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**Apr 26 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Judge of the South Carolina Business Court

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Appellant Case Number 2021-000767

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C. Barry Dykes and Barbara Eisenhardt, Individually and Derivatively On Behalf Of The Wild Wing Plantation Property Owners' Association, Inc.,.....Appellants,

v.

Wild Wing Company, LLC; Sunstar, LLC; Ralph R. Teal, Jr.; SLF IV/SBI Wild Wing, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI Properties MM, LLC; SLF IV/SBI Development Holdings, LLC; Wild Wing Residential Development, LLC; Stratford Land Manager, L.P. d/b/a Stratford Land; Stratford Land Fund IV, L.P.; SB Investments LLC; Realstar Management, LLC; Graeme T. Black; H. Gilford Edwards; Founders Wild Wing, LLC; Founders Group International, LLC; Dan Liu; Xian "Nick" Dou; Rick Schultz; Rick Taylor and Thomas Plankers, .....Respondents,

Wild Wing Plantation Owners' Association, Inc.,.....Nominal Defendant.

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**INITIAL BRIEF OF RESPONDENTS STRATFORD LAND MANAGER, L.P. AND  
STRATFORD LAND FUND IV, L.P.**

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Respectfully Submitted,

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April 26, 2022

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## STATEMENT OF THE ISSUES ON APPEAL

- I. **Did the Circuit Court err in holding that Appellants failed to offer any evidence that SLF or Stratford Land breached the alleged fiduciary obligations to the Association?**
- II. **Did the Circuit Court err in holding that Appellants claims are barred by the business judgment rule when there is no evidence that either SLF or Stratford Land had any controlling interest in any Declarant or the Board of Directors of the Association?**
- III. **Did the Circuit Court err in determining that the Appellants claims are barred by the applicable statute of limitations?**
- IV. **Did the Circuit Court err in finding that Appellants claim under the South Carolina Unfair Trade Practices Act could not be brought in a representative capacity?**

## STATEMENT OF THE CASE

The Statement of the Case as set forth in the Initial Brief of Declarant Respondents is incorporated herein.

## STATEMENT OF FACTS

The Statement of Facts as set forth in the Initial Brief of Declarant Respondents is incorporated herein.

## KEY POINTS

SLF and Stratford Land agree with and join in the arguments regarding the Math and the Amendments as set forth by Declarant Respondents in their Initial Brief in light of the fact that Appellants argue that both SLF and Stratford Land were Declarants in the allegations of their Amended Complaint and Brief filed with this Court. The briefs of the remaining Respondents are incorporated herein by reference.

## STANDARD OF REVIEW

Summary Judgment is appropriate where there is no genuine issue of material fact and it is clear that the moving party is entitled to a judgment as a matter of law. Rule 56, SCRPC; *South Carolina Prop. & Cas. Guar. Ass'n. v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). “In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial.” *NationsBank v. Scott Farm*, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct. App. 1995) (citing *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991)). “Once a party moving for summary judgment carries the initial burden of showing an absence of evidentiary support for the nonmoving party’s case, the nonmoving party may not simply rest on mere allegations or denials contained in the pleadings.” Although the Court must view the facts and inferences therefrom in the light most favorable to the non-moving party, the non-movant may not rest on mere allegations or denials of his pleading. Instead, the non-movant must set forth or point to specific facts showing that there is a genuine issue of material fact. *Hancock v. Mis-South Management Co.*, 381 S.C. 326, 330-331, 381 S.E.2d 801, 803 (2009).

## ARGUMENT

### **I. The Circuit Court correctly ruled that Appellants failed to present any evidence that SLF or Stratford breached any fiduciary duties to the Association.**

In their Amended Complaint filed June 10, 2019, Plaintiffs allege that Stratford Land Fund IV, L.P. (SLF) and Stratford Land Manager, L.P. d/b/a Stratford Land failed “to act in good faith and with due regard to the interests of the Wild Wing Association and its members”. Amended Complaint, paragraph 27. Plaintiffs further allege that SLF is a member of Defendant SLF IV/SBI JV, LLC, which was a member of SLF IV/SBI Wild Wing, LLC, the second Declarant which was involved from December 2010 to November 2011. Amended Complaint, paragraphs 31-34. SLF

was not the managing member of any of the above-named entities. Plaintiffs further allege that Stratford Land played a role in the formation and control of SLF IV/SBI Wild Wing, LLC and Wild Wing Residential Development, LLC as part of a joint venture. Amended Complaint, paragraph 42. Throughout the Amended Complaint, Plaintiffs refer to SLF and Stratford Land as Declarants. At no point do Plaintiffs allege that SLF or Stratford Land had controlling ownership or interest in any Declarant entity. Further, there is no allegation that SLF or Stratford Land was ever a Board Member of the Association.

In their appeal, the Appellant Plaintiffs state that Respondents, which appears to include reference to SLF and Stratford Land, “intentionally created a maze of corporate entities to shield entities and people from liability.” See Initial Brief, p. 34. Appellants cite *Pertuis v. Front Roe Restaurants, Inc.* 423 S.C. 640, 817 S.E.2d 273 (2018) in support of their argument. However, the case holds that the single business enterprise theory requires a showing of more than the various entities operations are intertwined. Combining multiple corporate entities into a single business enterprise requires further evidence of bad faith, abuse, fraud, wrongdoing or injustice resulting from the blurring of the entities legal distinctions. *Pertuis* at 280-281 (2018). It should be noted that at no point during the years long pendency of this action was any officer/member or other agent of SLF or Stratford Land called for deposition as to its role or position on behalf of the second Declarant. In his deposition taken December 5, 2018, when asked who Plaintiff Dykes believed Stratford Land Manager was, he replied “I believe they were involved with the second developer.” P. 65, ln. 4-7, 12/5/18 deposition of Dykes. This is simply not true and even differs from the allegations in the Complaint. Dykes further testified that his intent in naming entity Defendants was to sue “anyone who was involved in the decision-making” for Wild Wing Plantation. P. 68, ln16-17, 12/5/18 deposition of Dykes. Dykes was later asked what role Stratford

Land Fund IV played in appointing the board members of the property owner's association. He answered "I don't know specifically." P. 79, ln 6, 12/5/18 deposition of Dykes.

Appellants further argue that the members of the Board of Directors, appointed by the Declarants, were the same for a period of years. What Plaintiffs cannot argue, based on their own allegations in the Amended Complaint, is that SLF or Stratford Land had controlling interest in any Declarant such that it had a say, or vote, on who would serve on the Board of Directors. The record in this matter is void of any such evidence that could be relied upon to even allege that SLF or Stratford had controlling interest as Appellants now seem to argue. All allegations about wrongdoing by the Declarant entities centers around Appellants assertions that the Association was damaged by the actions of the Declarants. The Circuit Court found all such arguments to be without merit because as correctly pointed out by other Respondents in their Initial Briefs to this Court, Appellants continue to confuse the role of the Declarant and the Board of Directors of the Association. See Order filed July 12, 2021 "Findings of Fact". Appellants main concern with SLF and Stratford Land seems to be that in their opinion, other Respondents were "asset less" after certain transactions that took place, and if Appellants were found to be due and owing money, they may not be able to recover. However, as the Circuit Court correctly determined based on numerous factors, the Appellants are not owed any money from any named Respondent, particularly SLF and Stratford Land that never played any controlling/governing role in the business of the Association and actions, or inactions, based on its governing documents.

As has already been argued by another Respondent, the Declarants are not the Board of Directors of the Association, and the actions of the Board of Directors are not the actions of the Declarants.

**II. The Circuit Court correctly ruled that Appellants claims are barred by the business judgment rule.**

“In a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the “business judgment rule,” and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial actions.” *Goddard v. Fairways Dev. Gen. P’ship*, 310 S.C. 408, 414, 426 S.E.2d 15, 25 (Ct. App. 2000). “The burden of proving good faith is not on the governing board; the burden of proving a lack of good faith is borne, rather, by those challenging the board’s actions.” *Dockside Ass’n*, 294 S.C. at 87, 362 S.E.2d at 874; *see also Fisher v. Shipyard Vill. Council of Co-Owners, Inc.*, 415 S.C. 256, 781 S.E.2d 903 (2016). “Under the business judgment rule, a court will not review the business judgment of a corporate governing board when it acts without corrupt motives and in good faith.” *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 599, 538 S.E.2d 15, 25 (Ct. App. 2000).

Because the Individual Respondents’ actions were *intra vires*, Appellants must prove the business judgment rule does not apply because the Individual Respondents’ decisions were the product of bad faith, dishonesty, or incompetence. *See Goddard*, 310 S.C. at 414, 426 S.E.2d at 832.

There is no evidence to allege that SLF or Stratford Land engaged in any such conduct or decisions.

**III. The Circuit Court correctly ruled that Appellants’ claims against Stratford Land Manager, L.P. and Stratford Land Fund IV, L.P. are barred by the Statute of Limitations.**

Appellants’ claims are barred by the Statute of Limitations. No evidence is presented by the Appellants to show when SLF or Stratford Land may have “acted” in this matter. However,

based on the allegations in the Second Amended Complaint and the Circuit Court Orders, it would have to be sometime between 2010 and 2015.

Pursuant to the discovery rule, the statute of limitations begins to run when the injured “person knew or by the exercise or reasonable diligence should have known that he had a cause of action.” S.C. Code Ann § 15-3-535; *Walbeck v. I’On Co., LLC*, 426 S.C. 494, 519, 827 S.E.2d 348, 361 (Ct. App. 2019); *Dean v. Ruscon Corp.*, 321 S.C. 360, 363-64, 468 S.E.2d 645, 647 (1996). The test is objective. *Wiggins v. Edwards*, 314 S.C. 126, 442 S.E.2d 169 (1994). The relevant inquiry is not what a party subjectively knew at specific points in time, but rather, at what point a party objectively had “enough information such that [they] should have acted promptly to determine whether a cause of action might exist against [Defendants] for the injuries claimed in this case.” *Ashley River Indus., v. Mobil Oil Corp.*, 135 F. Supp. 2d 733, 742 (D.S.C. 2000), *aff’d* 245 F.3d 849 (4th Cir. 2001). South Carolina’s statute of limitations requires “very little to start the clock.” *Roe v. Doe*, 28 F.3d 404, 407 (4<sup>th</sup> Cir. 1994) (applying South Carolina law).

“A cause of action should have been discovered through exercise of reasonable diligence when the facts and circumstances would have put a person of common knowledge and experience on notice that some right had been invaded or a claim against another party might exist.” *Maher v. Tietex Corp.*, 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998).

SLF and Stratford Land join the other Respondents in their arguments regarding lack of preservation in regards to equitable tolling.

**IV. The Circuit Court correctly ruled that Plaintiffs in their representative capacity could not seek relief under the South Carolina Unfair Trade Practices Act.**

“An unfair trade practices claim may not be brought in a representative capacity.” *Wogan v. Kunze*, 366 S.C. 583, 609, 623 S.E.2d 107, 121 (Ct. App. 2005). SLF and Stratford Land join

the arguments set forth by other Respondents in regards to the Unfair Trade Practices Claim by Appellants, the Circuit Court's ruling on same and the lack of preservation.

**CONCLUSION**

Based on the foregoing, the Circuit Court Orders granting Summary Judgment in favor of Respondents SLF and Stratford Land should be affirmed.

Respectfully Submitted,

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v.

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LLC; Wild Wing Residential Development, LLC; Stratford Land Manager, L.P. d/b/a  
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LLC; Graeme T. Black; H. Gilford Edwards; Founders Wild Wing, LLC; Founders Group  
International, LLC; Dan Liu; Xian "Nick" Dou; Rick Schultz; Rick Taylor and Thomas  
Plankers, .....Respondents,  
Wild Wing Plantation Owners' Association, Inc.,.....Nominal Defendant.

**PROOF OF SERVICE**

I hereby certify that a true and correct copy of the Initial Brief of Respondents, Stratford  
Land Fund IV, L.P. and Stratford Land Manager, L.P., has been served via e-mail upon Robert  
T. Lyles, Esquire, Douglas W. MacKelcan, Esquire, Skyler C. Wilson, Esquire, Eugene H.  
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