

**IN THE SUPREME COURT OF OHIO**

GENE B. PHILLIPS, <i>et al.</i> ,	)	CASE NO. 2022-0845
	)	
Appellants,	)	On Appeal from the Cuyahoga County Court
	)	of Appeals, Eighth District Appellate Court
v.	)	Case No. 21-110636
	)	
ACACIA ON THE GREEN	)	
CONDOMINIUM OWNERS'	)	
ASSOCIATION, INC., <i>et al.</i> ,	)	
	)	
Appellees.	)	

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**APPELLEES' RESPONSE TO APPELLANTS' MEMORANDUM IN SUPPORT  
OF JURISDICTION**

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**I. THIS CASE IS NOT ONE OF PUBLIC AND GREAT GENERAL INTEREST**

This case is not one that merits this Honorable Court's consideration. At its heart, this case arises out of a nine-year long scorched earth campaign by Plaintiffs for personal patio grills despite their condominium association's forty-year prohibition against open flame cooking on individual patios. Turning a blind eye towards the health and safety of their neighbors, Plaintiffs' demands have morphed into wide-ranging criticisms of the association's current and past management and accounting practices.

Plaintiffs' claims have been heard and uniformly rejected by multiple courts, including the Cuyahoga County Court of Common Pleas, the Eighth Appellate District, the United States District Court for the Northern District of Ohio, and the Sixth Circuit Court of Appeals. Each of these courts, in accordance with well-settled legal principles, have soundly rejected Plaintiffs' claims. Nevertheless, Plaintiffs now troop these same tired and fact-intensive arguments before this Honorable Court masked as a jurisdiction appeal hoping for a different outcome. However, jurisdiction is not warranted because this case patently lacks any issues of public or great general interest. Nor does the dispute demonstrate the need for a modification or clarification among the jurisdictions regarding the applicable law.

Plaintiffs' *five* Propositions of Law are divorced from the facts in the record and controlling law. As this dispute is entirely limited to Plaintiffs' myopic recital of the record and proceedings below, it does not present any issue of law which is otherwise undecided or in dispute. It follows that this case is not one of either public or great general interest that demands review by this Honorable Court. Accordingly, Defendant-Appellees Acacia on the Green Condominium Association, Inc., current and former Board Members Scott D. Cohen, Richard N. Dettelback, William A. Doyle, Jr., John F. Klein, James N. Kleinfelter, Ronald A. Koplow, Alice B. Licker,

Diane E. Lombardy, Marvin N. Miller, Nina H. Rothman, and Amy W. Wachs, and Acacia's Association Manager, Lia Flynn, and its Maintenance Supervisor, Kenneth Jevnikar, ask that this Court decline to exercise its discretionary jurisdiction.

## **II. STATEMENT OF THE CASE AND FACTS**

Because Plaintiffs' claims are entirely fact-dependent and their Memorandum in Support of Jurisdiction strays from the record facts, the following detailed factual recitation is necessary.

**A. Acacia is a large, well-maintained condominium association that, for the last forty years, has prohibited personal patio grills for the safety and welfare of its residents.**

Plaintiffs Stephen Weiss<sup>1</sup> and Gene Phillips live in first floor units with patios at Acacia on the Green, a two-building, 273-unit condominium complex in Lyndhurst, Ohio that is managed by Acacia on the Green Condominium Association, Inc. ("Acacia"). It is home to approximately 375 people and was founded in 1980 when the buildings were converted from apartments to condominiums. Acacia's common areas, available for the equal enjoyment of all residents, include an outdoor swimming pool and nearby outdoor grilling area with two gas grills. *Phillips v. Acacia on the Green Condominium Assn.*, 8th Dist. Cuyahoga No. 110636, 2021-Ohio-4521, ¶ 2.

Pursuant to R.C. Chapter 5311, Ohio's Condominium Act, Acacia is administered by an elected seven-person board of directors (the "Board") comprised of unpaid volunteer unit owners. Its governing documents include a Declaration of Condominium Ownership, a set of Bylaws, and the Acacia Resident Rules and Information Handbook ("Resident Rules"). The Board's duties include regulating the "use, maintenance, repair, replacement, modification, and appearance of the condominium property." R.C. 5311.081(B)(4). In keeping with this duty, the Board created and

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<sup>1</sup> Upon Mr. Weiss' passing, his Estate and Trustee of his Trust were substituted in as party plaintiffs.

maintains the Resident Rules. The Board is also responsible for preparing a yearly budget for Acacia and submitting it to the unit owners. *See* Bylaws, Article X, Section 3. Though the deadline to submit the budget is December 15, the Board has traditionally prepared its budget in early April and then made copies of the documents available to interested unit owners in the on-site Association office. *Id.*, ¶ 3.

Article 9.01(B) of Acacia’s Declaration charges the Board with maintaining common areas in “a state of good working order, condition and repair.” Conversely, when condominium property becomes “obsolete,” Article 13 of the Declaration gives unit owners the option to vote and decide whether to renew and rehabilitate the property. Any dissenting unit owner then has the option to have their ownership interest purchased at fair market value. Between 2015 and 2019, the Board undertook various repairs of Acacia’s common areas, including its swimming pool, tennis court, parking deck, employee break room, and social room. Because the Board determined that this maintenance involved routine repairs and updates, it did not seek unit owner approval for the repairs. *Id.*, ¶ 4.

One of the Resident Rules prohibits unit owners from having personal grills on their individual patios, a rule that has been in effect since Acacia was converted from an apartment complex to a condominium association in 1980. *Phillips v. Acacia on the Green Condo. Ass’n*, No. 1:19CV1277, 2020 U.S. Dist. LEXIS 185941, \*3 (N.D.Ohio Oct. 7, 2020). Acacia banned personal grills “for multiple reasons, including concerns regarding the use of open flames in close proximity to a multi-unit residential building, the attraction of rodents and small animals to grease and food droppings often associated with outdoor cooking, and the nuisance created by unwanted odors and smoke arising from the grill and spreading to other units.” *Id.*

Weiss occupied a ground floor unit at Acacia with a patio since 2012. Over a five-year period beginning in 2013, he sought an exception to the no-personal-grill rule on numerous occasions and for various reasons. Each of these requests were considered by the Board and its legal counsel but were ultimately denied due to the overwhelming health and safety concerns underlying the grilling prohibition. Phillips has owned a ground floor unit, which is adjacent to Weiss' unit, since 2005. She requested permission to have a gas grill on her patio in 2018, which the Board denied. *Phillips v. Acacia on the Green Condominium Assn.*, 8th Dist. Cuyahoga No. 110636, 2021-Ohio-4521, ¶ 6.

**B. Plaintiffs' various claims are rejected by both federal and state courts.**

Frustrated with the denials of their requests for personal patio grills, in 2019, Weiss and Phillips (collectively, "Plaintiffs") brought suit against Acacia, eleven past and then-present Board members, and two of its employees. Plaintiffs brought claims for: Count I, violations of Ohio's condominium law; Count II, breach of corporate fiduciary duties in violation of R.C. Chapter 1702; Count III, breach of contract; Count IV, violations of the federal Fair Housing Amendments Act and the Americans with Disability Act; Count V, unlawful discrimination; Count VI, declaratory judgment; Count VII, audit and accounting; and Count VIII, injunctive relief. Counts IV and V were removed to federal district court and ultimately rejected when the district court granted appellees' motion for summary judgment. *Phillips v. Acacia on the Green Condo. Ass'n*, No. 1:19CV1277, 2020 U.S. Dist. LEXIS 185941, \*3 (N.D. Ohio Oct. 7, 2020). More recently, the district court's denial was affirmed by the Sixth Circuit Court of Appeals. *Phillips v. Acacia on the Green Condominium Assn.*, 6th Cir. No. 20-4182, 2022 U.S. App. LEXIS 14688, at \*1 (May 26, 2022).

After extensive fact discovery regarding the remaining state law claims, Acacia filed a motion for summary judgment as to all counts. The next day, Plaintiffs also filed a motion for partial summary judgment on various issues. After extensive briefing on both motions, the trial court denied Plaintiffs' motion and granted Acacia's motion, dismissing Plaintiffs' claims in their entirety.

In its combined journal entry granting Acacia's Motion for Summary Judgment, denying Plaintiffs' Motion for Partial Summary Judgment, and dismissing Plaintiffs' claims, the trial court found that "Acacia's refusal to allow plaintiffs' personal grills is in keeping with Acacia's governing documents and does not violate Ohio condominium law." It further found that R.C. 5311.08(B)(5) gives the Board the power to "adopt rules that regulate the use and occupancy of units, the maintenance, repair, replacement, modification, and appearance of units, common elements, and limited common elements when the actions regulated by those affect common elements or other units." The trial court also found that the rule restricting the use of patio grills predated both Phillips' and Weiss' purchase of their condominium units, and that the rule was not arbitrary, as it was grounded in the health and safety concerns attendant to open flames in close vicinity to a multifamily residential building. The court further found that the rule had been applied consistently "for decades." Accordingly, the court found the rule prohibiting the use of patio grills to be valid and enforceable.

With respect to Plaintiffs' claims regarding Acacia's alleged mismanagement, the trial court found that Plaintiffs were required to produce an expert report critical of Acacia's financial mismanagement to prove their breach of fiduciary duty claims, which they had failed to do. The trial court further found that expert report produced by Acacia refuted Plaintiffs' claims that the Board members had breached their fiduciary duties. The court concluded that because Plaintiffs



had failed to rebut Acacia's expert testimony, they had not met their Civ.R. 56 burden of demonstrating a genuine material issue of fact for trial. *Phillips v. Acacia on the Green Condominium Assn.*, 8th Dist. Cuyahoga No. 110636, 2021-Ohio-4521, ¶ 11-12.

On appeal, Plaintiffs raised three assignments of error: (1) the trial court erred in granting summary judgment to Plaintiffs on their claim that Acacia's Resident Rule prohibiting personal patio grills conflicts with their easement to use their patios and the rule violates Ohio condominium law; (2) the trial court erred in denying their Motion for Partial Summary Judgment because it incorrectly concluded that the other issues raised in Plaintiffs' motion required expert testimony to rebut the testimony of Acacia's experts that there was no evidence of misconduct or mismanagement by the Board and that the Board acted properly with respect to all of its duties to the unit owners; (3) the trial court erred in dismissing their complaint in its entirety because it did not decide the remaining claims in their complaint that — although not argued in their motion — were not dependent on the validity of the rule prohibiting personal patio grills and did not require expert testimony.

The appellate court below fully considered and ultimately rejected each of these assignments of error, finding that the rule prohibiting personal patio grills was reasonable because the "undisputed evidence demonstrates that the rule has been enforced for decades, and is based in health and safety concerns attendant to open flames in close vicinity to a multifamily residential building, protects unit owners from unwanted smoke, odors, and rodents and small animals attracted to grease, and has been applied consistently for decades." *Phillips v. Acacia on the Green Condominium Assn.*, 8th Dist. Cuyahoga No. 110636, 2021-Ohio-4521, ¶ 23. The Eighth District also affirmed the trial court's finding that the rule predated both Plaintiffs' occupancy. *Id.*

As to Plaintiffs’ failure to procure the requisite expert testimony, the Eighth District concluded “the evidence demonstrated that Acacia is a multimillion dollar concern, overseen by a Board of Directors with corporate and fiduciary duties and managed by an association manager with over 20 years of professional experience, with the assistance of an independent accounting firm, an insurance broker that specializes in habitation risks, and outside legal counsel that specializes in condominium law.” *Id.*, ¶ 28. In turn, Plaintiffs’ claims “challenged the financial operations, budgeting, and accounting practices of a condominium complex with a multimillion dollar yearly operating budget,” making it “readily apparent, therefore, that matters relating to the Board’s alleged mismanagement as alleged by appellants cannot be construed as within the ‘general knowledge and experience of mankind.’” *Id.*

In rejecting Plaintiffs’ third assignment of error, regarding unnamed claims that purportedly did not require expert testimony, the Eighth District found “[t]he trial court need not enunciate any definite statement concerning the court’s rationale for granting a motion for summary judgment.” *Id.*, ¶ 33 (internal citations omitted.) “In fact, the trial court need not issue anything more than a clear and concise pronouncement of the judgment in its ruling on a motion for summary judgment.” *Id.* Accordingly, the Eighth District overruled each of Plaintiffs’ assignments of error and affirmed the trial court’s total dismissal of Plaintiffs’ claims.

Disappointed with the appellate court’s opinion, Plaintiffs next filed a Motion for Reconsideration and a Request for En Banc Consideration. The request for reconsideration was denied because it did not call to the panel’s attention any obvious error in the decision or raise an issue that was either not considered at all or not fully considered when it should have been. Instead, the Eighth District concluded that Plaintiffs merely disagreed with the court’s decision, which was not a basis upon which to grant reconsideration. (See 01.18.2022, JE.) The request for en banc

consideration was denied because Plaintiffs failed to call to the court’s attention a viable intra-district conflict – specifically rejecting Plaintiffs’ argument that the Acacia panel’s decision conflicted with the court’s previous decision in *Heba El Attar v. Marine Towers E. Condo. Owners’ Ass’n*, 2018-Ohio-3274. (See 05.24.2022, JE.)

### **III. ARGUMENTS IN RESPONSE TO PLAINTIFFS’ PROPOSITIONS OF LAW**

While Plaintiffs spend a large portion of their memorandum recounting their various grievances against Acacia’s management, they devote less than two pages of their fifteen-page Memorandum in Support to actually discussing the governing law. Nonetheless, each of Plaintiffs’ Proposition of Law will be addressed in turn.

#### **A. The trial court and appellate court did not fail to consider any error presented by Plaintiffs.**

In an effort to create the appearance of a constitutional deprivation, Plaintiffs make the convoluted argument that “[w]hile the appellate court ruled on some of those issues by correctly deciding they required expert testimony to prove, which evidence was lacking, the court did not consider and rule on the arguments and evidence that [Plaintiffs] raised about each of them.” (Memorandum in Support, p. 13.) In effect, Plaintiffs allege that there are remaining issues, not mooted by the appellate court’s ruling as to the necessity of expert witness testimony. However, both the trial court and appellate court below fully and completely considered and ultimately rejected each and every argument presented by Plaintiffs.

The single supposed claim not ruled upon by the appellate court – which relates to votes taken by Acacia residents to waive a reserve requirement – is legally insignificant, as the appellate court determined that Plaintiffs had provided insufficient evidence to demonstrate that Acacia’s reserve fund was inadequate. In fact, the Eighth District expressly rejected such a suggestion in its ruling upon Plaintiffs’ motion for en banc consideration, wherein it declined to find that its ruling

on Plaintiffs' claims was in conflict with the *El Attar* case, as Acacia had maintained an adequately funded reserve fund, as demonstrated by expert testimony from Mark Bober, a forensic accountant. Subsequently, the appellate court properly found that any vote to waive the reserve requirement was irrelevant, as Plaintiffs could not prove as a matter of law that the reserves were not sufficiently funded.

**B. Plaintiffs failed to meet their evidentiary burden of proof below to support their complex accounting and property management claims with the requisite expert testimony.**

Plaintiffs' second Proposition of Law is supported by a single citation to the first paragraph of the syllabus in *Bruni v. Tatsumi*, 46 Ohio St.2d 127 (1976), which reads as follows:

In order to establish medical malpractice, it must be shown by a preponderance of evidence that the injury complained of was caused by the doing of some particular thing or things that a physician or surgeon of ordinary skill, care and diligence would not have done under like or similar conditions or circumstances, or by the failure or omission to do some particular thing or things that such a physician or surgeon would have done under like or similar conditions and circumstances, and that the injury complained of was the direct and proximate result of such doing or failing to do some one or more of such particular things.

As this is not a medical malpractice case, it is not clear how the Court's syllabus applies to the present dispute.

Regardless, Ohio law is clear, where alleged negligence involves the exercise of matters requiring professional skill and judgment, expert testimony is required. Evid.R. 702, *Ullmann v. Duffus*, 10th Dist. Franklin No. 05AP-299, 2005-Ohio-606; *Home Indem. Co. v. Kitchen, Deery & Barnhouse Co.*, 2000 Ohio App. LEXIS 5487, \*11-12 (Nov. 22, 2000). Plaintiffs continue to argue that their accounting malpractice, breach of fiduciary duty and property management claims against Acacia and its Board are "within the ken of a layperson," and therefore, expert testimony was unnecessary to survive summary judgment. They are wrong. As succinctly stated by the appellate court below:

The evidence demonstrated that Acacia is a multimillion dollar concern, overseen by a Board of Directors with corporate and fiduciary duties and managed by an association manager with over 20 years of professional experience, with the assistance of an independent accounting firm, an insurance broker that specializes in habitation risks, and outside legal counsel that specializes in condominium law. The claims set forth in [Plaintiffs]' complaint challenged the financial operations, budgeting, and accounting practices of a condominium complex with a multimillion dollar yearly operating budget. **It is readily apparent, therefore, that matters relating to the Board's alleged mismanagement as alleged by [Plaintiffs] cannot be construed as within the "general knowledge and experience of mankind."**

(Emphasis added.) Accordingly, expert testimony was necessary to support [Plaintiffs]' claims.

*Phillips v. Acacia on the Green Condominium Assn.*, 8th Dist. Cuyahoga No. 110636, 2021-Ohio-4521, ¶ 28 (emphasis added).

In their Motion for Summary Judgment, Acacia produced the expert report of Mark Bober, a forensic accountant with over 35 years of experience in financial analysis, accounting and auditing, and business and corporate advisory matters. In his report, Mr. Bober opined that after a careful review of all pertinent financial documents both internal to Acacia and compiled by its long-time professional accountants at Zinner & Co.:

- (1) Acacia's historical methodology and practices with respect to annual budgeting of operating expenses along with fiscal management of actual expenditures against budgeted expenditures is undertaken in a prudent manner and demonstrates strong fiscal management;
- (2) [T]he manner in which Acacia has historically funded replacement reserves has been fiscally responsible; and
- (3) Acacia's internal accounting controls as well as processes are strong.

In refuting Plaintiffs' maintenance and management-related claims, Acacia also produced the expert report of Steven Avner, who has over 50 years of real estate experience, including the management of condominium associations. In his report, Mr. Avner confirmed that the individually named Board members and employees had acted properly in accord with their duties to the owners and with respect to the operation of the facility.

Plaintiffs offered no expert testimony to refute Mr. Bober and Mr. Avner. Instead, they argued, without deposing either individual, that Bober and Avner “did not read the specific requirements of Acacia’s governing documents,” “were not aware of the Board’s failure to comply with [its] fundamental duties,” and “simply assumed without a factual basis” that Acacia’s actions were consistent with Acacia’s governing documents. *Phillips v. Acacia on the Green Condominium Assn.*, 8th Dist. Cuyahoga No. 110636, 2021-Ohio-4521, ¶ 31. The appellate court properly rejected this conjecture unsupported by any record evidence. *Id.*

The only evidence presented by Plaintiffs to support their claims of Acacia’s alleged financial mismanagement and violation of governing documents were their own self-serving and textually inconsistent interpretations of Acacia’s Declaration and Bylaws and the Ohio Revised Code. “Without any expert testimony, however, appellants failed to meet their evidentiary burden of demonstrating there was a genuine issue of material fact for trial.” *Id.*, ¶ 32; *Home Indem. Co. v. Kitchen, Deery & Barnhouse Co.*, 8th Dist. Cuyahoga No. 77372, 2000 Ohio App. LEXIS 5487, \*11 (Nov. 22, 2000) (where the plaintiff did not offer expert testimony to rebut the defendant’s expert testimony, the plaintiff did not meet its Civ.R. 56 evidentiary burden, and the trial court properly granted summary judgment to defendant).

While Ohio jurisprudence does excuse litigants from supporting their claims with expert testimony when the nature of the dispute is within the ken of a layperson, Plaintiffs’ claims against Acacia, which arise out of the management of budgeting for a multi-million-dollar condominium association, were not within the knowledge or general experience of a common person. Thus, there is no issue of law in dispute sufficient to support jurisdiction in this dispute.

**C. Plaintiffs' third and fourth Propositions of Law are improper because they rely upon an unrelated appellate decision and a misstatement of Acacia's governing documents.**

Plaintiff's third and fourth Propositions of Law asks this Court to "confirm" the Eighth Appellate District's holding in *Heba El Attar v. Marine Towers E. Condo. Owners' Ass'n*, 8th Dist. Cuyahoga No. 106140, 2018-Ohio-3274, and apply its holding to their claims against Acacia and its Board. The fundamental flaw in this argument is that the dispute in *El Attar* is factually distinct from Plaintiffs' claims against Acacia.

At issue in *El Attar* was a defendant-condominium association's failure to create and maintain a separate reserve fund for the payment of extraordinary expenditures. Because that association's declaration required the "build up" and maintenance of a reasonable reserve for contingencies and replacements, the court concluded that the association violated its governing documents by not maintaining such a separate fund. *El Attar*, 2018-Ohio-3274, ¶ 14. In defending its failure to have a separate reserve fund, the association argued that its members voted each year to waive this requirement pursuant to R.C. 5311.081(A). The court rejected this argument, finding that because the association's declarations required it to maintain a reserve fund, R.C. 5311.081(A) could not be used to deviate from the plain language of the declarations. *Id.*

Here, unlike *El Attar*, Acacia created and maintained a solid and robust reserve fund, which was managed in a "prudent" and "fiscally responsible" manner. (R. 79, MSJ, Ex. E., Expert Report of Mark Bober.) Thus, the holding in *El Attar*, which focuses on an association's failure to create and maintain any reserve fund, in violation of that association's governing documents, has no application to this dispute.

To manufacture the appearance of a conflict, Plaintiffs distort the facts by arguing that Acacia failed to abide by R.C. 5311.081(A)'s requirement that a condominium association must

set aside a minimum of 10% of its operating budget for its reserve fund. However, Acacia's funding of its reserve account has historically *exceeded 28% of its operating expenses*. (R. 79, MSJ, Ex. E., Expert Report of Mark Bober.) Thus, even if R.C. 5311.081(A) applied to this dispute, which it does not, Acacia has grossly exceeded the statute's 10% threshold.

Next, while it is true that Acacia's unit owners have overwhelmingly voted each year not to "fully" fund its reserve account, there is no requirement in Acacia's Declaration that the account be "fully funded." Instead, the Declaration only requires "an amount sufficient to establish an adequate reserve fund." (R. 97, Reply in Support of Summary Judgment, Ex. A., Declarations, Article XIX, Section 19.05.) Again, the only expert testimony elicited below demonstrates that Acacia more than satisfied its obligation to maintain an adequate reserve fund. Subsequently, the *El Attar* decision is factually distinct from the herein matter and has no relevance to this dispute. Plaintiffs have again failed to demonstrate that the Eighth District's ruling below was in any way inconsistent with any of its prior rulings.

**D. Acacia's governing documents explicitly prohibit Plaintiffs' desire for personal patio grills.**

Plaintiffs' fifth Proposition of Law, like numbers one-four, turns a blind eye to the facts in evidence. The appellate court addressed Plaintiffs' personal patio entitlement claim by pointing out that Acacia's governing documents and Ohio law prohibit Plaintiffs' claimed entitlement to personal patio grills as follows:

[Plaintiffs]' claim that they enjoy an unrestricted exclusive easement to use their patios as they see fit is not correct. Unit owners do not own their patios — Acacia does. *See* Declaration, Article V, Section 5.05 ("no Owner shall own \* \* \* (v) the patio or balcony.") \*\*\* Although [Plaintiffs] do not own their patios, they have an easement to "decorate, landscape or adorn" their patios so long as the use "shall not be contrary to the Rules of the Association." Declaration, Article XI, Section 11.02. In this regard, Acacia's Resident Rules state that "[a]ny form of cooking on the patio or balcony is prohibited. Grills and any food preparation or food storage equipment are prohibited on patios and balconies." **Thus, [Plaintiffs]' right to use**



**their patios is not unfettered, as they claim. Because Acacia has adopted a rule prohibiting personal patio grilling, as allowed by its governing documents, [Plaintiffs]' limited easement does not give them the right to keep their own personal patio grills in contravention of that rule.**

Emphasis added. *Phillips v. Acacia on the Green Condominium Assn.*, 8th Dist. Cuyahoga No. 110636, 2021-Ohio-4521, ¶ 21.

Because Acacia's rule against personal patio grills complies with its own Declaration and Bylaws and is reasonable under Ohio law, there was no error below in dismissing Plaintiffs' demand for personal grills as a matter of law.

#### **IV. CONCLUSION**

Condominium unit owners voluntarily submit to a form of property ownership that requires sacrificing a certain degree of freedom of choice which one might otherwise enjoy in separate, privately owned property. In choosing to live at Acacia on the Green, Plaintiffs voluntarily agreed to submit themselves to the rules and regulations of the Association and to abide by those decisions made by the duly elected Board. The challenges raised by Plaintiffs below, and now on appeal, are nothing more than a manifestation of their selfish desire to change those rules applicable to all Acacia residents for their own personal gain. This is not the law of Ohio and not a valid basis to invoke this Honorable Court's discretionary jurisdiction. Plaintiffs' claims were correctly dismissed by the trial court and affirmed by the appellate court below. As such, there are no issues of great or general interest presented by Plaintiffs' appeal warranting jurisdiction before this Honorable Court.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of August 2022 the foregoing has been electronically filed with the Clerk of Court using the CM/ECP system, which will send notification of such filing to all registered attorneys participating in this case, constituting service on all such attorneys.

/s/ Holly Marie Wilson

Holly Marie Wilson (0074291)