RECEIVED
May 13 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

---

APPEAL FROM THE LEXINGTON COUNTY
Court of Common Pleas

The Honorable H. Steven DeBerry, IV

---

Appellate Case No. 2022-000133

---

South Carolina Human Affairs Commission,

Appellant,

v.

Yacht Cove Owners Association, Inc., and Maria Dehart,

Respondent.

---

# INITIAL BRIEF OF RESPONDENT MARIA DEHART

---

Eugene H. Matthews, #10193
Richardson Plowden & Robinson, P.A.
Post Office Drawer 7788
Columbia, South Carolina 29202
T: (803) 771-4400
F: (803) 779-0016

*Attorney for Respondent Maria DeHart*

## TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... ii

STATEMENT OF THE ISSUES ON APPEAL ..... 1

STATEMENT OF THE CASE ..... 1

STANDARD OF REVIEW ..... 2

STATEMENT OF THE FACTS ..... 3

ARGUMENTS

I. DID THE TRIAL COURT ERR IN DISMISSING DEHART FROM AN ACTION BROUGHT PURSUANT TO THE SOUTH CAROLINA FAIR HOUSING LAW? ..... 4

CONCLUSION ..... 7

## TABLE OF AUTHORITIES

### Cases

Brooks v. S. C. State Bd. of Funeral Serv., 271 S.C. 457, 247 S.E.2d 820 (1978) .....5

David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).....2

Gecy v. S.C. Bank & Tr., 422 S.C. 509, 516, 812 S.E.2d 750, 754 (S.C. App. 2018).....2

Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) .....2

Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control,
411 S.C. 16, 766 S.E.2d 707, 719 (2014) .....6

Papasan v. Allain, 478 U.S. 265, 266, 106 S. Ct. 2932, 2934, 92 L. Ed. 2d 209 (1986) .....3

Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) .....2

Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995) .....2

### State Rules

Rule 12(b)(6), SCRCP .....2

Rule 56, SCRCP .....2

### Statutes

S.C. Code Ann. § 33-31-834 .....3, 4, 5, 6, 7

## STATEMENT OF THE ISSUES ON APPEAL

I. **DID THE TRIAL COURT ERR IN DISMISSING DEHART FROM AN ACTION BROUGHT PURSUANT TO THE SOUTH CAROLINA FAIR HOUSING LAW?**

## STATEMENT OF THE CASE

The South Carolina Human Affairs Commission ("SHAC") filed a lawsuit against Yacht Cove Owners Association, Inc. (the "HOA") and Respondent Maria Dehart ("Dehart"), who served as a volunteer on the Board of the HOA. SHAC sought to sue Dehart in her individual capacity as "an agent and employee[1] of Defendants(s) Yacht Cove Owners Association acting as its board chair [sic]" for acts taken by the HOA. (Amended Complaint, ¶ 3).

The HOA filed an answer to the Amended Complaint and is defending the lawsuit. Dehart was served with the Amended Complaint on May 10, 2021, and filed a Motion to Dismiss on June 3, 2021.

The Motion to Dismiss was heard by the Honorable H. Steven DeBerry, IV, on November 2, 2021. He granted Dehart's motion and issued an Order dismissing Dehart as a party from the lawsuit on December 16, 2021.

Thereafter, SHAC moved to amend Judge DeBerry's order, which he denied on January 7, 2022.

SHAC filed its Notice of Appeal on February 4, 2022.

---

[1] Dehart serves as a volunteer on the Board of the HOA at Yacht Cove. She is not an "employee" of the HOA.

## STANDARD OF REVIEW

When considering a Motion for Summary Judgment under Rule 56, SCRCP, a court does not decide genuine issues of material fact or make determinations of credibility. However, summary judgment is completely appropriate when a properly supported motion sets forth facts that (1) remain undisputed or (2) are contested in a deficient manner. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). Thus, summary judgment under Rule 56, SCRCP, is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Gecy v. S.C. Bank & Tr.*, 422 S.C. 509, 516, 812 S.E.2d 750, 754 (S.C. App. 2018). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

"In deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). "A 12(b)(6)[, SCRCP] motion should not be granted if 'facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.' " *Id.* (quoting *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Id.*

However, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. *Papasan v. Allain*, 478 U.S. 265, 266, 106 S. Ct. 2932, 2934, 92 L. Ed. 2d 209 (1986)

## STATEMENT OF FACTS

As stated above, Dehart was served with the Amended Summons and Complaint on May 10th, 2021, which alleged that she violated "the South Carolina Fair Housing Law by retaliating against the Aggrieved Parties because the Aggrieved Parties filed a complaint of housing discrimination against Defendants." (Amended Complaint, ¶ 3).

It is undisputed that Yacht Cove Owners Association, Inc. is a non-profit corporation organized under the laws of South Carolina.[2] It is also undisputed that Appellant's Amended Complaint identifies Dehart as a member of the board of directors, as set forth above.

It is also undisputed that S.C Code Ann. § 33-31-834 provides, in pertinent part, that "[a]ll directors, trustees, or members of the governing bodies of not-for-profit cooperatives, corporations, associations, and organizations described in subsection (b) [including not-for-profit corporations] are immune from suit arising from the conduct of the affairs of these cooperatives, corporations, associations, or organizations. This immunity from suit is removed when the conduct amounts to willful, wanton, or gross negligence." It is undisputed that Appellant has not alleged that Dehart acted in a manner that amounts to willful, wanton, or gross negligence.

[2] The Court may take judicial notice that the South Carolina Secretary of State lists "Yacht Cove Owners Association, Inc." as a domestic Non-Profit Corporation in good standing.

It is undisputed that, according to Appellent's own allegations, Appellant is suing Dehart for acts she took while acting as a member of the governing body of Yacht Cove. Indeed, Appellant alleges that Dehart "admitted that she, along with other members of Yacht Cove's Board, made the decision to charge the Aggrieved Parties for legal fees related to the previous housing discrimination complaint filed on or about February 27, 2020," and that "believed Article IX of Yacht Cove's Bylaws allowed the Board to assess the fees on behalf of Yacht Cove." (Amended Complaint, ¶¶ 15 and 17).

Indeed, Appellant admits that Dehart sought legal counsel prior to imposition of fees on the Aggrieved Parties. (Amended Complaint, ¶ 21).

## ARGUMENT

### I. DID THE TRIAL COURT ERR IN DISMISSING DEHART FROM AN ACTION BROUGHT PURSUANT TO THE SOUTH CAROLINA FAIR HOUSING LAW?

Judge DeBerry correctly dismissed the claims that Appellant attempted to state against Dehart with prejudice because they clearly ran afoul of immunity provided to persons such as Dehart in S.C Code Ann. § 33-31-834.

#### A. Policy Arguments

The policy underlying S.C Code Ann. § 33-31-834 is easy to grasp. Dehart is a volunteer board member of a homeowner's association ("HOA"). Persons who volunteer to serve their neighbors as board members of an HOA should not be subject to suits seeking draconian damages from would-be plaintiffs or regulatory agencies because the board members acted within the course and scope of their volunteer service.[3]

[3] Curiously, Appellant alleges in its brief that this case involved Dehart's "independent, discriminatory acts." (Appellant's Brief, p. 5). Respectfully, this is directly contrary to

Appellant's policy arguments regarding enforcement of "civil rights" also fail. SHAC may still attempt to convince a judge and/or jury that the Yacht Cove Owners Association, Inc. was in violation of the South Carolina Fair Housing Act in enforcing the provisions of the HOA's covenants. However cramped or one-sided SHAC's enforcement of the statutes under its purview may be, it will have an opportunity to make its argument against the HOA. Under South Carolina law, pursuing Dehart individually as well as the HOA is simply the vindictive act of a heavy-handed regulator. In passing a statute forbidding SHAC from doing so, the General Assembly has spoken regarding Appellant's "policy" argument.

**B. Appellant's "Administrative Interpretation"**

To the extent that Appellant seeks to rely on its internal "Administrative Interpretation" that individual board members of non-profit corporations are not immune from liability under the South Carolina Fair Housing Law, such reliance is unavailing. Appellant's internal interpretation takes no account of S.C. Code Ann. § 33-31-834, and in any event, a mere administrative interpretation may not take precedence over a statute. It is axiomatic that, where an administrative regulation – to say nothing of a mere "interpretation" – poses an irreconcilable conflict with a statute, the administrative rule is void and unenforceable. *Brooks v. S.C. State Bd. of Funeral Serv.,* 271 S.C. 457, 247 S.E.2d 820 (1978).

In its arguments, Appellant attempts to rely on its own administrative interpretations – which do not mention or consider S.C Code Ann. § 33-31-834 – in order

---

SHAC's own pleading, which alleges that Dehart was an agent of the HOA, and that SHAC was suing Dehart for acts she took while acting as a member of the governing

to convince the Court to ignore the protections granted by the General Assembly to volunteer non-profit Board members like Dehart. For that reason, the case cited by Plaintiff, *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 766 S.E.2d 707, 719 (2014), actually works against its own argument. Plaintiff cites to *Kiawah* as a declaration of deference to an agency's administrative interpretation of a statute entrusted to its administration or its own regulations "unless there is a compelling reason to differ." Id. at 34, 766 S.E.2d at 718. Plaintiff's argument fails for at least two reasons:

(1) In this matter, the statute at issue – S.C Code Ann. § 33-31-834 – has not been entrusted by the General Assembly to SHAC's administration and is not addressed in its own regulations.

(2) Moreover, Appellant has failed to account how its "interpretation" has addressed, in any meaningful way, the directives of the General Assembly as embodied in S.C. Code Ann. § 33-31-834.

Again, relying on *Kiawah*, this Court correctly found that SHAC's argument is "manifestly contrary to the statute." *Id.* at 35, 766 S.E.2d at 719. SHAC – in direct contravention of S.C. Code Ann. § 33-31-834 – sought to hold individual board members of non-profit corporations liable for acts taken squarely within the course of scope of his or her duty. In this regard, SHAC simply does not have the authority to override the General Assembly in this manner.

**C. Inapplicability of Federal Law**

---

body of Yacht Cove.

Finally, to the extent Appellant attempts to rely on federal interpretations of federal statutes regarding housing, such an argument is also unavailing. SHAC is a state agency created by the General Assembly seeking to prosecute this case under a South Carolina statute. South Carolina law, and the rules of interpretation and construction applying thereto, must control. Furthermore, Plaintiff has not directed the Court to any case in which another court, state or federal, that has interpreted a statute that does not provide the protections to persons such as Dehart afforded by S.C. Code Ann. § 33-31-834.

## CONCLUSION

For the reasons stated above, Respondent Maria Dehart respectfully requests that this Court affirm the decision of the trial court and uphold her dismissal from this case with prejudice.

Dated this the 13th day of May, 2022.

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.

Eugene H. Matthews, #10193
Post Office Drawer 7788
Columbia, South Carolina 29202
T: (803) 771-4400
F: (803) 779-0016
Email: gmatthews@RichardsonPlowden.com

**COUNSEL FOR DEFENDANT MARIA DEHART**

RECEIVED
May 13 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

---

APPEAL FROM THE LEXINGTON COUNTY
Court of Common Pleas

The Honorable H. Steven DeBerry, IV

---

Appellate Case No. 2022-000133

---

South Carolina Human Affairs Commission,

Appellant,

v.

Yacht Cove Owners Association, Inc., and Maria Dehart,

Respondent.

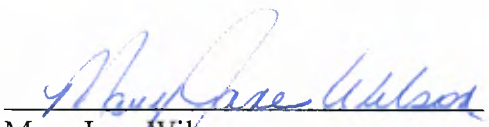
---

PROOF OF SERVICE

---

I, the undersigned employee for Richardson Plowden & Robinson, P.A., counsel for the Respondent, do hereby certify that I have served a copy of the Respondent's Initial Brief and Designation of Matter by causing a copy of the same to be personally deposited in a United States Postal mail box, postage prepaid, with the return address clearly visible, addressed to the counsel of record for Appellant as indicated below on this 13th day of May, 2022:

Caroline Scrantom
South Carolina Human Affairs Commission
1026 Sumter Street, Suite 101
Columbia, SC 29201



Mary Jane Wilson

RICHARDSON PLOWDEN
RICHARDSON PLOWDEN ROBINSON, P.A.
ATTORNEYS AT LAW

COLUMBIA P.O. Drawer 7788 • Columbia, SC 29202
1900 Barnwell Street, Columbia, SC 29201 P 803.771.4400 F 803.779.0016

MYRTLE BEACH P.O. Box 3646 • Myrtle Beach, SC 29578
2103 Farlow Street, Myrtle Beach, SC 29577 P 843.448.1008 F 843.582.0263

CHARLESTON P.O. Box 21203 • Charleston, SC 29413
235 MaGrath Darby Boulevard, Suite 100, Mount Pleasant, SC 29464 P 843.805.6550 F 843.805.6599

www.RichardsonPlowden.com

REPLY TO COLUMBIA
mwilson@richardsonplowden.com
T: 803-576-3739

May 13, 2022

RECEIVED
May 13 2022
SC Court of Appeals

Jenny Abbott Kitchings, Clerk
SC Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: South Carolina Human Affairs Commission vs Yacht Cove Owners Association, Inc., and Maria Dehart
Appellate Case No. 2022-000133

Dear Ms. Kitchings:

Enclosed herewith for filing, is the Initial Brief of Respondent, together with the Designation of Matter and Proof of Service. The original will be hand delivered to your office.

With kind regards, I am

Sincerely,

RICHARDSON PLOWDEN & ROBINSON, P.A.

Mary Jane Wilson

/mjw
cc: Caroline Scrantom