STATE OF MICHIGAN
IN THE SUPREME COURT

APPEAL FROM COURT OF APPEALS

CENTER WOODS, INC., a Michigan
Nonprofit Corporation,

Plaintiff/Appellant,

Michigan Supreme Court No. 144721

v

RES-CARE PREMIER, INC., a
Delaware Corporation,

Defendant/Appellee.

REPLY BRIEF ON APPEAL - Appellant

ORAL ARGUMENT REQUESTED

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STATE OF MICHIGAN
IN THE SUPREME COURT

SCOTT and JEANNE WOODBURY,

Plaintiffs,

and

CENTER WOODS, INC., a Michigan Nonprofit Corporation,

Plaintiff/Appellant,

v

RES-CARE PREMIER, INC., a Delaware Corporation,

Defendant/Appellee

and

RUTH AVERILL,

Defendant.

Michigan Supreme Court No. 144721
COA Case No.: 297819
Saginaw CC No.: 09-006758-CH-4

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PLAINTIFF/APPELLANT'S CENTER WOODS, INC.'s REPLY BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

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APPELLANT'S REPLY BRIEF

A. Status of Center Woods When Averill Moves In

In its Brief to this Supreme Court, counsel for Appellant CENTER WOODS, INC. (hereinafter "Center Woods") indicated that Ruth Averill moved into Center Woods Subdivision while it was administratively intact, that is, not administratively dissolved pursuant to MCL 450.2922. Counsel for Center Woods was wrong and Appellee was right.

Averill moved into Center Woods in 1996. Center Woods was administratively dissolved in 1991.

B. Center Woods Never Chose to be Something Other Than a Corporation

One of Appellee's best, and newest, arguments is that Center Woods chose to be something other than a corporation. There is no factual basis for this belated claim. Center Woods maintained the same, account #8302642, at Citizens Bank (formerly Second National Bank) since 1980. See **Appendix 233a**. It is undisputed that Center Woods conducted meetings, collected dues, and maintained the subdivision through the period of dissolution. (Appellee's Brief, p. 3, lns. 6-8) Averill participated paying dues, enjoying the fruits of others' labors (via the corporate operations), and attended and voted at corporate meetings when she chose to do so (Appellee's Appendix, p. 4b). Operations of the corporation Center Woods continued uninterrupted. The president was unaware of his obligation to file the Michigan Annual Report. See **Appendix 236a**. There is no evidence of a "choice" to be anything other than a corporation.

C. There Remain Other Reasons to Find in Favor of Center Woods

Appellee's operational use of the property, which has yet to occur, violates the building and use restrictions. The Lower Court never rendered an opinion on the prohibited commerical

use. Further, the building and use restrictions contain a provision allowing 75% of the neighborhood to change the restrictions. Appellee's commercial or other use of the property could be prohibited upon future vote.

D. Appellee Would Distort the Parties, the Facts, and the Statute

A corporation cannot attain $1.599 Billion dollar in annual revenue without being great at what it does. Appellee has done just that. Appellee is owned and funded by Onex, a $43 to $49 Billion dollar private equity firm. See **Appendix 238a**. These companies claim, and would have this Court determine, that Appellee is the victim, as opposed to Center Woods. Appellee's claims are based in large part on three things: 1) the building and use restrictions of 1941, which contain discriminatory provisions; 2) the fact that Appellee's customers are intellectually and developmentally disabled; and 3) Jeanne Woodbury's email.

Appellee would have the Court determine that people[1] living in subdivisions with historically created building and use restrictions, which contain discriminatory provisions are discriminators. That the residents' motive can only be discrimination, to the point that a right of first refusal contained in those same building and use restrictions cannot be enforced, as the right of first refusal is also discriminatory, by virtue of the fact that it is contained within the same document. This line of reasoning would invalidate the entire document and any historical document containing such a provision.

Appellee points out that the discriminatory motive becomes especially obvious when dealing with a company like Appellee which serves the intellectually and developmentally

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[1] If not people generally, then at least the residents of Center Woods.

disabled. Again Appellee must be a great company, but simply put, not everyone who opposes Appellee is a discriminator. Although anyone who opposes Appellee is open to that argument.

In this case, Appellee would argue there are few worse participants than Jeanne Woodbury who wrote:

> I would like to introduce myself. My name is Jeanne Woodbury and I along with my family are the residents of 3 Center Woods North. I just received a letter from Ruth Averill regarding the sale of her home. I have to admit that I am very concerned about who the residents will be as I have four small children. I was wondering if you knew if the group home would be for disabled individuals or troubled youth/sexual offenders. Though I do not oppose group homes one for troubled youths right next door to me is somewhat of a concern. I do not need to know who the residents are and I do not want to invade anyone's privacy so if you cannot provide me with any information I understand. Thank you in advance for your time and consideration. (Appellee's Appendix 7b)

Appellee would have this Court distort Jeanne Woodbury's email (a nurse who cares for the sick and disabled regularly) in order to find that, despite the plain language to the contrary, Ms. Woodbury is discriminating against the disabled. The plain language of the email states the opposite.

Similarly, Appellee would have this Court distort MCL 450.2925(2) by adding language:

> . . . the rights of the corporation shall be the same as though a dissolution or revocation had not taken place, and all contracts entered into and other rights acquired during the interval <u>that a dissolved corporation is permitted to enter into</u> shall be valid and enforceable. (Appellee's proposed statutory interpretation, Appellee's Brief, p. 20, ln. 23)

If the Court is uncomfortable with that addition, Appellee would have the Court read the statute in reverse:

> Unless and until a dissolved corporation is reinstated, contracts entered into and other rights acquired during the interval are not valid and enforceable. (Appellee's Brief, p. 23, lns. 9-11)

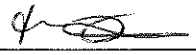
Appellee seeks to have this Court look to the broader statute, MCL 450.2833, as a guide for determining corporate rights upon reinstatement, as opposed to the more specific and plain language of MCL 450.2925.

The legislature spoke on the issue of reinstatement and a corporation's rights upon reinstatement. In order to cleanse our mental palates and come back to the actual statutory language, the legislature stated as follows:

> . . . the rights of the corporation shall be the same as though a dissolution or revocation had not taken place, and all contracts entered into and other rights acquired during the interval shall be valid and enforceable.

Dated: March 20, 2013

SHINNERS & COOK, P.C.



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