THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Appellate Case No. 2021-000511

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

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

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REPLY BRIEF OF APPELLANT FOR STATE FARM RESPONDENT

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November 7, 2021

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PREFACE

Pursuant to Rule 208(a)(3), SCACR, Raymond A. Wedlake, Appellant *(Pro Se)* files and serves this "Reply Brief of Appellant" responding to the "Initial Brief of Respondent State Farm …" (BORS). State Farm, like the Board of Directors (Board) of Woodington Homeowners' Association, Inc. (WHOA), is **but one Defendant** of **three Defendants** cited in an original case: 2020-CV-23-10201384 (C1384). Appellant reminds the Court of Appeals (CAP) that both "Brief of Appellant" (BOA), plus an "Initial Brief of Appellant" (to Circuit Court, IBOA, R. pp. 641 - 665), are matters of CAP record, received by CAP as stamped August 9, 2021, and November 8, 2021 for Final Brief.

I. REPLY TO "STATEMENT OF THE ISSUES ON APPEAL"

A) BORS cites one, and only one issue, that ONE ISSUE being: "… Dismiss On The Grounds That The Appellant Is Not An Insured …"

1. Appellant finds that focus by BORS upon one issue, only, makes much of content found in BORS to be such that "… the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.". All such content needs to be viewed by this Court as subject to "Motion to Strike", Rule 12(f), SCRCP. BORS in its "Introduction" admits: "… the only real issue with regard to his claims against State Farm is whether Appellant is a party to the insurance contract with State Farm …" .

2. BORS seems to admit, then, that fifteen-other "Issues on Appeal" found in BOA (BOA, p. 8-10) form a solid groundwork that necessarily shows dismissal of all C1384 issues, and dismissal of all-three-C1384 Defendants, cannot stand. BOA cited this-one issue as "[IV] C) The Judge erred by accepting that Appellant was not a party to a WHOA insurance contract …" (BOA, p. 13), which included sections C1 – C7 (BOA, pp. 13-14) that referred to several authorities, including: *Jennings v. First of Ga. Underwriters Co*. … (R. p. 658),

Dawkins v. Fields (R. p. 275), and *Evening Post Publ'g Co. v. Berkeley County Sch. Dist* (R. p. 275). Particularly, BOA showed (emphasis added):

> **C5. Appellant could be considered as a "third-party"**
> Possibly, this Court might consider Appellant as a "third-party" (THP) to ICO [the Insurance Contract]. Statutes confirm that THP beneficiaries have standing under the ICO; see SC Code of Laws Section 36-2-210 and -301, and Section 38-55-170 … ICO: '… can be enforced by such third party.");
> *Jennings v. First of Ga. Underwriters Co*. ... (BOA, p.13; R. p. 658)

B) BOA cited sixteen Issues on Appeal that need to be addressed

3. BOA cited 12 authorities (see BOA, "Table of Authorities", p. v), with 8 supporting Figures (BOA, Figure BOA.1 to BOA.8: R. pp. 43 - 45, 638, 396 - 407, 638 - 640, 641 – 665, 666 - 669, 670, 671 - 682). BOA relied upon IBOA (R. pp. 641 - 665), where IBOA included 108 supporting documents (attachments, exhibits, and figures) (R. pp. [various]). BORS claims: "… Appellant is not a party to the insurance contract …", which is clearly false based upon evidence before the Court, and based upon arguments presented by Appellant in myriads of pleadings.

C) BOAS claims statute is not applicable - an Error of Law

4. A footnote appears on BOAS, p. 7, claiming: "In his brief, Appellant cites … those statutes … not applicable to this matter." . Appellant finds cited statutes are clear, unambiguous, and apply directly to this matter. Statutory provisions do not apply in a misconstrued and twisted manner as claimed by BOAS. Appellant reiterates content from 11/19/20 in Appellant's "Memorandum in Opposition to State Farm Fire and Casualty Company's Notice of Motion and Motion to Dismiss" (MOP, Attachment IB.8; R. pp. 272 - 281):

> 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 [State Farm] is noted. Pursuant to Section 36-2-301, SF as seller of their goods (ICO [Insurance Contract]) 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**. (R. p. 280)

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. (R. p. 280)

D) Separation of powers prohibits the Judicial Branch of government from usurping authority of the Legislative Branch as given by statutory law

5. It is the Legislative Branch of government who makes law. It is **NOT** the Judicial Branch of government that makes law – separation of powers exist. Precedents must conform to statutory law if they are claimed to apply as a basis for judgment. The **SUPREME COURT** of South Carolina addressed these issues in *Smith v. Tiffany*. A few excerpts show (emphasis added):

"... we are likewise **constrained by the plain meaning of the unambiguous language** in the [Contribution Among Joint Tortfeasors] Act. While we appreciate the equity-driven argument of Appellants, **we must honor legislative intent as clearly expressed in the Act**, lest we run afoul of separation of powers."

‘It is **axiomatic that statutory interpretation begins (and often ends) with** the **text of the statute** in question. See *Timmons v. S.C. Tricentennial Comm'n*, 254 S.C. 378, 401, 175 S.E.2d 805, 817 (1970) (“**If a statute is clear and explicit** in its language, then there is **no need to resort to statutory interpretation or legislative intent to determine its meaning**.”); see also *Transp. Ins. Co. v. S.C. Second Injury Fund*, 389 S.C. 422, 429, 699 S.E.2d 687, 690 (2010) (“The text of a **statute as DRAFTED by the LEGISLATURE** is considered the **BEST EVIDENCE**

[419 S.C. 556]

of the **legislative intent or will**.” (citing *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000))). **Absent an ambiguity**, there is nothing for a court to construe, that is, a **court should not look beyond the statutory text to discern its meaning**.” [T]here is no occasion for employing rules of statutory interpretation and the **court has no right to look for or impose another meaning**” unless a statutory provision **is ambiguous**. *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995) (citing *Miller v. Doe*, 312 S.C. 444, 441 S.E.2d 319 (1994)); see also *Tilley v. Pacesetter Corp.*, 355 S.C. 361, 373, 585 S.E.2d 292, 298 (2003) (observing that **unless a statute is ambiguous**, “the application of standard rules of statutory **interpretation is unwarranted**”). _Only “[w]here the **language of an act gives rise to doubt or uncertainty** as to legislative intent” **may the construing court “search for that intent beyond the borders of the act itself**.” *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 348, 549 S.E.2d 243, 247 (2001) (citing *Lite House, Inc. v. J.C. Roy Co.*, 309 S.C. 50, 53, 419 S.E.2d 817, 819 (Ct. App. 1992)).’

‘In light of these well-established rules of statutory interpretation, ... we are unwilling to accept Appellants' invitation to look outside the text of the Act to justify the assumption that the legislature's use of differing terms in section 15-38-15 was not deliberate or that those words mean anything other than what they say. *See Hodges*, 341 S.C. at 87, 533 S.E.2d at 582 (“If the **legislature's intent is clearly apparent from the statutory language, a court may NOT embark upon a search for it outside the statute**."_ (citing *Abell v. Bell*, 229 S.C. 1, 91 S.E.2d 548 (1956))); see also *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (“[T]he **words found in the statute** [must be given] their '**plain and ordinary meaning**'” and “**if the words are unambiguous, we must apply their literal meaning**."_ (quoting *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007))).’

Smith v. Tiffany, 799 S.E.2d 479, 419 S.C. 548 (2017)

II. Reply to "Statement of the Case"

A) Appellant gave a more proper "Statement" in his BOA

6. Appellant includes by reference this section from IBOA (Figure BOA.5; R. pp. 649 – 650).

B) State Farm's "One Issue" makes irrelevant BORS' "Statement"

7. Given by State Farm only one issue, essentially all BORS' "Statement of the Case" content is subject to Rule 12(f), SCRCP, "Motion to Strike".

C) State Farm admits to violation of the Insurance Contract

8. No such language "… reservation of rights …" is found in the Insurance Contract (ICO, Exhibit D – "CMP-4814 Directors and Officers Liability"; R. pp. 568 - 570). State Farm cannot provide "… Board with a defense …" under the ICO on this basis. State Farm admits to a clear-contract violation with BORS stating:

> State Farm agreed to provide the HOA Board with a defense in this action under a reservation of rights.

III. Reply to "Standard of Review"

A) Respondent cites no specific deficiencies related to Causes of Action

9. Appellant finds generic comments in BORS vague and ambiguous. BORS cites no specifics showing deficiency in any of Appellant's causes of action. BORS does not challenge, nor more pertinently shows any evidence, that denies any of Appellant's facts. BORS does not show failure of any facts, nor show how facts were not "sufficient".

B) Respondent cannot bring a jurisdiction issue newly on appeal

10. BORS brings another issue that is not stated as part of their "Issues on Appeal". A question of jurisdiction cannot be brought newly at the appeal stage. The "Order Granting Defendants' Motion to Dismiss" (Exhibit NOA.2, R. pp. 27 - 36) does not contain the word:

"jurisdiction". This Order does not refer to Rule 12(b)(1), SCRCP. Thus, CAP is obliged to ignore a jurisdiction question that is newly brought on appeal.

IV. Argument

A) State Farm is one of three Respondents

11. Dismissal of Appellant's entire case, and dismissal of all-three Defendants, represents several Errors of Law, and several Errors of Fact. In the event this Court may decide Appellant has no standing to claim Breach of Contract against State Farm, affirmation of dismissal with regard to State Farm does not justify C1384 being dismissed in its **ENTIRETY**.

B) Appellant is a policyholder of the WHOA-insurance contract

12. As presented in BOA, paragraph C2 (BOA, p. 13), a person or group of persons, who are WHOA, and who pay the premium to maintain the ICO are directly-involved parties. They are owners of the policy, or policyholders. The issue of "policyholder standing" was addressed by the **Supreme Court** of Iowa in *Rieff v. Evans,* where a conclusion was: "… We find that policyholders have standing to hold third parties accountable to their corporation by derivative suit. …". Excerpts from *Rieff v. Evans* show (emphasis added):

> A group of policyholders, represented by Mary M. Rieff, **appeal the dismissal of their lawsuit against two insurance companies** and numerous individual defendants who were or are directors of Allied Mutual Insurance Company (Mutual). The defendants
> [630 N.W.2d 282]
> also include Allied Group, Incorporated (Group). Mutual is a nominal defendant and Nationwide Mutual Insurance Company (Nationwide) is an intervenor defendant. A motion to dismiss the lawsuit was filed by the defendants. The district court sustained the motion to dismiss holding that the **policyholders lacked standing** to proceed with the lawsuit and the suit was barred by a statute of limitations. **We reverse the dismissal** of the policyholders' suit in part and remand for further proceedings.
>
> ... They argued policyholders have no standing to bring a derivative suit, the statute of limitations bars the basis for the claims, and the policyholders have otherwise failed to state a cognizable claim for which relief can be granted.

... The issue generating the most dispute is **whether a policyholder has standing to bring a derivative suit on behalf of her mutual company**. **This right is unequivocally recognized for shareholders by state statute**. Iowa Code § 490.740. A similar right for policyholders may also be found
[630 N.W.2d 284]
in past precedent. Rowen v. LeMars Mut. Ins. Co., 230 N.W.2d 905 (Iowa 1975) (Rowen I).

Policyholder standing to sue derivatively is a right much recognized by other jurisdictions. See generally Theodore Allegaert, Comment, Derivative Actions by Policyholders on Behalf of Mutual Insurance Companies, 63 U. Chi. L.Rev. 1063, 1070-71 (1996) [hereinafter Allegaert] ("[T]here is ample precedent for allowing policyholder derivative actions to proceed.... Virtually all judicial opinions in insurance derivative actions ... have merely assumed ... standing."). **The United States Supreme Court has also recognized that the derivative suit is available to policyholders because of their similarity to shareholders.** Koster v. (American) Lumbermens Mut. Cas. Co., 330 U.S. 518, 522, 67 S.Ct. 828, 830, 91 L.Ed. 1067, 1072-73 (1947). "The stockholder's derivative action, to which this policyholder's action is analogous, is an invention of equity to supply the want of an adequate remedy at law to redress breaches of fiduciary duty by corporate managers." *Id.*

Courts around the nation have either explicitly provided this right or assumed it was available to policyholders. Koster v. (American) Lumbermens Mut. Cas. Co., 153 F.2d 888, 890-91 (2d Cir.1946), aff'd, 330 U.S. 518, 67 S.Ct. 828, 91 L.Ed. 1067 (1947); Elgin v. Alfa Corp., 598 So.2d 807, 810-12 (Ala.1992); Lower v. Lanark Mut. Fire Ins. Co., 151 Ill.App.3d 471, 473, 104 Ill.Dec. 341, 343, 502 N.E.2d 838, 840 (1986); O'Donnell v. Sardegna, 336 Md. 18, 32, 646 A.2d 398, 404-05 (1994); Harhen v. Brown, 46 Mass.App.Ct. 793, 808, 814-15, 710 N.E.2d 224, 235, 238-39 (1999), rev'd on other grounds by 431 Mass. 838, 730 N.E.2d 859 (2000); Pathfinder Life Ins. Co. v. Livingston, 140 Neb. 354, 299 N.W. 537, 539 (1941); Amabile v. Lerner, 64 N.J.Super. 507, 511-12, 166 A.2d 603, 605 (1960); Lesser v. Burry, 132 Ohio App.3d 319, 322, 724 N.E.2d 1227, 1229 (1999); Drain v. Covenant Life Ins. Co., 454 Pa.Super. 143, 152-56, 685 A.2d 119, 124-26 (1996). Further, several courts have used our Rowen jurisprudence to persuade them that **policyholders have standing.** See O'Donnell, 646 A.2d at 404; Harhen, 710 N.E.2d at 239.

Finally, we have found **no court that has expressly said this right is unavailable to**
[630 N.W.2d 288]
policyholders absent controlling statutory direction. Rather, courts have been sensitive to the necessity of such suits "to deal fairly and competently with those seeking relief for wrongs done." Harhen, 710 N.E.2d at 234. ...

> **We find that policyholders have standing to hold third parties accountable to their corporation by derivative suit**. Nothing in chapter 490 prohibits this power or overrules several years of precedent indicating this as an authorized policyholder action. Moreover, we are persuaded that a suit in equity gives our court more leeway to address issues that would not ordinarily be available to policyholders otherwise. See Koster, 330 U.S. at 522, 67 S.Ct. at 830, 91 L.Ed. at 1072-73. **Accordingly, we reverse the district court's dismissal of these derivative claims for lack of standing.**
>
> {*Rieff v. Evans*, 630 N.W.2d 278 (2001)}

13. In MOP (Attachment IB.8; R. pp. 276 - 277), Appellant argued that he is a third-party beneficiary, and thus is able to enforce the terms of a contract, citing *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) (R. p. 276)

14. As a Member of WHOA, Appellant is synonymous with the corporation as a part of it, and is thus in privity with WHOA. Authority cited in this paragraph contradicts that found in BORS ("Trancik"). State Farm admits: "… Appellant is a third-party claimant …" (BORS, p. 6). State Farm makes claim about "… third-party claimants are not in privity of contract …". As shown in this paragraph, it appears "… privity with a party …" is what applies. This Court addressed privity and the issue of standing of a third-party beneficiary in *George v. Empire* ... :

> Empire asserts the trial court erred in finding George has standing to request reformation of the primary policy because neither George nor the estates he represents were party to the insurance contract. Ordinarily, a party requesting reformation must have been a party to the written document **or in privity with a party**. 66 Am.Jur.2d Reformation of Instruments § 60 (1973). **However, a third-party beneficiary to an insurance contract may bring such an action**. *Id*.; 76 C.J.S. Reformation of Instruments § 49 (1994); see Kaiser v. Carolina Life Ins. Co., 219 S.C. 456, 65 S.E.2d 865 (1951). Therefore, **we agree** with

> the trial court's holding that **George has standing to seek reformation of the insurance policy as a third party beneficiary to the contract**.
>
> (*George v. Empire Fire and Marine Ins. Co.,* 336 S.C. 206 (1999), 519 S.E.2d 107)

C) Appellant presented required elements to the Court to claim breach of contract

15. Pleadings from both of Appellant and State Farm admit to the existence of a contract.

16. Appellant cited "its breach". For example, see Appellant's "First Amended Complaint [Addendum to Complaint plus Supplement; R. pp. 189 - 202]" (FAC, Attachment IB.3, pars. 4 – 10; R. pp. 192 – 195).

17. Appellant suffered significant damages because State Farm gave the Board access to "free counsel", which is another breach of contract, since access to counsel was not shared equally with Appellant, a *Pro Se* party. By providing free Counsel to the Board , State Farm damaged Appellant's constitutional right to a "… pursuit of happiness …". Myriads of what Appellant finds to be false claims by Counsels, that are contrary to SC Code of Laws, damaged Appellant's character and reputation as a law abiding citizen, and standing as a Member of WHOA. Given that Appellant has merely sought protections given to all citizens under Amendment XIV, annulment of protections as perpetrated by Counsels damaged Appellant's right to such protections. Appellant reiterates content from FAC:

> 9. The ICO contains a specific exclusion, which places SF [State Farm] in BOC [Breach of Contract] in the event that coverage continues to be provided via payments to CWC [Clarkson Walsh & Coulter] , 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) [R. p. 195]

> 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. (R. pp. 195)

D) Moot concepts cannot be used to deny Appellant's Constitutional rights

18. Appellant is given a United-States-constitutional right to seek "… due process …" and "… equal protection of the laws …" (Amendment XIV). State-Farm-Respondent's concept that Appellant is restricted from bringing claim against State Farm contradicts Amendment XIV. Evidence before the Court proves that Respondent's concept is **MOOT**, invalid, and contains a basic flaw under Amendment XIV.

V. CONCLUSION

The CAP is obliged to conclude that it:

a) cannot ignore **EVIDENCE** that proves Appellant has standing as a party to the ICO; and,

b) cannot ignore contents of the Record that proves that State Farm breached their contract.

CAP must reverse granting and affirmation of **dismissal** of C1384 in its **entirety**, and remand to permit Appellant to seek full adjudication of meritorious, breach-of-contract issues against State Farm.

Dated this 7th day of November, 2021

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CERTIFICATE OF APPELLANT

The undersigned certifies that his "Reply Brief of Appellant for State Farm Respondent" complies with Rule 211(b), SCACR.

November 7, 2021

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