

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Bonnie Brae Homeowners' Association, )  
Inc., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
HOA Community Management, LLC, )  
Charlene Rice, Jeff Dumpert, Tim Roach, )  
Janine Wyman, Julie Hrobsky, Jason )  
Resotka, and Donald Peake, )  
 )  
 )  
\_\_\_\_\_ Defendants. )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2016-CP-23-06406  
  
**DEFENDANTS' MEMORANDUM OF  
LAW IN OPPOSITION TO  
PLAINTIFF'S MOTION TO AMEND  
ITS COMPLAINT**

**TO: MICHAEL DODD, ATTORNEY FOR PLAINTIFF AND TO THE ABOVE  
NAMED PLAINTIFF:**

Defendants HOA Community Management, LLC, Charlene Rice, Jeff Dumpert, Tim Roach, Janine Wyman, Julie Hrobsky, Jason Resotka, and Donald Peake (“the Defendants”), by and through undersigned counsel, hereby file this Memorandum of Law in Opposition to Plaintiff’s Motion to Amend the Complaint.

Plaintiff initially filed this matter on November 3, 2016 and subsequently amended its complaint on November 30, 2016. Plaintiff now seeks to amend its pleadings again to add causes of action for breach of fiduciary duty, fraud, conspiracy, assumpsit, conversion, and violation of the S.C. Unfair Trade Practices Act. Plaintiff’s motion should be denied because the proposed amendment fails as a matter of law.

Rule 15 of the South Carolina Rules of Civil Procedure provides that “leave [to amend] shall be freely given when justice so requires and does not prejudice any other party.” However, the South Carolina Court of Appeals has held that leave to amend “may be denied where the proposed amendment would be futile.” *Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671,

681 (Ct. App. 2010), *rev'd, on other grounds* 401 S.C. 1, 736 S.E.2d 242 (2012). (*See also futile Higgins v. Med. Univ. of S.C.*, 326 S.C. 592, 604, 486 S.E.2d 269, 275 (Ct. App. 1997)).

As discussed more fully in Defendants' Memorandum in Support of Summary Judgment, Plaintiff failed to obtain the requisite membership approval before bringing suit in this matter. Because Plaintiff failed to take the required pre-litigation steps required by the Plaintiff's restrictive covenants, Plaintiff lacks standing to bring the action currently before the court. Plaintiff has similarly failed to seek or obtain membership approval to bring the additional claims sought in Plaintiff's Motion to Amend. Plaintiff lacked standing to bring this matter originally and also lacks standing to bring any new causes of action before the court. For this reason Plaintiff's Motion to Amend should be denied.

MCCABE, TROTTER & BEVERLY, P.C.

/s/ J. Ryan Oates

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April 3, 2017.