple fact that ADR would benefit all parties in this action. Plaintiff requests that both MADR, and his "Memorandum in Support of Plaintiff's Motion for ADR" (MSUP) of 09/21/20 be included here, in their entirety by reference.

ORDER CONFLICTED WITH THE CLERK'S PRIOR ASSURANCES

1. At the time of Plaintiff's filing of MADR, he was verbally informed by the Clerk of Court that MADR would be held aside until the time of completion of service, when thereafter it would be properly considered.
2. For MADR's denial to be based solely upon "... was filed prior to all parties being served ..." directly contradicts assurances given to Plaintiff by the Clerk.

3. With no knowledge of denial being made known to Plaintiff until 10/05, he feels justified in bringing this "Motion to Reconsider ...", where Exhibit R15.2 showed:

Your motion for ADR was filed prior to all parties being served, therefore; it was denied. ... Please consider this my written order on that Motion.

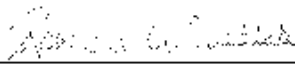
CONSIDERATION OF MADR, MSUP ANEW, IN THE ALTERNATIVE

4. Inasmuch as the basis for ADR denial was that the motion was untimely, being in advance of service of process and not filed on a substantive ground, Plaintiff requests in the alternative, therefore, for both MADR and MSUP to be re-filed and then newly considered.

5. In both MADR and MSUP, Plaintiff presented many cogent reasons for ADR to occur, and asks for all reasons to be considered before an official-written Order is issued for this motion, or its alternative, where Plaintiff requests timely and direct service of such Order.

THEREFORE, Plaintiff prays for recognition of ADR as an element of Court process which has merit, and which will be helpful in achieving meaningful resolution of disputed issues. Upon reconsideration or renewal of Plaintiffs' merits found in MADR, as supported by MSUP, Plaintiff respectfully requests this Court to rescind its Order denying ADR, and to **GRANT** this motion and thus schedule a date before which an ADR conference should occur.

Dated this 13th day of October, 2020.


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

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

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

Plaintiff,

v.

Board of Directors of Woodington
Homeowners' Association, Inc., comprised of
Mona Craig, Edward Decker, and Sandra
LaCroix at the time of filing; and McCabe
Trotter & Beverly, PC,

Defendants.

IN THE MAGISTRATE'S COURT

2020-CV-23-10201384

**DEFENDANT MCCABE TROTTER &
BEVERLY, PC'S MOTION TO DISMISS**

20073.47

TO: RAYMOND A. WEDLAKE:

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney for Defendant McCabe Trotter & Beverly, PC ("MTB") will move before the Presiding Judge of the Fairview/Austin Summary Court at 10:00 am on the 10th day after service hereof or as soon thereafter as possible for an Order dismissing Plaintiff's Complaint against it pursuant to Rule 12, SCRCF, and if the Complaint is not dismissed, to require Plaintiff make certain portions of the Complaint more certain pursuant to Rule 12(e), SCRCF, and strike certain portions of the Complaint pursuant to Rule 12(f), SCRCF, as set forth herein. The grounds for the dismissal include, but are not limited to the following:

CASTING PLAINTIFF IN FALSE LIGHT

Plaintiff's Complaint fails to state a claim and fails to state facts sufficient to constitute a cause of action against MTB pursuant to Rule 12(b)(6), SCRCF because South Carolina does not recognize a cause of action for "Casting in a False Light." Assuming the court will interpret this claim as a cause of action for defamation, said claim is barred by the statute of limitations. A claim for libel or slander must be brought within two years. S.C. Code §15-3-550. The statute of

limitations begins running at the time of the allegedly defamatory statement because “South Carolina has not adopted the discovery rule in libel and slander cases.” Jones v. City of Folly Beach, 326 S.C. 360, 369, 483 S.E.2d 770, 775 (Ct. App. 1997). Plaintiff’s Complaint states on its face that the allegedly defamatory statement was made September 20, 2016. (Complaint, ¶ 80.) While Plaintiff’s Complaint alleges the statute of limitations cannot begin to run until Plaintiff learned MTB “acted on [its] own initiative,” Plaintiff does not, and cannot, cite any authority for this position. Instead, the case law of this state is clear that the statutory period began on September 21, 2016 and expired on September 21, 2018. Plaintiff did not bring this suit until almost 2 years after that time. For these reasons Plaintiff’s claim for defamation should be dismissed.

CONSPIRACY TO EXTORT CORPORATE FUNDS/CONSPIRACY AND EXTORTION

1. Plaintiff’s Claims Related to Invoicing and Payment of Legal Fees to MTB Are Barred by Collateral Estoppel

“Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.” Carolina Renewal, Inc. v. S.C. Dep’t of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). In the instant case Plaintiff alleges that, due to the alleged bad acts of MTB, Woodington Homeowners’ Association, Inc. (“WHOA”) improperly and involuntarily paid an invoice for legal fees related to Case 2017-CP-23-06301. (Supplement to Complaint Overview, p. 3). However, Plaintiff filed a lawsuit under that same theory in March 2020 in Case 2019-CP-23-01501¹. Specifically, Plaintiff alleged:

COMES NOW, Raymond A. Wedlake (Plaintiff), in his capacity as a member in good standing of Woodington Homeowners’ Association, Inc.(WHOA), and by and through his undersigned legal counsel, Grant H. Gibson, Esq., hereby asserts a breach of covenants and breach of fiduciary duty by Defendants arising from acceptance of an improper invoice from the law firm of McCabe, Trotter, and Beverly, P.C. (McCabe), coupled with disbursement of WHOA funds to McCabe, or any partner or associate thereof.

¹ MTB was not a named party to Case 2019-CP-23-01501. However, this does not prevent MTB from asserting collateral estoppel as a bar to this suit because “modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” Carolina Renewal, Inc. v. S.C. Dep’t of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009).

In Case 2019-CP-23-01501 Plaintiff laid out almost identical facts to allege that several directors of WHOA improperly accepted a bill from MTB, held an improper vote to attempt to approve payment of that bill, miscounted votes in determining the membership approved the vote, demanded the court require WHOA seek recovery of over \$6,000 from MTB, and suggested any funds owed to MTB should be held in escrow until the appeal in case 2017-CP-23-06301 has been decided. These claims were all dismissed via Summary Judgment on March 13, 2020. Specifically, The Honorable Edward Miller held the following:

- “The Board properly counted the ballots both returned and not returned in accordance with the WHOA Bylaws, and in no way breached its fiduciary duty to WHOA members.” (Order, p. 6.)
- “[P]laintiff has failed to establish that the Board did not receive a majority of votes needed to pass the payment plan proposal . . .” (Order, p. 7.)
- “Based on the plain language of the Bylaws, it appears that the [board members] acted in accordance with WHOA Bylaws . . .” (Order, p. 7.)
- “[The board members] have done nothing improper, have acted in accordance with the WHOA Bylaws, and did not violate their fiduciary duty to its members.” (Order, p. 7.)
- “[The board members] were not in violation of the South Carolina Non-Profit Act as it pertains to the approval for the proposed ballots for indemnification and payment of legal fees.” (Order, p. 9.).

Judge Miller’s Order in Case 2019-CP-23-01501 unequivocally found that membership of WHOA voted indemnify the individual defendants from Case 2017-CP-23-6301 and such vote was properly held and valid. He further held the membership voted to pay the legal fee invoice submitted by MTB through a payment plan. Plaintiff cannot seek to collaterally attack Judge Miller’s holding by seeking relief from this Court. For that reason, Plaintiff’s claims related to invoicing and payment of legal fees for Case 2017-CP-23-06301 should be dismissed.

2. Plaintiff’s Complaint Fails to Allege Special Damages with Specificity

Plaintiff’s claim for conspiracy against MTB should be dismissed pursuant to Rule 12(b)(6) because Plaintiff has failed to state with specificity what special damages he suffered as a result of an alleged conspiracy. Special damages are an essential element in proving a claim for conspiracy.

LaMotte v. Punchline of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711 (1988). Specifically, damages alleged in a civil conspiracy claim must go beyond those alleged in other causes of action. Pye v. Estate of Fox, 369 S.C. 555, 633 S.E.2d 505 (2006). However, in this case the damages sought by Plaintiff, a refund of legal fees allegedly paid in violation of the WHOA's covenants, are the same damages sought by Plaintiff for its Breach of Contract claim against MTB's co-Defendant. Additionally, Plaintiff has failed to specifically state the special damages allegedly suffered as required by Rule 9(g), SCRPC.

3. Plaintiff's Complaint Fails to State Facts Sufficient to State a Claim for Conspiracy

"A civil conspiracy is a combination of two or more persons joining for the purpose of injuring the plaintiff and causing special damage to the plaintiff." LaMotte v. Punch Line of Columbia, Inc., 296 S.C. at 69, 370 S.E.2d at 713. Plaintiff first alleges MTB conspired with the Board of Directors for Woodington Homeowners' Association, Inc. ("BOD") to wrongfully pay invoices (Complaint, ¶ 24), however the Complaint later alleges MTB procured payment from the BOD through extortion and coercion (Complaint ¶ 48) and that MTB concealed information from the BOD to obtain payment (Complaint ¶ 54). Rather than alleging a conspiracy between Plaintiff and the BOD, Plaintiff's own Complaint alleges MTB was working against the BOD and not in concert with the BOD. Therefore the Complaint should be dismissed.

4. South Carolina Does to Recognize a Civil Cause of Action for "Extortion"

Plaintiff's Complaint fails to state a claim and fails to state facts sufficient to constitute a cause of action against MTB pursuant to Rule 12(b)(6), SCRPC because South Carolina does not recognize a civil cause of action for "Extortion."

5. The Doctrine of Attorney Immunity Precludes Plaintiff's Claims

MTB is not liable to Plaintiff under the doctrine of attorney immunity. South Carolina law provides that lawyers are immune from liability to third parties arising from the performance of professional activities as a lawyer on behalf of and with the knowledge of the client. Stiles v. Onorato, 318 S.C. 297, 458 S.E.2d 601 (1995). See also Gaar v. N. Myrtle Beach Realty Co., 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986). The purpose of this is to encourage zealous representation of a client without fear or lawsuits by disgruntled opposing parties. Id. "Consistent with Gaar and the above cited cases, we find that an attorney may be held liable for conspiracy

where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client.” Stiles v. Onorato, 318 S.C. at 300, 457 S.E.2d at 602). However, where the complaint alleges that all action was taken in the court of representation of a client, the attorney is immune under Gaar “for any activities taken in his professional capacity.” Id.

Based solely on the allegations of the Complaint, it is clear that all actions MTB took of which Plaintiff complains were taken as attorney acting within the scope of representation of its client. The Complaint does not allege MTB took any action outside the scope of its representation of its client. Therefore, MTB is immune from liability to Plaintiff for any damages allegedly suffered.

6. Plaintiff's Complaint Requests Relief Not Authorized by South Carolina Law.

Plaintiff asserts MTB is “lawfully obligated to pay back to WHOA Board . . . unlawful distributions of WHOA funds because McCabe [received an unlawful distribution pursuant to S.C. Code § 33-31-833(b)(2)].” (Complaint ¶ 56). Specifically, Plaintiff asks this Court to order MTB to pay back to WHOA funds paid by WHOA to MTB. (Complaint ¶ 93). However, S.C. Code § 33-31-833(b)(2) is inapplicable to the case at hand.

Section 33-31-833(b)(2) provides as follows: “A director held liable for an unlawful distribution under [§ 33-31-830] is entitled to contribution . . . (2) from each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter.” “Distribution” is defined as “the direct or indirect transfer of assets or any part of the income or profit of a corporation to its members, directors, or officers.” S.C. Code § 33-31-140 (emphasis added). As Plaintiff's Complaint concedes, the funds Plaintiff seeks reimbursed were paid from WHOA to MTB. MTB is not a member, officer, or director of WHOA so these funds could not possibly have been a “distribution” as defined by the Non-Profit Act. Additionally, Section 33-31-833 merely provides a mechanism by which a guilty director can receive contribution for damages from each member, director, or officer that received the impermissible distribution. Because Plaintiff does not claim to be a director who is guilty of violating S.C. Code § 33-31-830, he has no standing to invoke the contribution section of S.C. Code § 33-31-833(b)(2).

ADDITIONAL OBJECTIONS

1. Plaintiff Lacks Standing to Bring a Derivative Suit

Plaintiff has failed to meet the requirements of Rule 23, SCRPC, and therefore lacks standing to bring a derivative suit. Plaintiff does not fairly and adequately represent the members of WHOA, and Plaintiff's Complaint fails to allege that he does. In fact, there is currently pending before the Court of Common Pleas for Greenville County a class action lawsuit brought other members of WHOA alleging ²:

1. This case is about Defendant's actions of harassing his neighbors, eroding community camaraderie, and subjecting the Woodington residents to unnecessary legal expenses, using the Court system and its inherent authority to give credence to his bullying tactics. Defendant has engaged in a clear pattern of harassment through the use of the Court system and its elements through his frivolous lawsuits.

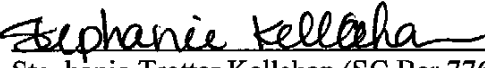
In 2019 The Greenville News published a story outlining Mr. Wedlake's harassment of his neighbors. <https://www.greenvilleonline.com/story/news/2019/04/02/sc-hoa-says-lawsuits-bankrupting-their-greenville-community/2919200002/>. Specifically, at least nine members met with the newspaper to discuss the endless lawsuits filed by Mr. Wedlake. Additionally, Plaintiff's own complaint shows that 29 members of WHOA returned ballots indicating they voted for indemnification and 32 members of WHOA returned ballots indicating they voted for the payment plan. This alone demonstrates Plaintiff's Complaint is not representative of the position of the WHOA members. As such, he should not be allowed to bring this suit derivatively.

Should Plaintiff's Complaint not be dismissed in its entirety, MTB moves to strike the exhibits to Plaintiff's Complaint pursuant to Rule 12(b)(f), SCRPC on the grounds that such exhibits contain improper evidentiary matters, unofficial versions of records, impertinent matters, excerpted documents, and otherwise inadmissible matters.

² 2020-CP-23-01458 was filed March 9, 2020 against Defendant Raymond A. Wedlake. A trial court may take judicial notice of previously entered, related court documents and consider them when ruling on a Motion to Dismiss under Rule 12(b)(6), SCRPC. See Doe v. Bishop of Charleston, 407 S.C. 128, 134 n. 2, 754 S.E.2d 494, 497 n. 2 (2014).

Further, Plaintiff's Complaint is vague and ambiguous as to which claims are being asserted individually versus derivatively. Plaintiff's Complaint is also vague and ambiguous as to the exact causes of action being asserted against MTB. Should Plaintiff's Complaint not be dismissed in its entirety, MTB moves pursuant to Rule 12(e) to require Plaintiff to make a more definite statement to clarify the exact nature of the claims asserted and which claims Plaintiff is seeking to assert individually as to those that he is purporting to assert derivatively.

This motion may be further supported by a memorandum of law. MTB further seeks an award of attorney's fees and costs.


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**ATTORNEY FOR MCCABE TROTTER &
BEVERLY**

Columbia, South Carolina
August 24, 2020

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

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*) bringing this “Memorandum in Support ... ADR” to reiterate a need for “Alternative Dispute Resolution” (ADR) as was requested on July 13, 2020, in his “Motion for ADR” (MADR). Plaintiff believes statements contained in “McCabe Trotter & Beverly’s (MTB) Return in Opposition to Plaintiff’s Motion for ADR” (RIO) lack perspective, and were brought with a “legal wrangling” intent to mislead and confound the simple fact that ADR would benefit all parties in this action. Regardless of whether, or not, ADR is mandated in Magistrate’s Court, legal wrangling is not a legitimate basis upon which ADR should be denied. All learned and knowledgeable persons know that mediation has numerous benefits, noted and recognized by courts and by the bar, which include:

- time - it takes on average 1/2 the time to complete cases where mediation exists when compared to non-mediated cases;
- costs - substantially less;
- efficiency - freeing up judges to address other cases; reducing stress on parties, which is particularly true for *Pro Se* parties, such as Plaintiff.

ARGUMENTS IN SUPPORT OF MADR

A) QUICK REVIEW OF MADR

1. In quick review of MADR, Court rules apply. Clearly shown in Rule 1(b), SCRADR is "... , these rules shall govern ADR processes that are neither court mandated nor required by statute in all cases pending in the courts of this State." Plaintiff points out that Rule 1(b) states no limitation precluding application to this Court. MADR showed (as excerpted):

1. Plaintiff finds no reference within SCRMC to ADR. Thus, pursuant to Rule 2, SCRMC (emphasis added):

RULE 2 APPLICATION OF STATUTORY LAW AND

CIRCUIT COURT PRACTICE IN ABSENCE OF RULE

These rules shall govern all civil suits in the magistrates court. If no procedure is provided by these rules, the **court shall proceed** in a manner consistent with the statutory law applicable to magistrates and **with circuit court practice** in similar situations but not inconsistent with these rules.

2. ADR is a requirement in Circuit Court before a case may be heard. Plaintiff understands no rationale for this Court to subjugate a requirement for, and scheduling of, ADR. Indeed as Rule 1, SCRADR (emphasis added)

Rule 1 Scope of Rules

These rules shall be construed to secure the just, speedy, inexpensive and collaborative resolution in every action to which they apply. **These rules govern Alternative Dispute Resolution (ADR) processes in the courts of this State ...**

(b) With the exception of Rules 3, 4, 5, 6, 7(e) and (f), 9(b) and (d), and Rule 10(a), these **rules shall govern ADR processes** that are neither court mandated nor required by statute in **all cases pending in the courts of this State.**

B) RPI VIOLATES COURT RULES

2. Plaintiff cites what he believes to be immaterial and impertinent content in RIO.

Plaintiff believes the intent of a cited Order was to extend an originally-limited set of counties that were ordered to participate in mandatory ADR, and make the "... program be operational in all counties in the state ...". Consequently, when RIO comments are immaterial and impertinent, they must be stricken, due to Rule 12(f), SCRCP, which shows:

(f) Motion to Strike. Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

Plaintiff declares that assumption of limitation to selected courts, only, in the pilot program does not apply after extension to "all counties", noting particularly that no limitation was stated as associated with extension, where cited 2015-11-12-04 Order shows (emphasis added):

2015-11-12-04

The Supreme Court of South Carolina

RE: Circuit Court Arbitration and Mediation and

Family Court Mediation Pilot Program

ORDER

By order dated February 1, 2006, this Court adopted Court-Annexed Alternative Dispute Resolution (ADR) Rules which govern court-annexed ADR processes in South Carolina **Circuit Courts** in civil suits, and in South Carolina **Family Courts** in domestic relations actions, in counties designated by this Court to participate in **mandatory ADR pursuant to a pilot program** or as required by statute. Only **certain counties were previously designated** for participation in the program. However, given the **success of the pilot program**, we hereby order that the **program be operational in all counties in the state**, effective January 1, 2016.

The SC Bar affirms "... Some magistrate courts have mediation programs as well" :

ADR is now mandatory in all 46 counties in South Carolina for circuit and family court. Probate judges may also order mediation in cases if they think

it is necessary. **Some magistrate courts have mediation programs as well.** (www.scbar.org/public/get-legal-help/common-legal-topics/alternative-dispute-resolution-adr)

As was formerly true in the pilot program, content in RIO showed:

By order of the South Carolina Supreme Court, the Court-Annexed Alternative Dispute Resolution Rules apply only to civil suits filed in South Carolina Circuit Courts or the South Carolina Family Courts. S.C. Administrative Order 2015-11-12-04.

3. Plaintiff cites immaterial and impertinent content in RIO, which therefore must be stricken. MTB seemingly makes reference to Rule 3(a), SCRADR, but without recognition that it is truly pointed exclusively towards agreement to mediate or to arbitrate, or to conduct “... early neutral evaluation ...”, where Rule 3(a) shows (as excerpted, emphasis added):

Rule 3 Actions Subject to ADR

(a) Mediation. ...

... the **parties may agree, in lieu of mediation**, to conduct an arbitration or early neutral evaluation under these rules. The parties may select their own neutral and may mediate, arbitrate or submit to early neutral evaluation at any time.

MTB did not file a “... motion to exempt a case from ADR ...”, neither did MTB cite “... case specific reasons ...” for exemption from ADR, nor did they make plain “... good cause ...” upon which their suggestion to deny MADR is based, as required by Rule 3(c). MTB also ignores Rule 3(d), which states a Judge may “... order a case to mediation” upon “... motion ... of any party ...”, where Rule 3(c) and 3(d) show (excerpted, emphasis added):

(c) Motion to Exempt from ADR. A party may file a **motion to exempt** a case from ADR **for case specific reasons**. **For good cause**, the Chief Judge for Administrative Purposes of the circuit may grant the motion. ...

(d) Motion to Refer Case to Mediation. 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**.

RIO showed merely:

This limitation is repeated in Rule 3 of the ADR Rules.

4. Plaintiff points out immaterial and impertinent content in RIO, which therefore must be stricken. MTB is certainly aware, based upon information and belief, that a *Pro Se* party such as Plaintiff suffers from extreme-discriminatory bias in Greenville-County-Circuit Court of Common Pleas. Plaintiff understands it is much more appropriate for a *Pro Se* party to be heard in Magistrate's Court. Consequently, such claim "... could have chosen ..." was brought without knowledge nor understanding. Plaintiff also contends such claim is immaterial and impertinent as related to MADR, where RIO showed:

Plaintiff could have chosen to bring this suit in the Court of Common Pleas for Greenville County, thus subjecting the parties to mandatory ADR.

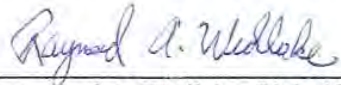
5. Plaintiff points to content which is immaterial, impertinent, and twisted logic as stated in RIO, which therefore must be stricken. If MTB refers to other court pleadings which are wrongfully alleged as "... frivolous court filings", they are immaterial and impertinent as related to MADR. Clearly, a request for scheduling of ADR is one that has merit, and therefore is not frivolous. RIO showed:

Requiring MTB to engage in alternative dispute resolution with Plaintiff would only serve to further increase damages to Defendant as a result of Plaintiff frivolous court filings.

6. Plaintiff contends that ADR will benefit all parties involved in this action. Any other viewpoint based upon conclusions resulting from "legal wrangling" will act to the detriment of parties, and to the detriment of this Court. Plaintiff believes in the wisdom of this Court as applied to obvious goodness associated with an ADR conference.

THEREFORE, Plaintiff prays for recognition of ADR as an element of Court process which has merit, and which will be helpful in achieving meaningful resolution of disputed issues. As previously brought by Plaintiffs' "Motion for ADR", Plaintiff respectfully requests for this Court to schedule a date before which an ADR conference should occur.

Dated this 21st day of September, 2020.



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

ATTACHMENT IB.5 - Motion for a Continuance ... to Allow Discovery

STATE OF SOUTH CAROLINA	)	2020-CV-23-10201384
	)	
COUNTY OF GREENVILLE	)	CIVIL CASE NUMBER
	)	
Raymond A. Wedlake, as a Member of	)	IN THE MAGISTRATE'S COURT
Woodington Homeowners' Association, Inc.	)	
and on behalf of other-similarly-situated Members	)	
of Woodington Homeowners' Association, Inc.	)	MOTION FOR A CONTINUANCE
PLAINTIFFS	)	
VS.	)	TO POSTPONE A 11/24/2020
	)	
Board of Directors of Woodington Homeowners'	)	SCHEDULED HEARING
Association, Inc., comprised of Mona Craigo,	)	
Edward Decker, and Sandra LaCroix at the time	)	TO ALLOW DISCOVERY
of filing	)	
AND	)	
McCabe, Trotter & Beverly, P.C.	)	
AND	)	
State Farm Fire and Casualty Company	)	[HEARING REQUESTED]
DEFENDANTS	)	

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*) and pursuant Rule 14, SCRMC, does respectfully request a continuance to postpone a Hearing scheduled for 11/24/2020, by bringing this "Motion for a Continuance ... to Allow Discovery ..." (MFC), stating as below.

Rule 14 shows (excerpted, emphasis added):

RULE 14 ... CONTINUANCES
The court shall be lenient ... in granting continuances of trials for good cause shown when necessary to serve the ends of justice. ...

ARGUMENT

1. Plaintiff respectfully requests the Court to recall his "Motion Requesting a Conference Which Might Promote Settlement; and Motion for Continuance Before Trial" as dated 10/13/2020, which showed:

TIME FOR DISCOVERY IS DESIRED

10. Plaintiff cites a need for “Discovery”, and thereby requests a minimum of a 90-day continuance of the Bench Trial scheduled for November 24, 2020:

10a) Experience has shown the Court process to produce, and to serve subpoenas requesting depositions from Members is lengthy and time consuming;

10b) Additionally, Plaintiff suspects that Counsel will move to “quash subpoenas”, to deny Plaintiff his right to gather evidence via discovery, based upon information and belief. With discovery, Plaintiff can prove to the Court the validity of his Complaint, but thereby adding some-indefinite period of time;

10c) Experience has shown that Members will ignore Court subpoenas asking for their witness via deposition. So, additional time will be required for the Court to assess if “Contempt of Court” applies to those Members who will not comply with Plaintiff’s request for their evidence via deposition;

10d) relative to Defendant SF, Plaintiff needs time to discover knowledge of SF’s actions, specifically statements of insurance claims that SF accepted. To date in other judicial actions, CWC has acted with disregard to Plaintiff’s requests to provide insurance-claim information, and Plaintiff fully expects CWC’s intent to “... hide evidence ...” will continue, based upon information and belief;

All such experiences indicate some **indefinite period of time** will be required before a trial that will “... serve the ends of justice ...” can proceed. Plaintiff requests for the Court to realize that in the event of such experiences, they comprise a set of “... unusual circumstances ...”, such that very likely additional continuances will be needed (contrary to Rule 14, SCRMC: “... no party shall be allowed more than one continuance in any case ...”).

2. Plaintiff needs additional time to finalize, serve, receive response to, and determine adequacy of responses, to the attached “Requests for Admissions” (Exhibits MC.1 – MC.3) pursuant to Rule 26(a), SCRCP, which shows (excerpted, emphasis added):

RULE 26 GENERAL PROVISIONS GOVERNING DISCOVERY

(a) **Discovery Methods.** Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions. ...

Such Requests for Admissions are designed to not only facilitate the ends of justice, but also to relieve the burden on the Court by having various issues disposed of prior to any hearing or trial.

3. Plaintiff believes that all Defendants may have evidence that they will claim is relevant to the case that will be uncovered via such Requests for Admissions. Such evidence is critical for Plaintiff to receive prior to presentation to the Court. Plaintiff objects to withholding of evidence that Defendants intend to bring to the scheduled-11/24/2020 Hearing. Much of such evidence will fall under Rule 12(f), SCRCP, and thereby should be stricken, where this Rule shows (excerpted, emphasis added):

RULE 12 DEFENSES AND OBJECTIONS ...

(f) **Motion to Strike.** Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

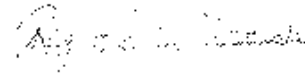
CONCLUSION

THEREFORE, based upon content found herein, Plaintiff prays for this MFC to be **GRANTED** to allow discovery per responses from these RFA, as well as other-subsequent discovery which may become needed, and:

A) for the Court to make known to all Defendants that withholding evidence, with intent to present it at a hearing or at trial, is an improper practice that this Court will not condone; and

B) that the Court grant a minimum of a 90-day continuance, to to commence upon the enter of an Order granting this MFC.

Dated this 30th day of October, 2020.



Raymond A. Wedlake, Plaintiff (*Pro Se*)
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864-254-9262 wedlakera@mail.com

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

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

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

STANDARD FOR REVIEW OF MOTION TO DISMISS

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

RULE 12 DEFENSES AND OBJECTIONS ...

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

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

STANDARD FOR REVIEW OF MOTION TO DISMISS IN FEDERAL COURT

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

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

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

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

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

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

ARGUMENTS
CASTING PLAINTIFF IN A FALSE LIGHT

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

STATUTE OF LIMITATIONS DOES NOT BAR PLAINTIFF'S COMPLAINT

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

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

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

SECTION 15-3-550. Two years.

Within two years:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONSPIRACY TO EXTORT CORPORATE FUNDS

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

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

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

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

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

vs.

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

BREACH OF COVENANTS, AND BREACH OF FIDUCIARY DUTY

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

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

THERE ARE GENUINE ISSUES OF MATERIAL FACT

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

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

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

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

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

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

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

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

THE COURT: There you go. Okay.

THE COURT: Point for you.

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

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

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

THE COURT: Mr. Wedlake, ---

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

THE COURT: What are those acts of negligence?

THE COURT: - Okay.

THE COURT: No, I don't.

THE COURT: All right.

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

THE COURT: Okay.

THE COURT: Okay.

THE COURT: Briefly.

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

[the Judge denied Plaintiff an opportunity to respond]

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

THE COURT: Thank you.

THE COURT: That is standard operating procedure.
THE COURT: Please do. Okay. Thank you.
(Transcript of Record, February 27, 2020, 2020-CP-23-01501)

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

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

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

Due by Friday, November 9th

EXHIBIT 13

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

The Association shall indemnify the 2017 Board Members ...

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

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

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

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

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

Due by Friday, November 9th

EXHIBIT 5

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

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

as **further proven false** by Complaint par. 43, and Exhibit 17 - an Affidavit attesting to **only 32**

"FOR" votes cast by Members – short of the required 34 - which showed (emphasis added):

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

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

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

15. No non-factual contentions should lead to dismissal of Plaintiff's claims related to invoicing and payment of legal fees for Case 2017-CP-23-06301.

B) Plaintiff's Complaint Alleges Special Damages with Specificity

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

98. Evidence presented show through its written and verbal statements, as attested to in the Affidavit and as set forth in Exhibits, McCabe intentionally disparaged Plaintiff in verbal and written communications to Members, in a concerted effort to disparage and undermine the reputation of Plaintiff in the Community. Through such a actions, McCabe was successful in exerting serious damage to Plaintiff's previously excellent reputation, resulting in his being shunned and treated with disrespect by many Members. McCabe's painting Plaintiff in a false light undermined his efforts to become a member of the WHOA-Board of Directors in all subsequent years after 2016. This Court must find McCabe's actions did misrepresent true facts, and thereby confirm that

McCabe did paint Plaintiff in a false light before Members, which has caused irreparable damage to Plaintiff's reputation.

17. In violation of their "Lawyer's Oath" (Exhibit 46 to SUC), Defendant seeks to mislead by saying: "... in this case the damages sought by Plaintiff, a refund of legal fees allegedly paid in violation of the WHOA's covenants ...", where factually such refund was rather sought to accrue to the benefit of WHOA – not to accrue to Plaintiff's benefit; shown in SUC was:

D. Plaintiff prays for the Court to issue an Order with directives for McCabe:
D1. to pay back \$7493 to WHOA Board;

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

RULE 9 PLEADING SPECIAL MATTERS

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

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

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

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

20. Pursuant to SC Code of Laws, a citizen cannot be barred from prosecution of his own cause:

SECTION 40-5-80. Citizen may prosecute or defend own cause.

This chapter may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires.

21. All of extortion, as well as embezzlement, obtaining money under false pretenses, conspiracy to defraud or other like offense, are noted in SC Code of Laws:

SECTION 40-11-110. ... civil penalties; ...

(A) The board may impose disciplinary action authorized by this chapter upon a licensee, certificate holder, or other entity or individual if the board finds any of these conditions:

(7) conviction ... of the offense of forgery, **embezzlement, obtaining money under false pretenses, theft, extortion, or conspiracy to defraud or other like offense** regardless of whether an appeal has been sought;

22. Plaintiff's case was plainly captioned showing "Extort", and it was the judgment of the Court to label Complaint as a civil action, rather than as a criminal action against MTB, where the caption shows (emphasis added):

Breach of Contract by the Board; Plus **CONSPIRACY** by McCabe to **EXTORT** Corporate Funds, and Casting Plaintiff in a False Light

23. Magistrates have jurisdiction in criminal cases:

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

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

SECTION 22-3-550. Jurisdiction over minor offenses; ...

(A) Magistrates have jurisdiction of all offenses which may be subject to the penalties of a fine or forfeiture not exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both. In addition, a magistrate may order restitution in an amount not to exceed the civil jurisdictional amount provided in Section 22-3-10(2). In determining the amount of restitution, the judge shall determine and itemize the actual amount of damage or loss in the order. In addition, the judge may set an appropriate payment schedule.

E) Doctrine of Attorney Immunity Does Not Apply to Plaintiff's Claims

24. Pleadings made clear that the corporate entity: WHOA, was never a client of MTB:

24a) Complaint showed:

3. I believe, because of information herein, that I am entitled to and do request a judgment for \$7493 against McCabe, who conspired with the 2018 Board, and later-year Boards, to extort payments from WHOA who was not their client. ...

SUC also showed (below "Case" refers to 2017-CP-23-06301):

Plaintiff comes before this Court as a *Pro-Se* party, citing Defendant McCabe, Trotter, and Beverly, P.C. (McCabe) for unethical and alleged-unlawful billing, directing their invoice (Exhibit 1) to Woodington Homeowners' Association, Inc. (WHOA), who was not a client of McCabe. ... McCabe did not render legal services to WHOA, and therefore WHOA has no obligation to pay what Plaintiff contends is an illegitimate bill.

27. Plaintiff cites McCabe for unethical and unlawful billing of WHOA, who was not their client in Case, which is currently pending Appeal (2018-001209), ... with subsequent alleged-unlawful imposition of such invoice for Fees assessed against Members, coupled with alleged-unlawful disbursement of WHOA funds by the Board to McCabe.

55. Plaintiff sought Nominal Damages of \$1 in Case, where McCabe's-alleged extortion is about a ratio of 50000:1 in damages that have been billed to WHOA, who was not their client in Case based on information and belief, and where no Court Order gave McCabe the privilege to bill a party who was not their client.

92. McCabe admitted that WHOA was not their client, and WHOA by McCabe's own admissions was "... never a party ...", but yet violated their "South Carolina Lawyer's Oath" (Exhibit 46) ... by sending an invoice to WHOA, to whom they provided no legal services as related to their defense of 2017-Board-members in Case. ...

24b) MTB, themselves, admitted that "... WHOA was never a party ...", and therefore extorted funds from a party who was not their client, as shown in SUC:

51. Additionally, in their "Respondents' Motion to Dismiss and Supporting Memorandum" (Exhibit 19) filed with the Court of Appeals on August 8, 2019 (2018-001209), McCabe themselves admit: "... WHOA ... was never made a party ...", with this fact as stated on Page 6 (emphasis added):

This action was instituted against Respondents in their capacity as the current Board of Directors of the Association. Notably, Woodington Homeowners' Association, Inc., the corporate entity itself, **was never made a party to this proceeding.** ...

Respondents' Motion to Dismiss was **DENIED** by Order filed November 8, 2019 (Exhibit 20).

25. Therefore, MTB is liable to Members for damages suffered.

F) Plaintiff's Complaint Requests Relief Not Authorized by South Carolina Law.

26. Plaintiff contends, opposing Defendant's claims to the contrary, that MTB is "... lawfully obligated to pay back to WHOA Board ...". Defendant contends "... S.C. Code § 33-31-833(b)(2) is inapplicable to the case at hand ...", due to an unrelated definition of "distribution". Defendant is confused between "distribution", and the plainly stated: "... unlawful distributions", to which the cited § 33-31-833(b)(2) applies (emphasis added):

SECTION 33-31-833. Liability for unlawful distributions.

(a) Unless a director complies with the applicable standards for conduct described in Section 33-31-830, a director who votes for or assents to a distribution made in violation of this chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

(b) A director held liable for an **unlawful distribution** under subsection (a) is entitled to contribution:

(2) from each person who received an **unlawful distribution** for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter.

Emphasized text in (2) says "... each person ..." without additional restriction, giving clear and plain-legislative intent that **unlawful distributions** must be paid back by all those who received them.

G) Complaint Showed Proven Standing to Bring a Derivative Suit

27. Complaint showed: **"FIGURE 1 - Six Member Statements Denying Defendants as Proxy, November 9, 2018 Ballots"**, which proved at least six Members (about 10% of 65 other Members) support a basic argument by Plaintiff, thereby justifying Plaintiff's case caption showing: "... and on behalf of other-similarly-situated Members ...". If other Members support Plaintiff, he has Standing to bring a Derivative suit. Defendant makes a false and unsupported claim: "... Plaintiff does not fairly and adequately represent the members of WHOA ...", since Complaint proved otherwise as found herein:

... as **further proven false** by Complaint par. 43, and Exhibit 17 - an Affidavit attesting to **only 29 "FOR" votes cast by Members** - short of the required 34 - which showed (emphasis added):

43. A majority (34) of Member votes did not approve Ballot 1 nor Ballot 2, where in violation of the NPCA Section 33-31-831(f), the Board used assumed-Proxy votes to **erroneously contend "PASSED"** ...

Defendant did not, and cannot show, any evidence which proves anything other than a **minority** of Members who support the Board, or who support MTB's claims. Consequently, Plaintiff represents the **majority** of Members, with Complaint showing proven Standing to bring a Derivative suit.

28. Neither of Defendant's claims in 28a nor 28b, give legally-valid rationale to lead to dismissal:

28a) A pending-class-action lawsuit brought by two-other Members is unrelated, irrelevant, and academic as applied to Plaintiff's derivative suit. However, a "... Complaint as a Third-Party Plaintiff ..." and a "Counterclaim" were filed against this-pending lawsuit. False claims in this-pending suit will lead to denial of "Certification", which has not been attempted to date, based upon information and belief. Plaintiff asked for Affidavits from named Plaintiffs, which do not exist to date. These Plaintiff's will not have interest to fully prosecute their case, based upon information and belief. Plaintiff also contends a law-firm was the party who brought this case, in violation of statute:

SECTION 40-5-350. Soliciting legal business unlawful.

It is unlawful for a person or his agent, employee, or anyone acting on his behalf to:

(1) solicit or procure through solicitation, either directly or indirectly, legal business; or

(2) solicit or procure through solicitation a retainer, written or oral, or an agreement authorizing an attorney to perform or render legal services.

A person who violates a provision of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

28b) Similarly, a "... 2019 The Greenville News published a story outlining Mr. Wedlake's harassment of his neighbors ..." is non-factual and unsupported by any substantive evidence, and hence is unrelated, irrelevant, and academic.

29. Defendant must be specific, which was not done nor supported by evidence, in claims to: "strike the exhibits to Plaintiff's Complaint ...", and must be specific for: "... require Plaintiff to make a more definite statement to clarify the exact nature of the claims asserted". Regardless, this claim does not support dismissal.

30. Plaintiff states that documented evidence is admissible because it is relevant, material, and competent. Defendant must bring specific proof to the contrary for evidence to be inadmissible. In

counter argument, Defendant tries to invalidate admissibility of "duplicates" contrary to "Rules of Evidence", SCRE, with no question being raised as to authenticity. Defendant makes no claims that documented evidence was hearsay, nor did they cite violations of SCRE, which show (as excerpted, emphasis added):

RULE 104 PRELIMINARY QUESTIONS

(a) Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or **the admissibility of evidence shall be determined by the court**, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, **the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.**

RULE 401 DEFINITION OF "RELEVANT EVIDENCE"

"Relevant evidence" means **evidence having any tendency to make the existence of any fact** that is of consequence to the determination of the action **more probable or less probable than it would be without the evidence.**

RULE 402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE ...

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. ...

RULE 1001 DEFINITIONS

For purposes of this article the following definitions are applicable:

(1) Writings and Recordings. **"Writings"** and **"recordings"** consist of **letters, words, sounds, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.**

(4) Duplicate. A **"duplicate"** is a **counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.**

RULE 1003 ADMISSIBILITY OF DUPLICATES

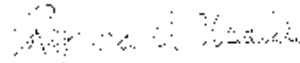
A duplicate is **admissible to the same extent as an original** unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

31. As to: "... which claims are being asserted individually versus derivatively ...", such is irrelevant, unrelated to, and academic, towards this Court serving the interests of justice.

32. Complaint listed causes of action being asserted against Defendant; see Complaint paragraphs 91, 92, 93, and 98.

THEREFORE as based upon the foregoing a conclusion other than **DENY** is not apparent as applied to Defendant's "... Motion to Dismiss". Consequently, Plaintiff's case plus additionally his claim for "... false light ...", should continue. This MOP may be further supported by a memorandum of law.

Dated this 11th day of September, 2020.



Raymond A. Wedlake, Plaintiff (*Pro Se*)
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864-254-9262 wedlakera@gmail.com

ATTACHMENT JB.7 - Opposition to Motion to Dismiss - Board

STATE OF SOUTH CAROLINA	)	2020-CV-23-10201384
	)	
COUNTY OF GREENVILLE	)	CIVIL CASE NUMBER
	)	
Raymond A. Wedlake, as a Member of	)	IN THE MAGISTRATE'S COURT
Woodington Homeowners' Association, Inc.,	)	
and on behalf of other-similarly-situated Members	)	
of Woodington Homeowners' Association, Inc.	)	MEMORANDUM IN OPPOSITION
PLAINTIFFS	)	
VS.	)	TO
Board of Directors of Woodington Homeowners'	)	
Association, Inc., comprised of Mona Craig,	)	DEFENDANTS' BOARD OF
Edward Decker, and Sandra LaCroix at the time	)	DIRECTORS OF WOODINGTON
of filing,	)	HOMEOWNERS' ASSOCIATION,
AND	)	INC., COMPRISED OF MONA
McCabe, Trotter & Beverly, P.C.	)	CRAIGO, EDWARD DECKER AND
AND	)	SANDRA LACROIX MOTION TO
State Farm Fire and Casualty Company	)	DISMISS PLAINTIFF'S COMPLAINT
DEFENDANTS	)	

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*) and brings this "Memorandum in Opposition to Defendants' Board of Directors of Woodington Homeowners' Association, Inc., ... Motion to Dismiss Plaintiff's Complaint" (MTD).¹

It is clear from precedents, as established by the Appellate Courts of South Carolina, and as supported by facts of this Case, that all claimed grounds for dismissal are unfounded. Further, MTD must be considered as a "Motion for Dismissal in Part". Where there are multiple causes of action, as here, as the Court is well aware, a motion for dismissal should not be viewed as an "all or nothing" disposition. The Court perhaps may decide to dismiss one claim, but not to dismiss the entirety of Plaintiff's case in the execution of, and in the serving of, interests of justice. Plaintiff has cited lawful requirements to which the Board of Directors (Board) of

¹ Vagueness and ambiguity by Defendant as related to make "... more certain ..." and to "... strike certain portions of the Complaint ..." must be disregarded since specificity is required, but is lacking.

Woodington Homeowners' Association, Inc. (WHOA), has not complied. Plaintiff has brought evidence showing unlawful actions by the Board which have been perpetrated upon Plaintiffs. Clearly there are genuine issues of material fact in dispute. Thus, consistent with enunciated policy of Appellate Courts, it is essential that merits of Plaintiff's case be heard. The merits, as supported by evidence, substantially outweigh all claims to dismiss.

STANDARD FOR REVIEW OF MOTION TO DISMISS

The standard based upon Rule 12(b)(6), SCRCP indicates that only in the absence of "... facts sufficient ..." can this rule be applied. Plaintiff's complaint (Complaint) cited a "Supplement to Complaint" (SUC) in paragraph 2 (p. 2), where SUC stated Facts in paragraphs 28 – 86 (pp. 19 – 44). All these Facts form a set of evidence more than sufficient to constitute a cause of action. Rule 12(b)(6) shows (excerpted, emphasis added):

RULE 12 DEFENSES AND OBJECTIONS ...

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

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

Based upon Rule 12(b)(1), SCRCP, Defendant's imagine an immaterial and irrelevant claim of "... jurisdiction ...", apparently related to "collateral estoppel" (discussed below). Jurisdiction of this Court applies per Complaint paragraph 1, which showed proof of all requirements for jurisdiction (Exhibit OP.1). Rule 12(b)(1) shows (excerpted, emphasis added):

RULE 12 DEFENSES AND OBJECTIONS ...

(b) How Presented. ...

(1) lack of jurisdiction over the subject matter, ...

STANDARD FOR REVIEW OF MOTION TO DISMISS IN FEDERAL COURT

The standard for analysis of a Motion to Dismiss in Federal Court is set forth in *Erickson v. Pardus*, 127 S. Ct. 2197, 167 L.Ed.2d 1081, 551 U.S. 89, 75 BNA USLW 3643 (2007) (*Erickson*).

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

The Court must take a liberal view of the pleadings, especially, as here, where the petitioner is *Pro Se*. As the Court also stated in *Erickson*:

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

In the event that the Court may interpret MTD as translated into a motion for Summary Judgment, since Plaintiff requested a “... full and fair opportunity to complete discovery ...”

via "Motion for a Continuance to Postpone a 11/24/2020 Scheduled Hearing to Allow

Discovery" dated 10/30/2020, it is Plaintiff's understanding that (excerpted, emphasis added):

Further, "[s]ummary judgment is a drastic remedy and **must not be granted until the opposing party has had a full and fair opportunity to complete discovery.**" *Dawkins v. Fields*, 354 S.C. 58, 69 (S.C., 2003)

and

Summary judgment is not appropriate where further inquiry into the facts is desirable to clarify application of the law. *Evening Post Publ'g Co. v. Berkeley County Sch. Dist.*, 392 S.C. 76, 82 (S.C., 2011)

Per the Supreme Court of South Carolina, Summary Judgment is "Premature" when (excerpted, emphasis added):

"Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Watson v. Southern Ry. Co.*, 420 F. Supp. 483, 486 (D.S.C. 1975); see also *Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E. (2d) 728, 729 (1986) ("an extreme remedy to be cautiously invoked"). This means, among other things, that **summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.** 10A Wright & Miller, *Federal Practice and Procedure* § 2741, p. 543 (1983); 6 Moore's *Federal Practice* ¶ 56.02[6], p. 56-39 (2d ed. 1990); see, e.g., *First Chicago Int'l v. United Exchange Co.*, 836 F. (2d) 1375 (D.C. Cir.1988); *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 756 F. (2d) 230 (2d Cir.1985); *Tyler v. City of Enterprise*, 521 So. (2d) 951 (Ala. 1988); *Gangadean v. Leumi Fin. Corp.*, 13 Ariz. App. 534, 478 P. (2d) 532 (1970); *Commercial Bank of Kendall v. Heiman*, 322 So. (2d) 564 (Fla. Dist. Ct. App. 1975); *Board of Education v. Van Buren & Firestone, Architects, Inc.*, 165 W. Va. 140, 267 S.E. (2d) 440 (1980); cf. Rule 56(f), S.C.R.C.P.[4]

[as cited from: *Baughman, et al. v. American Telephone and Telegraph Company, et al.*, 410 S.E.2d 537, 306 S.C. 101 (1991), Supreme Court of South Carolina.]

ARGUMENTS

MTD'S CLAIMS ARE ERRONEOUS AND/OR REFLECT MISINFORMATION

1. Defendant admits in MTD that previous cases "... are currently pending appeal." No final Order giving judgment exists for any appealed case. Defendant erroneously cites a settled

case “03758” that is immaterial and irrelevant to MTD. To clarify by showing case captions, three-appealed cases are:

- 1a) 2017-CP-23-06301: Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc., Plaintiff(s), vs. ... Board of Directors of the Woodington Homeowners' Association, Inc., ... Defendants ... “Complaint[,] Declaratory Judgment and Injunctive Relief” (Appeal 2018-001209, from involuntary nonsuit; this is the original case from which legal fees of McCabe, Trotter & Beverly, P.C. (MTB) were billed to WHOA);
- 1b) 2019-CP-23-00269: Raymond A. Wedlake, as a Member of the Woodington Homeowners' Association, Inc., Plaintiff (Pro Se), vs. ... Board of Directors of Woodington Homeowners' Association, Inc., Defendants ... “Verified Complaint for Declaratory Judgment and Injunctive Relief (non-Jury)” (Appeal 2020-000438, from Summary Judgment);
- 1c) 2019-CP-23-01501 (C1501): Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc., Plaintiff (Pro Se), vs. ... Board of Directors of Woodington Homeowners' Association, Inc., ... Defendants ... “Verified Complaint for Breach of Covenants, and Breach of Fiduciary Duty” (Appeal 2020-000506, from Summary Judgment);

where the settled, unrelated case that should not have been referenced by MTD was:

- 1d) 2018-CP-23-03758: Raymond A. Wedlake, as a Member of the Woodington Homeowners' Association, Inc., Plaintiff, vs. Kristine Lynch and Dawn Vonderbecke, and John Does & Jane Does numbers 1-10 and Doe Legal Entities numbers 1-10,

Defendants ... "Verified Complaint[,] Defamation (Slander and Libel)" (settled, unrelated).

2. Plaintiff fully expects reversal from dismissal of all-three appealed cases. Under South Carolina (SC) law, a new action may be commenced within up to "... one year after reversal", so "... cannot bring ..." is shown to be false under South Carolina (SC) Code of Laws (excerpted, emphasis added): :

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

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

3. Plaintiff's lawsuits to date that relate to the Board are based upon questions of law as supported by genuine issues of material fact, being brought before a Court of Law, for adjudication of alleged-unlawful actions by the Board that have been perpetrated upon WHOA members (Members). Such behavior reflects no pattern that is "... designed to harass members of the different incarnations of the ... Board over past four years ...", as erroneously stated by Defendant in MTD . This being calendar year 2020, with a first-case date of 2017, Defendant erroneously exaggerates to "... four years ...". Under a preamble which begins the "Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision" (Covenants), Plaintiff has specific rights "... to prosecute any proceeding at law ..." (Exhibit OP.2).

4. Though Defendant confirms "... Plaintiff is a resident and member of the WHOA ...", they then go on to say: "... this particular lawsuit arises out of his assertion that the 2020 incarnation of the Board breached its fiduciary duty to the members ...", where the caption of

this Case 2020-CV-23-10201384 (C1384) plainly does not show "... fiduciary duty ...", but rather shows:

Breach of Contract by the Board; Plus Conspiracy by McCabe to
Extort Corporate Funds, and Casting Plaintiff in a False Light

5. Defendant admits that MTB did not represent WHOA as their client, and thus a genuine issue of material fact is related to the Board's acceptance, and payment from WHOA funds, of MTB's invoice for legal fees. MTD variously shows:

... who represented the Board in a previous lawsuit filed by the plaintiff, *C.A. No.: 2017-CP-23-06301* .. The WHOA board retained the services of the law firm of McCabe, Trotter & Beverly, P.C. to represent them in that action. The WHOA Board in that action is still being represented by the law firm of McCabe, Trotter & Beverly, P.C. in the pending appeal of that action.

6. Plaintiff has provided evidence that the action brought is a derivative action; see Figure 1: "Six Member Statements Denying Defendants as Proxy, November 9, 2018 Ballots", as attached to Complaint. Given this proven fact, then it is Defendant's erroneous statement that "... Plaintiff claims ..." that is patently absurd. This evidence, which shows six Members who support Plaintiff, and deny support for the Board, thus belies MTD's erroneous claims:

... Further, plaintiff has not provided any evidence that the action he has brought is a derivative action. ...
... Plaintiff claims to bring this complaint "on behalf of other-similarly - situated Members of Woodington Homeowners' Association, Inc." which is patently absurd. ...

7. A claim by Defendant "... ballots were counted as per Article 17, Section 3, of the Woodington HOA Bylaws ..." belies the unlawful nature of the Board's-counting action. By-Laws cannot contain provisions which are unlawful. This By-Laws-counting provision is "... inconsistent with law ..." and thus cannot be cited as a valid method to count ballots.

7a) Valid-applicable sections from SC Code of Laws, the “South Carolina Nonprofit Corporation Act of 1994” (NPCA), primarily Sections 33-31-206 and 33-31-831, were contained in the Complaint (Exhibit OP.3);

7b) The Complaint cited other violations of law by the Board in several paragraphs:

7b.1. par. 8 and 9 - Section 33-31-140 “... Approved by the members ...”

7b.2. par. 10 - Section 33-31-724. Proxies.

7c) MTD refers to the Order from C1501, which was proposed by the same Counsel who is representing the Board in C1384. Plaintiff objected to content as drafted in a proposed Order (Exhibit OP.4.1), but as a *Pro Se* party was denied the usual courtesy afforded to attorneys for objections to be considered before the draft Order was signed. Consistent with practice of this Counsel, many statements appearing in the Order, which was signed by the Judge without modification from the Proposed Order as drafted by Counsel, were not stated by the Court during the Hearing. Indeed, the only substantive-Hearing comments made by the Court are shown in Exhibit OP.4.2. Plaintiff contends that such falsification of Order content was intentional on the part of Counsel, such that an Order with false content could be quoted in future Court documents, such as MTD. During the Hearing which granted Summary Judgment, the Court made absolutely:

7c.1. no statements about, nor any reference to: “... properly counted the ballots ...”;

7c.2. no statements about, nor any reference to: “... [Board] in no way breached its fiduciary duty to WHOA members. ...”

7c.3. no statements about, nor any reference to: "... [The Board] have done nothing improper, have acted in accordance with the WHOA Bylaws ..."

7c.4. no statements about, nor any reference to: "... [Board] did not violate their fiduciary duty ..."

7c.5. no statements about, nor any reference to: "... [The Board] were not in violation of the South Carolina Non-Profit Act as it pertains to the approval for the proposed ballots for indemnification and payment of legal fees."

Falsified content taken from the Order, which was not recorded as part of the Hearing as proven by the "Transcript of Record" (Exhibit OP.4.3), appears in MTD (Exhibit OP.4.4). From Plaintiff's perspective and in his opinion, such falsification of Order content is akin to prevarication.

8. Defendant with presumption makes a false claim, brought without any substantiation and without any confirming evidence, about "... genesis of ..." lawsuits. An event from 2015 was amicably resolved in 2016 and has no bearing, nor is it related in any way, to any of Plaintiff's lawsuits. Plaintiff's lawsuits cite actions and/or inaction by the Board, which are violations of WHOA By-Laws and/or SC Code of Laws. On May 30, 2016, a garage-door-paint-amicable-mutual agreement was reached between all parties (see Exhibit OP.5). Agreement date is almost more than one-year-and-five-months before a first lawsuit of October 2017. This historical timeline contradicts such-false claim, and proves it to be false, where MTD erroneously shows:

The genesis of this lawsuit and the multiple other lawsuits plaintiff has filed against the WHOA Board, stem from a 2016 dispute plaintiff had with the

WHOA Architectural Committee over a sailboat that plaintiff had painted on his garage door.

From Plaintiff's perspective and in his opinion, such-false claim is akin to prevarication.

9. Defendant with presumption makes other false claims, brought without any substantiation and without any confirming evidence, about "... ulterior purposes ..." and "... appears to be a grudge ...", where:

9a) no "... ulterior purposes ..." have been shown as supported by evidence, with only bald and unsupported contentions of opposing parties being of record;

9b) as shown and proven herein, the "grudge" claim is anachronistically incorrect;

Both claims represent irrelevant, immaterial, and scandalous matter which must be stricken from MTD under Rule 12(f), SCRCP. MTD shows:

Through the course of these lawsuits, Defendant has used the lawsuits themselves and the judicial system and its elements for ulterior purposes, in what appears to be a grudge held against the board following a dispute with the WHOA Architectural Committee over a sailboat that the plaintiff had painted on his garage door.

From Plaintiff's perspective and in his opinion, such-false claims are akin to prevarication.

10. Defendant with presumption makes a false claim, brought without any substantiation and without any confirming evidence, about "... abuse the legal process with the filing of these frivolous lawsuits ...":

10a) Plaintiff craves evidence, where none exists so Defendant cannot produce any, that documents any semblance of Plaintiff's actions that "... abuse the legal process ...";

10b) Factually, all cases filed are based upon violation of By-Laws, or SC Code of Laws, due to actions and/or inaction of the Board. Unlawful actions perpetrated upon Members by the Board cannot be termed "frivolous". Every Board of every HOA must

operate the Association in compliance with the law. In truth, no case has been cited as frivolous and without merit, regardless of attempts by Counsel to mislead Judges by requesting imposition of “frivolous sanctions”. No sanctions were awarded.

This claim represents irrelevant, immaterial, and scandalous matter which must be stricken from MTD under Rule 12(f), SCRPC. MTD shows:

It should be noted plaintiff has continued to abuse the legal process with the continuous filing of these frivolous lawsuits.

From Plaintiff’s perspective and in his opinion, such-false claim is akin to prevarication.

11. Defendant makes false claims, brought without any substantiation and without any confirming evidence, about “... plaintiff in his complaint is asserting the same causes of action against the current Board that he did in *CA No.: 2019-CP-23-01501* ...” :

11a) No Causes of Action were stated in the complaint (CM1) for C1501 that are claimed in MTD:

11a.1. MTD claims CM1 says:

... 1) accepting the legal invoice from McCabe, Trotter & Beverly, P.C. for legal services rendered ...

but the term “legal invoice” did not appear in CM1 except as shown in the

Fact section:

29. On February 2, 2018, Plaintiff repeated a demand that the legal invoice not be paid since to do so would: ...

11a.2. MTD claims CM1 says:

2) violated the WHOA bylaws and covenants by sending out ballots and the method used to subsequently count those ballots in passing an assessment to pay for the said legal fees

but the term “sending out ballots” did not appear in CM1 except as shown in the

Fact section:

33. In two ballots due November 22, 2018, the Board sought to ratify such misconduct by sending out ballots to Members (Exhibits 9 and 10) asking for them to approve indemnification payments resulting from a McCabe invoice, by way of a substantial increase in dues plus an assessment of a one-time-Member fee, based on information and belief (Affidavit).

11a.3. MTD claims CM1 says:

3) allege that the Board was in violation of the South Carolina Non-Profit Act in counting the ballots pertaining to the proposed assessment vote.

bnt reference to “violation ... NPCA” did not appear in CM1 except as shown

by two paragraphs in the Fact section:

29b) be a direct violation of indemnification specifications found in the NPCA (Exhibit 5);

42. On February 15, 2019, Plaintiff informed Defendants of a new homeowner, and they were asked to provide Plaintiff with an updated list of WHOA Members, but in direct violation of the NPCA which requires a Board to supply a Member list on request, Defendants continue to breach their duty by ignoring Plaintiff's request (Affidavit, Exhibit 14).

11b) As related to “... plaintiff in his complaint is asserting the same causes of action ...”,

Complaint shows nothing akin to MTD 1), 2), nor 3), as above and below, where the

only potentially-related claim found in Complaint in the “Causes of Action” section was

numbered paragraph 92 (see Exhibit OP.6). MTD erroneously showed:

In the instant case, plaintiff in his complaint is asserting the same causes of action against the current Board that he did in *CA No.: 2019-CP-23-01501*. Specifically, that the Board violated its fiduciary duties to the WHOA by 1) accepting the legal invoice from McCabe, Trotter & Beverly, P.C. for legal services rendered; 2) violated the WHOA bylaws and covenants by sending out ballots and the method used to subsequently count those ballots in passing an assessment to pay for the said legal fees; 3) allege that the Board was in violation of the South Carolina Non-Profit Act in counting the ballots pertaining to the proposed assessment vote.

These claims represents irrelevant, immaterial, and scandalous matter which must be stricken from MTD under Rule 12(f), SCRPC. From Plaintiff's perspective and in his opinion, such-false claims are akin to prevarication.

CONSPIRACY TO EXTORT CORPORATE FUNDS

A) Plaintiff's Claims Related to the Board's Payment of Legal Fees to MTB do not Violate the Doctrine of *Res Judicata*, a Clearly Erroneous Claim

12. MTD variously makes several erroneous points related to: "... same exact claims ...", "... attempt to re-litigate ...", and "... already been decided ...". These claims clearly pertain to the Doctrine of *Res Judicata*. All these points have an intent to claim that C1384 cannot bring suit against a never-previously-cited Defendant, such as MTB. C1384 has different Causes of Actions, and seeks different relief(s) than any-prior lawsuit. Defendant cites no evidence showing that any-C1384 claim represents a "... same exact claim ...". Nor does Defendant show any evidence of "... re-litigate ..." within C1384. With their admission that cases as cited by Defendant are pending appeal, then they have already conceded that nothing has "... already been decided ...".

13. MTD misstates facts and the meaning of case precedents relative to *Res Judicata*, as articulated by Appellate Courts in South Carolina, which are clearly contrary to Defendant's assertions. The doctrine of *Res Judicata* is inapplicable in C1384. As stated in the seminal case of *Nelson v. QHG of South Carolina Inc.*, 580 S.E.2d 171, 354 S.C. 290 (2003), the Court of Appeals of South Carolina reversed and remanded granting by a circuit court of defendants' motion to dismiss, where this is shown related to *Res Judicata* (emphasis added):

"had its origin in the principle that it is in the public interest that there should be an end of litigation and that **no one should be twice sued** for the

same cause of action. First Natl. Bank v. United States Fid. & Guar. Co., 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945)"

14. Clearly, here the Defendants are different, and the basis of the Complaint includes multiple causes of action which differ from those of the prior action. Thus, not only were the claims different but the claims in C1384 seek different relief(s).

15. Rationale behind *Res Judicata* is to not try twice issues that were previously litigated. "*Res judicata* ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues." James F. Flanagan, South Carolina Civil Procedure 642 (2d ed. 1996) (*Nelson v. OHG, infra*). Thus, there is no issue of preservation of judicial economy by virtue to C1384. Accordingly, various claims in MTD regarding *Res Judicata* must fail.

16. Several other points apply to C1384, fully substantiated by case precedents:

16a) no adjudication of the meritorious issues;

16b) the Court of Appeals of South Carolina affirmed that a final order is required (emphasis added):

... The court concluded *res judicata* did not apply because the order entered in the 1978 case was not a valid final order since the court at that time did not comply with the applicable statute and made no finding that the settlement was "a fair one, in the best interests of the minor, and it was not approved by [the court]." *Jennings v. Dargan*, 417 S.E.2d 646, 308 S.C. 317 (S.C. App. 1992)

16c) these points are fully substantiated by case precedents (see Exhibit OP.7).

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

17. Since no decisions from any previous actions are known to Plaintiff, and Defendant admits Collateral Estoppel: "... prevents a party from relitigating an issue that was decided in a previous action ...", then a claim of "re-litigating" is false. No judgments exist from the

referenced case: C1501, other than a wrongful granting of Summary Judgment against Plaintiff; see Appeal 2020-000506, where Plaintiff's Brief cites many errors of law associated with such granting. This Appeal is pending at this time. Plaintiff believes reversal of Summary Judgment will be forthcoming from the Appellate Court, which will result in a decision favorable to Plaintiff. However, no decision exists at this time.

18. The MTD argument that Collateral Estoppel applies in C1384 is not supported by evidence, facts, nor by case precedents, being clearly articulated by Appellate Courts in South Carolina, as explained in *Beall v. Doe*, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984; see Exhibit OP.8). It is abundantly clear from this black-letter precedent that claims of Collateral Estoppel do not apply, on multiple bases, under facts of C1384. The party asserting collateral estoppel must prove that they were either a party to the action, or in "privity" with such party. Neither applies in C1384. Thus this claim has no merit.

19. A **non-factual contention** that the Order in C1501 "... unequivocally found that membership of WHOA voted to indemnify the individual defendants from Case 2017-CP-23-06301 ..." was **proven false** as shown by Exhibit 13 as filed with SUC which showed on its face:

Due by Friday, November 9th

EXHIBIT 13

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

The Association shall indemnify the 2017 Board Members ...

as **further proven false** by Complaint par. 43, and Exhibit 17 - an Affidavit attesting to **only 29 "FOR" votes cast by Members** – short of the required 34 - which showed (emphasis added):

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

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

- Ballot #1 (indemnification) – PASSED
 - 53 FOR (29 returned and 24 Board Proxies)

20. A **non-factual contention** that the Order in C1501 "... further held the membership voted to pay the legal fee invoice submitted by MTB through a payment plan. ..." was similarly **proven false** as shown by Exhibit 5 as filed with SUC which showed on its face:

Due by Friday, November 9th

EXHIBIT 5

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

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

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

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

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

- Ballot #2 (Payment Plan) – PASSED
 - 56 FOR (32 returned and 24 Board Proxies)

21. Plaintiff contends no legal basis nor authority exists related to his Complaint that requires specification about immaterial and impertinent supposition, related to which claims are being brought against The Board individually and/or derivatively, which is also irrelevant.

22. None of Defendant's Exhibits A, B, nor C, which contain statements of dismissal, without adjudication on the merits of Plaintiff's prior cases, factually exhibit relevant nor pertinent information. Plaintiff has objected on the Court Record to the practice of Counsel writing Orders which are used as "soapboxes" for their positions, where very little akin to Order content was stated by Judges during hearings, but when thereafter the Judge simply signs the proposed Order without modification. The same facts and allegations against the Board were not brought for this C1384, which is captioned "Breach of Contract", nor for cases (as 1b and 1c):

1b) 2019-CP-23-00269: ... "Verified Complaint for Declaratory Judgment and Injunctive Relief (non-Jury)" ...;

1c) 2019-CP-23-01501: ... "Verified Complaint for Breach of Covenants, and Breach of Fiduciary Duty" ...;

Dismissal of all cases was unlawfully and wrongfully done, as is clearly apparent from Court Records, as well as reiterated in the "Record on Appeal" for appealed cases.

C) Plaintiff Possesses Standing to Bring a Derivative Suit

23. Plaintiff documented evidence showing support for him by six-other Members in Figure 1 as attached to SUC. This meets all requirements of Rule 23, SCRCP, giving Plaintiff standing to bring a derivative suit. MTD erroneously shows:

... Plaintiff has failed to meet the requirements of Rule 23, SCRCP, and therefore lacks standing to bring a derivative suit. ...

24. Plaintiff does not need to show support from all Members, nor from any-fixed number of Members to be able to state, as in the caption to C1384: "... and on behalf of other-similarly-

situated Members ...". MTD erroneously shows:

... Plaintiff does not fairly and adequately represent the members of the Woodington Homeowners' Association, Inc., ...

25. Plaintiff exhaustively has documented evidence in SUC and its Exhibits, which shows no support for the Board from a majority of Members. All recent ballot results lack approval from a majority of Members, to which Defendants themselves admit as Plaintiff has documented. In violation of NPCA Section 33-31-831(f), the Board – not the Members – voted to “overwhelmingly” approve recent ballots. MTD erroneously shows:

... Notably, the members of Woodington Homeowners' Association, Inc. voted overwhelmingly to ratify many of the issues alleged by Plaintiff in this suit, and such ratification being noted and identified in plaintiff's Complaint.

Defendants deny documented evidence with their-false claim of “... such ratification being noted and identified in plaintiff's Complaint. ...” From Plaintiff's perspective and in his opinion, such-false claim is akin to prevarication.

26. The fact that the Board has continuously acted to smear Plaintiff, and thus to brainwash other Members into thinking that Plaintiff is an enemy who acts against the lawful operation of WHOA, is the reason that the Board engaged a law firm and convinced other Members to act as Plaintiffs. Indeed upon query from Plaintiff, the Board facetiously said they “... know nothing ...” about the class-action lawsuit. There is little chance that such suit can qualify as a class action and become certified. This suit is not certified at this time. MTD erroneously shows:

... In fact, a class action suit has been brought against the plaintiff by members of the WHOA, entitled: Beverly Taylor, Marvin Taylor and Ada Alvarez, individually and on behalf of all similarly situated individuals v. Raymond Wedlake, C.A. No.: 2020-CP-23-01458.

As such, the bringing of a suit against Plaintiff is irrelevant, immaterial, and scandalous matter which must be stricken from MTD pursuant to Rule 12(f), SCRCP.

27. No non-factual contentions, nor any contentions which are prevarications, should lead to dismissal of Plaintiff's claims related to the Board's-allegedly-unlawful payment of legal fees.

CONCLUSION

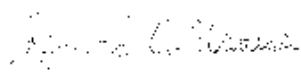
THEREFORE, for reasons stated herein, Defendant's MTD must be **DENIED**.

Additionally, Plaintiff asserts that his underlying case has validity, and merit, and asks the Court to appreciate that alleged-unlawful actions perpetrated by the Board upon Members must not be allowed to continue. Plaintiff contends that all claimed grounds for dismissal are unfounded, and further MTD must be considered as a "Motion to Dismiss in Part". Plaintiff has cited lawful requirements to which the Board has not complied, and brought evidence showing unlawful actions by the Board, which have been perpetrated upon Plaintiffs.

The moving party with their MTD makes no statement about being entitled to a judgment as a matter of law. In this "Memorandum in Opposition ...", Plaintiff raises many genuine issues as to material fact that are in dispute. Black-letter precedents as enunciated by Appellate Courts of South Carolina, relative to claims of *Res Judicata* and Collateral Estoppel, make clear these grounds are without merit, under documented evidence and facts, for C1384.

Court policy in South Carolina is to permit liberal reading and construction of pleadings to permit claims to be addressed on their merits, and policy further supports the clear conclusion that this Court must **DENY** Defendant's MTD.

Dated this 16th day of November, 2020.


Raymond A. Wedlake, Plaintiff (*Pro Se*)
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864-254-9262 wedlakera@gmail.com

ATTACHMENT IB.8 - Opposition to Motion to Dismiss - State Farm

STATE OF SOUTH CAROLINA	)	
	)	2020-CV-23-10201384
COUNTY OF GREENVILLE	)	
	)	<u>CIVIL CASE NUMBER</u>
Raymond A. Wedlake, as a Member of	)	
Woodington Homeowners' Association, Inc.	)	IN THE MAGISTRATE'S COURT
and on behalf of other-similarly-situated Members	)	
of Woodington Homeowners' Association, Inc.	)	
PLAINTIFFS	)	MEMORANDUM IN OPPOSITION
VS.	)	
	)	TO
Board of Directors of Woodington Homeowners'	)	
Association, Inc., comprised of Mona Craigo,	)	STATE FARM
Edward Decker, and Sandra LaCroix at the time	)	
of filing	)	FIRE AND CASUALTY COMPANY'S
AND	)	
	)	NOTICE OF MOTION
McCabe, Trotter & Beverly, P.C.	)	
AND	)	AND
	)	
State Farm Fire and Casualty Company	)	MOTION TO DISMISS
DEFENDANTS	)	

COMES NOW Raymond A. Wedlake, Plaintiff (Pro Se), and brings this "Memorandum in Opposition to State Farm Fire and Casualty Company's Notice of Motion and Motion to Dismiss", stating as follows.

Acceptance by the Court of "... Motion to Dismiss" (MTD) by State Farm (SF) necessitated this "Memorandum in Opposition ..." (MOP). It is clear from MOP content, as supported by facts of this Case, that all claimed grounds for dismissal are unfounded. Further, MTD must be considered as a "Motion for Dismissal in Part". Where there are multiple causes of action, as here, as the Court is well aware, a motion for dismissal should not be viewed as an "all or nothing" disposition. The Court perhaps may decide to dismiss one claim, but not to dismiss the entirety of Plaintiff's case against SF in the execution of, and in the serving of, the interests of

justice. Plaintiff has cited lawful requirements to which SF has not complied.

Multiple-Genuine Issues of Material Fact Exist and are in Dispute

Plaintiff has brought evidence, for example, showing Breach of Contract by SF, which they deny, that has been perpetrated upon Woodington Homeowners' Association, Inc. (WHOA), members (Members) who are Plaintiffs, which SF denies. Thus, consistent with enunciated policy of Appellate Courts, it is essential that merits of Plaintiff's case against SF be heard. The merits, as supported by evidence, substantially outweigh all claims to dismiss.

By reference, Plaintiff includes his original "Complaint Breach of Contract by the Board; Plus Conspiracy by McCabe to Extort Corporate Funds, and Casting Plaintiff in a False Light", along with its "Supplement to Complaint" (Complaint Plus Supplement, CPS), along with its supporting Exhibits and Affidavit, as well as his "First Amended Complaint" (FAC), in their entirety.

STANDARD FOR REVIEW OF MOTION TO DISMISS

The standard based upon Rule 12(b)(6), SCRCF indicates that only in the absence of "... facts sufficient ..." can this rule be applied. Plaintiff's FAC cited "Facts / Breach of Contract by SF" in paragraphs 4 – 10 (pp. 3 – 6). Plaintiff's FAC cited "Causes of Action" in paragraphs 25 – 29 (pp. 12 – 13). All these Facts form a set of evidence more than sufficient to constitute causes of action as cited. Rule 12(b)(6) shows (excerpted, emphasis added):

RULE 12 DEFENSES AND OBJECTIONS ...

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

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

STANDARD FOR REVIEW OF MOTION TO DISMISS IN FEDERAL COURT

The standard for analysis of a Motion to Dismiss in Federal Court is set forth in *Erickson v. Pardus*, 127 S. Ct. 2197, 167 L.Ed.2d 1081, 551 U.S. 89, 75 BNA USLW 3643 (2007) (*Erickson*).

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

The Court must take a liberal view of the pleadings, especially, as here, where the petitioner is *Pro Se*. As the Court also stated in *Erickson*:

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

In the event that the Court may interpret MTD as translated into a motion for Summary Judgment, since Plaintiff requested a “... full and fair opportunity to complete discovery ...” via “Motion for a Continuance to Postpone a 11/24/2020 Scheduled Hearing to Allow

Discovery” dated 10/30/2020, it is Plaintiff’s understanding that (excerpted, emphasis added):

Further, “[s]ummary judgment is a drastic remedy and **must not be granted until the opposing party has had a full and fair opportunity to complete discovery.**” *Dawkins v. Fields*, 354 S.C. 58, 69 (S.C., 2003)

and

Summary judgment is not appropriate where further inquiry into the facts is desirable to clarify application of the law. *Evening Post Publ’g Co. v. Berkeley County Sch. Dist.*, 392 S.C. 76, 82 (S.C., 2011)

Per the Supreme Court of South Carolina, Summary Judgment is “Premature” when (excerpted, emphasis added):

“Since it is a drastic remedy, summary judgment “should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.” *Watson v. Southern Ry. Co.*, 420 F. Supp. 483, 486 (D.S.C. 1975); see also *Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E. (2d) 728, 729 (1986) (“an extreme remedy to be cautiously invoked”). This means, among other things, that **summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.** 10A Wright & Miller, *Federal Practice and Procedure* § 2741, p. 543 (1983); 6 Moore’s *Federal Practice* ¶ 56.02[6], p. 56-39 (2d) ed. 1990); see, e.g., *First Chicago Int’l v. United Exchange Co.*, 836 F. (2d) 1375 (D.C. Cir.1988); *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 756 F. (2d) 230 (2d Cir.1985); *Tyler v. City of Enterprise*, 521 So. (2d) 951 (Ala. 1988); *Gangadean v. Leumi Fin. Corp.*, 13 Ariz. App. 534, 478 P. (2d) 532 (1970); *Commercial Bank of Kendall v. Heiman*, 322 So. (2d) 564 (Fla. Dist. Ct. App. 1975); *Board of Education v. Van Buren & Firestone, Architects, Inc.*, 165 W. Va. 140, 267 S.E. (2d) 440 (1980); cf. Rule 56(f), S.C.R.C.P.[4] [as cited from: *Baughman, et al. v. American Telephone and Telegraph Company, et al.*, 410 S.E.2d 537, 306 S.C. 101 (1991), Supreme Court of South Carolina.]

ADMINISTRATIVE HISTORY

Plaintiff’s original CPS for this case (C1384) was dated 06/10/2020, with FAC dated 09/28/2020. Plaintiff received notice from the Court of MTD being made part of a Hearing scheduled for 11/24/2020, with the result that this MOP is consequently brought.

ARGUMENTS
MTD'S CLAIMS ARE ERRONEOUS AND/OR REFLECT MISINFORMATION

1. Plaintiff has standing to sue via payment of dues as a Member of WHOA, that pays the insurance-coverage premium to SF. Plaintiff thanks SF for verification that it was the Board of WHOA, not Plaintiff, who incurred legal fees for "... payment of legal fees incurred by the [W]HOA Board ...". SF admits in MTD that an insurance contract (ICO) exists between WHOA and SF "... HOA Board is insured by State Farm ...". Plaintiffs are part-owners and therefore policyholders of this ICO due to their payment of dues, which are used to make premium payments to maintain the ICO in force. Consequently, Plaintiffs have a vested interest that SF perform according to ICO provisions, and is a Third-Party Beneficiary under such Contract with Standing to Sue.

Plaintiffs are Third-Party Beneficiaries

Indeed, regardless of averments found in MTD is the fact that Plaintiffs have an indirect action against State Farm. Plaintiffs are Members of WHOA and as such are **third-party beneficiaries**, thus able to enforce the terms of the Contract.

The Appellate Courts of South Carolina have made clear that a non-party may enforce contractual terms that intentionally provide her direct benefits. See, *e.g. Kingman v. Nationwide Mut. Ins. Co.*, 243 S.C. 405, 412, 134 S.E.2d 217, 221 (1964) (emphasis added):

"We have held in numerous cases that a **contract** between two persons, for the benefit of a third, **even though such third party be not named therein, can be enforced by such third party.**"; *Jennings v. First of Ga. Underwriters Co.*, 283 S.C. 455, 457, 322 S.E.2d 694, 695 (Ct. App. 1984) (explaining [429 S.C. 508] contracts between two persons for the benefit of a third **can be enforced by the third person even though she is not named therein**)...*Beverly v. Grand Strand Reg'l Med. Ctr., LLC*, 429 S.C. 502, 839 S.E.2d 468 (S.C. App. 2020)

SF has **not** performed according to ICO, taking “optional” elections (as alleged by SF) to provide coverage in Breach of Contract under the ICO, because Plaintiffs did not claim “monetary damages” which are an ICO requirement before coverage can be provided.

MTD states irrelevant, impertinent, and scandalous content that “... Board are not employees of State Farm and State Farm is not vicariously liable for their conduct. ...”, which must be stricken from MTD pursuant to Rule 12(f), SCRPC. MTD shows (emphasis added):

1. This matter arises out of a dispute between the plaintiffs and the Board of Directors for the Woodington Homeowners Association (“the HOA Board”) regarding the **payment of legal fees incurred by the HOA Board** in defending several prior lawsuits filed by the plaintiffs. **The HOA Board is insured by State Farm.** However, the members of the HOA Board are not employees of State Farm and State Farm is not vicariously liable for their conduct.

2. The ICO does not provide an option for SF to agree to provide a defense, and therefore such agreement is a Breach of Contract, which will cause damage to Plaintiff’s via subsequent increases of premium to maintain ICO in force. MTD shows (emphasis added):

2. Upon the filing of this lawsuit, **State Farm agreed to provide the HOA Board with a defense** in this action under a reservation of rights.

No such language “... reservation of rights ...” appears in the ICO; see Exhibit D as attached to FAC. SF is contractually limited to pay only “... those sums that the insured becomes legally obligated to pay as damages ...”. Since FAC requests **ZERO** dollars in damages, then no damages exist, and consequently SF can never come into a position of obligation to pay damages. The ICO confirms for SF that “... we will have no duty to defend the insured ...” as related to C1384 since this suit seeks **no** damages, and consequently “... this endorsement does not apply ...”. Plaintiff reiterates content from Exhibit D - Directors and Officers Liability (excerpted, emphasis added):

CMP-4814 DIRECTORS AND OFFICERS LIABILITY

This endorsement modifies insurance provided under the following:
BUSINESSOWNERS COVERAGE FORM

1. The following coverage is added to **SECTION II - LIABILITY:**
DIRECTORS AND OFFICERS LIABILITY

a. When a Limit Of insurance is shown in the Declarations for Directors And Officers Liability, **we will pay those sums that the insured becomes legally obligated to pay as damages** because of a "wrongful act" to which this endorsement applies.

We will have the right and duty to defend the insured, by counsel of our choice, against any "suit" seeking those damages. However, **we will have no duty to defend the insured against any "suit" seeking damages to which this endorsement does not apply. ...**

3. MTD attempts to gloss over that Plaintiff's CPS effectually sought "no damages" from the start. CPS sought \$1 in Nominal Damages, where Plaintiff was appalled that SF's position was that this minuscule and insignificant amount was claimed to be "damages" by SF, and thus they were contractually obliged to "... defend the insured ...". Such position to continue to defend after FAC with "no damages" is a Breach of Contract by SF. MTD erroneously shows:

3. The plaintiffs subsequently filed the amended complaint in this action. In the amended complaint, the plaintiffs amend their allegations against the HOA Board in an attempt, based on the plaintiffs' interpretation of the State Farm policy, to remove any potential insurance coverage afforded the HOA Board.

4. MTD does not cite any provision of the ICO that "... triggers coverage ..." resulting from FAC. With no effective ICO provision so stating, it must be concluded that MTD erroneously shows:

4. Likewise, in the amended complaint, the plaintiffs assert a breach of contract claim against State Farm for providing a defense to the HOA Board on the grounds that the amended complaint allegedly no longer triggers coverage under the State Farm policy.

5. Plaintiff contends that as a policyholder and third-party beneficiary, he has every right to hold SF accountable to provisions found in the ICO. No claim was made in FAC that Plaintiffs are insured under the ICO. Attempting to prosecuting a claim against the Board would be pointless, and dishonest. SF has breached provisions of the ICO, and therefore Plaintiffs as policyholders rightfully brought a direct action against SF. In a worst case, Plaintiffs are “third-Party Beneficiaries” and thus have standing to sue. MTD shows erroneously, in part:

5. The plaintiffs are not insureds under the State Farm policy. Rather, they are third-party claimants. The plaintiffs have not prosecuted their claim against the HOA Board in this action to conclusion and **have no direct action against State Farm.**

6. MTD contends, but without supporting evidence and without any stated rationale, where MTD erroneously shows:

6. As such, the plaintiffs have no claim against State Farm and cannot prosecute the current action against it.

where thus Plaintiff finds “... no claim ...” and “... cannot prosecute ...” to be irrelevant, immaterial, and scandalous matter which must be stricken from MTD pursuant to Rule 12(f), SCRPC.

7. “Standard of Review” sections of MOP addressed MTD’s misdirected claims pursuant to Rule 12(b)(6). MTD is vague and ambiguous with references to “... common and statutory laws ...”, stating no legal grounds for dismissal. MTD presumptively shows:

7. This motion is made pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and is based upon that rule, the facts of this case and the common and statutory laws of the State of South Carolina.

8. Pursuant to SC Code of Laws: "Uniform Commercial Code—Sales", Section 36-2-210, lawful justification for Plaintiff to require and to enforce conformance to the contract by SF is noted. Pursuant to Section 36-2-301, SF as seller of their goods (ICO) has an obligation to "... deliver ... in accordance with the contract. ..." (excerpted, emphasis added):

SECTION 36-2-210. Delegation of performance; assignment of rights.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

SECTION 36-2-301. General obligations of parties.

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

9. Plaintiff contends that a false claim for payment has been presented to SF by parties involved with this action, because contractual provisions required before payment can be made have been ignored or breached, based upon information and belief, pursuant to SC Code of Laws, Section 38-55-170. A false claim for payment is a misdemeanor triable in magistrates court (excerpted, emphasis added):

Section 38-55-170. Presenting false claims for payment.

A person who knowingly causes to be presented a false claim for payment to an insurer transacting business in this State, ... or who knowingly assists, solicits, or conspires with another to present a false claim for payment as described above, is guilty of a:

(3) **misdemeanor triable in magistrates court** or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, **if the amount of the claim is two thousand dollars or less.** Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both.

CONCLUSION

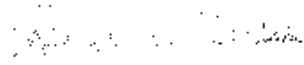
It is abundantly clear that Plaintiffs' underlying case has validity, and merit. The Court is asked to appreciate that a contract exists between SF and Plaintiffs, who are owners of the ICO provided to WHOA. Or, at a minimum, that Plaintiffs have standing as Members of WHOA, where Member dues pay the premium on the Policy. Black-letter statute demands that SF has a duty to perform according to contractual provisions. Plaintiff contends that all claimed grounds for dismissal are unfounded, and further MTD must be considered as a "Motion to Dismiss in Part". Plaintiff has cited lawful requirements to which SF has not complied, and brought evidence showing breach of contract by SF in FAC.

The moving party with their MTD makes no statement about being entitled to a judgment as a matter of law. In this MOP, Plaintiff raises many genuine issues as to material fact that are in dispute, under documented evidence and facts for C1384.

Court policy in South Carolina is to permit liberal reading and construction of pleadings to permit claims to be addressed on their merits, and policy further supports the clear conclusion that this Court must **DENY** Defendant SF's MTD.

THEREFORE, based upon CPS, FAC and their Exhibits and Affidavit, as well as arguments found here in MOP and Exhibit D, with the addition of matter that may be presented at a Hearing on MTD and other pleadings that may be made, Plaintiff prays for **DENIAL** of Defendant SF's MTD.

Dated this 19th day of November, 2020.


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

ATTACHMENT IB.9 - Opposition to Defendants' Proposed Order

STATE OF SOUTH CAROLINA	)	<u>2020-CV-23-10201384</u>
	)	
COUNTY OF GREENVILLE	)	CIVIL CASE NUMBER
	)	
Raymond A. Wedlake, as a Member of	)	
Woodington Homeowners' Association, Inc.	)	
and on behalf of other-similarly-situated Members	)	IN THE MAGISTRATE'S COURT
of Woodington Homeowners' Association, Inc.	)	
Plaintiffs	)	
vs.	)	
Board of Directors of Woodington Homeowners'	)	MEMORANDUM IN OPPOSITION
Association, Inc., comprised of Mona Craig,	)	
Edward Decker, and Sandra LaCroix	)	
at the time of filing	)	TO DEFENDANTS'
and	)	
McCabe, Trotter & Beverly, P.C.	)	PROPOSED ORDER
and	)	
State Farm Fire and Casualty Company	)	
<u>Defendants</u>	)	

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*), registering objections by bringing this "Memorandum in Opposition ..." (MOP) to a proposed Order (PO). The PO is titled: "Order Granting Defendants' Motion to Dismiss", which was submitted to the Honorable Judge Laura Saunders on 12/11/20, after a hearing of 11/24/20 (Hearing). Plaintiff reviews facts and evidence supporting such facts. No statement of facts being in dispute was voiced in prior pleadings nor during the Hearing. MOP documents many points found in the PO as invalid. MOP requests invalid content in the PO must be stricken pursuant to Rule 12(f), SCRPC (emphasis added):

(f) Motion to Strike. Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

ADMINISTRATIVE HISTORY

Dated 06/10/20, Plaintiff submitted an original Complaint plus Supplement (CPS) for two Defendants:

- a) Board of Directors (Board) of Woodington Homeowners' Association, Inc. (WHOA); and,
- b) McCabe, Trotter & Beverly, P.C. (MTB).

Complaint included a "Supplement to Complaint" (SUC), being completely supported by 46 Exhibits and Affidavit. Dated 09/28/20, a "First Amended Complaint" (FAC) was submitted supported by an additional 17 Exhibits. FAC added a third Defendant: State Farm Fire and Casualty Company. FAC was brought as an addendum to CPS, but FAC did not annul nor subjugate CPS in any manner. CPS stands as a matter before the Court.

Each Defendant submitted a "... Motion to Dismiss ..." (MTD) before the Hearing. Plaintiff submitted a MOP for each MTD, respectively. In the Hearing, dismissal of the entirety of Plaintiff's case (C1384) was verbally granted.

ARGUMENT

A) PO Contains Misinformation and Misstatements, or Incorrectly Stated Conclusions

1. Granting of MTD's must pertain to all of CPS, Exhibits, Affidavit, FAC and its Exhibits, MOP's, and all pleadings and contents of Record. Plaintiff stated in FAC (emphasis added):

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

Granting cannot be based upon FAC solely, as erroneously stated in PO :

THIS MATTER IS BEFORE the court on the defendants' motions to dismiss the plaintiffs' amended complaint.

For the foregoing reasons, the Court GRANTS the defendants' motions to dismiss. IT IS HEREBY ORDERED that the plaintiff's amended complaint be dismissed in its entirety with prejudice.

2. Plaintiff contends all parts of "Background" content that are redundant, immaterial, impertinent or scandalous matter must be stricken from PO pursuant to Rule 12(f), SCRC. Content in an Order, such as "Background" that is of a "soapbox" nature is immaterial, impertinent or scandalous matter that must be stricken.

2a) PO prevaricates when it states: "The genesis of this lawsuit and ... stem from a 2016 dispute ... sailboat that plaintiff had painted on his garage door." Such 2015-paint dispute was amicably resolved in 2016, as was documented in paragraph 8 of "Memorandum in Opposition to Defendants' Board ... Motion to Dismiss Plaintiff's Complaint", as shown by evidence in Exhibit OP.5; PO is factually inaccurate, since it is a matter of Court Record that at no time nor in any instance does any case refer to a "garage door";

2a.1. In the trial of a referenced case: 2017-CP-23-06301 (C6301), Counsel for the Board did not make a motion requesting an involuntary non-suit. Counsel asked for a "... directed verdict ...", which the Judge on his own volition translated into "involuntary non-suit". The Judge did so only by ignoring evidence, and documents, that were present in the Court Record. Evidence showed violation by the Board of By-Laws provisions. Other supporting evidence was contained in multiple exhibits, which was also ignored;

2a.2. As is a matter of Court Record, the Board's prior MTD in C6301 was **DENIED**

by Order of 01/23/18. In fact, the Court of Appeals not only accepted the Appeal on

C6301, but also denied a subsequent MTD by Respondents;

Consequently, this-background content must be stricken pursuant to Rule 12(f), as erroneously stated in the PO :

The genesis of this lawsuit and the multiple other lawsuits plaintiff has filed against the WHOA Board, stem from a 2016 dispute plaintiff had with the Woodington Homeowners Association ("WHOA") Architectural Committee over a sailboat that plaintiff had painted on his garage door. Plaintiff filed a lawsuit against the WHOA Board ... following plaintiff's presentation of his case at trial ... issued an Order granting the WHOA Board's motion for an involuntary non-suit ... Court granted defendants' motion to dismiss plaintiff's case. ...

2b) PO prevaricates when it states: "... the same exact claims ...", as proven by evidence presented herein via Exhibits OD.1 (C6301), OD.2 {case 2018-CP-2303758 (C3758)}, OD.3 (2019-CP-23-00269), OD.4 (2019-CP-23-01501), and Exhibit OD.5 (this-instant C1384):

2b.1. Inspection of Exhibit OD.5 as compared to prior cases (OD.1 – OD.4) shows no claims in C1384 are "... the same exact claims ..." to any previous case;

2b.2. Only where claims are similar enough to be deemed "... the same ..." can a contention be made that "... re-litigate the issues ..." applies;

2b.3 Only those issues that the Court deems are re-litigation can be dismissed; many new issues in C1384 can not be dismissed based upon such claim;

2b.4 For the Court to dismiss the entirety of all of C1384 suggests a lack of knowledge and understanding that new issues in C1384 must be recognized, contrary to the PO;

2b.5 In C3758, no issues were litigated; C3758 was settled by mutual agreement and was not dismissed per Court Order;

Consequently, this-background content must be stricken, as erroneously stated in PO :

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

2c) The insurance contract (ICO) states no provisions such as "... reservation of rights ...", and thus does not allow Defendant State Farm (SF) "... to provide the HOA Board with a defense ..." pursuant to such claim. Plaintiff proved that the ICO (Exhibit D to FAC) requires "... monetary damages ..." to exist before coverage is triggered under a State-Farm policy.

Consequently, this-background content must be stricken, as erroneously stated in PO :

State Farm Fire and Casualty Company ("State Farm") is the liability insurer for WHOA. Upon the filing of this lawsuit, State Farm agreed to provide the HOA Board with a defense in this action under a reservation of rights. ... in the amended complaint, the plaintiff asserts a breach of contract claim against State Farm for providing a defense to WHOA on the grounds that the amended complaint allegedly no longer triggers coverage under the State Farm policy.

B) Rule 12(b)(6) Does Not Apply to C1384

3. PO plainly states that the Court "... may dismiss a claim when the defendant demonstrates the plaintiff's "failure to state facts sufficient to constitute a cause of action" in the pleadings filed with the court ...". Plaintiff filed CPS and FAC, both of which stated "... facts sufficient ..." (SUC par. 28-78; FAC par. 11-24) to constitute a cause of action (SUC par. 87-96; FAC par. 25-29) to fully annul any Rule 12(b)(6), SCRCF claims.

4. PO plainly states "... court must grant the motion if the facts alleged in the complaint and the inferences reasonably deduced therefrom do not entitle the plaintiff to relief on any theory of the case. ...". Plaintiff contends that no reasonable Judge nor jury would find any mandate for dismissal, because several theories of the case entitle the plaintiff to relief.

5. During the Hearing, 12(b)(6) was not important enough for any of Defendants' counsel (Counsel) to mention, so therefore all 12(b)(6) content in the PO must be stricken pursuant to Rule 12(f).

C) Collateral Estoppel Cannot Be Applied to New Issues Found in C1384

6. Documented evidence (Exhibits OD.1 – OD.5) brought with this MOP proves that Counsel misrepresented issues found in C1384 by characterizing all issues as “re-litigation”. PO admits that it is only “... Plaintiff’s claims related to invoicing and payment of legal fees for Case 2017-CP-23-06301 must be dismissed. ...”. That is, other claims that plainly are not related to “... invoicing and payment of legal fees ...” cannot be dismissed based upon any claim of collateral estoppel. Clarification was given as found above: paragraphs 2b.1 – 2b.4.

D) Casting Plaintiff in a False Light

7. Though there may have been confusion as to limitations of South Carolina “Causes of Action”, all “False Light” claims are valid, and unethical misconduct by MTB was documented in Exhibits to CPS. This Court is probably aware that other jurisdictions recognize a “False Light” claim. South Carolina recognizes such claim under a guise of “Breach of Privacy”, which was rejected by this Court via dismissal. In “Memorandum in Opposition to Defendant McCabe Trotter & Beverly, PC’s Motion to Dismiss” (MOPMTB), Plaintiff plainly stated:

1. ... Plaintiff knows of no law, Court rule, nor any precedent which precludes presentation of evidence to form a “preponderance of evidence” for his case. It is therefore moot and academic as to whether or not a “False Light” cause of action exists, because South Carolina (SC) courts have viewed other cases either as claims for defamation or as claims related to breach of privacy.

E) Conspiracy

8. PO prevaricates when as related to “special damages” it states “... Plaintiff has failed to state with specificity ...” and “... Plaintiff has failed to specifically state ...”. In MOPMTB, Plaintiff showed an entire section titled: **“(B) Plaintiff’s Complaint Alleges Special Damages with Specificity”**, so therefore all such “failed” content in the PO must be stricken under Rule 12(f), where the PO shows:

... dismissed pursuant to Rule 12(b)(6) because Plaintiff has failed to state with specificity what special damages he suffered as a result of an alleged conspiracy. ... Additionally, Plaintiff has failed to specifically state the special damages allegedly suffered as required by Rule 9(g), SCRC.

During the Hearing, neither of Rule 12(b)(6) nor Rule 9(g) was important enough for any Counsel to mention, which affirms application of Rule 12(f) to strike such portions found in the PO.

F) Standing to Bring a Derivative Suit

9. Plaintiff has standing to bring a derivative suit because evidence was attached to CPS that showed support for Plaintiff by six-other WHOA members (Members); see Figure 1 - “Six Member Statements Denying Defendants as Proxy, November 9, 2018 Ballots”. PO prevaricates when it suggests that a **MINORITY** of Members who support the Board (less than a required 34 for a majority), means that Plaintiff cannot recognize other similarly-situated Members to satisfy requirements for a derivative suit. In MOPMTB, Plaintiff showed an entire section titled: **“(G) Complaint Showed Proven Standing to Bring a Derivative Suit”**, so therefore all such contrary content such as “... is not representative of the position of the WHOA members ...”, and “... not allowed to bring this suit derivatively. ...”, in the PO must be stricken under Rule 12(f).

10. Plaintiff's C1384 was brought both **individually** and **derivatively**, where the caption shows (emphasis added):

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

10a) whether or not Plaintiff has standing to bring a derivative action is immaterial, impertinent, and scandalous matter, and cannot be used by the Court to deny Plaintiff's- "Covenants" -given right to bring an **individual** action; see "Standing" section in CPS, par. 2;

10b) PO misleads by stating "... plaintiff cannot bring a derivative suit on behalf of a non-profit corporation as a *pro se* litigant. ...", because C1384 is brought by Plaintiff as a Member, and on behalf of Members who are proven by Figure 1 to be similarly situated. C1384 is not brought "... on behalf of a non-profit corporation ...", Plaintiff is not "... attempting to represent the corporate entity ...". Consequently, these claims and all associated claims in the PO are immaterial, impertinent and scandalous matter that must be stricken pursuant to Rule 12(f);

10c) the fact that Plaintiff brings C1384 as a *Pro Se* litigant is immaterial, impertinent and scandalous matter that must be stricken pursuant to Rule 12(f);

10d) as a citizen of the United States (US), state laws cannot be used to deny Plaintiff's rights under the "Constitution of the US", nor to deny "... due process ...", nor to deny "... equal protection of the laws ..." from Plaintiff. The "Bill of Rights" via Amendment XIV shows (emphasis added):

AMENDMENT XIV Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State

wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Plaintiff does not need to possess a law license to enjoy US Constitutional rights. Consequently, all claims that pertain to "... state laws ..." being used to "... abridge the privileges or immunities ..." of a citizen of the US represent immaterial, impertinent and scandalous matter the must be stricken pursuant to Rule 12(f).

11. In MOPMTB, Section G gave counter arguments related to "soapbox" content found in the PO as regards "... class action ...", and "... news story ...". Consequently, in the PO all such claims represent immaterial, impertinent and scandalous matter the must be stricken pursuant to Rule 12(f).

G) Plaintiff is a Policyholder, and thus is a Party to the State Farm Insurance Policy

12. Plaintiff is a party who pays (a part of) the insurance premium, and is therefore an owner of the policy, where the term "policyholder" is used here. Plaintiff believes that argument which contends that a policyholder has no standing to expect the insurance provider to comply with contractual requirements is tacitly ridiculous. When the provider willfully and knowingly elects to breach contractual-policy provisions, then the policyholder has every right and standing to bring an action to enforce the contract via a Breach of Contract suit. This is the situation, here, but the PO attempts to mislead with statements like "... policy was issued to WHOA. ...".

WHOA is comprised of its property-owner Members. WHOA does not represent any other other entity, nor any other corporate interest, nor any other parties, other than its Members.

Consequently, Plaintiff as a Member is a party to the contract. The PO admits that (emphasis added) "... an injured person **who is not a party** to the insurance contract **has no standing** to litigate a dispute between an insurer and an insured ...". Since Plaintiff **is a party** to the ICO, then he **has standing** to litigate a dispute between the insurer and the insured. Consequently, PO content that denies standing to bring a breach of contract claim is immaterial, impertinent and scandalous matter which must be stricken pursuant to Rule 12(f).

13. SC Code of Laws, Section 38-59-20 (Exhibit OD.6), recognizes Third-Party Claims; in all eight numbered sections of this statute, is seen: third-party claimants, or third-party claims, or third-party liability claims. This alliteration affirms standing of a third-party claimant.

14. The Supreme Court of SC precedent cited in PO "*Park v. Safeco. Ins. Co. of America*", simply does not apply to C1384. *Park* speaks to when a Plaintiff is **not** a party to an ICO. Only when a Plaintiff is **not** a party do establishment of "liability", and "... a judgment ..." become prerequisites. Only when a Plaintiff is **not** a party does it apply "... that he is therefore a stranger to the contract without standing in court", where *Park* shows:

To this complaint Safeco demurs, submitting that the complaint should be dismissed as to it because it appears on the face of the complaint: (1) that **plaintiff is not a party to Safeco's contract of insurance** alleged to protect McCall and the Ford involved in the collision, and has no **rights thereunder until and unless he first establishes liability and obtains a judgment** binding McCall or one protected by Safeco; and, (2) that there is no allegation that plaintiff has procured such judgment and **that he is therefore a stranger to the contract without standing in court.** [*Park v. Safeco. Ins. Co. of America*, 162 S.E.2d 709, 251 S.C. 410 (1968)]

15. The Supreme Court of SC affirms standing of "... an association's members ...":

The three part test for associational standing requires that an association's members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of

individual members in the lawsuit ... [*Carnival Corp v. Historic Ansonborough Neighborhood Ass'n*, 753 S.E.2d 846, 407 S.C. 67 (2014)]

H) Other Arguments

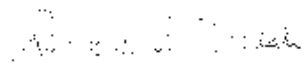
16. Plaintiff voiced objection during the Hearing, about Counsel writing proposed Orders which are used as “soapboxes”, and requested an opportunity to comment, which is fulfilled by this MOP.

17. Dismissal of C1384 in its entirety cannot be justified based upon any legal grounds. Plaintiff requests the Court recognize that only where legal grounds exist to dismiss one, or perhaps a few, of Plaintiff's claims is dismissal of those subset of claims appropriate and proper. Plaintiff emphasizes this point as contained in a “Memorandum in Opposition ... Dismiss”, which was reiterated in the Hearing:

... but I think an important distinction that I point out here is that each of these Motions to Dismiss must be considered as a Motion for Dismissal in part. That is to say that whether certain points are dismissed does not necessarily mean that the entirety of my case should be dismissed. ...
[Transcript of “Magistrate Hearing ...”, p. 41, ll. 1 - 7]

THEREFORE, Plaintiff prays for careful review, and not for a simple “rubber stamp” of the PO, until after undisputed facts that are supported by evidence are clearly understood, and content that was cited under Rule 12(f), SCRPC is stricken, or revised.

Dated this 17th day of December, 2020.


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

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

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

Plaintiff (Pro Se)

vs.

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

and

Doe Entities 1-10, and John & Jane Does 1-10

Defendants

) IN THE COURT OF COMMON PLEAS

) THIRTEENTH JUDICIAL CIRCUIT

) Civil Case No. 2019-CP-23-01501

) MEMORANDUM IN

) OPPOSITION TO DEFENDANTS'

) MOTION FOR

) SUMMARY JUDGMENT

20 FEB 24 AM 10:54
Paul Wickenbaker DDC GVL SC

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*), who disputes and questions the genuineness of Defendants' unsubstantiated claims in their "... Motion for Summary Judgment" (Motion) pursuant to Rule 56, SCRCP.

STANDARD THAT IS TO BE APPLIED

1. The Supreme Court of South Carolina reviewed the granting of summary judgment in *Bennett, et. al. v. Carter, et. al.*, Appellate Case No. 2016-000065, under the same standard applied by the trial court under Rule 56(c), SCRCP. *Quail Hill, LLC v. Cry. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010). The trial court shall grant summary judgment if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving

party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Quail Hill, LLC*, 387 S.C. at 235, 692 S.E.2d at 505 (quoting *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006)). Where, as here, the burden is upon Defendants to show a preponderance of evidence warranting summary judgment; "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.* 381 S.C. 326, 330, 673 S.E. 2D 801, 803 (2009).

THERE ARE GENUINE ISSUES OF MATERIAL FACT

2. The Board makes the bare statement that they did not breach their fiduciary duty, which is wholly inadequate, and goes to the essence which is a question of fact – Plaintiff's Complaint filed on March 23, 2019 was substantiated by specifics statements of violations as supported by Exhibits and Affidavit .
3. Plaintiff makes clear that discovery has not been completed and Mediation has not occurred, in violation of ADR 300-day from filing deadline, so Motion is premature.
4. Plaintiff has been forced to bring actions due to continuing improper Board Governance, and has done so wherever feasible by seeking Declaratory Judgments on a *Pro Se* basis to minimize costs, and to simply get Court input; the allegation that such cases are meant to harass is simply erroneous since Plaintiff's purpose is, and has always been, improvement of WHOA and to assure Governance that complies with South Carolina law, and the By-Laws.

5. The Board, by filling up the Court's time with irrelevant assertions, are seeking to avoid the reality that there is merit in Plaintiff's Complaint, which sets forth facts and causes of action supported by such facts.

5a) The Board is in essence trying to try the case itself with statements of history and facts for the court to decide on the merits rather than address Motion;

5b) The Board is arguing the case, not addressing elements required in a motion for summary judgment;

5c) In what they title "LEGAL ARGUMENT", they assert facts in dispute such as that the Board "properly counted" the ballots..." (p. 7 of "Memorandum in Support of Their Motion for Summary Judgment" (MemoSup))

5d) Assertions speak to the core of Plaintiff's complaint that the action by the Board was improper;

5d1. that the by-laws supposedly "approving" the payment of fees was invalid, where

Exhibit 1 (p. 2) shows:

Defendants' motion (Motion) must be denied on the basis that the cited By-Laws Amendment is invalid, as clarified below. Assuming arguendo such Amendment may be recognized as valid, several other arguments dictate that Motion must be denied:

A. By-Laws Cannot be Used in the Manner Desired by Defendants Without Specific Granting of Authority Stated in Restrictive Covenants;
Additionally, By-Laws Are Invalid When, as Here, They are Inconsistent With Law;

where additional content of Exhibit 1 starting on p. 3 clarifies:

the Board breached the NPCA Section 33-31-140 by denying the definition "Approved by the members"; they cannot act to : "... vote as Proxy for non-voting Members, and then to claim "Member Approval" to further their own, personal interests for their own personal gain;

5d2. That counting as a vote in favor of such payments of ballots not submitted was improper, and that in fact, the requisite number of members (50) did not cast ballots in favor of making such payments, where only 41 Member-ballots were returned as shown by WHOA Minutes of December 6, 2018 (Exhibit 2):

F. Questions

1. Member - "How many ballots were returned?"
 - a) 41 total ballots returned.

all involving questions of fact.

6. Plaintiff disputes that the moving party (Board) is entitled to a judgment as a matter of law:

6a) Statements of issues of law as erroneously raised by Defendants are not appropriate for a motion for summary judgment; they should rather be put into a motion to dismiss, and therefore Defendants filed the wrong motion;

6b) Plaintiff respectfully submits filing of a wrong motion accords that the Court should disregard Defendants' Motion.

7. Plaintiff cites the proper standard, that being per the South Carolina Supreme Court, evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the non-moving party (Plaintiff).

8. Plaintiff's Complaint, filed on March 23, 2019 is supported by Affidavits and Exhibits, which presents several genuine issues as to material facts per "Statement of Facts" paragraphs 19 to 46, which show actionable negligence due to breach of fiduciary duty, where a few selected facts are reiterated here:

29. On February 2, 2018, Plaintiff repeated a demand that the legal invoice not be paid since to do so would:
 - a) be a direct violation of By-Laws-indemnification requirements (Exhibit 4);

- b) be a direct violation of indemnification specifications found in the NPCA (Exhibit 5);
 - c) force an action for breach of covenants and fiduciary duty (Exhibit 6) (Affidavit).
35. Based upon information and belief, Defendants claimed both ballots passed based upon their breach of fiduciary duty by voting "For" as applied to ballots not returned by Members (Affidavit).
 42. On February 15, 2019, Plaintiff informed Defendants of a new homeowner, and they were asked to provide Plaintiff with an updated list of WHOA Members, but in direct violation of the NPCA which requires a Board to supply a Member list on request, Defendants continue to breach their duty by ignoring Plaintiff's request (Affidavit, Exhibit 14).
 43. Since March 9, 2019, when Defendants were asked to provide results from a ballot of February 22, 2019, they continue to breach their duty to respond to Plaintiff's request for information by ignoring it (Affidavit, Exhibit 15).
 44. On March 11, 2019, Defendants received Plaintiff's message which implored them to act in good faith and agree to action to defer this case from being filed:
 "Please accept this last-chance notice and reply affirmatively."
 but further breached their duty by choosing to ignore it, and did not reply (Affidavit, Exhibit 16).
9. Plaintiff supposes several issues that Defense Counsel (Counsel) is likely to spring upon him, where Counsel apparently intends to withhold such issues until just before the Hearing, to allow no time for Plaintiff to prepare arguments in opposition; these supposed issues are:
- 9a) a lawsuit cannot be brought against a Board of Directors (Board);
 - 9b) a lawsuit must be brought against the Corporate entity: Woodington Homeowners' Association, Inc. (WHOA), itself;
 - 9c) Defendants no longer comprise the Board, and are therefore a "wrong party";
 - 9d) Defendants are incapable of providing requested relief;
 - 9e) the Board of WHOA is "immune from suit" per the "South Carolina Nonprofit Corporation Act of 1994" (NPCA) Section 33-31-834(a);
10. Plaintiff cites his "Motion for Clarification and Requesting a Stay of Hearing for

Defendants' Motion for Summary Judgment", delivered to the Court for filing on February 21, 2020, to be incorporated herein entirely.

A Lawsuit Cannot be Brought Against a Board

11. History shows that many cases, in many Courts, have been brought against the Board of a Corporate entity (Exhibit 3); Plaintiff believes that the Court is fully aware that Defendants in their capacity as a Board represented the responsible, governing body of WHOA.

A Lawsuit Must be Brought Against WHOA

12. Plaintiff is a WHOA member (Member) and for the Court to force Plaintiff to bring a lawsuit against WHOA would be bringing a case against himself, and would lead to "self incrimination" which is prohibited by the Constitution of the United States.

"Wrong Party" - Defendants no longer comprise the Board

13. Wrong Party arguments have specifically been denied by this Court and the COA:

13a) Specific individuals making up a Board is irrelevant under the NPCA:

SECTION 33-31-140. Definitions.

Unless the context otherwise requires;

(3) "Board" or "board of directors" means the individual or individuals vested with overall management of the affairs of the domestic or foreign corporation, irrespective of the name by which the individual or individuals are designated, except that no individual or group of individuals is the board of directors because of powers delegated to that individual or group pursuant to Section 33-31-801(c).

13b) this very same argument was recently denied by the South Carolina Court of Appeals as applied to Appeal 2018-001209:

13c) a "Motion to Dismiss" was denied on January 3, 2019 by this Court:

13d) the NPCA requires a yearly election of a Board, so change of Board membership is a

law-mandated event;

13e) the NPCA recognizes “continuity of a Board” regardless of change of individual Board members.

Defendants are incapable of providing requested relief

14. Under the NPCA, the Board of WHOA is a continuous entity, which maintains the governing authority for WHOA regardless of individual Board members, so the Board is always capable of providing, or helping to facilitate, requested relief; however, the Board will not do so, acting in breach of their fiduciary duty.

The Board of WHOA is “immune from suit”

15. The WHOA Board does not possess immunity from suit:

15a) NPCA Section 33-31-834(a) shows:

... Nothing in this section may be construed to grant immunity to the not-for-profit cooperatives, corporations, associations, or organizations.

15b) NPCA Section 33-31-834(b) clarifies further that a tax-exempt status is required before immunity from suit applies:

(b) Subsection (a) applies to the following:

- (1) ...
- (2) not-for-profit corporations, associations, and organizations, as recognized in and exempted from taxation under Federal Income Tax Code Section 501(c)(3), (c)(6), or (c)(12).

15c) WHOA does not possess, and can never possess, any of the required-tax-exempt classifications to qualify for “immunity from suit”, where Figure 1 from an Officer of the Court as disclosed on October 31, 2019 shows:

... In particular, although the HOA is a nonprofit, and we believe the HOA is eligible to file for tax classification under 501(c)(3), (6), or (12), the HOA has not made the requisite tax filings at this point.

15d) WHOA does not possess, and can never possess, tax-exempt status of 501(c)(3) which is reserved for charitable organizations, where WHOA is a mutual-benefit nonprofit organization; seen in Exhibit 6:

A mutual-benefit corporation can be non-profit or not-for-profit in the United States, but it cannot obtain IRS 501(c)(3) non-profit status as a charitable organization.

An ~~association~~ would not qualify if its principal activities consist of securing ~~benefits~~ and performing particular ~~services~~ for members.

THEREFORE, based upon criteria for granting Summary Judgment, which Defendants have not met, and existence of numerous material facts which have been disputed, Plaintiff prays for denial of Defendants' Motion for Summary Judgment.

Dated this 22nd day of February, 2020.

Respectfully Submitted,

Raymond A. Wedlake

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

EXHIBIT 1

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	THIRTEENTH JUDICIAL CIRCUIT
Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc.	)	
Plaintiff (Pro Se)	)	Civil Case No. 2019-CP-23-00269
vs.	)	MEMORANDUM IN OPPOSITION
	)	
Christopher Edwards, Charles Koshis, Denis Esteve, Michael Keels, and William Craigo in their capacity as Board of Directors of Woodington Homeowners' Association, Inc.	)	TO MOTION FOR AWARD OF
	)	COSTS AND FEES AND
Defendants	)	SUBSEQUENT DISMISSAL
	)	OF COUNTERCLAIMS

COMES NOW, Raymond A. Wedlake (Plaintiff, *Pro Se*), and brings this "Memorandum in Opposition ..." (Memo), as follows.

Brief Background Summary - Nature of the Controversy

As former two-term member of the Board of Directors (Board) of the Woodington Homeowners' Association, Inc. (WHOA) and long-time resident of the Woodington community, Plaintiff seeks to assure proper Board Governance by promoting a platform of: (i) Board transparency, (ii) mandatory ADR, and, (iii) strict adherence to the Governing Documents. Consistent therewith, when Defendants cast ballots for WHOA members (Members) who did not vote on November 9, 2018 ballots, without having signed authorizations to act as Proxy for those Members who did not vote, as related to a massive increase in dues and a special assessment, Plaintiff sought to know: not how Members voted but simply who actually cast ballots, regardless of how they voted, as well as other information such as Board-Meeting Minutes.

When refused all such basic-requested information, rather than sue for breach of fiduciary duty, Plaintiff sought a Declaratory Judgment confirming he was entitled to such information pursuant to the South Carolina Nonprofit Corporation Act of 1994 (NPCA), Title 33, Chapter 31, Section 33-31-1602(d), *et seq* including (d)(2), which states that notwithstanding a list of specific items in the NPCA to which a Member may be entitled, the Court shall retain the power to compel production of corporate records. With disregard towards Plaintiff's motions that remain extant, summary judgment was wrongfully granted against Plaintiff's case, which was done not upon the merits but rather upon other-technical grounds. Defendants also sought summary judgment on their counterclaims which were brought against Plaintiff under the "South Carolina Frivolous Civil Proceedings Sanctions Act", which was denied. The Court noted that allegations of failure to name a right party would normally not be enough for Defendants to prevail in a "frivolous" action, and that Plaintiff's-stated arguments as presented at the Hearing contained several meritorious points.

Overview of Arguments in Opposition

Defendants' motion (Motion) must be denied on the basis that the cited By-Laws Amendment is invalid, as clarified below. Assuming *arguendo* such Amendment may be recognized as valid, several other arguments dictate that Motion must be denied:

- A. By-Laws Cannot be Used in the Manner Desired by Defendants Without Specific Granting of Authority Stated in Restrictive Covenants; Additionally, By-Laws Are Invalid When, as Here, They are Inconsistent With Law;
- B. Denial of Counterclaims Makes Award to Defendants of Costs and Fees Improper;
- C. Rebuttal of Specific Paragraphs of Motion;
- D. Application of the By-Laws Amendment Would Have a Chilling Impact on all

Declaratory Judgment Actions.

Arguments in Opposition

A. By-Laws Cannot be Used in the Manner Desired by Defendants

Without Specific Granting of Authority Stated in Restrictive Covenants;

Additionally, By-Laws Are Invalid When, as Here, They are Inconsistent With Law

1. The NPCA defines "Member Approval" in Section 33-31-140 as the will of a majority of corporation members:

(1) "Approved by the members" or "approval by the members" means approved or ratified by the members entitled to vote on the issue through either:

- (a) the affirmative vote of a majority of the votes of the members ...
- (b) a written ballot or written consent in conformity with this chapter.

This definition does not allow Defendants, as a WHOA Board:

1a) to take the action they took, that is to assume proxies, and to vote as Proxy for non-voting Members, and then to claim "Member Approval" to further their own, personal interests for their own personal gain;

1b) Defendants have no signed "proxy appointment forms" associated with their action to claim "Member approval", as required by the NPCA (emphasis added):

SECTION 33-31-724. Proxies.

(a) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact.

(b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. ...

1c) Defendants are mistaken to impose a Special Assessment upon Members, as associated with a claim of "Member Approval", based upon Defendants' voting for those who did not return ballots of November 9, 2018, since six-Member statements (Figure 1) acquired to date as part of discovery by Plaintiff show these Members' desires were:

1c1) to deny the Board's vote "FOR" associated with their non-returned ballot;

1c2) to deny that the Board may assume to act as Proxy for them;

where upon request, a non-redacted Figure 1 will be supplied to the Court as a confidential document.

1d) Defendants' conduct as to allegations of "Member Approval" is contrary to Section 33-31-202(b)(1-3) of the NPCA:

(b) Unless the articles provide otherwise, no director of the corporation is personally liable for monetary damages for breach of any duty to the corporation or members. However, this provision shall not eliminate or limit the liability of a director:

- (1) for any breach of the director's duty of loyalty to the corporation or its members;
- (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- (3) for any transaction from which a director derived an improper personal benefit ...

and also as found in the NPCA 33-31-851(a)(2):

- (a) ... the individual is or was a director: ...
- (2) reasonably believed:
 - (i) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and
 - (ii) in all other cases, that his conduct was at least not opposed to its best interests; ...

since when opposing a Member's desire to bring improvements to WHOA and benefits to its Members, a Board is duty bound to seek to resolve disputes, and not to deny negotiation and/or mediation in order to assuage their own egos, and having an intent to litigate and thus to bring

damage to the corporation -- an attitude and action which certainly do not reflect a corporate-best interest.

2. A Ballot-3-By-Laws Amendment (Exhibit 1) of November 9, 2018, for "Assessment of Legal Fees" did not pass with Member approval, since the required three-quarters (50) of Member votes needed for approval of an amendment were not so voted; only 41 Member-ballots were returned, as shown by WHOA Minutes of December 6, 2018 (Exhibit 2):

F. Questions

1. Member - "How many ballots were returned?"
 - a) 41 total ballots returned.

3. WHOA By-Laws may not be used in a manner inconsistent with South Carolina Code of Laws, as stated by NPCA Section 33-31-206(b):

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

where Defendants' actions violate 33-31-206(b), where Plaintiff finds no other provision of the NPCA, nor any provision of statutory law, which gives a Board or which gives Defendants:

3a) any right to impose assessment of attorney fees and/or legal costs and fees upon a Member who seeks to resolve disputed issues, where a Board previously denied all and any negotiation and/or mediation, thereby forcing the Member to seek resolution in a Court of law;

3b) any power to negate a Member's desire to bring improvements to WHOA, and to provide additional benefits to its Members.

4. Defendants violated WHOA Covenants with actions that stand contrary to several South Carolina Attorney General Opinions (AGO), which state that no HOA may use documents which come after the Restrictive Covenants, in this case titled as: "Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision" (Covenants), and thus Defendants

may not grant themselves additional powers not found in, nor authorized by, the Covenants:

4a) particularly, a right to amend the By-Laws in a manner inconsistent with South Carolina statute is not a power granted them per WHOA Covenants;

4b) WHOA Covenants convey only these-limited powers, where no power is granted to Defendants to allow a legal-fees assessment imposed upon a single lot, that was not related to "... the maintenance and upkeep of any improved or unimproved lot ..." (emphasis added):

ARTICLE V: ASSOCIATION OF OWNERS

(3) The Homeowners Association shall be entitled to collect dues, on an annual basis, assessed against each lot in an amount to be determined by the Board of Directors. These dues shall be administered by the officers of the Association and used for the payment of necessary expenses for the operation of the Homeowners Association and for the maintenance of any vacant and untended lot or unimproved lot and for the payment of any common utility expenses and for the maintenance of any property deeded to the Homeowners Association.

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

4c) Defendants may not apply By-Laws over WHOA Covenants, since By-Laws may not be used to extend power beyond contractual obligations created by the Covenants, as shown by an AGO to Goldfinch, August 5, 2016 starting of Page 3 (emphasis added):

" ... 2. Do by-laws prevail over covenants?

... court generally would find that restrictive covenants prevail over bylaws adopted pursuant to those covenants if there is a conflict between them. ... both South Carolina law and authority from other jurisdictions point to restrictive covenants as the constitutional document of a homeowners' association ("HOA") which generally takes precedence over any bylaws ...

Keikel v. Four Colonies Homes Ass'n"

and continuing of Page 4:

... appellate court held that the HOA could not "circumvent the intent of the Declaration [Covenants], the enabling document, by subsequently amending the Bylaws." *Id.* At 110. *Kjekel*, ...

and ending of Page 5:

Since the rise of the modern homeowners' association, several South Carolina cases have interpreted restrictive covenants as foundational both to granting and to limiting an HOA's power. For example, in *Lovering v. Seabrooke Island Property Owners Ass'n*, our Court of Appeals considered whether an HOA could charge an emergency assessment when the covenants and bylaws referred only to annual assessments, and was silent on the issue of emergency assessments. *Lovering v. Seabrook Island Property Owners Ass'n*, 289 S.C. 77, 344 S.E.2d 862 (Ct. App. 1986). The court held there that the emergency assessment exceeded the scope of the HOA's authority, ...

... The South Carolina Supreme Court affirmed the holding of the Court of Appeals that the emergency assessment was *ultra vires*, ...

4d) Defendants may not: "... change a community charter ..." to serve their own, personal purposes, as stated by an AGO to Davis, January 26, 2016, starting on Page 6 (emphasis added):

... However, it must be remembered that "[a]ll resolutions and by-laws must be conformable and subordinate to the general laws." *King v. Lieon*, 180 S.C. 224, 185 S.E. 305 (1936). Accordingly, any resolutions are invalid to the extent that they conflict with South Carolina law.

and continuing on Page 7:

A review of South Carolina law shows that covenants are contractual in nature. In *Kimard v. Richardson*, 407 S.C. 247, 754 S.E.2d 888 (Ct. App. 2014), ...

Therefore, covenants, in a sense are contractual in nature and bind the parties thereto in the same manner as would any other contract. ...

Any contract which is contradictory to a statute is invalid. ...

Accordingly, a declarant or board of directors cannot change a community charter [Covenants and/or By-Laws] in any manner

that would not be in compliance with statutory law.

4f) Defendants may not presume case law trumps the NPCA, as stated by an AGO to Davis, January 26, 2016, starting on Page 10:

VII. Does State case law have precedence of or trump the South Carolina Non-Profit Corporation Act?

The duty of a court is to interpret the laws and not to make the laws, which is a function of the legislature.

and in a **CONCLUSION**, summary points are stated on Page 12:

3. Resolutions are invalid to the extent that they conflict with South Carolina law;
4. A declarant or board of directors can not change a community charter [Covenants and/or By-Laws] in any manner that would not be in compliance with statutory law;
7. Since the courts and the legislature have different functions, case law does not have precedence over or trump statutory law, such as the South Carolina Non-Profit Corporation Act; ...

Motion must be denied on the basis:

B. Denial of Counterclaims Makes an Award to Defendants of Costs and Fees Improper

5. As noted in the "Brief Background Summary", in a Hearing of October 28, 2019, the Honorable Judge Robin Stilwell **DENIED** Defendants' motion seeking summary judgment for their Counterclaims, which were sought pursuant to the "South Carolina Frivolous Civil Proceedings Sanctions Act".

6. Judge Stilwell further suggested that Defendants drop their Counterclaims after he denied their "frivolous" claim.

7. As stated in *Baumann v. Long Cove Club owners Ass'n*, 668 S.E.2d 420, 380 S.C. 131 (2008), since WHOA Covenants do not provide for contractual authorization of attorney's fees, any such award would violate the existing WHOA Covenants:

Generally, attorney's fees are not recoverable unless authorized by contract or statute. *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 383, 377 S.E.2d 296, 297 (1989).

Motion must be denied on the basis:

C. Rebuttal of Specific Paragraphs of Motion

Paragraphs from Motion are denoted below by "M1", for example, for paragraph 1.

M1. Pursuant to a vote of the Members of the Woodlinton Homeowners' Association, an amendment to the Bylaws was recorded on December 27, 2018 in Book 2555 at Page 2943 in the Office of the Register of Deeds of Greenville County (see Exhibit A) which states in relevant part: ...

8. Rebuttal – As covered above in Plaintiff's Memo, since cited amendment to the By-Laws did not receive the required number (50) of Member-approving votes, such recording by Defendants represents an unlawful action; intent to extend contractual obligations via amending the By-Laws, where no such authority to extend was given in the Covenants, is similarly in violation of NPCA Section 33-31-202(b)(3), and such unlawful action most certainly does not represent a corporate-best interest.

M2. Plaintiff filed the above-captioned action on January 17, 2019.

9. Rebuttal – The date of Plaintiff's filing of the above-captioned action is irrelevant because as covered herein by Memo, Covenants give no authority for By-Laws to be later amended for the purpose of imposition of legal fees upon a single Member, nor for any other special assessment that is not related to specific statement in the Covenants, which is contractually limited to:

"... maintenance and upkeep ... shall be empowered to levy a special assessment applicable to that lot, but only in an amount equal to any sum or sums which had to be expended for that purpose."

M3. On November 25, 2019, Defendants' Motion for summary judgment was granted on all of Plaintiff's claims brought in this action. Thus, Plaintiff has not prevailed in the above-captioned action.

10. Rebuttal – As covered herein by Memo, summary judgment was mistakenly based upon errors of law, where Plaintiff documented Defense Counsel's admission of such:

10a) in Plaintiff's: "Motion for a New Hearing on Defendants' Motion for summary judgment and to Extend ADR Deadline", which was filed in the Public Index on November 18, 2019, before the Order was signed on November 25, 2019, where additionally Plaintiff's "New Hearing" motion has not been heard to date, and where no Order for this motion has been issued;

10b) in Plaintiff's: "Motion to Reconsider Order Granting Summary Judgment and Extending ADR Deadline", reiterating such again as filed in the Public Index on December 26, 2019, which similarly has not been heard to date, and where no Order for this motion has been issued.

M4. Pursuant to the December 27, 2018 amendment, Defendants are entitled to all

costs and fees incurred in this action.

11. Rebuttal – Until after a final judgment is rendered, Defendants have no entitlement to any costs nor fees incurred in this action, where as covered herein by Memo, such judgment cannot be based on an invalid-By-Laws amendment that is “inconsistent with law”.

M5. Defendants respectfully request that this Court enter an Order granting Defendants Motion and finding Plaintiff responsible for all costs and fees incurred in this action, a specific statement detailing such amount to be provided to the Court by Affidavit.

12. Rebuttal – for all reasons covered herein by Memo, Motion cannot lawfully be granted.

M6. Subsequent to and contingent upon all costs and fees being awarded in this action, Defendants consent to and respectfully request that this Court dismiss their counterclaims without prejudice, thus closing the above-captioned matter.

13. Rebuttal – Motion stated a not-previously-declared prerequisite to dismissal of their Counterclaims, where in a hearing of December 13, 2019, the Transcript (emphasis added) shows no statement by Counsel of this contingency:

MR. BROGDON: Your Honor, and -- and just briefly, again, we have also filed a Motion for Attorney's Fees in this action, yesterday. That Motion will be heard at a different time. Just wanted to make you aware of it, as well. And we will be willing to dismiss our counterclaims at that Motion for Attorney's Fees hearing as part of the -- as part of the Motion hearing. (Transcript p. 6, ll. 1-7)

where such incomplete and inaccurate “... willing to dismiss ...” was used to mislead the Judge so that the Judge would grant “quash” of subpoena's related to Plaintiff's discovery, which the Judge proceeded to do based on presumption of uncertain-future events (emphasis added):

THE COURT: Mr. Wedlake, depositions are part of our procedural process in a pending lawsuit. There is still an active part of this lawsuit which your opposing counsel has indicated will be dismissed and -- at -- at a Motion hearing. Has it been set?

MR. BROGDON: Your Honor, it has not been set yet, but we intend to -- We have another hearing set for January 14th. We intend to set it -- set it for that same day as well.

THE COURT: Okay. So, January 14th counsel has held out to the Court, as an officer of the Court, that the case is going to be dismissed. There will be no pending claim in this action. (Transcript p. 8, ll. 2 -- 15).

M7. This motion is supported by the South Carolina Rules of Civil Procedure, statutes and case law, and such other supporting memoranda, authority, or attachments as are filed or presented before or at the hearing on this motion.

14. Rebuttal -- Plaintiff craves knowledge of supporting rules, statutes, and case law, since none are known to him and no such filings exist to date; if "dumped on" with a load of previously unseen and undisclosed documents at, or shortly before the January 14 Hearing, Plaintiff must be granted a continuance to be allowed to assimilate and understand any such supporting authority.

Motion must be denied on several other grounds, regardless of non-validity of the By-Laws Amendment which mandates assessment of legal fees for: "... filing a legal action, in any form, ..." (Exhibit 1):

**D. Application of the By-Laws Amendment Would Have a
Chilling Impact on all Declaratory Judgment Actions**

Even assuming arguendo that other arguments may be discounted, consistent with the South Carolina "Uniform Declaratory Judgments Act", and the legislative history thereof, coupled with interpretive case-law, the Court must recognize the expediency and value of Declaratory Judgment (DJ) actions.

15. The Court's denial to date to recognize the DJ statement of Plaintiff's original case will chill and discourage individuals from bringing DJ actions, which are highly favored by the law, and also per commentary and cases; the "Uniform Declaratory Judgments Act" shows:

15a) Section 15-53-20. Courts of record may declare rights, status and other legal relations.

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

15b) SECTION 15-53-40. Construction of contract before or after breach.

A contract may be construed either before or after there has been a breach thereof.

15c) SECTION 15-53-60. Enumeration is no restriction on general powers.

The enumeration in Sections 15-53-30 to 15-53-50 does not limit or restrict the exercise of the general powers conferred in Section 15-53-20 in any proceeding when declaratory relief is sought in which a judgment or decree will terminate the controversy or remove an uncertainty.

15d) SECTION 15-53-130. Chapter shall be construed liberally.

This chapter is declared to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. It is to be liberally construed and administered.

16. The Court did not dismiss Plaintiff's DJ based upon its merits, but rather granted summary judgment to Defendants based upon two, other, legal-technical reasons:

1. immunity from suit, and
2. wrong party,

where both reasons represent errors of law:

16a) indeed Defense Counsel acknowledged the “immunity” argument was based upon faulty facts provided to the court concerning the correct-tax status of WHOA;

16b) Judge Stilwell himself denied a “wrong party” argument in Case 2017-CP-23-06301;

16c) the South Carolina Court of Appeals denied a “wrong party” argument in Appeal 2018-001209 (appeal from 2017-CP-23-06301).

17. The Court of Appeals of South Carolina said as related to *Pond Place Partners, Inc., et. al. v. Poole et. al.*, 351 S.C. 1567 S.E.2d 881 (S.C. App. 2002):

Poole filed the underlying action attempting to invalidate the amendments to the covenants pursuant to the Uniform [351 S.C. 16] Declaratory Judgments Act.

"The Declaratory Judgment Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationships." *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (citing *Williams Furniture Corp. v. Southern Coatings & Chemical Co.*, 216 S.C. 1, 56 S.E.2d 576 (1949)); S.C.Code Ann. § 15-53-130 (1977).

"To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy." *Graham*, 319 S.C. at 71, 459 S.E.2d at 845 (citing *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985)).

"A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party." *Graham*, at 71, 459 S.E.2d at 845 (citing *Power v. McNair*, 255 S.C. 150, 177 S.E.2d 551 (1970)).

This requirement is satisfied by "[a]ny person interested under a deed . . . written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a . . . contract or franchise may have determined any question of construction or validity arising under the instrument, . . . contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." S.C.Code Ann. § 15-53-30 (1977); see also Rule 57, SCRPC. *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1567 S.E.2d 881 (S.C. App. 2002) "

18. A basic definition helps clarify the role of DJ, as found per:

https://en.wikipedia.org/wiki/Declaratory_judgment

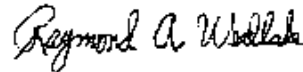
A **declaratory judgment**, also called a **declaration**, is the legal determination of a court that resolves legal uncertainty for the litigants. It is a form of legally binding preventive adjudication^[1] by which a party involved in an actual or possible legal matter can ask a court to conclusively rule on and affirm the rights, duties, or obligations of one or more parties in a civil dispute (subject to any appeal).^[2] The declaratory judgment is generally considered a statutory remedy and not an equitable remedy in the United States,^[3] and is thus not subject to equitable requirements, ...

A declaratory judgment ... can provide legal certainty to each party in a matter when this could resolve or assist in a disagreement. Often an early resolution of legal rights will resolve some or all of the other issues in a matter.

A declaratory judgment is typically requested ... or when a party or parties believe that their rights under law and/or contract might conflict; ...

THEREFORE, based on submission of pleadings and for the reasons and arguments submitted herein, as well as those which may be submitted at any Hearing on Motion, Plaintiff prays that Motion be **DENIED**.

Dated this 8th day of January, 2020.



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EXHIBIT OP.4.3

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

RAYMOND A. WEDLAKE,
ET AL.

PLAINTIFF,

-VS-

SCOTT BASHOR,
ET AL.

DEFENDANT.

2019-CP-23-01501

TRANSCRIPT OF RECORD

FEBRUARY 27, 2020
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

PRO SE

ATTORNEY FOR DEFENDANT:

P. CHRISTOPHER SMITH, JR., ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

CERTIFICATE OF REPORTER

15

EXHIBITS

<u>NQ</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

(No exhibits were presented to the court reporter to mark during this hearing)

1 **MR. SMITH:** Chris Smith here for the Defendants, Your
2 Honor. It's our motion for summary judgment. This case is
3 similar to several others I have where I feel like individuals
4 on the other side should put a sign in their yard, move away,
5 and get away from any neighborhood that has a homeowners
6 association.

7 This one appears to have started over a red sailboat that
8 kind of looks like a Jack-o-lantern, I'm told, and a fire over
9 that. He got fired up, started filing lawsuits. Several
10 lawsuits, several years go by.

11 The attorneys representing our clients on those, some of
12 whom are with me here today, incurred fifty-six thousand
13 dollars and some change in legal fees through the McCabe
14 Trotter Law Firm as a result of defending his suits. And now
15 this current suit is challenging the Board's decision through
16 the community to pay the legal fees they incurred from
17 fighting his suit. So he's causing them to incur more legal
18 fees to fight this suit. And at some point it's just got to
19 stop and he's got to quit filing suits.

20 But we're here today, and I'm arguing that, number one,
21 it's not a properly filed derivative suit. He's not filing
22 this on behalf of the members of the association even though
23 he says he's filing as a member of the association. This is
24 in his individual capacity. It's not any type of derivative
25 suit, number one.

1 Number two, he's suing the individually named board
2 members. And they're insulated from liability and aren't
3 proper Defendants in this case.

4 And separately the bylaws that he appears to be
5 challenging through his lawsuit, which I think started with an
6 attorney before attorney withdrew as counsel, were actually
7 adopted when he was a board member many years ago. And the
8 notice was proper. The votes were proper. And the decisions
9 were made to pay these legal fees which were incurred because
10 of his conduct. And I say there's no issue of fact, Judge,
11 and this case should be dismissed.

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

13 **MR. WEDLAKE:** Before I begin, Your Honor, filed February
14 24th was my memorandum in opposition to Defendant's motion for
15 summary judgment. I'd like to request that document be
16 recognized in its entirety as part of the court record for
17 this hearing.

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

20 **MR. WEDLAKE:** It is filed in the public index, sir, ---

21 **THE COURT:** There you go. Okay.

22 **MR. WEDLAKE:** --- February 24th.

23 **THE COURT:** Point for you.

24 **MR. WEDLAKE:** And similarly I had filed on February 20th.
25 and it is in the public index, a motion for clarification and

1 requesting a stay of hearing for this motion for summary
2 judgment. I would also request that that be entered into its
3 entirety as part of the court record in this hearing.

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

7 **MR. WEDLAKE:** That wasn't the case in the referenced case
8 that counsel had just cited where involuntary non-suit was
9 granted against me where that case was merely declaratory
10 judgment ---

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

13 **MR. WEDLAKE:** That's correct, ---

14 **THE COURT:** --- to the points ---

15 **MR. WEDLAKE:** --- sir, but that's why I was ---

16 **THE COURT:** Mr. Wedlake, ---

17 **MR. WEDLAKE:** --- confused ---

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

22 **MR. WEDLAKE:** I'll just make some kind of highlight
23 comments from my memorandum in opposition. My understanding
24 is the standard is that the court shall only grant summary
25 judgment if there's no genuine issues as to any material fact.

1 That's item 1 on page 1.

2 And I put in a header for a number 2 in following that
3 there are genuine issues of material facts. Number 2, the
4 bare statement that they did not have any breach of their duty
5 in this case is wholly inadequate. I have a complaint which
6 was filed on March 23rd, 2019 which substantiated specific
7 statements of violations and supported by exhibits and
8 affidavits.

9 Number 3, I would point out that discovery has not been
10 completed and mediation has not occurred in this case, which
11 is in violation of the ADR 300 day from filing deadline. So
12 the motion is premature.

13 On page 3 I summarize item 5(b). The board really did
14 not address the elements required for a motion in summary
15 judgment. And looking down that page, item (a), the reference
16 to the bylaws cannot be used in this manner since they --
17 board had created new empowerment that they gave themselves
18 with what they did with the bylaws, which is contrary to the
19 restrictive covenants. So additionally the bylaws are invalid
20 because they are inconsistent with -- with the law.

21 The bottom of paragraph -- on page 3, the Non-profit
22 Corporation Act, section 33-31-140 defines approved by the
23 members and also states that a board cannot act to vote as
24 proxy for non-voting members and then also to claim that there
25 was member approval associated with that.

1 And on page 4, item (f) as quoted from an exhibit in the
2 referenced ballot, only 41 total ballots were returned, which
3 did not meet a requirement of 50 ballots for a bylaws
4 amendment to be valid.

5 Item 6(a), issues of law that may have been stated by
6 counsel are not appropriate for a motion for summary judgment.
7 They should rather have been put into a motion to dismiss and,
8 therefore, Defendants have filed the wrong motion.

9 And, again, the proper standard that was cited earlier as
10 per the South Carolina Supreme Court and the addition to that
11 is that all inferences which can reasonably be drawn therefrom
12 must be viewed in the light most favorable to the non-moving
13 party, which would be me, the Plaintiff.

14 In item 8 I cite again my complaint. And we had
15 statements of facts, paragraph 19 through 46, which showed
16 actionable negligence due to breach of fiduciary duty. And
17 ---

18 **THE COURT:** What are those acts of negligence?

19 **MR. WEDLAKE:** Particularly over to page 4 and 5 I've
20 cited selected paragraphs from the complaint. Number 29 where
21 I repeated a demand that the legal invoice referred to by
22 counsel not be paid. And also items 35 -- particularly items
23 35 -- paragraph 35, 42, 43 and 44. I won't bother reading
24 them all on page 5.

25 And the additional things that may become pertinent once

1 I've finished speaking here, they claim a lawsuit cannot be
2 brought against a board. In exhibit 3 of this memorandum in
3 opposition it shows that throughout history many cases have
4 been brought against a board of directors.

5 Before -- paragraph 12, a lawsuit must be brought against
6 WHOA. Again, I don't think that's correct as stated
7 previously in another hearing, which would lead -- because it
8 would lead to self-incrimination of myself because I am a
9 member of the association, which is prohibited by the
10 Constitution of the United States.

11 The thing that keeps coming up is this wrong party
12 argument. So on number 13, specifically 13(a) on page 6 I
13 cite section 33-31 140 of the Non-profit Corporation Act,
14 which defines the board of directors as the individuals vested
15 with overall management of affairs of the domestic or foreign
16 corporation, particularly irrespective of the name by which
17 the individual or individuals are designated.

18 And similarly a motion to dismiss on the same wrong party
19 argument of not being the proper party was denied on January
20 3rd, 2019 by this Court in the case that was referenced by
21 counsel.

22 On page 7 the immunity from suit issue, item 15(a), the
23 Non-profit Corporation Act, section 33 31 834(a) shows,
24 eliminating the first few sentences, nothing in this section
25 may be construed to grant immunity to the not-for-profit

1 cooperatives, corporations, associations, or organizations.

2 Item 15(b), it is further clarified in section 834(b)
3 that the tax -- a tax exempt status is required before
4 immunity from suit applies, specifically (b)(2) not-for-profit
5 corporations, associations, or organizations as recognized in
6 and exempted from taxation under federal income tax code
7 section 501(c)(3)(c)(6) or (c)(12).

8 And item 15(c), the homeowners association does not
9 possess and can never possess any of the required tax exempt
10 classifications to qualify for immunity from suit. And I've
11 also cited figure 1 of this document which is a statement from
12 an officer of the court as disclosed on October 31, 2019 which
13 shows in particular although the HOA is a non-profit and we
14 believe the HOA is eligible to file for tax classification
15 under 501(c)(3), (6) or (12) the HOA has not made the requisite
16 tax filings at this point.

17 And my understanding is -- and I have another exhibit,
18 exhibit 6 attached to this document that the tax exempt status
19 of 501(c)(3) is reserved for charitable organizations whereas
20 Woodington Homeowners Association is a mutual benefit non-
21 profit corporation where I would highlight that in exhibit 6
22 that reference shows an association would not qualify if its
23 principal activities consist of securing benefits and
24 performing particular services for members.

25 So basically that's a summary of my memorandum in

1 opposition. I have other points in my motion to clarify and
2 stay, which I will go in -- go into if so desired by the
3 Court.

4 **THE COURT:** Okay.

5 **MR. WEDLAKE:** Okay. Do you desire that I hit some other
6 highlights?

7 **THE COURT:** No, I don't.

8 **MR. WEDLAKE:** All right. Thank you.

9 **THE COURT:** All right.

10 **MR. SMITH:** Very briefly, Your Honor. No evidence has
11 been supported to create even a mere scintilla of evidence in
12 this case. And it's his own attorney's fees that he caused
13 the association to incur that he's now saying they shouldn't
14 pay which would have caused that law firm to then file a
15 lawsuit against the community causing even more harm, which is
16 just absurd.

17 And he's suing the individual members in their individual
18 capacity, which is not proper in this case. And quite
19 honestly, his assessment -- I understand his individual
20 portion of what would have been assessed out of that fifty-
21 three thousand, six hundred, eighty-four dollars and fifty
22 cents (\$53,684.50) was only a few hundred dollars. So he's
23 just doing this out of spite and out of further harm to the
24 community.

25 And his suit's not properly filed. He has not properly

1 filed a derivative suit. And this case should be dismissed.
2 Thank you.

3 **THE COURT:** Okay. There haven't been any motion for Rule
4 11 sanctions or anything like that?

5 **MR. SMITH:** No, Your Honor. It's my understanding the
6 community has taken steps to make further amendments to try to
7 head this off going forward to give remedies for attorney's
8 fees to actually pursue him under contract and under the
9 bylaws for future actions.

10 **THE COURT:** Okay.

11 **MR. SMITH:** But I've got to talk with my clients. Those
12 type motions may be forthcoming, Your Honor.

13 **THE COURT:** Okay.

14 **MR. WEDLAKE:** May I speak again, please, Your Honor?

15 **THE COURT:** Briefly.

16 **MR. WEDLAKE:** No attorney's fees have been imposed by me
17 on any member of this association. The reference to my
18 lawsuits, although valid, all those costs have been incurred
19 by the board. And, again, the case cited by defense counsel
20 was for declaratory judgment. There's absolutely no need for
21 the board to have brought in attorneys and/or incurred any
22 legal fees whatsoever.

23 Furthermore, all of my cases have been brought for one
24 dollar in nominal damages. So the fact that the board had
25 decided that they were going to fight against questions that

1 were just about, look, here's what the bylaws say, I say they
2 mean this, you say they mean that, that was utterly absurd and
3 was indeed wilful, wanton and gross negligence on their part
4 to run up, which in addition to the fees claimed by defense
5 counsel, they have actually now totaled up to about one
6 hundred thirty thousand dollars (\$130,000.00) against my case
7 where three dollars (\$3.00) were asked for the Court to award
8 to me.

9 Again, no attorney's fees whatever have been imposed by
10 me upon the members of the association. Those fees represent
11 responsibility of the board in their wrongful actions to defer
12 resolutions of disputes which would help improve the
13 association and help everyone to move forward and to put this
14 behind us.

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

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

1 Having said that, I am going to grant the motion for
2 summary judgment. I'm going to request that counsel prepare
3 an order to reflect the arguments presented today. All right?

4 **MR. SMITH:** Thank you, Your Honor.

5 **THE COURT:** Thank you.

6 **MR. WEDLAKE:** Your Honor, may I request that I be given
7 review privilege on the proposed order before you sign it,
8 please?

9 **THE COURT:** That is standard operating procedure.

10 **MR. WEDLAKE:** Typically defense counsel does not give me
11 that courtesy.

12 **MR. SMITH:** We'll send him a copy, Your Honor.

13 **THE COURT:** Please do. Okay. Thank you.

14 (Hearing Ended at 2:40 pm)

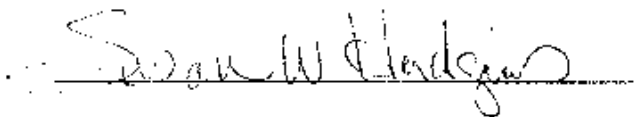
15 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 27th day of February 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 9, 2020


Circuit Court Reporter

ATTACHMENT IB.13 - Official Transcript of Record - Hearing of 11/24/20

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	
COUNTY OF GREENVILLE	)	
Raymond A. Wedlake, as a Member	)	2020-CV-23-10201384
of Woodington Homeowners'	)	
Association, Inc. and on	)	
behalf of other-similarly-	)	
situated Members of Woodington	)	
Homeowners' Association, Inc.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Board of Directors of	)	
Woodington Homeowners'	)	
Association, Inc., comprised	)	
of Mona Craig, Edward Decker,	)	
and Sandra LaCroix at the	)	
time of filing	)	
AND	)	
McCabe, Trotter, and Beverly,	)	
P.C.	)	
AND	)	
State Farm Fire and Casualty	)	
Company,	)	
	)	
Defendants.	)	

Magistrate hearing taken in the aforementioned matter was heard before the Honorable Laura M. Saunders taken before Rachel H. Wood, Court Reporter and Notary Public, at Fairview Austin Summary Court, 205 North Maple Street, Suite 4, Simpsonville, South Carolina, on the 24th day of November, 2020, commencing at the hour of 10:01 a.m.

REPORTED BY: Rachel H. Wood
Court Reporter

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EXHIBITS:

(None were marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT:

2 We are going to go ahead and go on the record. This is
3 Case Number 2020-CV-23-10201384. This is Raymond A.
4 Wedlake, as a Member of the Woodington Homeowners'
5 Association, Incorporated on behalf of other-similarly-
6 situated members of the Woodington HOA versus the Board
7 of Directors of the Woodington HOA, Mona Craig, Edward
8 Decker, Sandra LaCroix, and McCabe, Trotter & Beverly,
9 P.C. along with State Farm Fire and Casualty Company.
10 So we have Raymond Wedlake present on behalf of the
11 Plaintiff. I believe Stephanie --

12 MS. KELLAHAN:

13 Your Honor, I'm Stephanie Kellahan from McCabe, Trotter
14 Beverly.

15 THE COURT:

16 Nice to meet you, Stephanie.

17 MS. KELLAHAN:

18 Nice to meet you.

19 THE COURT:

20 And then we have?

21 MR. FARR:

22 And I am Nick Farr with Gullivan White & Boyd here on
23 behalf of State Farm Fire and Casualty.

24 THE COURT:

25 Nice to meet you. Thank you.

1 MR. SMITH:

2 And Chris Smith here on behalf of the Board Members and
3 the Board.

4 THE COURT:

5 Okay. Great. So because we had so many Dispositive
6 Motions filed at once, Mr. Wedlake, I wanted to
7 schedule these for today because it would take some
8 time on a schedule date for a bench trial. I know the
9 way the Notices went out it said a bench trial, but
10 today is actually per my email just scheduled for the
11 Motions to Dismiss, along with I believe you filed some
12 sort of Motion for a Preliminary Injunction, Mr.
13 Wedlake, so I'll hear from you last on that.

14 MR. WEDLAKE:

15 That Motion has been withdrawn, Your Honor, which I did
16 inform The Court.

17 THE COURT:

18 Okay. I apologize. There's been such a flurry of
19 filings that I may have missed that.

20 MR. WEDLAKE:

21 Is this Rachel Wood, the court reporter?

22 THE COURT:

23 Yes, Ms. Wood also is here hired by the Plaintiff to
24 provide court reporting services and I believe she is
25 on the record and taking down everything that's being

1 said as we go along.

2 MR. WEDLAKE:

3 I hadn't noticed at first when I came in. Thank you,
4 Ms. Wood.

5 THE COURT:

6 Okay. All right. Well, thank you. So we'll go ahead
7 and get started. I don't know if any of the Defense
8 Counsel has decided on who is going to go first, but I
9 know that McCabe, Trotter actually filed their Motion
10 first, so we can start with you if you'd like to.

11 MS. KELLAHAN:

12 Thank you, Your Honor.

13 MR. SMITH:

14 I think I filed the longest.

15 THE COURT:

16 All right. Yes, ma'am

17 MS. KELLAHAN:

18 Thank you, Your Honor. As I stated I'm Stephanie
19 Trotter Kellahan. I am the managing shareholder for
20 McCabe, Trotter & Beverly and I'm here today as Counsel
21 for the firm. We filed a Motion to Dismiss based on
22 several different grounds. And I think it would help
23 The Court for me to sort of lay a roadmap before we get
24 started. The way that I read Mr. Wedlake's Complaint
25 is that there are essentially a direct claim by Mr.

1 Wedlake. He is individually asserting against McCabe
2 Trotter & Beverly a claim that he has filed as casting
3 plaintiff in a false light. I do believe that he has
4 asserted several derivative claims. And those are for
5 extortion and/or conspiracy to extort, unlawful
6 distribution under the Nonprofit Act, and those are the
7 three claims that he has asserted derivatively.
8 Beginning with the direct claim Your Honor, I believe
9 The Court should dismiss this for two reasons. One,
10 South Carolina does not recognize a Cause of Action
11 called casting plaintiff in a false light. Brown
12 versus Pearson in the Court of Appeals decided that was
13 not a Cause of Action in 1997. The case cites it as
14 326 S.C. 409. However, when you construe Mr. Wedlake's
15 pleadings liberally as a Pro Se litigant I think he
16 probably has alleged the elements of defamation. His
17 allegation is essentially that an attorney in our firm
18 wrote a letter.

19 (Off the Record 10:06 a.m. -- 10:06 a.m.)

20 MS. KELLAHAN:

21 Mr. Wedlake has essentially alleged that a lawyer in my
22 firm Ryan Oates --

23 THE COURT:

24 You-all can remove your masks. It's your choice.

25 MS. KELLAHAN:

1 Thank you. Has alleged that an attorney in my office,
2 Ryan Oates, wrote a letter to the membership of
3 Woodington Homeowners' Association that Mr. Wedlake
4 alleges defamed him. He alleges that it ruined his
5 reputation in the community. And I believe those are
6 the elements for liable in South Carolina. The problem
7 is, and the reason I think The Court should still
8 dismiss this Cause of Action, is that the statute of
9 limitations for defamation is two years. And that
10 begins to run when the allegedly defamatory statement
11 is made. Mr. Wedlake has attached that letter as an
12 exhibit to his Complaint and the date on that letter is
13 September 18th of 2016. South Carolina Code 15-3-550
14 states the statute of limitations is two years. In
15 Jones versus Folly Beach, which I cited in my Motion,
16 provides there is no Discovery Rule for liable. So the
17 statute begins to run on the date the statement was
18 made, not the date it was discovered. Even if we did
19 recognize the Discovery Rule Mr. Wedlake attaches his
20 response to that letter, which was dated I believe
21 September 25th of 2016. So he discovered the
22 defamatory statement in 2016. He did not bring this
23 action until 2020. So the statute has well run. Mr.
24 Wedlake's Memorandum in Opposition to our Motion cites
25 the Discovery Rule. He cites some case law. I would

1 represent to Your Honor that that case law is about the
2 statute of limitations for contract actions, not for
3 liable. He also makes a claim here alleging defamation
4 and that this was an attempt to twist his allegations
5 to be defeated by the statute of limitations. However,
6 Your Honor, in a Common Pleas case 2020-CP-23-1679 he
7 alleged the same Cause of Action, casting in a false
8 light against different parties. The Circuit Court
9 Judge in that case granted Summary Judgment and in his
10 Motion to Reconsider Mr. Wedlake said, "Well, everybody
11 knows that casting in a false light is really
12 defamation." So I think what's before The Court are
13 allegations that amount to defamation. What's attached
14 to the Complaint clearly shows it accrued more than two
15 years ago and so that direct claim by Mr. Wedlake
16 should be dismissed. If that claim is dismissed all
17 that's left are derivative claims. And I believed that
18 Mr. Wedlake, first and foremost, lacks the ability to
19 bring those because he's not a licensed attorney in the
20 State of South Carolina. A derivative claim can be
21 thought of in two ways. Either the shareholder is
22 bringing the claim on behalf of the corporation, the
23 corporation is the real party of interest, which is
24 what the Supreme Court in Johnson versus Baldwin 221
25 S.C. 141 stated, "The shareholder is a nominal

1 plaintiff. The corporation is the real party of
2 interest." To think of it in another way Mr. Wedlake
3 is alleging that he is bringing this action on behalf
4 of other homeowners in the Woodington Homeowners'
5 Association that are situated similarly to him. In
6 either case he's bringing the action on behalf of
7 someone other than himself, which he's not allowed to
8 do if he's not a licensed attorney. Now, in
9 Magistrate's Court a corporation can be represented
10 under certain circumstances. However, the Supreme
11 Court as well as the statute requires that a written
12 authorization signed by the corporation's president,
13 chairperson, general partner, owner or CEO must sign
14 the written authorization and the authorization has to
15 be filed with the Magistrate at the time the initial
16 pleading is filed. I would submit to The Court I
17 haven't seen such a written authorization and based on
18 the facts of this case I don't believe that Mr. Wedlake
19 could obtain a written authorization because he has
20 named the president of the Association as an adverse
21 party. So I believe that his derivative claim should
22 be dismissed on a standing issue in that he doesn't
23 have standing to represent the corporation or his
24 neighbors as he's an unlicensed attorney before the
25 Magistrate Court. Even if Mr. Wedlake were allowed to

1 represent the corporation or his neighbors I believe
2 his claims fail substantively. And I'll just run
3 through those very quickly. I've laid them out in my
4 Motion to The Court. First, Mr. Wedlake alleges that
5 the Board paid -- the Association paid my law firm
6 attorney's fees and that those attorney's fees should
7 be refunded to the Association under South Carolina
8 Code 33-31-833 (b)(2). Your Honor, a reading of that
9 statute and the other sections within that chapter show
10 that this section is really a mechanism whereby The
11 Court determines if the distribution was illegal makes
12 the guilty -- one of the guilty directors pay the full
13 amount of the illegal distribution back to the
14 corporation and this section allows that guilty
15 director to seek contribution from the other guilty
16 parties. So a bad guy issues a distribution to all the
17 shareholders and he's enriched by \$100, but the
18 corporation loses 1,000. If The Court says, "Bad guy,
19 you have to pay the full 1,000 back," he can use this
20 section to go to the other people that got \$100 and
21 seek contribution from them. 33-31 defines
22 distribution as a defined term in the definition
23 section. And it says it is a direct or indirect
24 transfer back to a member, officer or director.
25 Plaintiff's Complaint does not allege that McCabe,

1 Trotter & Beverly is a member, officer, or director, so
2 any money that was paid to McCabe, Trotter & Beverly
3 isn't a distribution so it doesn't fall under the
4 statute. Additionally, as I just said this a mechanism
5 for a guilty director to get paid back. The Plaintiffs
6 don't allege that they are a guilty director who made a
7 distribution in violation of the Act or that they've
8 paid that money back and now they're seeking
9 contribution. So this -- this section is entirely
10 inapplicable to the case at hand. The bulk of the
11 Plaintiff's Complaint derivatively seems to fluctuate
12 between two theories. One, that McCabe, Trotter &
13 Beverly extorted these legal fees from the Board or
14 from the HOA and the idea that McCabe, Trotter &
15 Beverly conspired with the Board to extort the money
16 from the HOA. Accepting all of his factual allegations
17 is true I still don't believe the Plaintiff has stated
18 a Cause of Action for either of these. The first thing
19 is South Carolina doesn't recognize a civil cause of
20 action for extortion. There is a criminal offense for
21 extortion. It's a misdemeanor. Common law extortion
22 can only be committed by a public official who expects
23 money for official duties. That hasn't been alleged
24 here at all. The Plaintiff's response to McCabe,
25 Trotter & Beverly's Motion to Dismiss states that he

1 meant for it be a criminal allegation. That it was the
2 Magistrate's Court that labeled it civil.

3 Unfortunately, Mr. Wedlake can't prosecute a criminal
4 action in Magistrate's Court under In re Matter of
5 Richland County Magistrate's Court 389 S.C. 408. So if
6 it's a civil cause of action it fails because South
7 Carolina doesn't recognize a civil cause for extortion.
8 If it's a criminal allegation it fails because Mr.
9 Wedlake can't enforce criminal offenses. The remainder
10 of the Complaint seems to allege that we conspired.
11 Conspiracy is two or more persons joining together to
12 injure the Plaintiff and causing special damages, which
13 is critical for a conspiracy theory or a conspiracy
14 cause of action. This cause fails for two reasons.
15 First, the Complaint alternates between alleging that
16 we conspired with the Board, that's paragraph 24 of the
17 Complaint. Then it changes to we threatened and
18 coerced the Board. That's paragraph 48 and then it
19 becomes that we hid information from the Board to trick
20 the HOA into paying us, and that's paragraph 52. None
21 of those theories add up to conspiring with another
22 party. And that's just an element of conspiracy. If
23 we threatened, coerced, forced, hid information we
24 couldn't have been working in concert with that main
25 part, the Board. The Complaint also fails because it

1 fails to allege any special damages. Special damages
2 are damages that are separate and distinct from the
3 damages alleged in the other causes of action. The
4 only damages alleged is that a refund of these legal
5 fees need to be made. The legal fees are what are
6 extorted. The legal fees are what Plaintiffs are
7 asking to come back. But that is the same damage and
8 same relief requested both under the Nonprofit Statute,
9 that I just discussed, as well as the breach of
10 contract claim that has been alleged against the Board
11 Members. So there's no separate and distinct special
12 damage that has been alleged that would support a
13 conspiracy cause of action. Additionally, attorneys
14 are immune for liability to third parties if the
15 allegations arise from the performance of their
16 professional activities. To be guilty or liable for
17 conspiring with your client you have to breach an
18 independent duty to a third party and you have to act
19 outside your scope of representation, and neither of
20 those things have been alleged in the Complaint. The
21 only allegation is that McCabe, Trotter & Beverly
22 conspired with their client, the individual Board
23 Members, to get the Board Members' legal fees paid.
24 And even assuming that there was some bad act in there
25 the only allegation is that McCabe, Trotter & Beverly

1 worked with their client to represent their client in a
2 legal capacity. The final thing that I would like to
3 bring to The Court's attention is I believe that all
4 these claims are precluded under claim preclusion and
5 collateral estoppel. Mr. Wedlake has brought several
6 lawsuits. This all started in 2017 with the case he
7 brought against several members who served on the Board
8 of Directors. My understanding this was a Declaratory
9 Judgment Action seeking a DJ that the Board should
10 comply with the Bylaws among other things. That case
11 was -- involuntary nonsuit was granted in favor of the
12 Board Members. That's on appeal. Mr. Wedlake sued
13 other Board Members in 2019 for a records request. He
14 sued other Board Members in 2019. And that 2019 case,
15 2019-CP-23-1501, is the case where Mr. Wedlake already
16 rehashed all of this. His theory is essentially the
17 Association should have never paid our legal fees.

18 THE COURT:

19 Hold on just a second. My battery just died. I know
20 we have a court reporter, but I want to have my own
21 record.

22 (Off the Record 10:17 a.m. -- 10:18 a.m.)

23 THE COURT:

24 All right. Back on the record. I apologize.

25 MS. KELLAHAN:

1 Thank you, Your Honor. The 2019-1501 case is a case
2 where he essentially rehashes all of this same theory.
3 Mr. Wedlake's position is that the HOA should have
4 never paid our legal fees. The Association held a vote
5 where they asked the Membership to vote on whether the
6 Board Members should be indemnified. That is should
7 the Association pay the legal fees associated with
8 2017-6301, and if that vote is yes, will the Membership
9 approve a payment plan that the Association had
10 proposed to McCabe, Trotter & Beverly. And Mr.
11 Wedlake's theory is that the way those votes were
12 counted is improper. And he spends a lot of time going
13 through the ballots that were received for, ballots
14 that were not returned, the ballots received not for
15 these two proposals. All of this was the subject of
16 the lawsuit in 2019. And what the Circuit Court found
17 was that they dismissed Mr. Wedlake's claim. They
18 granted Summary Judgment in favor of the Defendants.
19 He is correct in that the causes of actions that he
20 alleged in 2019 differ from the causes of actions that
21 he has alleged here. He is also correct that my law
22 firm was not a party to the 2019 case. So the parties
23 are a little bit different. However, I don't believe
24 that precludes The Court from applying collateral
25 estoppel here. Collateral estoppel provides that where

1 an issue has already been litigated, no matter what
2 name you call it, no matter what theory you are
3 seeking, if the issue has already been litigated it
4 cannot be relitigated in a subsequent court
5 proceeding. So the heart of this conspiracy, extortion
6 claim and I'm sure Mr. Smith will talk about this a
7 little bit in his Motion to Dismiss some of the claims
8 against the Board, the heart of it is this vote was
9 wrong. The ballots were wrong. They weren't counted
10 correctly. The Bylaws don't allow you to do it that
11 way or if they do the Bylaws are illegal. Whatever the
12 theory is it all goes to this vote was wrong and so the
13 money should have never been paid to McCabe, Trotter &
14 Beverly. That has already been litigated. That has
15 already been decided by the Circuit Court and Summary
16 Judgment has already been granted. What Mr. Wedlake
17 has done is he's decided to come to This Court and try
18 to get a different answer. And he admits as much in
19 his pleadings in his -- in my motion -- my Memorandum
20 in Opposition to ADR I made a statement if Mr. Wedlake
21 wanted ADR he could have filed this action in the Court
22 of Common Pleas. He, in fact, had to specifically
23 settle for \$7,495 as his damages instead of the full
24 33,000 my law firm was paid in order to be in the
25 jurisdiction of This Court. And his response was that

1 I'm well aware, I was not aware, but that everyone
2 knows he experiences extreme bias in the Common Pleas.
3 That he can't get a fair shake up there because they
4 keep ruling against him so he's come here as a Pro Se
5 litigant to try to get the relieve he seeks. And
6 that's just not how our system works. He had a full
7 and fair chance to litigate this before the Court of
8 Common Pleas. It was a Summary Judgment Hearing.
9 Summary Judgment was granted and so this issue has
10 already been decided. The fact that McCabe, Trotter &
11 Beverly wasn't there doesn't matter. It would only
12 matter if Mr. Wedlake were trying to assert this claim
13 against us. So not being a party to the original
14 action only works if someone is trying to assert
15 collateral estoppel against you. But because Mr.
16 Wedlake was a party in the original action, because he
17 had a full and fair opportunity to litigate this,
18 collateral estoppel would prohibit him from bringing a
19 new cause of action on the same theory, the same set of
20 facts before This Court in an attempt to get a
21 different answer. To quickly recap, Your Honor, first
22 I believe the casting plaintiff in a false light is
23 barred by the statute of limitations. I believe The
24 Court should strike the remainder of Mr. Wedlake's
25 claims since he's not a licensed attorney. He cannot

1 represent Woodington Homeowners' Association or his
2 individual neighbors as a non-lawyer in Magistrate's
3 Court. Even if Mr. Wedlake could represent those
4 parties, even if he were licensed in the State of South
5 Carolina, the remainder of his claims would fail
6 substantively and they are also blocked by collateral
7 estoppel because he has already litigated these issues
8 before the Court of Common Pleas.

9 THE COURT:

10 All right. So, I see Mr. Smith standing, so we'll hear
11 from Mr. Smith on behalf of I believe it's --

12 MR. SMITH:

13 I've got the Board Members and the entire Board.

14 THE COURT:

15 Board of Directors. Okay. Thank you. Well, hold on
16 just a second. Mr. Wedlake, what I'd like to do I have
17 a feeling after reading their Motions to Dismiss and
18 Memorandums in Support, I want to hear from all of
19 three attorneys. I think they're all basically joining
20 in the same arguments and then I'm going to afford you
21 an opportunity to respond. I think that's the most
22 efficient way to do things.

23 MR. WEDLAKE:

24 Well, you see, Your Honor, at my age I get confused
25 easy between arguments and so if I get muddled in my

1 mind --

2 THE COURT:

3 Okay. Well, you can take notes. You can take notes.

4 MR. WEDLAKE:

5 And as you're aware I have submitted the Memorandums in
6 Opposition to these things.

7 THE COURT:

8 And I have read them. I have read them very carefully,
9 so I just think in the interest of judicial economy,
10 since we have all those people out there in the waiting
11 room I'm going to hear from all three attorneys and
12 then I'm going to allow you to respond to all three
13 arguments. You can go one by one by one, but I'm not
14 going to go back and forth and back and forth. That
15 would just waste time.

16 MR. WEDLAKE:

17 I see. However, should I become confused if you might
18 point that out to me then --

19 THE COURT:

20 I will do my best to keep you on track. Mr. Smith.

21 MR. SMITH:

22 And I will be very brief, Your Honor, so I don't
23 confuse Mr. Wedlake in any fashion if I can help it. I
24 would just incorporate Stephanie's arguments first of
25 all. They're mostly duplicative and I don't need to

1 rehash them. I was actual present for that February
2 hearing with Judge Miller and Mr. Wedlake actually
3 attached the transcript to the Memorandum in Opposition
4 to our Motion. That's all you need to read quite
5 honestly. Judge Miller on page 13 of the transcript,
6 "So if I understand you correctly these attorney's
7 fees, the fees that were incurred to defend your
8 lawsuits." So he filed a lawsuit against our Board.
9 They're forced as a Board and a corporation to go hire
10 an attorney to defend his suit, and then he files a
11 separate suit saying you shouldn't have defended my
12 lawsuit and shouldn't have paid the attorney's fees.
13 And he said, "What would you have them do, just
14 rollover? They can't do that." And it's different
15 Board Members named, but it's the same arguments in
16 this one and it's not a properly filed derivative suit,
17 first of all. It's barred by collateral estoppel.
18 It's potentially res judicata as well. It's not a
19 properly filed class action and no one is in line with
20 him separately. It's important because Mr. Wedlake,
21 and I've only heard this through hearsay, I've covered
22 two hearings. I haven't touched these otherwise, but
23 it happened to be two of the most critical hearings.
24 Six lawsuits in Federal Court, State court, pending at
25 various Courts of Appeals at the moment. And it all

1 started over a sailboat on a garage and a rejection and
2 he just got fired up and started filing suits. And
3 when they didn't turn out his way filed more. And I've
4 heard it through the grapevine he said he has a million
5 dollars and he won't stop until all his money is
6 exhausted. And so now these homeowners have filed a
7 class action against him and I would hate to see him
8 waste his money on this. Like just -- just come to a
9 settlement of that class action and move on with your
10 life. If you're that angry sell your house, you know,
11 and get out of the neighborhood. But the idea of
12 having six lawsuits over the same issues and keep forum
13 shopping basically by filing in different courts to
14 litigate this sailboat on a garage, it's destructive on
15 his own behalf and there's no merit to it. And we've
16 had multiple courts, including Judge Miller, and that
17 Order was attached to our Motion to Dismiss and as I
18 said Mr. Wedlake has attached the transcript, which has
19 our arguments and has Judge Miller's oral findings on
20 the record. And, Your Honor, I just would suggest that
21 this case should be dismissed as the others have been
22 dismissed on the same grounds and on the grounds that
23 it's now collateral estoppel, because it's the exact
24 same issues rehashed. And as it pertains to my clients
25 he's only asking for a \$1 in this case. It just like

1 we're an added necessary party to go against the claims
2 against the law firm that -- that properly billed fees
3 to defend his lawsuits and then now against the
4 insurance company, who is properly providing a defense
5 when my clients turned it over to their carrier. And
6 there's no viable cause of action against any of us.

7 Thank you.

8 THE COURT:

9 Thank you, Mr. Smith. Are you with me Mr. Wedlake?
10 Are you staying with us?

11 MR. WEDLAKE:

12 I am

13 THE COURT:

14 All right.

15 MR. FARR:

16 All right, Your Honor.

17 THE COURT:

18 I'll hear from you, Mr. Farr.

19 MR. FARR:

20 Nick Farr here on behalf of State Farm. I'm going to
21 be very brief as well, but just some -- a little bit of
22 background on State Farm's involvement in this. State
23 Farm is the liability insurer for the HOA. And so when
24 they -- when the HOA provided them with notice of this
25 lawsuit State Farm reviewed the allegations in the

1 Complaint and decided to extend a defense. They hired
2 Mr. Smith and his firm to provide a defense to the HOA.
3 Mr. Wedlake apparently didn't like the fact that they
4 decided to defend the lawsuit so he filed this Amended
5 Complaint. He asserts one cause and he adds State Farm
6 as a Defendant and he asserts one cause of action for
7 breach of contract. His basis is that in the Amended
8 -- in the very Amended Complaint that he added State
9 Farm he changed an allegation to go from seeking \$1 in
10 monetary damages to no monetary damages. So because of
11 that he says it's no longer covered and State Farm
12 can't provide a defense. So he's basing his claim for
13 one on the Amended Complaint that he has already --
14 that he is filing to name them as a Defendant. But
15 secondly, he is -- the genesis as you heard, the
16 genesis of all this is that he didn't want to the HOA
17 to be able to pay the legal fees of their own counsel
18 that they had. So then when they give it to the
19 insurance company and the insurance company is now
20 paying for their legal fees he doesn't like that
21 either. But he does not have any standing to bring
22 this claim. He is not a -- he is not -- this is a
23 contract between State Farm and the HOA. He's not a
24 party to that contract. This is a longstanding
25 precedent. The South Carolina Supreme Court ruled in

1 this issue in Park versus Safeco Insurance Company,
2 which is 251 S.C. 410. It's a 1968 decision. A
3 plaintiff who is not a party to the lawsuit does not
4 have standing to litigate a dispute between the
5 insurance company and its insurer unless he has first
6 gotten a judgment against -- if he has gone and gotten
7 a judgment against the HOA and he wants to seek a
8 Declaratory Judgment and that judgment is covered by
9 the terms of the policy he could do that, but he has
10 not done that. And there is not a dispute between
11 State Farm and the HOA. State Farm is actually
12 providing a defense for the HOA. There's nothing to be
13 litigated on that front. And then going to the merits,
14 you know, I've been representing insurance companies
15 for over tens years and this is honestly the first time
16 I've ever been sued for extending a defense to the
17 insurer when the insurer wants us to do that.

18 THE COURT:

19 Like a good faith claim and a bad faith claim

20 MR. FARR:

21 Yeah, exactly. So for those reasons, and I'll
22 incorporate these other arguments that have also been
23 made, but his claims against State Farm should be
24 dismissed. Thank you.

25 THE COURT:

1 Thank you very much. All right. Having heard from all
2 the three attorneys for the Defense and the different
3 parties involved, Mr. Wedlake, I'm going to turn the
4 floor over to you and hear from you in response.

5 MR. WEDLAKE:

6 Yes. So I have filed a Memorandum in Opposition to all
7 of these things, which as you have indicated that you
8 are aware of and you have read. I'm always amazed at
9 how attorneys can come into Court and try to twist
10 things around, which particularly I find often are
11 inapplicable really to the arguments that I have
12 presented in my Complaint. But I will start first from
13 my Memorandum in Opposition for McCabe, Trotter &
14 Beverly. Now, before I begin, Your Honor, do you have
15 specific questions over any content or I should just
16 kind of go through a brief summary review of my
17 Memorandum in Opposition?

18 THE COURT:

19 I don't have any specific questions at this time, so
20 I'd like for you to summarize as best you can based on
21 all of your different Memorandums that have been filed.

22 MR. WEDLAKE:

23 Okay. So on page 1 of my Memorandum in Opposition to
24 Dismiss for McCabe, MTB as I've noted it in the
25 document, I indicate a standard for review of Motion to

1 Dismiss and I note that no attorney here today has so
2 much as referenced what they claimed in their Motion to
3 Dismiss about Rule 12(b)(6), the South Carolina Rules
4 of Civil Procedure. And in one instance also a
5 12(b)(1) the lack of jurisdiction, they didn't seem to
6 feel that was important to bring up, which is the
7 standard upon which Motions to Dismiss must be based.
8 On page 1 of my Memorandum in Opposition I say that
9 Rule 12(b)(6) indicates that only in the absence of
10 facts sufficient can the Rule be applied. In my
11 Complaint and Supplement to my Complaint in this case,
12 all of those facts form a set of evidence more than
13 sufficient to constitute a Cause of Action is what I
14 say on page 1. I also cite case precedent on page 2
15 under the section Standards for Review to Motion to
16 Dismiss in Federal Court citing Erickson versus Pardus,
17 which says that Federal Rules of Civil Procedure
18 require only "a short and plain statement of the claim
19 showing that the pleader is entitled to relief." It
20 also goes on to say specific facts are not necessary.
21 The statement need only, "give the Defendant fair
22 notice of what ... the claim is and the grounds upon
23 which it rests." Also citing another case precedent
24 reference. Counsel I believe admitted that The Court
25 must take a liberal view of the -- of the pleadings as

1 is indicated on page 2 of my Memorandum citing Estelle
2 -- well, it's found in Erickson versus Pardus. Now, in
3 this specific instance on page 3 I address the casting
4 plaintiff in a false light and I believe my Complaint
5 contains factual evidence demonstrating the misconduct
6 by MTB related to this item. And I don't know of any
7 law or precedent which precludes the presentation of
8 evidence to form a preponderance of evidence for my
9 case on page 3. Therefore I state it's moot and
10 academic as to whether or not a false light cause of
11 action exists and there is a precedent in South
12 Carolina that other cases have viewed this as either a
13 claim for defamation or a claim related to breach of
14 privacy. I also contended in my Memorandum that the
15 claims were brought within the two-year period of my
16 learning that they -- that MTB was the root cause of
17 their own actions and I cite content from my Complaint,
18 which has two Exhibits 43 and 44, Item 85 in the
19 Complaint, paragraph 85 in the Complaint. And then
20 Item 3 on page 3 I understand how MTB wants to make
21 this false light into defamation so that they can bring
22 all these arguments about the statute of limitation and
23 that my claim really is defamation, which again I
24 really see as moot and academic and kind of irrelevant
25 in that regard. On page 4, Item 4, I state that I,

1 Plaintiff, cites precedent and go into details of
2 various case precedent, which give authority to my
3 position. Then Item 5 on page 4 in reference to these
4 other cases where I believe all of the parties have
5 fully admitted that none of this stuff has been
6 litigated before because it was simply dismissed. The
7 merits were never addressed. Litigation never
8 addressed the merits of my case. It was simply
9 dismissed, leading to my appeal in each instance and I
10 state on Paragraph 5, page 4 that reversal upon appeal
11 will annul any statute of limitations. And I cite
12 Section 15-3-90 titled Effect of Reversal of Judgment
13 from the S.C. Code of Laws. I also believe that on
14 page 5, Item 6, there is evidence to prevent the bar of
15 the statute of limitations citing S.C. Code Law Section
16 15-3-130. Item 7 on page 5 I say The Court is bound by
17 precedent to interpret statutory language by, "Their
18 plain and ordinary meaning without resulting to subtle
19 or forced construction." And I cited case references
20 to that effect. And on page 5 I begin a section where
21 I claim all of the claims are not barred by collateral
22 estoppel. There in Item 8 the crux of this matter is
23 as I state, "Since no decisions from any previous
24 actions are known to Plaintiff, and Defendant admits
25 collateral estoppel prevents a party from relitigating

1 an issue that was decided in a previous action then a
2 claim of relitigating is false." There have been no
3 judgments other than the granting of dismissal and
4 wrongful granting of Summary Judgment leading to appeal
5 in those cases where Summary Judgment was ordered. In
6 Item 9 on page 5 I also claim that collateral estoppel
7 does not apply and cite cause of action against MTB was
8 not -- was not known in case as cited 03758 and only
9 obtained after the settlement which resulted after
10 mediation. Where it says I am not entirely lacking in
11 every instance. Counsel has seen to fit to use what
12 call legal rambling tactics to preclude any mediation
13 such that some of these things might be properly
14 mediated with the advice of an impartial mediator. On
15 page 6, Item 10 I state Defendant's contention of same
16 theories is ridiculous and show details of captions and
17 I believe it was also admitted here in This Court that
18 MTB was not a named party to the case they cited 01501.
19 On page 6, Item 11 the main crux is that there are
20 genuine issues of material fact involved in the cases
21 where Summary Judgment was improperly granted. And
22 given my pleadings as known to This Court, I would
23 contend that Your Honor is well aware that pleadings
24 are complete and indicate many genuine issues of
25 material fact involved in all of my cases where

1 primarily my cases have been cited against the Board
2 based on aspects of law, which I have properly cited in
3 this case. In Item 12 on page 6 I made it a record in
4 the Public Index about the reference to orders and
5 actions of Judges in prior actions, where the thrust of
6 this argument is for the specific case cited now
7 resulting in the appeal of 506 in the Court of Appeals,
8 is that the Proposed Order contained a whole bunch of
9 stuff which I had objected to. And what happens is
10 that due to the bias against me that exist in the
11 Circuit Court, as was admitted to by Counsel here
12 today, the Judge makes a ruling and states no -- no
13 reason or rationale why he has ruled that way. He
14 merely suggests to Counsel that Counsel present a
15 Proposed Order, which they use as a soapbox, as I say
16 on page 7. As drafted by Counsel and fabricate based
17 upon matter that aired in Court, and this is the
18 critical thing here, Your Honor, what gets written into
19 the Order is not matter that was aired in Court, that
20 was not stated by the Judge. And on page 7, I start to
21 go into the full set of comments made by The Court in
22 the referenced case that were limited to stuff as
23 shown, where at the bottom of page 7 in the instance as
24 cited it was the Judge himself without prompting from
25 Counsel that asked about Rule 11 Sanctions, which was

1 answered by Counsel, that, no, there were no Rule 11
2 Sanctions proposed. And at the bottom of the page 7
3 then The Court says, "Okay. Blah, blah, blah. That
4 the Board should have just rolled over," which I
5 believe I heard the Counsel say here today. But then
6 he cut me off and didn't let me even have a chance to
7 respond. And even though he claims that he's told me
8 they welcome Pro Se litigants he goes on then to say as
9 I quote in the bottom of page 7, "But we hold them to
10 the same standards as we do attorneys." This case in
11 question was drafted and signed by an attorney, even
12 though at the time of the hearing he had been dismissed
13 as the Counsel, because of his remaining in Florida
14 where he was when he was engaged as my attorney. He
15 had plans at that time to return to South Carolina, but
16 did not.

17 THE COURT:

18 Well, I think at that time, Mr. Wedlake, you were
19 representing yourself before The Court, so.

20 MR. WEDLAKE:

21 That's correct. He was dismissed at that time. Now, I
22 believe if I misspoke that what's I intended to say.

23 THE COURT:

24 All right. Let's move on.

25 MR. WEDLAKE:

1 In any event, the Ruling for Summary Judgment was based
2 on Rule 11 with respect to Sanctions for Pleading or
3 lawsuits that have no valid basis for merits, which was
4 simply false as I believe it's contained in all of the
5 pleadings as you will find in the record will plainly
6 show. This again is the bottom of page 7. Then on
7 page 8 in following I cite in Item 13 what I believe to
8 be nonfactual contentions that apply as stated in the
9 case. And, of course, the deal is here that Counsel
10 wants to paint me as claiming improperly that the
11 members have voted on these things that they present as
12 reasons as to why I can't bring the cases. Where
13 indeed I show that the members, the majority of
14 members, did not vote for any of the things that they
15 so claim that were voted and passed by the Association.
16 And if this is not been appreciated by, Your Honor,
17 this is the thing. The law defines approval by the
18 members and states that as a vote of the members,
19 whereas these things were merely voted by the Board to
20 claim passage. The law also says that the Board can't
21 do that as I have cited and included in my case. So
22 the point of that is that the Board has perpetrated
23 unlawful actions upon the membership of the
24 Association, which is a legitimate genuine issue of
25 material fact that is in dispute. And I reiterate that

1 in page 9 in 14, the same deal. The members did not
2 vote to pass the cited bill as has been claimed,
3 unlawfully claimed by the Board as being passed. In
4 Item 15 on page 9 I state that no nonfactual contention
5 should lead to dismissal of Plaintiff's claims. In
6 Item 16 relative to special damages which have been
7 contended, I did not so state. I state Item 16 the
8 specific damage suffered as a result of alleged
9 conspiracy were contained in my Supplement to the
10 Complaint and cite the evidence. On page 10, Item 17,
11 the gist of this is the claim was made that I'm trying
12 to get the money back for my benefit and this is
13 inaccurate. I state in Item 17 factually such refunds
14 was rather sought to accrue to the benefit of WHOA, not
15 to accrue to Plaintiff's benefit and cite the
16 Supplemented Complaint that shows they're lying. In
17 Item 18 I state that -- Plaintiff specifically stated
18 damages to comply with Rule 9(g) South Carolina Rules
19 of Civil Procedure, whereas I believe Counsel erred
20 here today that I did not do that. That was done. In
21 Item 19 I state that several facts sufficient to quote,
22 "To show a claim for conspiracy are contained in the
23 Complaint," and reference the specific paragraphs. In
24 item -- in item under section of S.C. Code of Laws
25 recognizes an action by a citizen/extortion. I show

1 the statutory basis upon which item in paragraph 20.
2 S.C. Code of Law a citizen cannot be barred from
3 prosecution of his own cause. And I understood or I
4 thought I heard that I can't do this because I have no
5 rights in this state as a citizen because I'm not an
6 attorney and I find that particularly inappropriate.
7 In Item 20 I cite that S.C. Code of Law Section 40-5-
8 80. There's also been contentions that I can't do
9 things that are of a criminal nature and there again I
10 don't believe there's a basis under the law. In
11 paragraph 21 I cite Section 40-11-110. There's also
12 been jurisdictional questions that were brought where
13 on page 11, Item 23 I state Magistrates have
14 jurisdiction and cite Section 22-3-520 and Section 22-
15 3-550. There was also a statement of attorney immunity
16 and I state on page 11 I don't believe that that
17 doctrine applies to my claims. And I reiterate in
18 paragraph 24 that all the pleadings have made clear the
19 corporate entity WHOA was never a client of MTB. If
20 they were not their client then how can MTB bill the
21 corporation for their legal expenses? And in Item 24 I
22 say a whole bunch of stuff as well as reference the
23 Supplemental Complaint. In Item 25 of my conclusion is
24 stated therefore MTB is liable to members for damages
25 suffered and I believe that I am coming to the point of

1 law that says that. Counsel themselves here today
2 tried to indicate that the S.C. Code of Laws 33-31-
3 833(b)(2) contradicts my claim based on the definition
4 of distribution. I believe that's inapplicable as I
5 state in paragraph 26 on page 12. And I believe that
6 they are confused between distribution and the plainly
7 stated unlawful distributions to which this Code
8 Section in 833(b)(2) applies. And on page 13 I
9 actually quote that section of the law. Where the
10 punch line in (b)(2) is that from each person who
11 received an unlawful distribution for the amount of the
12 distribution whether or not the person receiving the
13 distribution knew it was made in violation of this
14 chapter, which to me is a black letter as stated in the
15 statute. So I contend on page 13 then that it is clear
16 and plain-legislative intent that an unlawful
17 distributions must be paid back. There is -- then I
18 start a section titled "G" on page 13 that my Complaint
19 showed proven, standing to bring a derivative suit
20 where I believe the Motion to -- a Motion to Dismiss
21 has stated that I didn't say or show anything that
22 showed I could do that. In paragraph 27 on page 13 I
23 specifically say my Complaint showed figured 1, six
24 member statements denying Defendants had proxy November
25 9, 2018 ballots, which proved at least six members,

1 which is about ten percent of 65 other members, support
2 a basic argument by Plaintiff. And this -- this is
3 another thing that although not stated here yet in this
4 hearing I had intended to discover in previous cases
5 more members that supported my position, but I was
6 unable to do that because of, again, the bias against
7 me in our Circuit Court where my subpoenas and my
8 Motions for Discovery were quashed denying me the right
9 of discovery, which I need to show that there are other
10 members in addition to these six in figure 1 that I
11 have cited that support my position and therefore give
12 me the standing to bring a derivative suit. So I
13 believe arguments that I have no standing and didn't
14 show any reason or rationale that I have standing are
15 indeed false claims. In paragraph 28 on page 14 I
16 state that I don't believe there is legally-valid
17 rationale that leads to dismiss -- dismissal. The
18 reference to other cases being brought to me and that I
19 should just move out of the neighborhood and go home
20 and duck my head, the specific thing I say on page 14,
21 Item 28(a) certification of the class action against me
22 has not been certified at this time. And in that
23 regard I don't believe there is any legitimate claims
24 that will lead to certification of that case. I'm not
25 sure if it was stated here today, but on page 14, Item

1 29, I state, Defendant must be specific, which was not
2 done nor supported by evidence in claims to strike
3 and/or require a more definite statement. I also make
4 at the bottom of page 14 continuing on 15, paragraph 30
5 that the Defendants must bring specific proof to the
6 contrary for evidence to be admissible. And when I
7 come into hearings like this in front of The Court I
8 hear a lot of things said, but basically they're just
9 words that are spoken. Whether they put them in
10 writing in their Memorandums to Dismiss or not, none of
11 them being supported by evidence nor by anything that
12 indicates validity or gives support to such statements.
13 On page 15 I go into the Rule 104, and Rule 401, and
14 Rule 402, and Rule 1001, Definitions and so forth. And
15 on page 16, paragraph 31 I say as to which claims are
16 being asserted individually versus derivatively. Such
17 is irrelevant, unrelated to, and academic towards This
18 Court serving the interest of justice. And then I
19 state a conclusion. So that is my highlights from my
20 Memorandum in Opposition for MTB. I also have other
21 Memorandums for each other Defendant. And may I take a
22 moment to get cited on that?

23 THE COURT:

24 Decided?

25 MR. WEDLAKE:

1 Cited.

2 THE COURT:

3 Cited. Sure.

4 MR. WEDLAKE:

5 All right.

6 THE COURT:

7 Actually we'll take about a five minute break if that's
8 okay with everybody. The rest room is the last door on
9 the right, so I'll give you five minutes to get
10 everything pulled up so we can proceed with your
11 argument. Okay?

12 MR. WEDLAKE:

13 It will just take me a minute and I'll be ready. Thank
14 you.

15 THE COURT:

16 All right. We'll be at ease for five minutes.

17 (Off the Record 11:01 a.m -- 11:09 a.m)

18 THE COURT:

19 We'll go back on the record. Mr. Wedlake, I think you
20 were going to present on some of your other Memorandums
21 in Opposition as to State Farm and Woodington HOA.

22 MR. WEDLAKE:

23 Yeah. So in the order now I will hit highlights from
24 my Motion -- Memorandum in Opposition for the Board.
25 So on page 1 of this Memorandum which I may have

1 missed now in the earlier one as well, but I think an
2 important distinction that I point out here is that
3 each of these Motions to Dismiss must be considered as
4 a Motion for Dismissal in part. That is to say that
5 whether certain points are dismissed does not
6 necessarily mean that the entirety of my case should be
7 dismissed. That's on page 1. Similarly, starting on
8 page 2, the same thing that the standard of review
9 should be based on Rule 12(b)(6), which again didn't
10 seem to be mentioned. The same arguments otherwise as
11 I think we've previously covered. However, in this
12 case there was a claim that there was no jurisdiction
13 so that Rule 12(b)(1) indicated that my case should be
14 dismissed. Whereas as shown on page 2, I state the
15 jurisdiction of This Court applies per Complaint,
16 paragraph 1, which showed proof of all the requirements
17 for jurisdiction and reiterated that in exhibit as
18 attached to this Memorandum Exhibit OP.1. I review
19 again the same stuff about the Motion to Dismiss in
20 Federal Court on page 3, Erickson versus Pardus. All
21 the same stuff there otherwise. However, now in this
22 Memorandum I state that -- at the end of page 3
23 continuing on page 4, in the event that The Court may
24 interpret the Motion to Dismiss as translated into a
25 Motion for Summary Judgment, since Plaintiff requested

1 a "full and fair opportunity to complete discovery via
2 my Motion for a Continuation to postpone to allow
3 discovery," which I believe is also properly filed
4 before This Court. Citing the case precedents that
5 indicate again that that should not be done.
6 Continuing onto page 4. I reiterate again at the
7 bottom of page 4, Argument 1, that everyone here is in
8 agreement that the previous cases are currently pending
9 appeal. No final order giving judgment exists for any
10 appealed case. And then go onto to clarify a listing
11 of the cases on page 5, where the captions particularly
12 indicate that these things are not the same. And said
13 that is indicated based upon what is appearing on page
14 5 of my Memorandum ending on page 6. I state again on
15 page 6 that I fully expect reversal from dismissal of
16 all three appealed cases. And then I cite the South
17 Carolina Code of Laws Section 15-3-90, which gives me
18 the right to bring another case as I understand the
19 meaning of this statute. And I state on page 6,
20 paragraph 3 that Plaintiff's lawsuits to date relate to
21 the Board are based upon questions of law as supported
22 by genuine issues of material fact being brought before
23 a Court of law. And I go on with other comments there.
24 Specifically, that under the Preamble in the
25 Declaration of Covenants, Conditions, and Restrictions

1 for Woodington Subdivision it says that Plaintiff, that
2 I have specific rights "to prosecute any proceeding at
3 law" which I indicated as Exhibit OP.2. And in item
4 -- paragraph 4, it continues over on page 7. The case
5 caption in this case is based on breach of contract by
6 the Board, which is not the same as is cited in other
7 cases. In Item-- paragraph 6 on page 7, again I
8 reiterate as I did in the previous Memorandum that I
9 provided evidence that the action brought is a
10 derivative action and I stated comments on that
11 previous page as also contained in paragraph 6. I
12 won't reiterate again the fact that the Bylaws as in
13 paragraph 7 on the bottom of page 7, Bylaws cannot
14 contain provisions which are unlawful, which has been
15 the crux of arguments brought previously. And then
16 it's specific in S.C. Code of Laws. The Bylaws cannot
17 contain provisions which are unlawful. Consequently
18 claims based on unlawful provisions of the Bylaws
19 really have no standing for This Court. On page 8,
20 Item 7A I cite the Nonprofit Corporation Act, Sections
21 33-31-206 and 33-31-831, which I also attached as
22 Exhibit OP.3 to this Memorandum. In Item 7B I again
23 review all the other violations of law by the Board
24 citing Section 33-31-140 as we discussed previously
25 voted by the numbers. Not discussed previously 7(b)(2)

1 on page 8, Section in 33-31-724. The Board had no
2 proxies for what they did when they voted in the
3 ballots as they claim has been done. There were no
4 proxies that they had and consequently the law
5 precludes them having done this. Item 7C again I
6 review the statements that appear in Orders that have
7 been referenced in the Memorandum-- the Motions to
8 Dismiss, where again much of content of those Orders
9 were not stated by Courts during hearings. And I have
10 attached Exhibit OP.4.2 to prove that contention. And
11 I itemize again in Item 7C.1 through 7C.5 that none of
12 these statements were proper in the Order.

13 THE COURT:

14 Mr. Wedlake, I just want to remind you that I've read
15 this -- your Memos and I will possibly read them again,
16 but you don't have to go through every single point.
17 What I need you to do in this Motion Hearing is to
18 properly and summarily respond to the Defense Counsel's
19 arguments for dismissal of your suit. I've read it in
20 detail.

21 MR. WEDLAKE:

22 Okay.

23 THE COURT:

24 Going through point by point and paragraph by paragraph
25 summing it back up to me, you know, is -- I don't want

1 -- I just don't think it's going to help much because
2 I've read it.

3 MR. WEDLAKE:

4 And thank you for that, Your Honor.

5 THE COURT:

6 Yes, sir.

7 MR. WEDLAKE:

8 My impression however has been in Circuit Court that
9 that is not the case. The Judges not only are
10 uninformed or have not read the content that's
11 presented before The Court.

12 THE COURT:

13 Well, we're not in Circuit Court. We're sitting here
14 in the People's Court, Magistrate's Court and you're
15 representing yourself.

16 MR. WEDLAKE:

17 It's very good, but they also -- they also do not
18 listen to anything I say when I plead in hearings as
19 well, which is the nature of the abuse of judicial
20 discretion which I believe has been referenced here.

21 THE COURT:

22 We're not here to relitigate the other cases that were
23 or are pending in Circuit Court or Appeals Court.
24 We're here on this case and I am intently listening to
25 you.

1 MR. WEDLAKE:

2 All right.

3 THE COURT:

4 So you may proceed.

5 MR. WEDLAKE:

6 Well, in other pages then I cite what I believe are
7 other false claims. And particularly on page 11 I cite
8 Rule 12(f) South Carolina Rules of Civil Procedure that
9 there are claims brought in their Motions which are
10 immaterial, scandalous matter, and must be stricken
11 under this Rule. An important point on page 11,
12 paragraph -- page 11, paragraph 11, no causes of action
13 in the Complaint are the same that have been previously
14 claimed and I give the details of that. Okay. I
15 present on page 13 and following, content relating to
16 the conspiracy, which Counsel has claimed again is
17 irrelevant, and I can't say that, but what I have said
18 is contained in 12, 13. Now, another important point
19 though was picked up on paragraph 13. The doctrine of
20 res judicata I say is inapplicable in this case and
21 give arguments to that effect. Defendants are
22 different and so forth saying claims are not claims and
23 so forth. I also contend in Section Titled B on page
24 14 that my claims are not barred by collateral
25 estoppel. And I won't -- won't go into any other

1 details then based upon comments from Your Honor. The
2 important points are however is that their claims are
3 not supported by evidence, facts, nor by case
4 precedents. Okay. Again, I state on page 17 that I
5 don't believe there's any legal basis nor authority
6 that exists about the question of which claims are
7 individual and which are derivative, and it has been
8 stated by Counsel here today that again I have
9 improperly filed a derivative action. I don't believe
10 that's true. Again, no previous cases have been --
11 have been -- the judgments have been given without
12 adjudication on the merits. And I state on page 17
13 again I believe I have a standing to bring a derivative
14 suit. Importantly relative to this on paragraph 24 on
15 page 17 I do not need support shown from -- from all
16 the members nor from any fixed number of members to be
17 able to state as I have in the caption of my cases this
18 is brought on behalf of other-similarly-situated
19 members as has been proven by the figure cited
20 previously. Okay. I believe that I covered that the
21 referenced suit class action against me is not
22 certified at this time. And I conclude at page 19,
23 paragraph 27 no nonfactual contentions nor any
24 contentions which are for prevarications, should lead
25 to dismissal. So that summarizes this Memorandum in

1 Opposition. So may I continue on to the next
2 Memorandum in Opposition as relates to State Farm?

3 THE COURT:

4 You may proceed. This is your time.

5 MR. WEDLAKE:

6 Give me just a moment to switch pages here. All right.
7 So similarly State Farm has claimed that I cannot bring
8 action against them under the contract and that is the
9 key of my argument in my Memorandum in Opposition. And
10 as I state on page 2 again there are multiple genuine
11 issues of material fact that exists and are in dispute.
12 And I have presumed that my Amended Complaint has been
13 accepted and is in front of This Court based on the
14 fact that you heard arguments from Counsel representing
15 State Farm

16 THE COURT:

17 Correct.

18 MR. WEDLAKE:

19 Then I review the standard for Motion to Dismiss. The
20 same stuff about Motion to Dismiss in Federal Court,
21 Erickson versus Pardus. I review again if it should
22 translated into a Motion for Summary Judgment. All
23 right. So my arguments begin on page 5. That I have
24 standing to sue via payment of dues as a member of the
25 WHOA that paid the insurance coverage premium And

1 since I paid the premium in part I am an owner of the
2 policy, which therefore in my statements here in
3 summary are that if I am an owner of the policy then I
4 have a right to presume that the contract must be
5 abided by -- by State Farm. And an important point
6 here on page 5, a section titled "Plaintiffs are third-
7 party beneficiaries," is that this also gives me an
8 indirect action against State Farm as a third-party
9 beneficiary. And I cite case precedent Kingman versus
10 Nationwide Mutual Insurance Company as such on page 5.
11 And on page 6 the point of the matter is State Farm has
12 not performed according to the insurance contract
13 taking optional elections as they allege to provide
14 coverage, which is a breach of contract under the
15 insurance contract, because I have not claimed monetary
16 damages. As may be recalled from the Amended Complaint
17 I specifically changed request for nominal damages of
18 \$1 to zero dollars such that the contract provision
19 that monetary damages must exist for them to provide
20 coverage does not exist in my case. Consequently
21 without contractual means by which they can provide
22 coverage they cannot provide coverage under the
23 contract. I also claim in Item 2 on page 6 that the
24 contract does not provide the option that they claim
25 they have to provide a defense. And on page 7 I

1 excerpt the actual contract contents, which I believe
2 applies. Okay. I won't -- I won't state anything else
3 on any of this other stuff on page 7, Items 3 and Items
4 4, other than is nothing in the contract that triggers
5 coverage. So, again, under the contract they are
6 prohibited from supplying coverage. Now, in that
7 regard the fact that the Board seeks Counsel to
8 represent them although that may be their right, is
9 contrary to the best interest of the Association
10 because that simply leads to stuff like this, Motions
11 to Dismiss so that my cases never are addressed and
12 their merits are never heard, judgments are never
13 given, ruling -- are never stated to resolve the
14 issues. The lack of resolution of the issues is the
15 thing that damages the corporation and leads to
16 continued disputed unrest between me and the Board.
17 All right. So, the other points that they made in
18 their Motion to Dismiss is that I cannot prosecute the
19 current action against it. I am a policyholder
20 therefore I have every right to expect them to act
21 according to the contract. On page 9, paragraph 8 I
22 cite the Section 36-2-210 and 36-2-301. Okay. And
23 that's -- that's basically it on this one, Your Honor.
24 Thank you, Your Honor.

25 THE COURT:

1 Thank you, Mr. Wedlake. Would any of the Defense
2 Counsel like to respond to Mr. Wedlake's presentation?

3 MS. KELLAHAN:

4 Your Honor, I just a few things that I want to point
5 out and make sure The Court is clear on.

6 THE COURT:

7 Yes, ma'am

8 MS. KELLAHAN:

9 Very briefly. Mr. Wedlake made a statement that the
10 parties admit the merits have never been considered,
11 that his cases have just been dismissed, and I wanted
12 to be sure that the record was clear. McCabe, Trotter
13 & Beverly does not admit that. The case that we were
14 all talking about 2019-CP-23-1501 was dismissed on
15 Summary Judgment, which is a determination on the
16 merits. The Court decided there were no genuine
17 material issues of fact and decided the case was a
18 matter of law. So McCabe, Trotter & Beverly believes
19 that this was decided on the merits. Mr. Wedlake cites
20 Section 15-3-90 which says -- which is the effect of a
21 Reversal Judgment for the proposition that his
22 defamation claim isn't barred by the statute of
23 limitations and he says he expects case 2017-6301 will
24 be reversed. That case didn't have anything to do with
25 McCabe, Trotter & Beverly. We were Counsel in that

1 case, but we weren't a party. There was no defamation
2 claim. So even if that case is reversed it wouldn't
3 somehow restart the statute of limitations on a
4 defamation claim that wasn't brought until 2020. He
5 also cites Section 15-31-30 as -- for the proposition
6 that because Woodington Homeowners' Association, who he
7 purports to represent as a nominal Plaintiff, because
8 they paid our invoice that somehow restarts the statute
9 of limitation on Mr. Wedlake's defamation claim.
10 That's not at all what that section provides. That
11 section provides that when you make a part payment on a
12 debt and that restarts the statute of limitations based
13 on common law that this section just provides the
14 mechanism by which you bring suit -- you bring suit on
15 the original action, not the new payment. And the last
16 thing I just wanted to point out to The Court was that
17 Mr. Wedlake cited Section 40-11-110 for the proposition
18 that McCabe, Trotter & Beverly can be held guilty of
19 extortion. Title 40, Chapter 11 governs contractors.
20 It doesn't at all apply to the case at hand. It's
21 talking about when a homebuilder or another general
22 contractor commits some bad act, so it doesn't apply in
23 this case here.

24 THE COURT:

25 Mr. Smith.

1 MR. SMITH:

2 Very briefly, Your Honor. First of all, no discovery
3 in Magistrate's Court so Mr. Wedlake's argument for
4 discovery is improper. Secondly, Exhibit B to our
5 Motion, which is the Order granting Summary Judgment in
6 Case 2019-CP-23-1501, makes findings of the fact that
7 essentially refute all of Mr. Wedlake's arguments and
8 he's made it clear that he believes the Circuit Court
9 is biased and he's trying to relitigate that Order here
10 and that's improper. And I would suggest that the only
11 person harming the community is Mr. Wedlake and he
12 continues to do so with these filings and I don't know
13 that sanctions are warranted, but at some point he's
14 got to stop with these frivolous lawsuits and
15 continuing to just file in other forums. And I don't
16 know that there's anything that Your Honor can do to
17 curtail that and he seems pretty determined, but we
18 would just ask that our Motions be granted in their
19 entirety based on the fact that he's just relitigating
20 the same cases and then barred by collateral estoppel.

21 THE COURT:

22 Mr. Farr.

23 MR. FARR:

24 And very briefly on behalf of State Farm Mr. Wedlake
25 mentioned over and over about there are genuine issues

1 of material fact. This is not a Summary Judgment
2 Hearing. This is a Motion to Dismiss Hearing. I will
3 state his failure to state a claim upon which relief
4 can be granted, so even if he could have all the
5 discovery he wanted the simple fact is that as is
6 currently pled he has not stated a claim against State
7 Farm. He is -- there is no contract between the
8 parties. There has been no breach and he has shown no
9 damages. The fact that he is, you know, presumably I
10 guess paying HOA dues and so part of those dues maybe
11 go to paying the premiums of the policy doesn't make
12 him a policyholder. My neighbor, if I get in a bad
13 poker match with my neighbor and I wager that I'll pay
14 his insurance premiums for six months and lose, doesn't
15 make me all a sudden a party to that contract even
16 though I'm paying for his policy. He's also not a
17 third-party beneficiary particularly with respect to
18 these claims. I'm trying to figure out exactly what
19 benefit he was supposed to have gotten when he sues his
20 own HOA Board here, but. And then damages, I don't
21 really know how he's been damaged by the fact that
22 State Farm is defending his HOA. You know like I think
23 what he just summed up saying he doesn't want them to
24 have a lawyer. He wants to be able just to come in and
25 do what he wants. And so he can't have it both ways.

1 He can't say, "You guys want to pay for a lawyer, you
2 can't do that. Your insurance company wants to pay for
3 it, you can't do that either." So, thank you.

4 THE COURT:

5 Thank you very much. Mr. Wedlake, I'm going to --

6 MR. WEDLAKE:

7 May I make one counter comment then?

8 THE COURT:

9 All right. You can make one more counter comment, yes,
10 sir.

11 MR. WEDLAKE:

12 The dispute under the Rules of This Court about the
13 discovery statement that was just made that discovery
14 isn't improper. I don't believe that's true. Rule
15 15(a) was cited by the Board's representative in a
16 letter I received, which was not put in front of This
17 Court, which I responded to. Since there is no Rule in
18 Magistrate's Court stating provisions for discovery,
19 therefore Rule 2 of Magistrate's Court it says you will
20 comply with the statutory requirements and/or Circuit
21 Court Rules as the rule that applies. I believe
22 discovery is entirely proper in every court proceeding
23 such that the claim about discovery being improper I
24 believe is incorrect.

25 THE COURT:

1 All right. Well, I've had an opportunity to listen to
2 the arguments of Counsel of Pro Se Litigant, Mr.
3 Wedlake. I've read all the Memorandums filed in
4 support of the Motions to Dismiss as well as the
5 Memorandums in Opposition filed by the Plaintiff. You
6 know and unfortunately, Mr. Wedlake, I agree with the
7 Defense here. You know I tried to -- I tried very hard
8 and I do my very best to stay unbiased in my position
9 as a Magistrate to make sure that Pro Se Litigants like
10 yourself are properly represented or properly allowed
11 to represent themselves in Magistrate's Court. And I
12 think you do a very good job of filing all the
13 necessary documents that I need to review. However,
14 Defense Counsel has made some very pointed -- some
15 strong points and they hit the high notes in their
16 arguments and I agree with them. You know casting the
17 Plaintiff in a false light that is not a recognized
18 cause of action in Civil Court. It may be construed as
19 a defamation suit, but in that case it has to fall
20 within the required statute of limitations and I find
21 that that falls out of the two-year statute of
22 limitations as the Defense Counsel has presented. So
23 for that reason the false light claim is dismissed. As
24 to the derivative claim you know, I agree you're not
25 allowed to bring a derivative claim on behalf of the

1 Board or the Members of the Board without approval by
2 the Board. And we don't have any written authorization
3 by the Board President under the Rules that will allow
4 you to do that. Therefore, you know, your derivative
5 claim is not valid and you don't have any standing to
6 bring that suit. You know as far as your ability to
7 prosecute a criminal action in Civil Court that's not
8 allowed. So the extortion claim is not a civil cause
9 of action that I can consider and it certainly can't be
10 prosecuted in the Civil Court realm. It has to be
11 taken up the Solicitor's office and law enforcement. I
12 can't consider that. As far as conspiracy is concerned
13 you would have to prove some sort of special or
14 economic damage such as lost wages. These legal fees
15 that have been accrued so far are as a direct result of
16 your lawsuits against the Board and the Members of the
17 Board. They have had no choice but to hire legal
18 counsel to represent them. And, you know, the attorney
19 doesn't represent in that -- well, we didn't really go
20 into this, but I wouldn't think that the attorneys for
21 the Board represent the individual members. They're
22 hired on behalf of the Board. So, you know, I haven't
23 seen any special damages presented or any factual
24 evidence. Well, we haven't had any evidentiary
25 evidence presented to The Court necessarily. I'm

1 making this ruling as a matter of law. You know
2 collateral estoppel that's issue preclusion. Basically
3 has this issue been previously litigated in other
4 courts. I absolutely believe it has. I think, you
5 know, at some point, Mr. Wedlake, this has got to stop.
6 This is costing a lot of money. I mean something that
7 can potentially bankrupt your HOA. I don't know what
8 happens when an HOA goes bankrupt. I don't practice in
9 that area of law or hear those kind of issues in This
10 Court. But, again, back to the -- or as to the State
11 Farmsuit, you know, Mr. Farr is correct. You have to
12 go get a DJ or file a DJ Action, get a Declaratory
13 Judgment that says you should be a party to that
14 insurance contract between the Board and State Farm.
15 But, otherwise, you don't have the ability to file suit
16 against them for providing a defense to the HOA Board
17 and you certainly aren't a party to that contract which
18 would invoke any coverage or protections for yourself
19 as an individual at this time. Unless a Court says
20 otherwise that matter is not before me today and I
21 certainly am not going to rule on whether or not you have
22 any protections under the State Farm policy as an
23 individual member or member of the Association. You
24 know I know that you mentioned in some of your Memos
25 that there was some evidentiary issues and brought up

1 some of the Rules of Evidence, but this is a hearing on
2 the Motion to Dismiss and all the grounds presented
3 along with your defenses to those. I can't really make
4 any determinations on any evidentiary issues because we
5 just haven't gotten that far. You know I'm happy to
6 let the Circuit Court make a decision on what I rule
7 today, but, you know, you don't have a standing to sue
8 State Farm and you certainly don't have a standing to
9 bring a derivative suit. And any of the false light or
10 extortion claims fail as a matter of law. So with
11 that, Mr. Wedlake, I'm going to have to dismiss this
12 suit. And I'm dismissing it in This Court with
13 prejudice. You can't bring it back here. And, you
14 know, I appreciate what you're doing, but I think it's
15 causing an intense hardship on your neighborhood. I
16 mean, you know, these attorneys over here are making
17 plenty of money defending your lawsuits, but it's not
18 helping your neighborhood at all. You know I can't get
19 involved in the governments of your Board. I can't
20 make decisions about that, so I'm not. So I can just
21 look at this suit and decide whether or not it needs to
22 go to any further and I'm dismissing it today. So with
23 that would, Ms. Kellahan, or which of the attorneys
24 would like to prepare a proposed Order. I know you-all
25 want to put in some specifics here.

1 MS. KELLAHAN:

2 Your Honor, I'm actually not being paid to be here
3 today.

4 THE COURT:

5 Okay. I'm sorry. I shouldn't have gone there.

6 MS. KELLAHAN:

7 No, that's okay. So if somebody who is getting paid
8 here today wants to draft it that would be great, too.

9 MR. FARR:

10 How about Chris and I both are being paid by State
11 Farm so why don't we work together and we'll come up
12 with a joint Order for everybody?

13 THE COURT:

14 All right. All right. I don't mean to get involved in
15 who's getting paid and who's not, but definitely would
16 -- you-all just agree on who is going to submit a
17 Proposed Order. And what that they're going to do is
18 email it to us because we're all on that same email
19 chain, Mr. Wedlake. And then you'll have an
20 opportunity to review it and respond to it with any
21 corrections and/or clarifications or proposed
22 deletions, however you want, and then I'll take a look
23 at it. Kind of like we did in the last case.

24 MR. WEDLAKE:

25 Yes. Now, Your Honor, am I correct that there have

1 been no claims for dismissal with prejudice brought to
2 The Court?

3 THE COURT:

4 I have the discretion to do that and so I'm doing it.

5 MR. WEDLAKE:

6 So you are doing that on your discretion?

7 THE COURT:

8 Yes, sir.

9 MR. WEDLAKE:

10 And we touched on the fact that when Counsel writes
11 Orders, Proposed Orders, they submit them I reply
12 with objections and my objections are never considered
13 and then a whole bunch of stuff goes into the Order,
14 which is then used as a soapbox just like it was by
15 Counsel here today.

16 THE COURT:

17 Well, we haven't ever exchanged Proposed Orders. So
18 you don't know how I'm going to do that. So what I'd
19 like for you to do is once he emails the Order if you
20 have Microsoft Word you can take it and do it, review
21 it, and add things or delete things, strike through
22 things using track changes. So I'll see where every
23 time you've made an edit you can email that to me.

24 MR. WEDLAKE:

25 Now, that's what I have done in the past, which has

1 been ignored, which is all I'm citing to your attention
2 at this time.

3 THE COURT:

4 Okay. Well, I won't ignore it. I'll certainly
5 consider it. Now, that doesn't mean that I'm going to
6 agree with you, but I'll let you know.

7 MR. WEDLAKE:

8 Now, I have four other hearings scheduled on the 30th
9 so what the game typically is is an Order is put in and
10 within three days it's signed by the Judge regardless
11 of my objections and/or the fact that I said, "Look, I
12 can't respond in that interval."

13 THE COURT:

14 What other hearings? They're not relative to this
15 action necessarily. There's nothing else to be heard
16 in This Court.

17 MR. WEDLAKE:

18 This is the same issue I brought up to The Court here
19 as well as The Court, the Circuit Court involving this
20 one. I'm just a single person. There's just 24 hours
21 in a day.

22 THE COURT:

23 You brought this all on yourself.

24 MR. WEDLAKE:

25 I can't do things that The Court requires within a

1 specific time frame necessarily and I'm not talking
2 about months. I'm talking about just a matter of days.
3 One of the Orders, Proposed Order, that was issued was
4 signed by the judge without any change overall of my
5 objections within one day.

6 THE COURT:

7 And that's within the Judge's purview to do that, so.

8 MR. WEDLAKE:

9 I'm not saying it's not within the Judge's purview.

10 I'm saying it's judicial bias against me, Your Honor.

11 THE COURT:

12 Okay. Well, I'm trying to really hard to be neutral
13 here, but I have to do -- I have to consider this as a
14 matter of law. We're not getting into this --

15 MR. WEDLAKE:

16 Yes, I am not questioning matters of the law or your
17 judgment in that regard at this time.

18 THE COURT:

19 Thank you.

20 MR. WEDLAKE:

21 However, I will confer with my attorney adviser and
22 decide whether a Notice of Appeal will be appropriate
23 in this case. Particularly as in my Complaint I have
24 cited unlawful actions by the Board which apparently
25 have been ignored by this hearing.

1 THE COURT:

2 You can appeal me. I will not be personally offended
3 one bit. We can let the Circuit Court listen to the
4 record and decide for themselves. I won't be offended,
5 but that's your decision to make, but for purposes of
6 today this hearing is concluded and the matter is
7 dismissed with prejudice.

8 MR. WEDLAKE:

9 Thank you, Your Honor, and I will consciously consider
10 what you have said.

11 THE COURT:

12 Yes, sir.

13 MR. WEDLAKE:

14 Thank you very much.

15 THE COURT:

16 Thank you, Mr. Wedlake. Thank you, Counsel. You-all
17 have a good day.

18 HEARING ADJOURNED 11:51 A.M.

19

20

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CERTIFICATE OF REPORTER

I, RACHEL H. WOOD, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 64 pages represents a true and accurate transcript of the Magistrate Court hearing which was taken by me on the 24th day of November, 2020.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Rachel H. Wood, Reporter
Notary Public for South Carolina
Commission Expires: 02/13/2029

FIGURE BOA.3 - Transcript of Record

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS

Raymond A. Wedlake, et)
al.,) TRANSCRIPT OF RECORD
Appellants,) 2021-CP-28-05006
-vs-)
Board of Directors of)
WHOA, et al.,)
Respondents.)

RECEIVED
Aug 09 2021
SC Court of Appeals
April 22, 2021
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, JUDGE

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

PRO SE
Attorney for the Appellants

STEPHANIE TROTTER KELLAHAN, ESQUIRE
MICHAEL MURPHY, ESQUIRE
Attorneys for the Respondents

Margaret A. Woods
Circuit Court Reporter

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

5 (Pause.)

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

13 THE APPELLANT: Yes, I'm here.

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

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

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

8 THE COURT: Good, let's go.

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

18 THE COURT: Certainly they are.

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

1 THE COURT: Uh, ---

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

13 THE COURT: Alright.

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

17 THE COURT: 'kay.

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

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

5 THE COURT: Yes, sir.

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

8 THE COURT: Okay.

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

14 THE COURT: Okay.

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

18 THE COURT: 'kay.

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

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

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

3 THE COURT: (Indiscernible cross-talk.)

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

8 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

21 THE COURT: 'kay.

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

1 upheld.

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

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

20 THE COURT: Okay.

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

1 substantiated based on all the evidence that I have presented
2 to the Court ---
3 THE COURT: Okay.
4 THE APPELLANT: --- so well that's a wrap for me.
5 THE COURT: Well, ha, ha, ha, okay. Well I certainly do
6 appreciate it, I appreciate, uh, once again the excellent
7 arguments on all sides here. Uh, uh, again, give me about two
8 weeks on this one, um, I generally don't ask for that much
9 time, uh, when I'm, uh, when I'm takin' matters under
10 advisement but, uh, but, uh, uh, in this case I know there's a
11 lot to look through, I've looked through it once but, uh,
12 after hearin' arguments and gettin' some things cleared up,
13 just give me a little time to be able to go through all this
14 so, um, I -- you should hear somethin' from me, uh, before two
15 weeks, alright. Thank you so much.
16 MR. MURPHY: Thank, Your ---
17 THE APPELLANT: Thank ---
18 MR. MURPHY: --- Honor.
19 THE APPELLANT: --- you.
20 MS. KELLAHAN: Thank you, Your Honor.
21
22
23
24
25

1 CERTIFICATE OF REPORTER

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

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

13 July 6, 2021

14
15 Margaret A. Woods

16 Margaret A. Woods, Court Reporter
17 in and for the State of South Carolina at Large.
18
19
20
21
22
23
24
25

ATTACHMENT IB.4 - Request for Written Orders with Service to Plaintiff

703 Creekview Drive
Greenville, SC 29607
October 5, 2020

The Honorable Judge Laura Saunders
Fairview/Austin Summary Court
205 N. Maple Street Suite 4
Simpsonville, SC 29581

RE: 2020-CV-23-10201384

Subject: Request for Written Orders with Service to Plaintiff

Dear Honorable Judge Saunders:

Please accept this request for: a) written Orders giving disposition for outstanding motions; and, b) verification that the Court is aware of related documents. To date, I am not aware that any Orders were issued related to 2020-CV-23-10201384, where I am a Plaintiff. No Orders have been served to me. May I hope that all Orders will contain legal rationale, and explanations of reasoning leading to judgment, rather than merely containing brief statements of grant or deny?

My requests are made pursuant to a "Magistrate's Summons" (Exhibit 1) of September 29, 2020, which informed me about a bench trial scheduled for November 24, 2020. Without prior disposition of pending motions, I can not know how to prepare properly for such trial. My case cited six-similarly-situated Plaintiffs, and I also need to bring additional evidence to the Court, but gathering such evidence will require "Discovery", which often takes a very long time.

Confusion is noted in Exhibit 1. Two defendants: "Board ..." and "McCabe ..." are seen. However, on September 28, 2020, I personally hand delivered a copy of an "Amendment to Complaint" (Exhibit 2) which showed:

2. addition of a third Defendant: State Farm Fire and Casualty Company

This third defendant is not shown in Exhibit 1. I am not informed that Exhibit 2, which cited an attached "First Amended Complaint" was not accepted by the Court.

My "ADR" motion is particularly relevant to be disposed before trial. The Appendix lists other pending motions, with associated documents of which I hope the Court is aware. Thank you for attention to my requests.

Sincerely,

Raymond A. Wedlake, Plaintiff (*Pro Se*)
703 Creekview Drive, Greenville, SC 29607
864-254-9262

FILED 2020 OCT 5 PM 3:00
CLERK OF COURT
JUDGE LAURA SAUNDERS
2020 OCT 5 PM 3:00
CLERK OF COURT
JUDGE LAURA SAUNDERS

APPENDIX

MTB denotes Defendant: "McCabe, Trotter & Beverly, P.C."

<u>Date</u>	<u>Item</u>
Jul 13	Plaintiff's motion requesting scheduling of ADR
Aug 24	MTB's return in opposition to ADR
Sep 21	Plaintiff's memorandum in support of ADR
Aug 7	Plaintiff's motion for preliminary injunction
Aug 24	MTB's return in opposition to preliminary injunction
Sep 22	Plaintiff's memorandum in support of preliminary injunction
Aug 24	MTB's motion to dismiss
Sep 11	Plaintiff's memorandum in opposition of MTB's motion to dismiss
Sep 28	Plaintiff's "First Amended Complaint"

ATTACHMENT IB.6 - Discovery not Allowed - RFP from State Farm

STATE OF SOUTH CAROLINA	)	<u>2020-CV-23-10201384</u>
	)	CIVIL CASE NUMBER
COUNTY OF GREENVILLE	)	
	)	
Raymond A. Wedlake, as a Member of	)	
Woodington Homeowners' Association, Inc.	)	IN THE MAGISTRATE'S COURT
and on behalf of other-similarly-situated Members	)	
of Woodington Homeowners' Association, Inc.	)	
PLAINTIFFS	)	
vs.	)	REQUEST FOR
Board of Directors of Woodington Homeowners'	)	PRODUCTION OF DOCUMENTS
Association, Inc., comprised of Mona Craigo,	)	
Edward Decker, and Sandra LaCroix	)	FROM DEFENDANT
at the time of filing	)	
and	)	STATE FARM FIRE AND
McCabe, Trotter & Beverly, P.C.	)	CASUALTY COMPANY
and	)	
State Farm Fire and Casualty Company	)	
DEFENDANTS	)	

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*) and brings this 'Request for Production of Documents from "State Farm Fire and Casualty Company" Defendant', pursuant to Rule 15(a), SCRMC (excerpted, emphasis added), and Rule 34(a), SCRCP(excerpted, emphasis added):

RULE 15 EXCHANGE OF INFORMATION BETWEEN PARTIES ..
(a) Recognizing the unique nature of the court's jurisdiction and the need for a speedy determination of actions filed in the court, the prompt voluntary **exchange of information and documents by parties** prior to trial is encouraged, but in no event shall the court require such exchange.

RULE 34 PRODUCTION OF DOCUMENTS ...
(a) Scope. **Any party may serve on any other party a request (1) to produce** and permit the party making the request, or someone acting on his behalf, to inspect and copy, **any designated documents**, or electronically stored information (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and **which are in the possession, custody or control of the party upon whom the request is served; ...**

and hereby requests that Defendant respond and furnish genuine and complete copies of the following communications, documents, and materials to Plaintiff as soon as practicable after service of this request, but no later than 30 days after receipt of these requests.

DEFINITIONS

A. The term "Defendant" refers to "State Farm Fire and Casualty Company", their affiliates, agents, assigns, or any other-pertinent-corporate division or subdivision, and any-independent agent or anyone acting on behalf of Defendant, now or in the past, as represented in the instant Case 2020-CV-23-10201384 (C1384), by the law firm of Gallivan, White & Boyd P.A., Nicholas A. Farr, Esq.

B. "Person" means and includes, without limiting the generality of its meaning, any natural person or third party; corporate or business entity; firm; partnership; association; group; governmental body, agency, or subdivision; committee; commission; or other organization or entity.

C. The terms "related to" and "concerning" include referring to, alluding to, responding to, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, reflecting, analyzing, constituting, or in any way relevant to the specified subject within the meaning of Rule 26, SCRCP.

D. "Communication" shall include without limitation, and is also not limited to, any statements or transmission or acquisition of information from whatever source, including other third parties, via: notes, letters, texts, sketches, photos, e-mail, memoranda, documents, recordings (audios/videos), or other reproductions of materials and subject matter reflecting pertinent information or evidence, regardless of whether audio, visual, written, digital, or oral communication, as may be related in any way to cited lawsuits.

E. As used here, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used and vice versa. The male gender form of a pronoun shall also include the female gender form of the pronoun. The use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb so used.

F. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

G. "Each," "any," and "all" are both singular and plural.

REQUESTS FOR PRODUCTION

Privilege Log

This request seeks production of all non-privileged communications regarding any claim filed, including any communications provided in support thereof, as well as Defendant's response(s) thereto. Although Plaintiffs are not seeking documents which are protected by a recognized privilege, Defendant is requested to list any documents which may be responsive to this request, with sufficient detail on a separate **privilege log**, such that a determination about whether the claim of privilege may apply can be reviewed.

REQUEST NO. 1:

Provide any and all communications related to Defendant's Claim: 40F6976W2 related to C1384, which may include but is not limited to those of possible witnesses, including parties to this action, where written, oral, summarized or reproduced in any manner whatsoever.

REQUEST NO. 2:

Provide any and all communications related to Defendant's Claims: 40-4977-K76 (2018CP2303758) and 40-1711-G27 (2017CP2306301), which may include but is not limited to those of possible witnesses, including parties to this action, where written, oral, summarized or reproduced in any manner whatsoever.

REQUEST NO. 3:

Provide any and all communications related to Defendant's Claims, whose numbers or identifications are not known, related to Cases: 2020CP2301458 and 2019CP2301501, which may include but is not limited to those of possible witnesses, including parties to this action, where written, oral, summarized or reproduced in any manner whatsoever.

REQUEST NO. 4:

Provide any and all communications reflecting any damages incurred by, or accrued to, Defendant as a result of any of claim or claims made related to Plaintiff.

REQUEST NO. 5:

Provide any and all communications reflecting payments made by Defendant to the Board, or to involved parties or any person, as a result of any of claim or claims made related to Plaintiff.

REQUEST NO. 6:

Provide all and any communications made by Defendant concerning the allegations raised against them in Plaintiff's Complaint.

REQUEST NO. 7:

Provide any and all communications:

7a) provided to and/or relied upon by each and every person, expert or consultant this Defendant intends to call as an expert witness at trial, in preparation of his or her opinion or testimony, or

7b) that embody, reflect, refer to or summarize reports or memoranda prepared for this Defendant by any person this Defendant expects to call as an expert witness.

Dated this 5th day of November, 2020.


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

ATTACHMENT IB.10 - Notice of Civil Appeal

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

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

Appellant

vs.

Board of Directors of Woodington Homeowners'
Association, Inc., comprised of Mona Craig,
Edward Decker, and Sandra LaCroix
at the time of filing

and

McCabe, Trotter & Beverly, P.C.

and

State Farm Fire and Casualty Company

Respondents

2020-CP-23-05996
COMMON PLEAS CASE NUMBER

2020-CV-23-10201384
MAGISTRATE CIVIL CASE NUMBER

IN THE COURT OF COMMON PLEAS

NOTICE OF CIVIL APPEAL

The Plaintiff, Raymond A. Wedlake (*Pro Se*), hereby gives notice of appeal pursuant to Rule 18, SCRMC, from the judgment of the magistrate's court in the above action, to the Circuit Court of Common Pleas, in the county of Greenville.

This notice of appeal is made subsequent to an "Order Granting Defendants' Motion to Dismiss" which was received on the 28th day of December, 2020. South Carolina Code of Laws: Title 18, Chapters 1 and 7, grant to Plaintiff a statutory right for this Appeal.

The appellant's exceptions to the judgment of the magistrate are set forth as follows:

- a) The Order granting dismissal was based upon Errors of Law and Errors of Fact;
- b) Plaintiff was not clear about actual-legal grounds upon which dismissal was based;
- c) Plaintiff's pleadings and documents, that gave clear evidence of genuine issues of material fact, were not given lawful consideration pursuant to statutory law, nor pursuant to South Carolina Supreme Court precedents;
- d) Plaintiff reserves the right to file a subsequent Initial Brief that will support these, and additional, claims.

Dated this 28th day of December, 2020.

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

SCCA/720 (Amended 8/1/2011) [- as modified]

Verified