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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No.: 2021-000471

Bull Point Plantation Property Owners Association, Inc.....Respondent,

vs

Bull Point SC, LLC, Bull Point, LLC, Bull Point Plantation Owners Association, Inc., William E.
Gavigan, Michael Carey, Christopher J. Quick, James Riordan, Richard Riney,
..... Appellants,

RECORD ON APPEAL

VOLUME II

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ASSOCIATION, INC.**

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Civil Action No. 2020-CP-07-00817

BULL POINT PLANTATION PROPERTY
OWNERS ASSOCIATION, INC.

Plaintiff,

**NOTICE OF MOTION AND MOTION
TO ALTER OR AMEND COMPLAINT**

-vs-

BULL POINT SC, LLC; BULL POINT,
LLC; BULL POINT PLANTATION
OWNERS ASSOCIATION, INC.;
WILLIAM E. GAVIGAN; MICHAEL
CAREY; CHRISTOPHER J. QUICK;
JAMES RIORDAN; RICHARD RINEY,

Defendants

COMES NOW, Bull Point Plantation Property Owners Association, Inc. (hereinafter, "BPPPOA"), by and through its undersigned counsel, and hereby moves this Court for an Order pursuant to Rule 15 of the South Carolina Rules of Civil Procedure (hereinafter, "SCRCP") giving BPPPOA leave to amend its complaint. A copy of the proposed Amended Complaint is attached hereto as Exhibit A.

BPPPOA seeks to amend its Complaint so that it may clarify and supplement some of the factual allegations based on actions that have occurred and/or have been discovered since it filed its Complaint. BPPPOA also seeks to add causes of action against the Defendants and add another defendant, BDG Recovery, LLC. Since the filing of the Complaint, BPPPOA has uncovered new evidence resulting from information received by and/or the action and/or inaction taken by some or all of the Defendants to this lawsuit. Such conduct has revealed new factual predicates and triggered the application of legal theories that were not otherwise known to BPPPOA.

Rule 15, SCRCP governs the amendment of pleadings. Rule 15(a) of the SCRCP, states “a party may amend his pleading . . . by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.” This rule has been liberally interpreted by South Carolina Courts. Courts have consistently ruled that “[t]his rule strongly favors amendments and the Court is encouraged to freely grant leave to amend.” See Jarrell v. Seaboard Sys. R.R., 294 S.C. 183, 186, 363 S.E.2d 398, 399 (Ct. App. 1987); see also Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 716 (Ct. App. 2005). Courts have further held that “[l]eave to amend pleadings pursuant to Rule 15 SCRCP, shall be liberally and freely given when justice so requires and does not prejudice any other party.” See Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 218, 493 S.E.2d 826, 835-36 (1997); see also Pruitt v. Bowers, 330 S.C. 483, 488-89, 499 S.E.2d 250, 253 (Ct. App. 1998). “It is well established that a motion to amend a pleading is addressed to the sound discretion of the trial judge.” See Duncan v. CRS Serrine Eng’rs, 337 S.C. 537, 542, 524 S.E.2d 115, 118 (Ct. App. 1999); see also Berry v. McLeod, 328 S.C. 435, 450, 492 S.E.2d 794, 802 (Ct. App. 1997) (Stating that “Courts have wide latitude in amending pleadings”).

Defendants will not be prejudiced by the proposed amendment. Currently there is no trial date set and no depositions have been taken. Defendants are free to conduct discovery on all areas clarified in the proposed amended complaint and prepare their defenses.

BPPPOA’s proposed amendments are necessary for the just and equitable pursuit of and trial of this action. Allowing BPPPOA leave to make these amendments is in accord with both the letter and spirit of Rule 15, SCRCP and will cause no prejudice to the Defendants in this matter.

Prayer

For these reasons, BPPPOA asks that the Court set this motion for hearing and, upon hearing, grant Bull Point Plantation Property Owners Association, Inc.'s Motion to Amend its complaint.

Consultation Certification

The undersigned certify that prior to filing the motion they have communicated with opposing counsel and attempted in good faith to resolve the matter contained in the motion but were unsuccessful.

Respectfully Submitted,

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February 1, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

BULL POINT PLANTATION PROPERTY
OWNERS ASSOCIATION, INC.

Civil Action No. 2020-CP-07-00817

Plaintiff,

-vs-

BULL POINT SC, LLC; BULL POINT, LLC;
BULL POINT PLANTATION OWNERS
ASSOCIATION, INC.; WILLIAM E.
GAVIGAN; MICHAEL CAREY;
CHRISTOPHER J. QUICK; JAMES
RIORDAN; RICHARD RINEY; BDG
RECOVERY, LLC

**AMENDED COMPLAINT
(JURY TRIAL REQUESTED)**

Defendants

Plaintiff Bull Point Plantation Property Owners Association, Inc. (hereinafter "Plaintiff" or "Association"), submits this Amended Complaint and alleges the following:

PARTIES

1. The Association is a non-profit corporation organized and existing under the laws of South Carolina, and is located, and has its principal place of business in Beaufort County, South Carolina.

2. Defendant Bull Point SC, LLC ("Bull Point SC") is a separate Limited Liability Company incorporated under the laws of South Carolina and from August 21, 2017 until November 18, 2019 was the purported Declarant of Bull Point Plantation (although it did not meet the definition of Declarant under the Declaration). Bull Point SC has its primary place of business in Beaufort County, South Carolina.

3. Bull Point, LLC is a separate Limited Liability Company incorporated under the laws

of South Carolina and has its primary place of business in Beaufort County, South Carolina.

4. Bull Point Plantation Owners Association, Inc. is a separate non-profit corporation organized and existing under the laws of South Carolina and has its primary place of business in Beaufort County, South Carolina. Bull Point Plantation Owners Association, Inc. was incorporated by Defendant Gavigan in February 2000.

5. BDG Recovery, LLC is a separate Limited Liability Company incorporated under the laws of South Carolina and has its primary place of business in Beaufort County, South Carolina.

6. William E. Gavigan (“Gavigan”) is an individual citizen and resident of Beaufort County, SC and is the managing member and/or incorporator of Bull Point SC; Bull Point, LLC; BDG Recovery, LLC; and Bull Point Plantation Owners Association, Inc.

7. The individuals named below have purported to be members of the Board of Directors of the Association (collectively “Purported Directors”), but have never actually been duly appointed or elected members of the Board of Directors of the Association:

- a. Between August 2017 and November 2019, William E. Gavigan was the purported President of the Board of Directors of the Association, but was never actually duly appointed or elected the President of the Board of Directors of the Association;
- b. Michael Carey is a citizen and resident of South Carolina and between August 2017 and November 2019 was a purported member and/or officer of the Board of Directors of the Association, but was never actually duly appointed or elected a member and/or officer of the Board of Directors of the Association;
- c. James Riordan is a citizen and resident of South Carolina and between August

- 2017 and November 2019 was a purported member and/or officer of the Board of Directors of the Association, but was never actually duly appointed or elected a member and/or officer of the Board of Directors of the Association;
- d. Christopher J. Quick is a citizen and resident of South Carolina and between August 2017 and November 2019 was a purported member and/or officer of the Board of Directors of the Association, but was never actually duly appointed or elected a member and/or officer of the Board of Directors of the Association;
- e. Richard Riney is a citizen and resident of South Carolina and between August 2017 and November 2019 was a purported member and/or officer of the Board of Directors of the Association, but was never actually duly appointed or elected a member and/or officer of the Board of Directors of the Association;
- f. Defendants Carey, Riordan, Quick, and Riney may be referred to collectively as the “Individual Defendants.”

JURISDICTION AND VENUE

8. Plaintiff brings this action as a declaratory judgment action pursuant to § 15-53-10, et seq., Code of Laws of South Carolina (1976), for the purpose of determining a question in controversy between the parties as more fully appears herein. Plaintiff also brings this action pursuant to the common-law and statutory general jurisdiction of this Court.

9. Venue is appropriate because the acts and omissions complained of herein took place in Beaufort County, South Carolina, and the property that is the subject of this action is located in Beaufort County.

FACTUAL BACKGROUND

10. Bull Point Plantation is a private waterfront community located in Beaufort County, South Carolina.

11. Bull Point, LLC was the original Developer/Declarant of Bull Point Plantation.

12. Upon information and belief, Defendant Gavigan was not an owner, member, manager, employee, officer, director, or otherwise affiliated with Bull Point, LLC when it began developing Bull Point Plantation.

13. On or about September 26, 1995, during its development of Bull Point Plantation, Bull Point, LLC created the Association. Bull Point, LLC subsequently transferred to the Association the common areas within Bull Point to be owned and held by the Association for the use and enjoyment of the Association's members.

14. The Association's name has changed over time (from "Bull Point Homeowners Association, Inc." to "Bull Point Property Owners Association, Inc." to its current name "Bull Point Plantation Property Owners Association, Inc."), but it was always the entity that operated as the only property owners' association of Bull Point Plantation, with its members being all owners of real property in Bull Point Plantation.

15. Some of the Defendants have contended that Defendant Bull Point Plantation Owners Association, Inc., which was formed in 2020, is and always has been the correct property owners' association of Bull Point Plantation. However, the Association (Bull Point Plantation Property Owners Association, Inc.) is and has been the property owners' association since 1995.

16. In 2010, the Association was added as a defendant in construction defect lawsuit filed by Michael Woods and Cecelia Woods styled Michael Woods and Cecelia Woods v. Thomas Johnson, et al., 2008-CP-07-4861 (hereinafter the "Woods Lawsuit").

17. The Association did not file a responsive pleading to the Woods Lawsuit and, on

February 19, 2013, a default judgment was entered against the Association in favor of Michael and Cecelia Woods (hereinafter the “Woods Judgment”).

18. In 2008, Bull Point, LLC owned Lot 223 in Bull Point Plantation and executed a Note and Mortgage on Lot 223 to the Association.

19. Bull Point, LLC defaulted on its financial commitments and purported to assign its rights of the Declarant to German American Capital Corporation in 2012, who then immediately purported to transfer those Declarant rights to DB Aster, LLC.

20. Bull Point, LLC transferred all of its remaining real property in Bull Point Plantation (with the exception of Lot 223) to German American Capital Corporation / DB Aster.

21. Bull Point, LLC abandoned its claim to the Declarancy in 2012 when it purported to assign those rights. Between 2012 and 2020, Bull Point, LLC did not claim to be the Declarant, did not act as the Declarant, did not exercise any of the Declarant’s right, and did not perform any of the Declarant’s obligations.

22. At that time, Defendant Gavigan was not an owner, member, manager, employee, officer, director, or otherwise affiliated with Bull Point, LLC.

23. In 2014, the Association foreclosed on the mortgage it held on Lot 223 and later obtained Lot 223 (which was Bull Point, LLC’s last remaining property in Bull Point Plantation) by way of the foreclosure action.

24. On August 21, 2017, Defendant Bull Point SC purported to obtain the rights of the Declarant from DB Aster (by way of GSI, LLC – another Gavigan entity) and thereby appointed the members of the Association’s Board of Directors.

25. Defendant Gavigan, as the Managing Member of Bull Point SC, appointed himself as

President of the Board of Directors of the Association and, at times, appointed the Individual Defendants as members and/or officers of the Board of Directors of the Association.

26. However, Defendant Gavigan and the Individual Defendants were never duly appointed or elected members or officers of the Board of Directors of the Association.

27. Nevertheless, Bull Point SC, Gavigan, and/or the Individual Defendants began grossly mismanaging, misappropriating, and converting the Association's assets.

28. Prior to the assertion of control over the Association by Bull Point SC, Gavigan, and the Individual Defendants, the Association operated with a balanced budget, taking in sufficient revenue to meet operating expenses and, in most years, contribute to its Contingency Fund.

29. In contrast, Bull Point SC, Gavigan, and/or the Individual Defendants operated the Association's finances at a deficit at all times when they asserted control of the Association.

30. Bull Point SC, Gavigan, and/or the Individual Defendants improperly spent hundreds of thousands of dollars of the Association's funds on unbudgeted expenses, personal expenses, and inappropriate expenses.

31. These unbudgeted, personal, and inappropriate uses of Association funds included, but were not limited to, spending on vacations, alcohol, golf outings, hotels, airfare, restaurants, and personal merchandise. Upon information and belief, they also included expenditures to facilitate development and marketing of some Defendants' properties for sale.

32. Although the Association's governing documents require the Declarant to fund any budget shortfalls, Bull Point SC, Gavigan, and/or the Individual Defendants instead took money from the Association's Contingency Fund to fund the shortfalls.

33. To allow Bull Point SC, Gavigan, and/or the Individual Defendants to raid the

Contingency Fund, they first purported to eliminate the Contingency Fund Committee, which was made up of Association members and provided important safeguards over the Association's savings.

34. Bull Point SC, Gavigan, and/or the Individual Defendants also took money from the Association's Architectural Review Board's escrow account, whose funds were property of specific Association members and held in trust by the Association in that account.

35. Bull Point SC, Gavigan, and/or the Individual Defendants posted altered, false, inaccurate, and/or misleading financial reports on the Association's website in an effort to conceal their inappropriate use of, overspending of, and theft of the Association's funds.

36. Gavigan operated other for-profit businesses that are not related to the Association out of the Association's clubhouse without paying the Association rent or utilities.

37. Gavigan also stored his personal equipment or equipment belonging to his other businesses on the Association's property without paying the Association rent.

38. The Association's bank records show that Gavigan issued checks from the Association's account to his other businesses, with no explanation for the payment.

39. Gavigan used the Association's employees to promote and assist his other business ventures while the Association was paying those employees.

40. Bull Point SC, Gavigan, and the Individual Defendants operated the Association in violation of South Carolina law and its governing documents by not having a Treasurer and not conducting annual financial audits.

41. Bull Point SC, Gavigan, and the Individual Defendants transferred lots owned by the Association to Defendant Bull Point SC, forgave assessments owed to the Association on those lots, and then sold those lots and kept the profits which should have gone to the Association.

42. Bull Point SC and Gavigan sold lots they personally owned in Bull Point Plantation

and allowed the purchasers to combine the lots with other lots they owned, resulting in reduced assessment revenue for the Association while providing Gavigan and Bull Point SC with a sales incentive to the purchasers.

43. Similarly, upon information and belief when Gavigan and Bull Point SC sold lots to purchasers, they used their purported authority over the Association to lead the purchasers to believe that they would not have to pay Association assessments.

44. Bull Point SC, Gavigan, and the Individual Defendants also created annual budgets for the Association which contemplated all the property owned by Bull Point SC paying annual assessments, but Bull Point SC refused to pay annual assessments.

45. Bull Point SC, Gavigan, and the Individual Defendants also failed to timely pay payroll and real estate taxes on behalf of the Association, subjecting the Association to late penalties, interest, and IRS scrutiny.

46. Bull Point SC, Gavigan, and/or the Individual Defendants instructed the Association's gate house security personnel to document and track entry and exit activity of Association members (as well as their vendors and guests) who spoke out against them.

47. In 2017, after Bull Point SC, LLC purported to obtain the rights of the Declarant, Bull Point SC, LLC advertised for sale the Association's valuable common area properties, including but not limited to the River Cabin, Magnolia Island, and the Clubhouse, for millions of dollars.

48. Those properties were owned by the Association, not by Bull Point SC, LLC.

49. On December 3, 2018, a number of members of the Association, both individually and derivatively on behalf of the Association, filed a lawsuit against Bull Point SC and the then-purported Board of Directors challenging, amongst other things, Bull Point SC's purported declarancy rights and its appointment of the members and/or officers of the Association's Board of Directors

(hereinafter the "Attridge Litigation").

50. On July 2, 2019, the plaintiffs in the Attridge Litigation filed a Motion for Partial Summary Judgment seeking an order that Bull Point SC was not the Declarant of Bull Point and/or that, even if it was, Bull Point SC did not have the right to appoint the members of the Association's Board of Directors, as those members were to be elected by the membership.

51. On September 19, 2019, Bull Point SC and Gavigan filed their own Motion for Partial Summary Judgment in the Attridge Litigation, seeking an order that Bull Point SC was the proper Declarant and that it had the right to appoint the Association's Board of Directors.

52. On September 27, 2019, the Court notified the parties that it would hear the cross-motions for partial summary judgment in the Attridge Litigation on October 15, 2019.

53. Sometime after the Attridge Litigation was filed, Defendant Gavigan claims to have obtained all interests in Bull Point, LLC, which at that time was an entity without any assets.

54. On October 4, 2019, Defendant Gavigan, as purported President of the Association, and Defendant Riney, as purported Secretary of the Association, signed two separate Quit Claim Deeds transferring some or all of the Association's valuable common elements to Bull Point, LLC.

55. These properties included the same properties that Bull Point SC, LLC advertised for sale over two years earlier.

56. Defendant Gavigan was not the President of the Association and Defendant Riney was not the Secretary of the Association.

57. These Quit Claim Deeds were recorded in the Beaufort County Register of Deeds on October 10, 2019.

58. Following the October 15 hearing, the Court entered an Order on November 18,

2019 granting the Plaintiffs' Motion for Partial Summary Judgment, denying Bull Point SC and Gavigan's Motion for Partial Summary Judgment, and ordering, amongst other things, that Bull Point SC was never the Declarant of Bull Point Plantation, that all actions Bull Point SC took as the purported Declarant (including appointing members of the Association's Board of Directors) are void, that Gavigan and the other individual Defendants were not members of the Association's Board of Directors, and that Gavigan and the other individual defendants were enjoined from serving on the Association's Board (unless elected by the membership) and from taking any action in further governance of the Association.

59. Gavigan, through his counsel, explained that the transfer of the common areas to Bull Point, LLC was necessary to remedy certain errors contained in the deeds by which Bull Point, LLC originally transferred the common areas to the Association.

60. More specifically, Gavigan claimed that the deeds were necessary because the record title owner of the properties was "Bull Point Property Owners Association," not "Bull Point Plantation Property Owners Association, Inc." which the Association changed its name to years ago.

61. Gavigan, through his counsel, assured the Court and the undersigned counsel that he would transfer the properties back to the Association, i.e. Plaintiff Bull Point Plantation Property Owners Association, Inc.

62. Nevertheless, Gavigan has argued and continues to argue, to his advantage, that Bull Point, LLC is the title holder of the common areas.

63. Gavigan, through Bull Point, LLC, has claimed to have the authority to use the Clubhouse as he wishes and to authorize others to do the same.

64. The undersigned counsel repeatedly followed up with Gavigan's counsel about the

promise to transfer the properties back to the Association.

65. Meanwhile, the Association learned that there were outstanding judgments against Bull Point, LLC such that those judgments would potentially attach to the properties which Gavigan transferred from the Association to Bull Point, LLC.

66. Accordingly, the undersigned demanded that in addition to transferring the properties back to the Association, Bull Point, LLC obtain a full release in favor of the Association of any and all rights to enforce any judgments or liens against the properties.

67. Gavigan's illegal and unauthorized transfer of the Association's common area properties also led to concerns within the Association as to whether appropriate insurance was being maintained on the common area properties and whether property taxes would be timely paid.

68. On February 5, 2020, Gavigan filed paperwork creating the Defendant Bull Point Plantation Owners Association, Inc., an entity with a name very similar but slightly different from the Plaintiff Bull Point Plantation *Property* Owners Association, Inc.

69. On March 6, 2020, Gavigan, as Managing Member of Bull Point, LLC, signed a Quit Claim Deed transferring some but not all of the property that he previously transferred from the Association to "Bull Point Plantation Owners Association, Inc.," the Defendant entity that Gavigan had incorporated just one month prior.

70. Gavigan began claiming that the entity he created in February 2020 is and always has been the true property owners association for Bull Point Plantation. However, this Court in the Attridge Litigation disagreed, finding that the Association is and always has been the property owners association for Bull Point Plantation.

71. Gavigan's March 6, 2020 transfer not only undermines what he claimed to be his valid

reason for transferring the properties to Bull Point, LLC, but also is simply a transfer from one Gavigan entity to another, not a transfer back to the Association.

72. Gavigan's March 6, 2020 transfer also is in violation of the Court's November 18, 2019 Order in the Attridge Litigation, as it results in his continued control over the Association's common area properties.

73. Gavigan has still failed to transfer the valuable common area properties back to the Association and asserts that the common area properties are his to use and barter with, even claiming that he would wager the Association's Clubhouse against an Association member's home.

74. Upon information and belief, Gavigan, Bull Point SC, Bull Point, LLC; and Bull Point Plantation Owners Association, Inc. are working together to carry out Gavigan's plan of stealing the Association's common area properties and selling them for a profit.

75. Just prior to this Court wresting control of the Association from Bull Point SC and Gavigan, Gavigan incorrectly informed all Association members that some of their homes are not part of Bull Point Plantation and that they are not required to pay Association assessments.

76. This despite the fact that Gavigan accepted their assessment payments when he was asserting control over the Association.

77. Bull Point SC, Gavigan, and Bull Point, LLC have continued to interfere with the Association's operations by telling Association members that they do not have to pay assessments and by attempting to persuade Association members to secede from the Association.

78. Upon information and belief, in their efforts to sell their remaining lots in Bull Point Plantation, Bull Point SC, Gavigan, and Bull Point, LLC have falsely told prospective purchasers that they will not have to pay Association assessments if they purchase the lots.

79. When Gavigan and Bull Point SC begrudgingly gave up control of the Association,

they did so leaving the Association saddled with debt for the year 2019 without sufficient operating funds to pay the same.

80. Upon information and belief, while Gavigan claimed to be in control of the Association, he had actual or constructive notice of the Woods Judgment.

81. During his purported tenure as President of the Association, Gavigan took no action to protect the Association against the Woods Judgment or to attempt to satisfy it.

82. Instead, Gavigan concealed his knowledge of the Woods Judgment to use against the Association at a later time.

83. In fact, after Gavigan was removed from office at the Association, he (through his other entity BDG Recovery, LLC) purported to obtain an Assignment of the Woods Judgment and has now sought to collect it from the Association.

84. Upon information and belief, Michael Woods and Cecelia Woods assigned the judgment to BDG Recovery, Inc. in exchange for little to no consideration.

85. Gavigan even filed a Motion for Injunction seeking to postpone the Association's Annual Meeting in December 2020 in part because of his acquisition of the Woods Judgment.

86. His Motion was denied.

87. The Association has filed a Motion for Relief from the Woods Judgment.

**FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment pursuant to
S.C. Code Ann. §§ 15-53-10- 15-53-140 and Rule 57 SCRCF)**

88. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

89. Plaintiff brings this cause of action against Defendants pursuant to S.C. Code Ann. §§

15-53-10 through 15-53-140 and Rule 57 of the SCRCPP seeking a declaration that the Deeds that Gavigan and Riney signed on behalf of the Association purporting to transfer some or all of the Association's valuable common area properties to Bull Point, LLC are void, are of no legal effect, and should be set aside because Gavigan and Riney were not members of the Association's Board of Directors and had no authority to sign the deeds on behalf of the Association because they were not elected by the members and not properly appointed by a Declarant.

90. In turn, Plaintiff seeks a declaration that the deeds from Bull Point, LLC to Bull Point Plantation Owners Association, Inc. are void, are of no legal effect, and should be set aside. The ultimate declaration that the Plaintiff seeks is that the properties that Gavigan and Riney transferred from the Association to Bull Point, LLC and then to Bull Point Plantation Owners Association, Inc. are still owned by the Association and no judgments against Bull Point, LLC or Bull Point Plantation Owners Association, Inc. have attached to them.

91. The South Carolina Declaratory Judgment Act provides that this Court has the power to declare the rights, status, and other legal relations whether or not further relief is or could be claimed, S.C. Code Ann. §15-53-20.

92. Due to the facts, conditions, and circumstances set forth in this Complaint, an actual and justiciable controversy exists.

**FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment pursuant to
S.C. Code Ann. §§ 15-53-10- 15-53-140 and Rule 57 SCRCPP)**

93. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

94. The Declaration of Covenants, Conditions, and Restrictions for Bull Point Plantation defines the Declarant as Bull Point, LLC "or any party which acquires said Declarant's entire interest

with respect to the Property and Additional Property at the time of such pursuant to Foreclosure of a Mortgage encumbering said Declarant's interest in the Property and the Additional Property.”

95. In 2014, Bull Point, LLC's entire interest with respect to the Property and Additional Property in Bull Point Plantation was comprised only of Lot 223, which the Association acquired pursuant to foreclosure of its mortgage over that property.

96. While the Court in the Attridge Litigation ruled that Bull Point SC is not and never was the Declarant, it was not been asked to and has decided who, if anyone, is the Declarant.

97. Nevertheless, Bull Point SC, LLC still claims to be the Declarant, as does Bull Point, LLC.

98. Plaintiff brings this cause of action against Defendants pursuant to S.C. Code Ann. §§ 15-53-10 through 15-53-140 and Rule 57 of the SCRCF seeking a declaration that the Association became the Declarant of Bull Point Plantation when it acquired Lot 223 from Bull Point, LLC by way of foreclosure of a mortgage; that the Association remains the Declarant of Bull Point Plantation; and that no other entity has been the Declarant of Bull Point Plantation since the Association became the Declarant in 2014.

99. Further, to the extent it is determined that Bull Point SC, LLC is the Declarant and/or was the Declarant between 2017 and 2019, the Association seeks a Declaration that Bull Point SC, LLC was required to fund the Association's budget deficits for the years that it was the Declarant.

100. The South Carolina Declaratory Judgment Act provides that this Court has the power to declare the rights, status, and other legal relations whether or not further relief is or could be claimed, S.C. Code Ann. §15-53-20.

101. Due to the facts, conditions, and circumstances set forth in this Complaint, an actual and justiciable controversy exists.

**FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment pursuant to
S.C. Code Ann. §§ 15-53-10- 15-53-140 and Rule 57 SCRPC)**

102. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

103. The Declaration of Covenants, Conditions, and Restrictions for Bull Point Plantation, which were drafted in originally recorded in 1995, provides that, in certain circumstances, the “Declarant shall have the right to appoint or remove any member of member of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (i) the expiration of twenty-five (25) years after the date of the recording of this Declaration; or (ii) the surrender by Declarant of the authority to appoint and remove directors and officers of the Association by an express amendment to this Declaration executed and recorded by Declarant.”

104. Notably, this provision of the Declaration conflicts with the Association’s Articles of Incorporation, which require the Association’s members to elect its Board of Directors.

105. The Association believes that is Articles of Incorporation control, but Defendants have argued otherwise.

106. Bull Point, LLC and Bull Point SC, LLC claim to be the Declarant.

107. While the Association believes it is the Declarant and that its members have the exclusive right and duty to elect its Board of Directors, it brings this cause of action against Defendants pursuant to S.C. Code Ann. §§ 15-53-10 through 15-53-140 and Rule 57 of the SCRPC seeking a declaration that the Declarant’s purported rights to appoint or remove members of the Association’s Board of Directors and/or officers expired in 2020, twenty-five years after the Declaration was first recorded.

108. The South Carolina Declaratory Judgment Act provides that this Court has the power

to declare the rights, status, and other legal relations whether or not further relief is or could be claimed, S.C. Code Ann. §15-53-20.

109. Due to the facts, conditions, and circumstances set forth in this Complaint, an actual and justiciable controversy exists.

**FOR A FOURTH CAUSE OF ACTION
(Declaratory Judgment pursuant to
S.C. Code Ann. §§ 15-53-10- 15-53-140 and Rule 57 SCRPC)**

110. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

111. The Declaration of Covenants, Conditions, and Restrictions for Bull Point Plantation provide that each Owner of a Lot or Dwelling (i.e. each Member of the Association) also owns a right and interest in the Common Areas.

112. Further, each Owner of a Lot or Dwelling (i.e. each Member of the Association) owns a portion of the Association's Contingency Fund.

113. The Association brings this cause of action against Defendants pursuant to S.C. Code Ann. §§ 15-53-10 through 15-53-140 and Rule 57 of the SCRPC seeking a declaration that the Association's Members are the true and rightful legal and/or equitable owners of the Common Areas and Contingency Fund, including all the money that makes up the Contingency Fund.

114. The South Carolina Declaratory Judgment Act provides that this Court has the power to declare the rights, status, and other legal relations whether or not further relief is or could be claimed, S.C. Code Ann. §15-53-20.

115. Due to the facts, conditions, and circumstances set forth in this Complaint, an actual

and justiciable controversy exists.

**FOR A FIFTH CAUSE OF ACTION
(Conflict of Interest Transactions)**

116. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

117. Under South Carolina Code Ann. § 33-31-831, a conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest.

118. A conflict of interest transaction is voidable if the transaction was not fair to the corporation at the time it was entered into.

119. Even if Gavigan and Riney were members of the Association's Board of Directors, which the Court has found they were not, the transfer of the Association's common elements to Bull Point, LLC by way of the Quit Claim Deeds were conflict of interest transactions because Gavigan, through his company Bull Point, LLC directly benefitted therefrom.

120. Further, if Gavigan is correct that Bull Point, LLC is still the Declarant, its transfer of the properties to Bull Point Plantation Owners Association, Inc. was a conflict of interest transaction since it benefitted Gavigan's companies to the detriment of the Association.

121. Further, Bull Point SC, Gavigan, and/or the Individual Defendant used Association funds for their personal benefit and for the benefit of Gavigan's other business entities, to the financial detriment of the Association.

122. Bull Point SC and Gavigan used their apparent authority over the Association to

promise prospective purchaser of their own real estate that they would not have to pay Association assessments, which is to Bull Point SC and Gavigan's benefit and to the Association's detriment.

123. Gavigan used the information he learned as purported President of the Association to secure a purported assignment of the Woods Judgment and is now seeking to collect that judgment from the Association, even while Gavigan claims to still be the Declarant through Bull Point SC or Bull Point, LLC.

124. These conflict of interest transactions were not fair to the Association and deprived the Association of its valuable common areas and financial resources.

125. The conflict of interest transactions, and thus the Quit Claim Deeds and the assignment of the Woods Judgment are void and should be set aside.

126. The Association should be made whole for the funds that Defendants took from it to benefit themselves and others.

**FOR A SIXTH CAUSE OF ACTION
(Injunction)**

127. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

128. As stated above, the Quit Claim Deeds by which the Association conveyed its common elements to Bull Point, LLC are void and should be set aside.

129. Even if they are not void, Gavigan stated that his intent in transferring the common areas to Bull Point, LLC was to clear a cloud on the title and then transfer the common areas back to the Association.

130. Instead, Gavigan, through Bull Point, LLC, transferred the properties to a different company he owns, Defendant Bull Point Plantation Owners Association, Inc.

131. Accordingly, the Association requests that the Court issue an Order requiring that Bull Point, LLC and Bull Point Plantation Owners Association, Inc., at their expense, transfer all property that they received via the October 4, 2019 and March 6, 2020 Quit Claim Deeds back to the Association, free of any liens or encumbrances.

132. Further, the Association requests that the Court issue an Order requiring that the properties be transferred back to the Association free and clear of all liens and judgments that did not cloud the title to the properties before Gavigan transferred them from the Association to Bull Point, LLC.

133. Alternatively, the Association requests that the Court issue an Order requiring that Bull Point, LLC and Bull Point Plantation Owners Association, Inc. procure releases of all judgments and liens that did not cloud the title to the properties before Gavigan transferred them from the Association to Bull Point, LLC.

134. The Association will be irreparably harmed if its common areas are not transferred back to it free and clear of all liens and judgments. The common areas include the security gate, roads, clubhouse, pool, and other critical components of Bull Point Plantation that the Association's members need to live there.

135. The Association lacks an adequate remedy at law to recover damages from the loss of its common areas.

**FOR A SEVENTH CAUSE OF ACTION
(Fraud as to Gavigan; Bull Point Plantation Owners Association, Inc.; and Bull Point, LLC)**

136. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

137. Gavigan; Bull Point Plantation Owners Association, Inc.; and Bull Point, LLC, by way of the transfer itself and otherwise, have represented that their transfer of some of the properties

to Bull Point Plantation Owners Association was a transfer back to the Association.

138. That representation was false, since the Association's correct name, as Gavigan recognized, is Bull Point Plantation Property Owners Association, Inc. and because Bull Point Plantation Owners Association is an entity owned and controlled by Gavigan, not the Association.

139. Gavigan and Bull Point, LLC never intended to transfer the properties back to the Association, as Gavigan, through Bull Point SC listed some of them for sale two years prior.

140. That representation was material in that Gavigan; Bull Point Plantation Owners Association, Inc.; and Bull Point, LLC intended it to satisfy the Association that its valuable common area properties have been returned to it.

141. Gavigan; Bull Point Plantation Owners Association, Inc.; and Bull Point, LLC knew of the falsity of this representation.

142. Gavigan; Bull Point Plantation Owners Association, Inc.; and Bull Point, LLC intended that the Association act on this representation by accepting that the properties had been returned to it.

143. The Association was initially ignorant to the falsity, as it did not initially realize the very slight variation in the names.

144. The Association initially relied on its truth in believing that some of the properties had been returned to it.

145. The Association had the right to rely on the trust of the representation.

146. The Association has suffered consequent and proximate injury because it still does not have title to its valuable common area properties.

**FOR AN EIGHTH CAUSE OF ACTION
(Fraud as to Bull Point SC, Gavigan, and the Individual Defendants)**

147. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

148. Bull Point SC, Gavigan, and the Individual Defendants, by way of misappropriating and/or mispending the Association's funds and publishing false and misleading financial reports during their putative administration and Bull Point, LLC, represented that the Association's finances were in order and masked their inappropriate spending.

149. Those representations were false.

150. Those representations were material in that the Defendants intended it to satisfy the Association that its finances were in order, when they were not.

151. Defendants knew of the falsity of these representations.

152. Defendants intended that the Association act on these representations by accepting that the Association's funds were not being misspent or stolen.

153. The Association was initially ignorant to the falsity, as it did not initially realize the inappropriate spending.

154. The Association initially relied on its truth in believing that its funds had not been taken and overspent.

155. The Association had the right to rely on the truth of the representations.

156. The Association has suffered consequent and proximate injury because its funds have been depleted.

**FOR A NINTH CAUSE OF ACTION
(Tortious Interference with Contracts as to Bull Point SC, Gavigan, and Bull Point, LLC)**

157. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully

set forth herein.

158. There exists between the Association and its members a contract that the members will pay annual assessments to the Association on each lot that they own.

159. Bull Point SC, Gavigan, and Bull Point, LLC were all aware of these contracts.

160. Bull Point SC, Gavigan, and Bull Point, LLC intentionally procured the breach of some of these contracts by telling Association members that they did not have to pay Association assessments on all or some of their lots.

161. Bull Point SC, Gavigan, and Bull Point, LLC intentionally procured the breach of some of these contracts by urging Association members to secede from the Association.

162. Bull Point SC, Gavigan, and Bull Point, LLC intentionally procured the breach of some of these contracts by purporting to allow Association members that owned more than one lot to combine their lots and only pay one annual assessment.

163. Bull Point SC, Gavigan, and Bull Point, LLC were not justified in procuring the breach of these contracts.

164. The Association has been damaged by Bull Point SC, Gavigan, and Bull Point, LLC's procurement of the breaches, and such damage was proximately caused by the breaches.

**FOR A TENTH CAUSE OF ACTION
(Tortious Interference with Prospective Contracts as to Bull Point SC, Gavigan, and Bull Point, LLC)**

165. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

166. All purchasers of real property in Bull Point Plantation would enter into a contract with the Association requiring the purchaser to pay the Association annual assessments.

167. Bull Point SC, Gavigan, and Bull Point, LLC have intentionally interfered with these prospective contractual relations by telling prospective purchasers that they will not have to pay annual assessments.

168. Bull Point SC, Gavigan, and Bull Point, LLC did this for an improper purpose and by improper methods, as they have no right to bind the Association and they would benefit from prospective purchasers of their properties not having to pay Association assessments.

169. The Association has been damaged by Bull Point SC, Gavigan, and Bull Point, LLC's interference and such damage was proximately caused by the breaches.

**FOR AN ELEVENTH CAUSE OF ACTION
(Negligence, Gross Negligence, Breach of Fiduciary Duty, and Violation of South Carolina Nonprofit Corporation Act as to Bull Point SC, Gavigan, and all Individual Defendants)**

170. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

171. During their purported control over the Association, Bull Point SC, Gavigan, and the Individual Defendants owed the Association and its members duties, fiduciary and otherwise, to amongst other things, operate the Association in a reasonable manner and for the benefit of the Association and its members, and not for their own benefit.

172. Bull Point SC, Gavigan, and the Individual Defendants breached these duties in numerous ways, including but not limited to the following:

- a. Mismanaging, overspending, and stealing the Association's funds;
- b. Publishing false and misleading financial reports;
- c. Deeding the Association's common area property to entities owned by Gavigan;
- d. Asserting control over the Association's common area property;
- e. Leading Association members to believe that they did not have to pay annual assessments on all of their lots;
- f. Telling Association members that they were not part of the Association;
- g. Asking Association members to secede from the Association;
- h. Using Association employees for their personal benefit;
- i. Using Association property for their personal benefit;
- j. Failing to timely pay the Association's debts;
- k. Failing to fund the Association's deficits while Bull Point SC purported to be the Declarant;

- l. Failing to budget and satisfy a judgment against the Association and instead using that knowledge to obtain the judgment and later try to collect it from the Association;
- m. Using knowledge of the Woods Judgment acquired during their purported administration on the Association's Board against the Association;
- n. In other ways that will be uncovered during discovery.

173. Further, Bull Point SC, Gavigan, and the Individual Defendants violated the South Carolina Nonprofit Corporation Act by transferring the Association's common area properties to entities owned by Gavigan and by using the Association's funds for their own benefit, as these acts amounted to unauthorized and prohibited distributions under the Act.

174. Bull Point SC and the individual Defendants acted intentionally, recklessly, willfully, and wantonly in committing all or some of the above-mentioned breaches.

175. The Association has been damaged by these breaches and such damages was proximately cause by these breaches.

**FOR A TWELFTH CAUSE OF ACTION
(Slander of Title as to Bull Point SC, Gavigan, and Bull Point, LLC)**

176. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

177. Bull Point SC, Gavigan, and Bull Point, LLC published false statements, with malice, regarding the Association's title to its real property that has caused the Association special damages, particularly in the form of diminished value of that property in the eyes of third parties.

**FOR A THIRTEENTH CAUSE OF ACTION
(Conversion as to Bull Point SC; Bull Point, LLC; Bull Point Plantation Owners Association, Inc.; Gavigan; and the Individual Defendants)**

178. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

179. By misappropriating, spending, and/or taking the Association's money and real property without the Association's authorization, these Defendants assumed and exercised the right of ownership over the Association's money and real property to the Association's exclusion.

**FOR A FOURTEENTH CAUSE OF ACTION
(Abuse of Process as to Bull Point SC; Bull Point, LLC; Gavigan; and Bull Point Plantation Owners Association, Inc.)**

180. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

181. By filing and maintaining numerous lawsuits, counterclaims, appeals, and motions which are wholly unsupported and contradicted by various Court orders, these Defendants have committed willful acts in the use of process that are not property in the conduct of the proceedings.

182. Defendants had and continue to have an ulterior purpose in maintain their baseless claims – to harass and annoy the Association and its members, officers, and directors.

**FOR A FIFTEENTH CAUSE OF ACTION
(Civil Conspiracy as to BDG Recovery, LLC; Bull Point, LLC; Bull Point SC; Gavigan; and
the Individual Defendants)**

183. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

184. Upon information and belief, BDG Recovery, LLC; Bull Point, LLC; Bull Point SC; Gavigan; and the Individual Defendants were aware of the judgment against the Association in the Woods Lawsuit while they purported to be in control of the Association.

185. Upon information and belief, BDG Recovery, LLC; Bull Point, LLC; Bull Point SC; Gavigan; and the Individual Defendants also knew that they could obtain an assignment of the judgment from Mr. and Mrs. Woods for little to no consideration.

186. Instead of obtaining that assignment for the Association, or otherwise satisfying the judgment, BDG Recovery, LLC; Bull Point, LLC; Bull Point; Gavigan; and the Individual Defendants waited until the Association was controlled by its member-elected board and acquired the judgment for BDG Recovery, LLC, who is now seeking to collect on the judgment from the Association.

187. These Defendants acted together for the purpose of injuring the Association, which caused special damages to the Association.

188. These damages go beyond and are distinct from the damages alleged in Plaintiff's other causes of action.

**FOR A SIXTEENTH CAUSE OF ACTION
(Civil Conspiracy as to Bull Point, LLC; Bull Point SC; Bull Point Plantation Owners
Association, Inc.; Gavigan; and the Individual Defendants)**

189. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

190. Upon information and belief, Bull Point, LLC; Bull Point SC; Bull Point Plantation Owners Association, Inc.; Gavigan; and the Individual Defendants were aware that no entity except the Association had a legal claim to ownership of the common area properties in Bull Point Plantation.

191. These Defendants acted together by transferring the common area properties from the Association, to Bull Point, LLC; and then to Bull Point Plantation Owners Association, Inc. for the purpose of injuring the Association, which caused special damages to the Association.

192. These damages go beyond and are distinct from the damages alleged in Plaintiff's other causes of action by, amongst other things, having to expend resources defending itself against the Woods Judgment.

**FOR A SEVENTEENTH CAUSE OF ACTION
(Amalgamation of Corporate Interests / Single Business Enterprise as to Bull Point, LLC;
Bull Point SC; BDG Recovery, LLC; and Bull Point Plantation Owners Association, Inc.)**

193. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

194. Bull Point, LLC; Bull Point SC; BDG Recovery, LLC; and Bull Point Plantation Owners Association, Inc. are so intertwined that they should be treated as one single business entity such that they are each liable for the acts of the others.

195. Each of these Defendants acted in bad faith, fraudulently, and wrongly with regard to the Plaintiff such that injustice would result from allowing these entities to be treated as legally distinct.

**FOR AN EIGHTEENTH CAUSE OF ACTION
(Piercing the Corporate Veil as to Gavigan; Bull Point, LLC; Bull Point SC; BDG Recovery, LLC; and Bull Point Plantation Owners Association, Inc.)**

196. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

197. Gavigan is a member, employee, director, owner, and the driving force behind Bull Point, LLC; Bull Point SC; BDG Recovery, LLC; and Bull Point Plantation Owners Association, Inc.

198. Upon information and belief, each of these corporate Defendants were undercapitalized, failed to observe corporate formalities, lacked corporate records, were insolvent, had their funds siphoned by Gavigan, had other non-functioning officers or directors, and were used as mere facades for Gavigan.

199. Significant injustice and unfairness would result if the acts of these entities not be regarded as Gavigan's own personal acts.

PLAINTIFF'S REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that this Court inquire into this matter and issue an Order:

- a. That the October 4, 2019 Quit Claim Deeds were not authorized by the Association and are void;
- b. That the October 4, 2019 Quit Claim Deeds constitute conflict of interest transactions and are void;
- c. That the October 4, 2019 Quit Claim Deeds are set aside and have no binding legal effect;

- d. That the March 6, 2020 Quit Claim Deed from Bull Point, LLC to Bull Point Plantation Owners Association, Inc. is set aside and have no binding legal effect;
- e. Granting an injunction ordering Bull Point, LLC and Bull Point Plantation Owners Association, Inc., at their expense, to transfer all property that they received via the October 4, 2019 and March 6, 2020 Quit Claim Deeds back to the Association;
- f. Granting an injunction ordering that Bull Point, LLC and Bull Point Plantation Owners Association, Inc. ensure that the Association receives its property back free and clear of all liens and judgments and other clouds on the title that did not exist before Gavigan transferred the properties from the Association to Bull Point, LLC;
- g. Granting an injunction ordering that Gavigan and all entities controlled by Gavigan or in which Gavigan holds an interest may not file any document affecting title to any common area properties within Bull Point Plantation;
- h. Issuing all other declarations requested herein;
- i. Finding all Defendants liable for the respective causes of actions asserted against them;
- j. Finding that the corporate defendants be amalgamated and treated as a single business entity;
- k. Finding that Gavigan is personally responsible for the actions of each of the corporate defendants;
- l. Awarding the Association actual damages, punitive damages, and attorney fees and costs; and
- m. Awarding the Association any further relief that this Court deems just and proper.

(Signature block on following page)

Respectfully Submitted,

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: /s/ Jeffrey M. Bogdan
M Dawes Cooke, Jr. (SC Bar #1376)
Jeffrey M. Bogdan (SC Bar #76354)
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Telephone: 843-577-7700
Facsimile: 843-577-7708
Attorneys for Plaintiff

February 1, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BULL POINT PLANTATION PROPERTY
OWNERS ASSOCIATION, INC.

Plaintiff,

-vs-

BULL POINT SC, LLC; BULL POINT, LLC;
BULL POINT PLANTATION OWNERS
ASSOCIATION, INC.; WILLIAM E.
GAVIGAN; MICHAEL CAREY;
CHRISTOPHER J. QUICK; JAMES
RIORDAN; RICHARD RINEY,

Defendants

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Civil Action No. 2020-CP-07-00817

MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that ten (10) days after the service hereof, or as soon thereafter as counsel may be heard, the Plaintiff Bull Point Plantation Property Owners Association, Inc. (hereinafter the "Association"), will appear before the Court of Common Pleas in the Beaufort County Courthouse at 140 Ribaut Road, Beaufort, South Carolina 29901, or another location as the Court may specify, and Motion the Judge of that Honorable Court for an Order granting it summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that the pleadings, depositions, answers to interrogatories, and admissions on file show that there is no genuine issue as to any material fact and that Plaintiff is entitled to judgment as a matter of law.

This Motion is further based on South Carolina Jurisprudence, the South Carolina Rules of Civil Procedure, the pleadings and discovery in this action, the Affidavit of Robert Brendza, Vicki Menard, Mary A. D'Ambrosio, Joseph P. D'Ambrosio, and Michael Pellechia (attached as Exhibit A), and any Memorandum and additional affidavits that will be subsequently filed.

WHEREFORE, based on the law of the State of South Carolina, the grounds set forth above, and such materials as may have been or may hereafter be properly submitted to the Court, Plaintiff respectfully prays this Honorable Court enter judgment in its favor.

Respectfully Submitted,

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: /s Jeffrey M. Bogdan
M Dawes Cooke, Jr. (SC Bar #1376)
Jeffrey M. Bogdan (SC Bar #76354)
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Facsimile: 843-577-7708
Attorneys for Plaintiff

October 23, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC.

Civil Action No. 2020-CP-07-00817

Plaintiff,

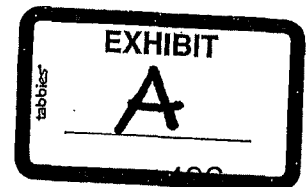
-VS-

BULL POINT SC, LLC; BULL POINT, LLC;
BULL POINT PLANTATION OWNERS ASSOCIATION, INC.; WILLIAM E. GAVIGAN; MICHAEL CAREY; CHRISTOPHER J. QUICK; JAMES RIORDAN; RICHARD RINEY,

AFFIDAVIT OF ROBERT BRENDZA, VICKI MENARD, MARY A. D'AMBROSIO, JOSEPH P. D'AMBROSIO, AND MICHAEL PELLECHIA, IN THE CAPACITY AS DIRECTORS OF THE BOARD OF THE PLAINTIFF BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC.

Defendants

1. I am over 21 years of age and am competent to attest to the facts stated herein.
2. All of the facts stated herein are within my personal knowledge as a member of the board of directors for the Bull Point Plantation Property Owners Association, Inc. (the "Association").
3. The Association is a non-profit corporation organized and existing under the laws of South Carolina, and is located, and has its principal place of business in Beaufort County, South Carolina.
4. The Association was incorporated when Stancil Kirkland signed and filed its Articles of Incorporation in September 1995. At that time, the Association was named "Bull Point Homeowners Association, Inc."
5. Around this same time, Stancil Kirkland also signed the "Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation" (hereinafter the "Declaration").



6. The Association's Articles of Incorporation expressly state that the Association was formed to "provide for maintenance, preservation and architectural control of the residence lots and common area within that certain tract of property known as the Bull Point Property" and that the Association has the power to "exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in" the Declaration"

7. In July 2006, the Association changed its name from "Bull Point Homeowners Association, Inc." to "Bull Point Property Owners Association, Inc."

8. In November 2014, the Association again changed its name from "Bull Point Property Owners Association, Inc." to "Bull Point Plantation Property Owners Association, Inc.," which is the current name of the Association and the name of the Plaintiff in this case.

9. While Bull Point, LLC was developing Bull Point, it transferred to the Association the common areas within Bull Point to be owned and held by the Association for the use and enjoyment of the Association's members.

10. On August 21, 2017, Defendant Bull Point SC, LLC purported to obtain the rights of the Declarant and thereby appointed the members of the Association's Board of Directors.

11. Defendant Gavigan, as the Managing Member of Bull Point SC, LLC appointed himself as President of the Board of Directors of the Association and, at times, appointed the other individual Defendants as members and/or officers of the Board of Directors of the Association.

12. On December 3, 2018, a number of members of the Association, both individually and derivatively on behalf of the Association, filed a lawsuit against Bull Point SC, LLC and the then-purported Board of Directors challenging, amongst other things, Bull Point SC, LLC's purported declarancy rights and its appointment of the members and/or officers of the Association's Board of Directors (hereinafter the "Attridge Litigation").

13. On July 2, 2019, the plaintiffs in the Attridge Litigation filed a Motion for Partial Summary Judgment seeking an order that Bull Point SC, LLC was not the Declarant of Bull Point and/or that, even if it was, Bull Point SC, LLC did not have the right to appoint the members of the Association's Board of Directors, as those members were to be elected by the membership.

14. On September 19, 2019, Bull Point SC, LLC and Gavigan filed their own Motion for Partial Summary Judgment in the Attridge Litigation, seeking an order that Bull Point SC, LLC was the proper Declarant and that it had the right to appoint the Association's Board of Directors.

15. On September 27, 2019, the Court notified the parties that it would hear the cross-motions for partial summary judgment in the Attridge Litigation on October 15, 2019.

16. On October 4, 2019, Defendant Gavigan, as purported President of the Association, and Defendant Riney, as purported Secretary of the Association, signed two separate Quit Claim Deeds transferring some or all of the Association's valuable common elements to Bull Point, LLC, a company which Gavigan had recently acquired.

17. These Quit Claim Deeds were recorded in the Beaufort County Register of Deeds on October 10, 2019.

18. Following the October 15 hearing, the Court entered an Order on November 18, 2019 granting the Plaintiffs' Motion for Partial Summary Judgment, denying Bull Point SC, LLC and Gavigan's Motion for Partial Summary Judgment, and ordering, amongst other things, that Bull Point SC, LLC was never the Declarant of Bull Point Plantation, that all actions Bull Point SC, LLC took as the purported Declarant (including appointing members of the Association's Board of Directors) are void, that Gavigan and the other individual Defendants were not members of the Association's Board of Directors, and that Gavigan and the other individual defendants were enjoined from serving on the Association's Board (unless elected by the membership) and from

taking any action in further governance of the Association.

19. Based upon the Judgment entered by the Court finding that Gavigan was not entitled to serve on the Association's Board, he had no authority to convey the Association's property to anyone, let alone to himself.

20. Upon information and belief, Gavigan, through his counsel, explained that the transfer of the common areas to Bull Point, LLC was necessary to remedy certain errors contained in the deeds by which Bull Point, LLC originally transferred the common areas to the Association.

21. Upon information and belief, Gavigan claimed that the deeds were necessary because the record title owner of the properties was "Bull Point Property Owners Association," not "Bull Point Plantation Property Owners Association, Inc." which the Association changed its name to years ago.

22. Upon information and belief, Gavigan, through his counsel, assured the Court and the Association's counsel that he would transfer the properties back to the Association, i.e. Plaintiff Bull Point Plantation Property Owners Association, Inc.

23. Gavigan's illegal and unauthorized transfer of the Association's common area properties led to concerns within the Association as to whether appropriate insurance was being maintained on the common area properties and whether property taxes would be timely paid.

24. On February 5, 2020, Gavigan filed paperwork creating the Defendant Bull Point Plantation Owners Association, Inc., an entity with a name very similar but slightly different from the Plaintiff Bull Point Plantation *Property* Owners Association, Inc.

25. On March 6, 2020, Gavigan, as Managing Member of Bull Point, LLC, signed a Quit Claim Deed transferring some but not all of the property that he previously transferred from the Association to "Bull Point Plantation Owners Association, Inc.," the Defendant entity that Gavigan

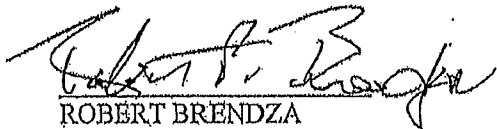
had incorporated just one month prior.

26. Gavigan has still failed to transfer the valuable common area properties back to the Association.

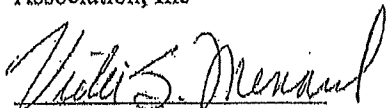
27. The common area properties are vital to the Association and its members. The Declaration vests each member of the Association with the right to use the common area properties. Gavigan's appropriation of the common area properties would catastrophically deprive the members of the Association of their vested right to use those properties.

28. In compliance with Chief Justice Beatty's April 22, 2020 Order Governing the Operation of the Trial Courts During the Coronavirus Emergency, I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

FURTHER AFFIANT SAYETH NOT,



ROBERT BRENDZA
On Behalf of the Board of Directors
of Bull Point Plantation Property Owners
Association, Inc



VICKI MENARD
On Behalf of the Board of Directors
of Bull Point Plantation Property Owners
Association, Inc



MARY A. D'AMBROSIO
On Behalf of the Board of Directors
of Bull Point Plantation Property Owners
Association, Inc



MICHAEL PELLECCIA
On Behalf of the Board of Directors
of Bull Point Plantation Property Owners
Association, Inc



JOSEPH P. D'AMBROSIO
On Behalf of the Board of Directors
of Bull Point Plantation Property Owners
Association, Inc

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	Civil Action No. 2020-CP-07-00817
)	
)	
Bull Point Plantation Property Owners Association, Inc.,)	ANSWER OF DEFENDANTS
)	
Plaintiffs,)	
)	(JURY TRIAL REQUESTED)
vs)	
)	
Bull Point SC, LLC, Bull Point, LLC, Bull Point Plantation Owners Association Inc.,)	
William E. Gavigan, Michael Carey,)	
Christopher J. Quick, James Riordan,)	
Richard Riney,)	
)	
Defendants,)	
)	

NOW COME Defendants Bull Point SC, LLC and Bull Point, LLC (hereinafter the “Bull Point Defendants”), Michael Carey, William E. Gavigan, Christopher J. Quick, James Riordan, and Richard Riney (hereinafter “Individual Defendants”), and Bull Point Plantation Owners Association Inc., and answer the Complaint of Plaintiff, denying all allegations not specifically admitted, and stating as follows:

1. In Paragraphs 1 through 6 of Plaintiff’s Complaint, Plaintiff attempts to identify the parties. Plaintiff also references matters addressed in an order of this Court in “Attridge Litigation” that is now on appeal to the South Carolina Court of Appeals. Plaintiff wrongly characterizes matters in these Paragraphs, as addressed in the affidavit filed by William Gavigan in support of the Motion for Preliminary Injunction filed in this matter May 8, 2020, which is attached as Exhibit “A” to this Answer. Further, some of the Individual Defendants did not serve on the Board of Bull Point Plantation Property Owners Association Inc. “at all time relevant” to the Complaint.

2. Unless otherwise admitted, the remaining allegations in Paragraph 1 through 6 of Plaintiff's Complaint are denied.

3. In Paragraphs 7 and 8 of Plaintiff's Complaint, Plaintiff sets forth the jurisdiction and venue. To the extent that any claim brought by Plaintiff is justiciable, the Defendants have no objection to the jurisdiction and venue in this matter, although Plaintiffs rely on assertions regarding matters that are now on appeal. Unless otherwise admitted, the Defendants deny the remaining allegations of Paragraphs 7 and 8 of Plaintiff's Complaint.

PLAINTIFF'S ALLEGATIONS

4. In Paragraphs 9 through 37 of Plaintiff's Complaint, the Plaintiff attempts to set forth the factual background. To the extent these allegations conflict with the actual record in this matter, or Exhibit "A," the allegations in these paragraphs are denied. Unless otherwise admitted, the remaining allegations in Paragraphs 9 through 37 of Plaintiff's Complaint are denied, and strict proof is demanded thereof.

FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT AS PURSUANT TO
S. C CODE ANN §§ 15-53-10 – 15-53-140 AND RULE E57 SCRPC)

5. Defendants incorporate their responses to Plaintiff's previous allegations as if fully set forth herein.

6. Defendants deny the allegations set forth in Paragraphs 38 through 41 of the Complaint.

SECOND CAUSE OF ACTION
(CONFLICT OF INTEREST TRANSACTION)

7. Defendants incorporate their responses to Plaintiff's previous allegations as if fully set forth herein.

8. Defendants deny the allegations set forth in Paragraphs 42 through 47 of the Complaint.

THIRD CAUSE OF ACTION
(INJUNCTION)

9. Defendants incorporate their responses to Plaintiff's previous allegations as if fully set forth herein.

10. Defendants deny the allegations set forth in Paragraphs 48 through 56 of the Complaint.

FOURTH CAUSE OF ACTION
(FRAUD AS TO GAVIGAN AND BULL POINT, LLC)

11. Defendants incorporate their responses to Plaintiff's previous allegations as if fully set forth herein.

12. Defendants deny the allegations set forth in Paragraphs 57 through 66 of the Complaint.

Wherefore, having fully answered the Complaint of Plaintiff, Defendants set forth their affirmative Defenses as follows:

FIRST DEFENSE

1. Plaintiff's Complaint, and each cause of action therein, fails to state facts sufficient to constitute a cause of action pursuant to Rule 9(b), Rule 12(b)(6) or Rule 12(c), SCRCP.

SECOND DEFENSE

2. Plaintiff's claims are barred by the doctrine of unclean hands, and may be barred by waiver, estoppel, promissory estoppel, judicial estoppel, and/or laches.

THIRD DEFENSE

3. Plaintiff is barred from relief or recovery, in any capacity, because they have failed to allege any basis to recover claimed damages.

FOURTH DEFENSE

4. Plaintiff cannot establish the necessary elements of the claims it has attempted to bring, and for that reason, the claims must be dismissed with prejudice.

PRAYER

WHEREFORE, the Defendants pray for an Order of this Court as follows:

1. For dismissal of Complaint with costs; and
2. For such other and further relief as the Court may deem just, proper and equitable.

This the 29th day of May, 2020.

RICHARDSON PLOWDEN & ROBINSON, P.A.

s/Eugene H. Matthews

Eugene H. Matthews, S.C. Bar No. 10193

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CHRISTOPHER J. QUICK, AND RICHARD RINEY

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s/Irish "Ryan" Neville

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s/Brian Boger

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COUNSEL FOR DEFENDANTS WILLIAM E. GAVIGAN,
BULL POINT SC, LLC, BULL POINT, LLC, AND BULL
POINT PLANTATION OWNERS ASSOCIATION, INC.

EXHIBIT A
AFFIDAVIT OF WILLIAM GAVIGAN

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

**AFFIDAVIT OF
WILLIAM E. GAVIGAN**

I, WILLIAM E. GAVIGAN, hereby declare as follows:

1. I am over the age of 18 years. I am a resident of Beaufort, South Carolina. As set forth below, I am the owner of the companies mentioned herein below. In that capacity, I could and would competently testify thereto regarding the following:

Corporate Ownership

2. I am the owner, either directly or through other entities I own, of the below listed companies, each of which has some relationship with Bull Point Plantation. I am also the Manager, Managing Member or President, as applicable, of said below listed companies:

- a. BDG RECOVERY, LLC, a South Carolina limited liability company.
- b. BULL POINT, LLC, a South Carolina limited liability company.
- c. BULL POINT SC, LLC, a South Carolina limited liability company.
- d. GSI, LLC, a South Carolina limited liability company.
- e. OLD SOUTH PROPERTIES, INC., a South Carolina corporation.

3. I am a developer and hold the title of declarant for several communities in Beaufort County, South Carolina.

4. I have been in the real estate development profession since 2006. Our companies have been involved with master planned communities in North Carolina, South Carolina, and Georgia. I have directly led the sale and development of over ten thousand acres of land to include the \$61 million sale of 5,000 acre in Jasper County known as River Port.

5. Since 2009 my primary focus has been acquiring troubled assets and communities, obtaining the required compliance with Federal and State agencies, and then increasing the value of these communities through enhancement, improvement, sales and development.

History of the Declarant at Bull Point Plantation

6. On January 23, 1995, Metropolitan Properties, Inc. conveyed to Bull Point, LLC the first of several parcels that consists of 694-acres commonly referred to as Bull Point Plantation, which was developed and continues to be developed as a phased subdivision.

7. On September 22, 1995, Bull Point, LLC executed restrictive covenants, entitled the "Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation" (the "Declaration"). (Recorded in Book 805, at Page 218.)

8. Under the Declaration, Bull Point, LLC is the "Declarant" and the "Association," defined in Section 1.01(e), is "Bull Point Plantation Owners Association, Inc." Significantly, since 1995, Bull Point, LLC has amended the Declaration approximately twenty-five (25) times. No amendment has modified the definition of "Declaration." No amendment has modified the definition of "Association."

9. In 2011, one of Bull Point, LLC's lenders, BB&T, commenced a foreclosure action, United States District Court Case No. 9:11-cv-00629-SB, against property secured by a mortgage (the "BB&T Foreclosure Action").

10. Defendants in this action included, *inter alia*, Bull Point, LLC, Bull Point Property Owners Association, Inc., and Bull Point Plantation Property Owners Association. Bull Point Property Owners Association, Inc. did not file a responsive pleading, whereas Bull Point Plantation Property Owners Association did file an answer. In its answer, Bull Point Plantation Property Owners Association admitted that it "was deferent and [was] not an active association."

11. During the pendency of the BB&T Foreclosure Action, German American Capital Corporation (GACC) acquired the BB&T-Bull Point, LLC loan and stepped into the shoes of BB&T. GACC was successful in the action, and on July 5, 2012, the court in the foreclosure action issued its Deed by Judicial Order, and transferred to DB Aster, LLC most of Bull Point, LLC's real property. Subsequently, on December 28, 2012, Bull Point, LLC executed an Assignment of Rights Under Declaration, with the intent to convey the Declarant Rights to DB Aster, LLC, an assignee of GACC.

William Gavigan's Involvement and Relationship with Bull Point Plantation

12. I first became involved with Bull Point during the pendency of the BB&T Foreclosure Action, when Stan Kirkland and Donald Barrett sought me out to assist in the completion of the development. To that end, Bull Point, LLC and one of my companies executed an agreement to complete the development and I later testified in a federal court proceeding regarding the development and our plan to finish out and complete the development.

13. My agreement with Bull Point, LLC was suspended due to the successful foreclosure by GACC; however, I maintained contact with Bull Point, LLC's principles and GACC's representatives because of my interest in Bull Point.

14. When Bull Point came on the market, I was contacted by the owner's agent. After considerable negotiation, on August 18, 2017, one of my companies, GSI, LLC, purchased from DB Aster, LLC and German American Capital Corporation (GACC): (1) all right, title and interest in the real property at Bull Point, (2) the development and permit rights for future phases, (3) the Declarant Rights, and (4) a judgment by GACC against Bull Point, LLC for \$2.4 million (inclusive of interest).

15. On August 21, 2017, GSI, LLC, conveyed to Bull Point SC, LLC everything it acquired from DB Aster, LLC and GACC, exclusive of a handful of lots.

The Foreclosure of Lot 223

16. On May 5, 2014, Bull Point Plantation Property Owners Association, Inc. commenced that action entitled *Bull Point Plantation Property Owners Association, Inc. v. Bull Point, LLC, et al.*, Circuit Court Case No. 2014CP0701080 (the "Lot 223 Foreclosure Action"). On said date, no entity was registered with the South Carolina Secretary of State with the name Bull Point Plantation Property Owners Association, Inc.

17. On January 21, 2015, the court in the Lot 223 Foreclosure Action, issued its Master's Deed, which conveyed Lot 223 to Bull Point Plantation Property Owners Association, Inc. On said date, no such entity was registered with the South Carolina Secretary of State with the name Bull Point Plantation Property Owners Association, Inc.

The Fraudulent Name Change Following the Foreclosure of Lot 223

18. On February 5, 2015, the same date that the Master's Deed for Lot 223 was recorded, Russ Dimke, in the putative capacity as Secretary/Treasurer, submitted to the Secretary of State Articles of Amendment to change the name of Bull Point Property Owners Association, Inc. to Bull Point Plantation Property Owners Association, Inc. This name change was improper because:

- a. The Articles of Incorporation require any amendment to have "the assent of seventy-five (75%) of the entire membership"; no such amendment was ever voted on by the members, let alone receiving approval of 75% of the membership.

- b. The Bylaws require that all written instruments be signed by the President; the President did not sign the Articles of Amendment.
- c. Russ Dimke was not a member of the corporation and did not have the authority to do this.

The Attridge Action Ruling Regarding the Declarant Rights

19. On December 3, 2018, a handful of owners at Bull Point commenced that action entitled *Jon Attridge, et al v. The Board of Directors of Bull Point Plantation Property Owners Association, Inc., et al.*, Circuit Court Case No. 2018CP0702345 (the "Attridge Action"). Among other things, the action sought to have the court rule that Bull Point SC, LLC was not the Declarant.

20. On November 18, 2019, the court in the Attridge Action issued its Order. The Order held, among other things, that Bull Point SC, LLC was not the Declarant. (Order, ¶ 5.)

21. Although that part of the Order entitled "Relief Granted" did not state why it ruled Bull Point SC, LLC was not the Declarant, earlier in the Order the court stated that the definition of "Declarant" could only be interpreted such that the Declarant Rights transferred only upon the foreclosure of the Declarant's "entire interest." As set forth in the Facts section of the Order, Bull Point, LLC's entire interest was not foreclosed upon and, therefore, the Declarant Rights did not transfer to DB Aster, LLC and, subsequently, to GSI, LLC and, subsequently, to Bull Point SC, LLC.

Bull Point, LLC's Interest in Bull Point Plantation

22. At all times, from September 1995 to the present, Bull Point, LLC has continued to have an interest in Bull Point Plantation.

23. On July 5, 2012, on the date the court issued its Deed by Judicial Order in the BB&T Foreclosure Action:

- a. The deed did not convey Lot 223, Phase VI, Bull Point Plantation.

24. On January 21, 2015, on the date the court issued its Master's Deed in the Lot 223

Foreclosure Action:

- a. There did not exist an entity with the name Bull Point Plantation Property Owners Association, Inc., the purported grantee of Lot 223.

25. Under the express terms of the Declaration, Bull Point, LLC owned and continues

to own:

- a. Approximately 25 acres consisting of (i) Lake Bellinger, (ii) Lake Izard, and (iii) Lake Pocotaligo;
- b. Approximately 9 acres consisting of the maintenance area and storage area.
- c. The gated and guarded monitored access.
- d. The interest under that Easement Agreement, dated July 12, 2001, between Bull Point, LLC and the owner of Lot 35, Phase I. (Recorded 10/31/2001, Book 01490, at Page 0973.)
- e. The interest under that Easement Agreement, dated January 12, 2005, between Bull Point, LLC and the owner of Lot 33, Phase I. (Recorded 01/14/2005, Book 02084, at Pages 1196-1200.)
- f. The interest under that Easement Agreement, dated July 21, 2005, between Bull Point, LLC and the owner of Lot 35, Phase I. (Recorded 08/11/2005, Book 02207, at Pages 0896-0899.)
- g. The interest under that Conservation Easement, dated December 22, 2003. (Recorded 12/24/2003, in Book 01889, at Pages 2334-2348.)

Declarant Alone Can Add Property to Declaration

26. Under Article II, Sections 2.01 and 2.02, of the Declaration, only the Declarant may add property to the Development.

27. The following property has been made a part of the Development, as that term is defined in the Declaration:

- a. Phase I
- b. Phase II
- c. Phase IV
- d. Phase V-A
- e. Phase VI

28. Attached hereto as Exhibit A is a true and correct copy of the *Nineteenth Amendment to Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation* that added Phase V-A and which recounts the history of the phases being made a part of the Development.

29. The following property has not been made a part of the Development:

- a. Phase III and lots therein
- b. Phase V-B and lots therein
- c. Future Phase VII and (45 lots) therein
- d. Future Phase VIII, portions of which are intended for Common Area and the property at 114 Barnaby Bluff (resort pool, tennis, Club house).
- e. The Clubhouse
- f. Magnolia Island
- g. The Boat launch and landing, docks, etc.

- h. The Bird Sanctuary
- i. Lake Izard (association funds were used to dig the lake)
- j. All other Additional Property.

The Developer's Vision the for Bull Point Plantation

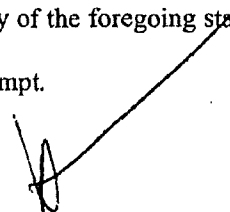
30. My intent since acquiring Bull Point Plantation has been and remains to finish the development of the subdivision, and to make it a flagship community in the Lowcountry. To that end, I have, among other things, invested time and resources to perform a capital reserve study, conduct a road maintenance study, fix and repair items suffering from lack of maintenance (which in some respects appears to have been intentional), coordinate the installation of data and power, implement new and improved procedures, remedy defective titles, greatly increased property values, brought about a 50-fold increase in sales, *and* submitted portions of Additional Property to the Declaration by adding Phase V-A to the Development.

31. Certain persons have represented, falsely, that I committed to transferring property to the "POA." At no time have I ever committed to transferring any property to the POA, which was defined in the Court's Order as Bull Point Plantation Property Owners Association. Further, I have never committed to transferring property to Bull Point Plantation Property Owners Association, Inc., which certain persons contend is an owner's association. Rather, at all times my commitment and duty has been and is to the "Association," as defined in the Declaration as Bull Point Plantation Owners Association, Inc. There is, however, a caveat to this. Certain deadlines are set forth in the Declaration, including possibly September 2020. After this deadline, it is possible/probable that no further amendments may be made to the Declaration by the Declaration, including adding Common Areas.

32. Unfortunately, my goal of completing the Development of Bull Point Plantation has been hindered by a handful of owners (i.e., those involved with Huspah Properties, LLC) that have sought to acquire for themselves the Declarant Rights and control of the Association. This obstruction has included these owners filing several legal actions, which have impeded my efforts to further proceed with development of Bull Point Plantation. But for their obstruction, I believe that Bull Point Plantation would be in a much better place, additional portions of the Additional Property would be part of the Development, and the property values at Bull Point would be significantly higher.

33. That in compliance with Chief Justice Beatty's April 22, 2020 Order Governing the Operation of the Trial Courts During the Coronavirus Emergency, I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

FURTHER THE AFFIANT SAYETH NOT:



William E. Gavigan

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

BULL POINT PLANTATION PROPERTY
OWNERS ASSOCIATION, INC.

Civil Action No. 2020-CP-07-_____

Plaintiff,

-vs-

BULL POINT SC, LLC; BULL POINT, LLC;
BULL POINT PLANTATION OWNERS
ASSOCIATION, INC.; WILLIAM E.
GAVIGAN; MICHAEL CAREY;
CHRISTOPHER J. QUICK; JAMES
RIORDAN; RICHARD RINEY,

**SUMMONS
(NON-JURY)**

Defendants

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his offices at 288 Meeting Street, Ste. 200, Post Office Drawer H, Charleston, South Carolina, 29402, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you.

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: /s/ M. Dawes Cooke, Jr.
M Dawes Cooke, Jr. (SC Bar #1376)
Jeffrey M. Bogdan (SC Bar #76354)
P.O. Drawer H (29402)
288 Meeting Street, Suite 200
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Telephone: 843-577-7700
Facsimile: 843-577-7708
Attorneys for Plaintiff

April 3, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

BULL POINT PLANTATION PROPERTY
OWNERS ASSOCIATION, INC.

Civil Action No. 2020-CP-07-_____

Plaintiff,

-vs-

BULL POINT SC, LLC; BULL POINT, LLC;
BULL POINT PLANTATION OWNERS
ASSOCIATION, INC.; WILLIAM E.
GAVIGAN; MICHAEL CAREY;
CHRISTOPHER J. QUICK; JAMES
RIORDAN; RICHARD RINEY,

**COMPLAINT
(NON-JURY)**

Defendants

Plaintiff the Bull Point Plantation Property Owners Association, Inc. (hereinafter the "Association"), submits this Complaint and alleges the following:

PARTIES

1. The Association is a non-profit corporation organized and existing under the laws of South Carolina, and is located, and has its principal place of business in Beaufort County, South Carolina.

2. Defendant Bull Point SC, LLC ("Bull Point SC") is a separate Limited Liability Company incorporated under the laws of South Carolina and from August 21, 2017 until November 18, 2019 was the purported Declarant of Bull Point Plantation (although it did not meet the definition of Declarant under the Declarations). Bull Point SC has its primary place of business in Beaufort County, South Carolina.

3. Bull Point, LLC is a separate Limited Liability Company incorporated under the laws of South Carolina and has its primary place of business in Beaufort County, South Carolina.

4. Bull Point Plantation Owners Association, Inc. is a separate non-profit corporation

organized and existing under the laws of South Carolina and has its primary place of business in Beaufort County, South Carolina.

5. William E. Gavigan (“Gavigan”) is an individual citizen and resident of Beaufort County, SC and is the managing member and/or incorporator of Bull Point SC; Bull Point, LLC; and Bull Point Plantation Owners Association, Inc.

6. The individuals named below have purportedly been members of the Board of Directors of the Association (collectively “Purported Directors”), but have never actually been members of the Board of Directors of the Association:

- a. At times relevant herein, William E. Gavigan was the purported President of the Board of Directors of the Association, but was never actually the President of the Board of Directors of the Association;
- b. At times relevant herein, Michael Carey was a citizen of and resided in South Carolina and was a purported member and/or officer of the Board of Directors of the Association, but was never actually a member and/or officer of the Board of Directors of the Association;
- c. At times relevant herein, James Riordan was a citizen of and resided in South Carolina and was a purported member and/or officer of the Board of Directors of the Association, but was never actually a member and/or officer of the Board of Directors of the Association;
- d. At times relevant herein, Christopher J. Quick was a citizen of and resided in South Carolina and was a purported member and/or officer of the Board of Directors of the Association, but was never actually a member and/or officer of the Board of Directors of the Association;

- e. At times relevant herein, Richard Riney was a citizen of and resided in South Carolina and was a purported member and/or officer of the Board of Directors of the Association, but was never actually a member and/or officer of the Board of Directors of the Association;

JURISDICTION AND VENUE

7. Plaintiff brings this action as a declaratory judgment action pursuant to § 15-53-10, et seq., Code of Laws of South Carolina (1976), for the purpose of determining a question in controversy between the parties as more fully appears herein. Plaintiff also brings this action pursuant to the common-law and statutory general jurisdiction of this Court.

8. Venue is appropriate because the acts and omissions complained of herein took place in Beaufort County, South Carolina, and the property that is the subject of this action is located in Beaufort County.

FACTUAL BACKGROUND

9. Bull Point Plantation is a private waterfront community located in Beaufort County, South Carolina.

10. Bull Point, LLC was the original Developer/Declarant of Bull Point Plantation.

11. On September 26, 1995, during its development of Bull Point Plantation, Bull Point, LLC created the Association and subsequently transferred to the Association the common areas within Bull Point to be owned and held by the Association for the use and enjoyment of the Association's members.

12. On August 21, 2017, Defendant Bull Point SC purported to obtain the rights of the Declarant and thereby appointed the members of the Association's Board of Directors.

13. Defendant Gavigan, as the Managing Member of Bull Point SC, appointed himself as

President of the Board of Directors of the Association and, at times, appointed the other individual Defendants as members and/or officers of the Board of Directors of the Association.

14. However, Defendant Gavigan and the other individual Defendants were never actually members and/or officers of the Board of Directors of the Association.

15. On December 3, 2018, a number of members of the Association, both individually and derivatively on behalf of the Association, filed a lawsuit against Bull Point SC and the then-purported Board of Directors challenging, amongst other things, Bull Point SC's purported declarancy rights and its appointment of the members and/or officers of the Association's Board of Directors (hereinafter the "Attridge Litigation").

16. On July 2, 2019, the plaintiffs in the Attridge Litigation filed a Motion for Partial Summary Judgment seeking an order that Bull Point SC was not the Declarant of Bull Point and/or that, even if it was, Bull Point SC did not have the right to appoint the members of the Association's Board of Directors, as those members were to be elected by the membership.

17. On September 19, 2019, Bull Point SC and Gavigan filed their own Motion for Partial Summary Judgment in the Attridge Litigation, seeking an order that Bull Point SC was the proper Declarant and that it had the right to appoint the Association's Board of Directors.

18. On September 27, 2019, the Court notified the parties that it would hear the cross-motions for partial summary judgment in the Attridge Litigation on October 15, 2019.

19. Sometime after the Attridge Litigation was filed, Defendant Gavigan obtained all interests in Bull Point, LLC, which at that time was an entity without any assets.

20. On October 4, 2019, Defendant Gavigan, as purported President of the Association, and Defendant Riney, as purported Secretary of the Association, signed two separate Quit Claim Deeds transferring some or all of the Association's valuable common elements to Bull Point, LLC,

a company which Gavigan had recently acquired. See Exhibits A and B.

21. Defendant Gavigan was not the President of the Association and Defendant Riney was not the Secretary of the Association.

22. These Quit Claim Deeds were recorded in the Beaufort County Register of Deeds on October 10, 2019.

23. Following the October 15 hearing, the Court entered an Order on November 18, 2019 granting the Plaintiffs' Motion for Partial Summary Judgment, denying Bull Point SC and Gavigan's Motion for Partial Summary Judgment, and ordering, amongst other things, that Bull Point SC was never the Declarant of Bull Point Plantation, that all actions Bull Point SC took as the purported Declarant (including appointing members of the Association's Board of Directors) are void, that Gavigan and the other individual Defendants were not members of the Association's Board of Directors, and that Gavigan and the other individual defendants were enjoined from serving on the Association's Board (unless elected by the membership) and from taking any action in further governance of the Association.

24. Gavigan, through his counsel, explained that the transfer of the common areas to Bull Point, LLC was necessary to remedy certain errors contained in the deeds by which Bull Point, LLC originally transferred the common areas to the Association.

25. More specifically, Gavigan claimed that the deeds were necessary because the record title owner of the properties was "Bull Point Property Owners Association," not "Bull Point Plantation Property Owners Association, Inc." which the Association changed its name to years ago.

26. Gavigan, through his counsel, assured the Court and the undersigned counsel that he would transfer the properties back to the Association, i.e. Plaintiff Bull Point Plantation Property

Owners Association, Inc.

27. Nevertheless, Gavigan has argued, to his advantage, that Bull Point, LLC was the title holder of the common areas.

28. The undersigned counsel repeatedly followed up with Gavigan's counsel about the promise to transfer the properties back to the Association.

29. Meanwhile, the Association learned that there were outstanding judgments against Bull Point, LLC such that those judgments would potentially attach to the properties which Gavigan transferred from the Association to Bull Point, LLC.

30. Accordingly, the undersigned demanded that in addition to transferring the properties back to the Association, Bull Point, LLC obtain a full release in favor of the Association of any and all rights to enforce any judgments or liens against the properties.

31. Gavigan's illegal and unauthorized transfer of the Association's common area properties also led to concerns within the Association as to whether appropriate insurance was being maintained on the common area properties and whether property taxes would be timely paid.

32. On February 5, 2020, Gavigan filed paperwork creating the Defendant Bull Point Plantation Owners Association, Inc., an entity with a name very similar but slightly different from the Plaintiff Bull Point Plantation *Property* Owners Association, Inc.

33. On March 6, 2020, Gavigan, as Managing Member of Bull Point, LLC, signed a Quit Claim Deed transferring some but not all of the property that he previously transferred from the Association to "Bull Point Plantation Owners Association, Inc.," the Defendant entity that Gavigan had incorporated just one month prior. See Exhibit C.

34. Remarkably, Gavigan's purported intent for transferring the properties to Bull Point, LLC in the first place was to correct the fact that "Bull Point Plantation Owners Association, Inc." was the

record title holder, when “Bull Point Plantation Property Owners Association, Inc.” should have been.

35. Gavigan’s March 6, 2020 transfer not only undermines what he claimed to be his valid reason for transferring the properties to Bull Point, LLC, but also is simply a transfer from one Gavigan entity to another, not a transfer back to the Association.

36. Gavigan’s March 6, 2020 transfer also is in violation of the Court’s November 18, 2019 Order, as it results in his continued control over the Association’s common area properties.

37. Gavigan has still failed to transfer the valuable common area properties back to the Association.

**FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment as pursuant to
S.C. Code Ann. §§ 15-53-10- 15-53-140 and Rule 57 SCRPC)**

38. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

39. Plaintiff brings this cause of action against Defendants pursuant to S.C. Code Ann. §§ 15-53-10 through 15-53-140 and Rule 57 of the SCRPC seeking a declaration that the Deeds that Gavigan and Riney signed on behalf of the Association purporting to transfer some or all of the Association’s valuable common area properties to Bull Point, LLC are void, are of no legal effect, and should be set aside because Gavigan and Riney were not members of the Association’s Board of Directors and had no authority to sign the deeds on behalf of the Association because they were not elected by the members and not properly appointed by a Declarant.

40. The South Carolina Declaratory Judgment Act provides that this Court has the power to declare the rights, status, and other legal relations whether or not further relief is or could be claimed, S.C. Code Ann. §15-53-20.

41. Due to the facts, conditions, and circumstances set forth in this Complaint, an actual and

justiciable controversy exists.

**FOR A SECOND CAUSE OF ACTION
(Conflict of Interest Transaction)**

42. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

43. Under South Carolina Code Ann. § 33-31-831, a conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest.

44. A conflict of interest transaction is voidable if the transaction was not fair to the corporation at the time it was entered into.

45. Even if Gavigan and Riney were members of the Association's Board of Directors, which the Court has found they were not, the transfer of the Association's common elements to Bull Point, LLC by way of the Quit Claim Deeds were conflict of interest transactions because Gavigan, through his company Bull Point, LLC directly benefitted therefrom.

46. These conflict of interest transactions were not fair to the Association and deprived the Association of its valuable common areas.

47. The conflict of interest transactions, and thus the Quit Claim Deeds, are void and should be set aside.

**FOR A THIRD CAUSE OF ACTION
(Injunction)**

48. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

49. As stated above, the Quit Claim Deeds by which the Association conveyed its common elements to Bull Point, LLC are void and should be set aside.

50. Even if they are not void, Gavigan stated that his intent in transferring the common areas to Bull Point, LLC was to clear a cloud on the title and then transfer the common areas back to the Association.

51. Instead, Gavigan, through Bull Point, LLC, transferred the properties to a different company he owns, Defendant Bull Point Plantation Owners Association, Inc.

52. Accordingly, the Association requests that the Court issue an Order requiring that Bull Point, LLC and Bull Point Plantation Owners Association, Inc., at their expense, transfer all property that they received via the October 4, 2019 and March 6, 2020 Quit Claim Deeds back to the Association.

53. Further, the Association requests that the Court issue an Order requiring that the properties be transferred back to the Association free and clear of all liens and judgments that did not cloud the title to the properties before Gavigan transferred them from the Association to Bull Point, LLC.

54. Alternatively, the Association requests that the Court issue an Order requiring that Bull Point, LLC and Bull Point Plantation Owners Association, Inc. procure releases of all judgments and liens that did not cloud the title to the properties before Gavigan transferred them from the Association to Bull Point, LLC.

55. The Association will be irreparably harmed if its common areas are not transferred back to it free and clear of all liens and judgments. The common areas include the security gate, roads, clubhouse, pool, and other critical components of Bull Point Plantation that the Association's members need to live there.

56. The Association lacks an adequate remedy at law to recover damages from the loss of its common areas.

**FOR A FOURTH CAUSE OF ACTION
(Fraud as to Gavigan and Bull Point, LLC)**

57. For this cause of action, Plaintiff incorporates all allegations set forth above as if fully set forth herein.

58. Gavigan and Bull Point, LLC, by way of the transfer itself and otherwise, have represented that their transfer of some of the properties to Bull Point Property Owners Association was a transfer back to the Association.

59. That representation was false, since the Association's correct name, as Gavigan recognized, is Bull Point *Plantation* Property Owners Association, Inc. and because Bull Point Property Owners Association is an entity owned and controlled by Gavigan, not the Association.

60. That representation was material in that Gavigan and Bull Point, LLC intended it to satisfy the Association that its valuable common area properties have been returned to it.

61. Gavigan and Bull Point, LLC knew of the falsity of this representation.

62. Gavigan and Bull Point, LLC intended that the Association act on this representation by accepting that the properties had been returned to it.

63. The Association was initially ignorant to the falsity, as it did not initially realize the very slight variation in the names.

64. The Association initially relied on its truth in believing that some of the properties had been returned to it.

65. The Association had the right to rely on the trust of the representation.

66. The Association has suffered consequent and proximate injury because it still does not have title to its valuable common area properties.

PLAINTIFF'S REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that this Court inquire into this matter and issue an Order:

- a. That the October 4, 2019 Quit Claim Deeds were not authorized by the Association and are void;
- b. That the October 4, 2019 Quit Claim Deeds constitute conflict of interest transactions and are void;
- c. That the October 4, 2019 Quit Claim Deeds are set aside and have no binding legal effect;
- d. That the March 6, 2020 Quit Claim Deed from Bull Point, LLC to Bull Point Plantation Owners Association, Inc. are set aside and have no binding legal effect;
- e. Granting an injunction ordering Bull Point, LLC and Bull Point Plantation Owners Association, Inc., at their expense, to transfer all property that they received via the October 4, 2019 and March 6, 2020 Quit Claim Deeds back to the Association;
- f. Granting an injunction ordering that Bull Point, LLC and Bull Point Plantation Owners Association, Inc. ensure that the Association receives its property back free and clear of all liens and judgments and other clouds on the title that did not exist before Gavigan transferred the properties from the Association to Bull Point, LLC;
- g. Granting an injunction ordering that Gavigan and all entities controlled by Gavigan or in which Gavigan holds an interest may not file any document affecting title to any common area properties within Bull Point Plantation;
- h. Finding Gavigan and Bull Point, LLC liable for fraud;
- i. Awarding the Association actual damages, punitive damages, and attorney fees and costs; and
- j. Awarding the Association any further relief that this Court deems just and proper.

(Signature block on following page)

Respectfully Submitted,

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: /s/ M. Dawes Cooke, Jr.
M Dawes Cooke, Jr. (SC Bar #1376)
Jeffrey M. Bogdan (SC Bar #76354)
P.O. Drawer H (29402)
288 Meeting Street, Suite 200
Charleston, SC 29401
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Telephone: 843-577-7700
Facsimile: 843-577-7708
Attorneys for Plaintiff

April 3, 2020
Charleston, South Carolina

ELECTRONICALLY FILED - 2020 Apr 03 12:55 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700817

“EXHIBIT A”

All those certain roads and rights of way with improvements thereon shown and dedicated as the Sheldon Lane 50 foot right of way for access, ingress and egress for Phase VB of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 9th day of November, 1998, last revised March 17th, 2003 and recorded in the Office of the RMC for Beaufort County, South Carolina in Plat Book 92 at Pages 34 and 35 (hereinafter the Phase VB Plat).

ALSO

All those certain pieces, parcels and improvement tracts of land on which road right of ways have been constructed outside of the designated right of way easements as shown and designated on the Phase VB Plat.

ALSO

All of the parcels with improvements thereon shown and designated as drainage improvements on the Phase VA Plat

R700-020-000-0126

This being the same property conveyed to Bull Point Plantation Property Owners Association, Inc. by deed of Bull Point, LLC dated November 20, 2008 and recorded at the Register of Deeds Office for Beaufort County, South Carolina in Book 2785 at Page 2028.

AND ALSO:

All that certain piece, parcel or lot of land, consisting of 9.42 acres, with improvements thereon, situate, lying and being in Sheldon Township, Beaufort County, South Carolina and being shown and designated on a plat prepared for Bull Point, LLC dated the 18th day of September 2007 and recorded in the office of the Register of Deeds Office for Beaufort County, South Carolina on December 14, 2007 in Plat Book 00123 at Page 0038. Said plat is incorporated herein for a more complete description.

TMS No. R700-020-000-0252-0000

AND

All that certain piece, parcel or lot of land, consisting of 2.551 acres situate, lying and being in Beaufort County, South Carolina and being shown and designated a Parcel 2 on a plat prepared for Bull Point, LLC dated the 4th day of December 2007 and recorded in the office of the Register of Deeds Office for Beaufort County, South Carolina on December 14, 2007 in Plat Book 00123 at Page 0037. Said plat is incorporated herein for a more complete description.

TMS No. R700-020-000-0127-0000

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated September 24, 2012 and recorded at the Register of Deeds Office for Beaufort County, South Carolina in Book 3177 at Page 2705.

AND ALSO:

All those certain roads and right of ways with improvements thereon shown and dedicated as the Stephens Path and a portion of the Barnaby Bluff 50 foot right of ways for access, ingress and egress for Phase III of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 2nd day of May, 2002 and recorded in the Register of Deeds Office for Beaufort County, South Carolina in Plat Book 87 at Page 22 (hereinafter the Phase III Plat).

ALSO

All those certain parcels designated and/or constructed within the leisure trail easements for Phase III and any drainage easements on the Phase III Plat.

ALSO

All those certain pieces, parcels and tracts of land on which road right of ways improvements have been constructed outside of the designated right of way easements as shown and designated on Phase III Plat.

R700-020-000-0176

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated November 20, 2008 and recorded at the Register of Deeds Office for Beaufort County, South Carolina in Book 2785 at Page 2031.

AND ALSO:

And those certain roads and right of ways with improvements thereon shown and dedicated as the King Charles Drive and a portion of Barnaby Bluff 50 foot right of ways for access, ingress and egress for Phase VI of the Bull Point Subdivision on a plat prepared by Andrews Engineering Company dated February 24, 2005, revised March 15, 2005 and recorded in the office of the RMC for Beaufort County, South Carolina in Plat Book 105 at Page 106 (hereinafter the Phase VI Plat).

ALSO

All those certain parcels shown as designated as a leisure trail and/or drainage easements on the Phase VI Plat.

ALSO

All those certain pieces, parcels and tracts of land on which the road right of ways and/or leisure trail improvements which have been constructed outside of the designated right of way or leisure trail easements as shown and designated on the Phase VI Plat.

R700-020-000-0248
R700-020-000-0249

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated November 20, 2008 and recorded at the Register of Deeds Office for Beaufort County, South Carolina in Book 2785 at Page 2034.

AND ALSO:

All those certain roads and rights of ways with improvements thereon shown and dedicated as the Bull Point Drive 50 foot right of way for access, ingress and egress for the entrance way and Phase I of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 14th day of January, 1995 and recorded in the office of the Register of Deeds Office for Beaufort County, South Carolina on January 23rd, 1995 in Plat Book 51 at Page 165 (hereinafter the Phase I Plat).

ALSO

All those certain parcels designated as meandering trails and drainage easements on the Phase I Plat.

ALSO

All those certain pieces, parcels and tracts of land on which road right of ways and/or meandering trails and drainage improvements have been constructed outside of the designated right of way or meandering trail easements as shown and designated on the Phase I Plat.

R700-020-000-0254

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated November 20, 2008 and recorded at the Register of Deeds Office for Beaufort County, South Carolina in Book 2785 at Page 2019.

AND ALSO:

All those certain roads and right of ways with improvements thereon shown and dedicated as the Island Way 50 foot right of way for access, ingress and egress for Phase VA Big Bull Island, Bull Point Subdivision on a plat prepared by Andrew and Burgess, Inc. Engineering dated the 9th day of May, 2007 and recorded in Plat Book 119 at Page 195 at the Register of Deeds Office for Beaufort County, South Carolina. The improvements transferred by the within deed includes, but is not limited to the constructed vehicular bridge providing ingress and egress from the main land of the Bull Point Subdivision to Big Bull Island. The above referenced Phase VA Plat is incorporated

herein.

ALSO

All of the parcels with improvements thereon shown and designated as drainage improvements on the Phase VA Plat.

R700-026-000-0176

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated November 20, 2008 and recorded at the Register of Deeds Office for Beaufort County, South Carolina in Book 2785 at Page 2016.

AND ALSO:

All that certain piece, parcel or lot of land consisting of 2.09 acres with improvements thereon, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, and being shown and designated as William Bull Park and Lot 87, on a plat entitled Lot Line Revision, William Bull Park, prepared for Bull Point Plantation, Gardens Corner, Beaufort County, South Carolina by David E. Gasque, RLS, Gasque & Associates, Inc., dated May 7, 2002 and recorded in Plat Book 00086 at Page 0176 on May 8, 2002 in the Office of the Register of Deeds for Beaufort County, South Carolina. Said Plat being incorporated herein and made a part hereof by reference for a more complete description.

R700-027-000-0138-0000

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated December 28, 2006 and recorded at the Register of Deeds Office for Beaufort County, South Carolina in Book 2497 at Page 1071.

AND ALSO:

All those certain roads and right of ways with improvements thereon shown and dedicated as the Bull Point Drive 50 foot right of way for access, ingress and egress Phase II of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 8th day of November, 1995, with latest revision date of August 28th, 2000 and recorded in the office of the Register of Deeds Office for Beaufort County, South Carolina in Plat Book 75 at Page 180 (hereinafter the Phase II Plat).

ALSO

All those certain parcels designated as a meandering trails and drainage easements on the Phase II Plat.

ALSO

All those certain pieces, parcels and tracts of land on which road right of ways and/or meandering trails and drainage improvements have been constructed outside of the designated right of way or meandering trail easements as shown and designated on the Phase II Plat.

R700-027-000-0199

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated November 20, 2008 and recorded at the Register of Deeds Office in Book 2785 at Page 2025.

AND ALSO:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in Sheldon Township, Beaufort County, South Carolina and being shown and designated as .61 acres of common area with improvements thereon for access to Magnolia Island located between Lot 51 and Lot 52, on a plat showing lot line revision between common area, Lot 51 and Lot 52, Bull Point, Phase I, prepared for Stan Kirkland, Gardens Corner, Beaufort County, South Carolina, by Gasque and Associates, Inc. dated November 21, 2003 and recorded November 24, 2003 in Book 96 on Page 116.

Also, ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, and being shown as the Boardwalk to Magnolia Island 851.51 feet in length as shown on the above referenced Plat recorded in Book 96 at Page 116.

Also, All that certain piece, parcel and tract of land designated as Magnolia Island containing 2.61 acres as shown on Exhibit A1 attached thereto and incorporated herein. It is the intent of Grantor to deed the Magnolia access easement common area, the 851.58 boardwalk from the mainland to Magnolia Island and the 2.62 acres, with improvements thereon, known as Magnolia Island.

The Grantors Quit-Claim any and all its right, title and interest to any and all property located below the OCRM Critical Line or Mean High Water Line.

R700-027-000-0203

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated December 28, 2006 and recorded at the Register of Deeds Office for Beaufort County, South Carolina in Book 2497 at Page 1060.

AND ALSO:

All that certain piece, parcel and tract of land, with improvements thereon shown as 7.37 acres, more or less. Clubhouse site Phase VIII Bull Point Plantation on the composite Master Phasing Plan dated March 17, 2003 and revised July 19, 2006 by Andrews Engineering Co., Inc. The completed amenities located on the property include Swimming Pool Complex with Pool House, Clubhouse, and Tennis Court Complex and Detention Pond.

R700-027-000-0217

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated September 27, 2007 and recorded at the Register of Deeds Office for Beaufort County, South Carolina in Book 2637 at Page 819.

AND ALSO:

All that certain piece, parcel or lot of land, consisting of 0.72 acres, with improvements thereon, situate, lying and being in Sheldon Township, Beaufort, South Carolina and being shown and designated on a plat of Phase II prepared for Bull Point, LLC dated the 8th day of November 1995 with the latest revision date of August 28th, 2000 and recorded in the office of the Register of Deeds Office for Beaufort County, South Carolina in Plat Book 75 at Page 180. The above .72 acres is located between and contiguous to Lot 68 and Lot 69 as shown on within Phase II Plat. The improvements on the 0.72 tract include paving, boat ramp and community dock. The above referenced Phase II Plat is incorporated herein.

R700-027-000-0241

This being the same property conveyed to Bull Point Property Owners Association, Inc. by deed of Bull Point, LLC dated November 21, 2008 and recorded at the Register of Deeds for Beaufort County, South Carolina Office in Book 2785 at Page 2037.

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BULL POINT PLANTATION PROPERTY
OWNERS ASSOCIATION, INC.

Plaintiff,

-vs-

BULL POINT SC, LLC; BULL POINT, LLC;
BULL POINT PLANTATION OWNERS
ASSOCIATION, INC.; WILLIAM E.
GAVIGAN; MICHAEL CAREY;
CHRISTOPHER J. QUICK; JAMES
RIORDAN; RICHARD RINEY,

Defendants

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-07-00817

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court on the Motion for Summary Judgment of Plaintiff Bull Point Plantation Property Owners Association, Inc. (hereinafter the "Association"). Plaintiff seeks to have its common area properties (its roads, its parks, its ponds, its clubhouse and business office, its swimming pool, its tennis courts, its community dock, its community boat landing, etc.) returned to it. This is necessary because on October 4, 2019, Defendants Gavigan and Riney, as purported President and Secretary, respectively, of the Association signed two Quit Claims Deeds (recorded in the Beaufort County Register of Deeds at Book 3802, Pages 185-192 and Book 3802, Pages 195-197) (collectively the "October 4, 2019 Deeds") transferring these properties from the Association to Bull Point, LLC (an entity that Mr. Gavigan owns or controls). Then, on March 6, 2020, Mr. Gavigan signed another Quit Claim Deed (recorded in the Beaufort County Register of Deeds at Book 3844, Pages 2148-2151) (hereinafter the "March 6, 2020 Deed") transferring some of these properties to Bull Point Plantation Owners Association, Inc., an entity that he created in February 2020 and claims is the real property owners' association for Bull Point Plantation. A

community utilities & insurance. "Special Projects" were paid each year from the contingency fund. On average the operating budget was being exceeded each year by approximately \$70,000 being taken from the contingency fund. These expenses included capital expenses as well as legal fees and a wide range of expenses not included in the annual budget. These expenses were not voted on by the members and there was no long term plan for these projects.

- The current board's assertion that 2019 was the first year the POA exceeded the budget approved at the annual meeting is false if you look at the total expenditures for the POA during the year. Our historical spreadsheet including both operating expenses and contingency funds show that in fact every year except 2014 the POA board exceeded the member approved operating budget. In 2014 DB Aster paid dues on the developer lots.
- 2019 End of Year Financials include all common area repairs AND capital projects. Only operating expenses are included in the 2020 Budget.
- The current board has stated they are within budget after the first quarter of 2020. Their budget document prepared shows they have spent \$17,712 less than the 2020 budgeted expenses. However, this does not include the \$62,833.50 from the contingency fund and \$33,845.38 from the special assessment collected to pay 2019 expenses (for a total of unbudgeted expenses of \$96,678.88). As of March 31, 2020 they have spent \$213,617 versus their budget of \$134,650.40 total expenses.
- 2020 Dues Collected as of March 31 are \$499,585 (represents 204 lots paying dues). Dues in the budget are \$595,693. This is a difference of \$95,817 in budgeted dues not collected. Even when you subtract the \$49,028 in bad debt budgeted, this suggests we are not on budget and will not be able to meet our budgeted operating expenses for 2020 which is \$595,402.
- I believe there is a court order that required a meeting of association members for any contingency funds voted on by the board of directors while this legal action is still pending. There was no meeting of the members for the \$96,678.88 spent from the contingency fund and special assessments in first quarter 2020. The 2020 Budget only has \$2000 budgeted for common area maintenance and repair. At the end of the first quarter they were over this number by more than \$60,000 even if you exclude the amount spent to pay 2019 bills.
- I attended the February 15, 2020 board elections with 3 proxys and 2 were denied. They also hired an armed off-duty Beaufort County Sherriff. This is just one of many illustrations of their bullying tactics that have pitted neighbor against neighbor.
- The vote count from the February meeting was 200 for this new board and 5 against. We have never seen certification of these election results. Dues as of the end of March reflect 204 lots paying dues. How can we have a vote count of 205?
- We are not better off with this new board. We no longer have access to the 75 ft. Maintenance easements at the freshwater lakes (where many of the plaintiff's live). These areas were used for fishing, a golf cart path around the lake and wildlife viewing. For 20 years we've enjoyed these common areas and homes on the lakes were designed and landscaped to separate private property from the maintenance easements. We received notice these areas are now private property and the areas where we taught our grandchildren to fish are no longer common areas even though the cost to maintain and mow this private property continue to be paid with our POA dues. This was done without any meeting of members to discuss the issues or vote on it. When I challenged it in writing I simply received a response that I was wrong and should read the CC&R's.
- More transparency as to the legal and professional fees is called for. I want to be sure legal fees paid by the small group of property owners to initiate this lawsuit, is not reimbursed out of POA funds. This reimbursement out of POA funds promise was made by many of these same

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

BULL POINT PLANTATION PROPERTY
OWNERS ASSOCIATION, INC.

Plaintiff,

Civil Action No. 2020-CP-07-00817

-vs-

BULL POINT SC, LLC; BULL POINT, LLC;
BULL POINT PLANTATION OWNERS
ASSOCIATION, INC.; WILLIAM E.
GAVIGAN; MICHAEL CAREY;
CHRISTOPHER J. QUICK; JAMES
RIORDAN; RICHARD RINEY,

Defendants

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Plaintiff the Bull Point Plantation Property Owners Association, Inc. (hereinafter the "Association"), by and through its undersigned counsel, submits this Memorandum in Support of its Motion for Summary Judgment.

INTRODUCTION

By this motion the Plaintiff Association, the property owners' association for Bull Point Plantation, seeks the return of its common properties, including its roads, its parks, its ponds, its clubhouse and business office, its swimming pool, its tennis courts, its community dock, and its community boat landing. The Association's former Board president, Defendant William Gavigan, conveyed these properties to himself shortly before this Court (through Judge Carmen Mullen) ruled that he was not actually the president of the Board and did not have the authority to appoint the Board directors or to act on behalf the Association. Mr. Gavigan told Judge Mullen at that time that he was simply trying to correct a title defect and would re-convey the properties to the Association. He has since changed his mind and is determined to keep the properties.

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“EXHIBIT A”

All that certain piece, parcel or tract of land, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, and being that portion of Tomotley Plantation known as Bull Point, consisting of 694.1 acres, more or less, and two out islands containing 18.5 acres and 5.0 acres, as will be more fully shown on that certain plat entitled Plat of Tomotley Plantation, Sheldon Township, Beaufort County, South Carolina, prepared by Rod C. Spann, R.L.S., and R. D. Trogdon, Jr., R.L.S., dated March 31, 1981, and recorded in the RMC Office for Beaufort County, South Carolina on January 23, 1985, in Book 32 of Plats, at Page 201.

- R700-020-000-0054
- R700-020-000-0066
- R700-020-000-0184
- R700-020-000-0191
- R700-020-000-0217
- R700-020-000-0218
- R700-020-000-0219
- R700-020-000-0247
- R700-026-000-0175
- R700-027-000-0119
- R700-027-000-0198
- R700-027-000-0216

This being the same property conveyed to Bull Point Property Owners Association by deed of Bull Point, LLC dated October 21, 2011 and recorded at the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3092 at Page 2123.

AND ALSO

All those certain pieces, parcels and lots of land, situate, lying and being in Sheldon Township, Garden’s Corner, Beaufort County, South Carolina, consisting of two parcels containing a total of 1.79 acres and described as; Area Quit Claimed to Open Space (1.25 acres) and Area Quit Claimed to Open Space (0.54 acres) on a plat entitled Lot Line Abandonment and Lot Deconfiguration on Lot 11, Lot 192, and Open Space prepared by Gasque and Associates Inc. dated November 30, 2007 revised January 19, 2008 and recorded in the Beaufort County Register of Deeds Office on March 12, 2008 in Book 00124 at Page 0032 and attached hereto and incorporated herein for a more complete description.

- R700-027-000-0239
- R700-027-000-0240

This being the same property acquired by Bull Point Property Owners Association by deed of Bull Point, LLC dated March 26, 2008 and recorded in the Register of Deeds Office for Beaufort County, South Carolina in Book 2707 at Page 668.

Point Subdivision on a plat prepared by Andrew and Burgess, Inc. Engineering dated the 9th day of May, 2007 and recorded in Plat Book 119 at Page 195 at the Register of Deeds Office for Beaufort County, South Carolina. The improvements transferred by the within deed includes, but is not limited to the constructed vehicular bridge providing ingress and egress from the mainland of the Bull Point Subdivision to Big Bull Island. The above referenced Phase VA Plat is incorporated herein.

ALSO

All of the parcels with improvements thereon shown and designated as drainage improvements on the Phase VA Plat.

R700-026-000-0176

AND ALSO:

All those certain roads and right of ways with improvements thereon shown and dedicated as the Bull Point Drive 50 foot right of way for access, ingress and egress Phase II of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 8th day of November, 1995, with latest revision date of August 28th, 2000 and recorded in the office of the Register of Deeds Office for Beaufort County, South Carolina in Plat Book 75 at Page 180 (hereinafter the Phase II Plat).

ALSO

All those certain parcels designated as a meandering trails and drainage easements on the Phase II Plat.

ALSO

All those certain pieces, parcels and tracts of land on which road right of ways and/or meandering trails and drainage improvements have been constructed outside of the designated right of way or meandering trail easements as shown and designated on the Phase II Plat.

R700-027-000-0199

This property is conveyed subject to all obligations, restrictions, limitations, covenants, easements and benefits as contained in the Declaration of Covenants, Conditions, and Restrictions for Bull Point Plantation dated the 22nd day of September, 1995 and recorded at the Office of the Register of Deeds for Beaufort County, South Carolina on September 26, 1995 in Book 805 at Page 218, as amended, from time to time and all other easements and restrictions of record applicable thereto.

All these parcels being a portion of the same property conveyed to the within Grantor by deed of Bull Point Property Owners Association, Inc. k/n/a Bull Point Plantation Property Owners Association, Inc. dated October 24, 2019 and recorded at the Office of the Register of Deeds for Beaufort County, South Carolina Office in Book 3802 at Page 185-192.

“EXHIBIT A”

All that certain piece, parcel or tract of land, situate, lying and being in Sheldon Township, Beaufort County, South Carolina, and being that portion of Tomotley Plantation known as Bull Point, consisting of 694.1 acres, more or less, and two out islands containing 18.5 acres and 5.0 acres, as will be more fully shown on that certain plat entitled Plat of Tomotley Plantation, Sheldon Township, Beaufort County, South Carolina, prepared by Rod C. Spann, R.L.S., and R. D. Trogdon, Jr., R.L.S., dated March 31, 1981, and recorded in the RMC Office for Beaufort County, South Carolina on January 23, 1985, in Book 32 of Plats, at Page 201.

- R700-020-000-0054
- R700-020-000-0066
- R700-020-000-0184
- R700-020-000-0191
- R700-020-000-0217
- R700-020-000-0218
- R700-020-000-0219
- R700-020-000-0247
- R700-026-000-0175
- R700-027-000-0119
- R700-027-000-0198
- R700-027-000-0216

This being the same property conveyed to Bull Point Property Owners Association by deed of Bull Point, LLC dated October 21, 2011 and recorded at the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3092 at Page 2123.

AND ALSO

All those certain pieces, parcels and lots of land, situate, lying and being in Sheldon Township, Garden’s Corner, Beaufort County, South Carolina, consisting of two parcels containing a total of 1.79 acres and described as; Area Quit Claimed to Open Space (1.25 acres) and Area Quit Claimed to Open Space (0.54 acres) on a plat entitled Lot Line Abandonment and Lot Deconfiguration on Lot 11, Lot 192, and Open Space prepared by Gasque and Associates Inc. dated November 30, 2007 revised January 19, 2008 and recorded in the Beaufort County Register of Deeds Office on March 12, 2008 in Book 00124 at Page 0032 and attached hereto and incorporated herein for a more complete description.

- R700-027-000-0239
- R700-027-000-0240

This being the same property acquired by Bull Point Property Owners Association by deed of Bull Point, LLC dated March 26, 2008 and recorded in the Register of Deeds Office for Beaufort County, South Carolina in Book 2707 at Page 668.

"EXHIBIT A"

All those certain roads and rights of way with improvements thereon shown and dedicated as the Sheldon Lane 50 foot right of way for access, ingress and egress for Phase VB of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 9th day of November, 1998, last revised March 17th, 2003 and recorded in the Office of the RMC for Beaufort County, South Carolina in Plat Book 92 at Pages 34 and 35 (hereinafter the Phase VB Plat).

ALSO

All those certain pieces, parcels and improvement tracts of land on which road right of ways have been constructed outside of the designated right of way easements as shown and designated on the Phase VB Plat

ALSO

All of the parcels with improvements thereon shown and designated as drainage improvements on the Phase VA Plat recorded in Plat Book 119 at Page 195.

R700-020-000-0126

AND ALSO:

All those certain roads and right of ways with improvements thereon shown and dedicated as the Stephens Path and a portion of the Barnaby Bluff 50 foot right of ways for access, ingress and egress for Phase III of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 2nd day of May, 2002 and recorded in the Register of Deeds Office for Beaufort County, South Carolina in Plat Book 87 at Page 22 (hereinafter the Phase III Plat).

ALSO

All those certain parcels designated and/or constructed within the leisure trail easements for Phase III and any drainage easements on the Phase III Plat.

ALSO

All those certain pieces, parcels and tracts of land on which road right of ways improvements have been constructed outside of the designated right of way easements as shown and designated on Phase III Plat.

R700-020-000-0176

AND ALSO:

All those certain roads and right of ways with improvements thereon shown and dedicated as the Island Way 50 foot right of way for access, ingress and egress for Phase VA Big Bull Island, Bull

Point Subdivision on a plat prepared by Andrew and Burgess, Inc. Engineering dated the 9th day of May, 2007 and recorded in Plat Book 119 at Page 195 at the Register of Deeds Office for Beaufort County, South Carolina. The improvements transferred by the within deed includes, but is not limited to the constructed vehicular bridge providing ingress and egress from the mainland of the Bull Point Subdivision to Big Bull Island. The above referenced Phase VA Plat is incorporated herein.

ALSO

All of the parcels with improvements thereon shown and designated as drainage improvements on the Phase VA Plat.

R700-026-000-0176

AND ALSO:

All those certain roads and right of ways with improvements thereon shown and dedicated as the Bull Point Drive 50 foot right of way for access, ingress and egress Phase II of the Bull Point Subdivision on a plat prepared by Gasque and Associates, Inc. dated the 8th day of November, 1995, with latest revision date of August 28th, 2000 and recorded in the office of the Register of Deeds Office for Beaufort County, South Carolina in Plat Book 75 at Page 180 (hereinafter the Phase II Plat).

ALSO

All those certain parcels designated as a meandering trails and drainage easements on the Phase II Plat.

ALSO

All those certain pieces, parcels and tracts of land on which road right of ways and/or meandering trails and drainage improvements have been constructed outside of the designated right of way or meandering trail easements as shown and designated on the Phase II Plat.

R700-027-000-0199

This property is conveyed subject to all obligations, restrictions, limitations, covenants, easements and benefits as contained in the Declaration of Covenants, Conditions, and Restrictions for Bull Point Plantation dated the 22nd day of September, 1995 and recorded at the Office of the Register of Deeds for Beaufort County, South Carolina on September 26, 1995 in Book 805 at Page 218, as amended, from time to time and all other easements and restrictions of record applicable thereto.

All these parcels being a portion of the same property conveyed to the within Grantor by deed of Bull Point Property Owners Association, Inc. k/n/a Bull Point Plantation Property Owners Association, Inc. dated October 24, 2019 and recorded at the Office of the Register of Deeds for Beaufort County, South Carolina Office in Book 3802 at Page 185-192.

RECEIVED

May 09 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No.: 2021-000471

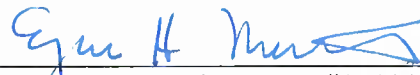
Bull Point Plantation Property Owners Association, Inc.....Respondent,

vs

Bull Point SC, LLC, Bull Point, LLC, Bull Point Plantation Owners Association, Inc., William E. Gavigan, Michael Carey, Christopher J. Quick, James Riordan, Richard Riney,
..... Appellants,

CERTIFICATE OF COMPLIANCE

I, Eugene H. Matthews, counsel for Appellants, hereby certify, pursuant to Rule 210(g) of the South Carolina Appellate Court Rules, that this Record on Appeal contains all of the material and documentation proposed to be included by any of the parties and does not contain any other material.



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