

Hudson Worthy
2014 Internship Final Paper
ACE Internship: Master-In-Equity, Charleston, SC

This past summer I was fortunate to have been given the chance to intern as a clerk under the only Master in Equity Judge in Charleston County, Mikell Scarborough. The Charleston County Master in Equity office works to litigate and resolve civil non-jury disputes; most commonly mortgage foreclosure, judicial sales, land partitions, and judgments. As a clerk for Judge Scarborough, my daily duties consisted of reading through cases and discussing any questions with the Judge in his judicial chambers. In the courtroom, I was given the opportunity to sit next to the Judge on his bench along with his other Law clerk. This was a great experience as I was able to enter into the courtroom with the Judge and observe the hearings from a bird's-eye view.

Throughout my internship, I struggled with understanding the Legal language and oral complexity of arguments from the wide range of prestigious attorneys. The majority of the summer I was forced to refer back to the *Black's Law Dictionary* in order to follow along with the difficult dialect that was expressed in the courtroom. Upon the time of entering at nine o'clock in the morning to leaving at five, Judge Scarborough encouraged me to engage my interest outside of the Master in Equity Office and observe jury trials, common pleas, civil, criminal or family court cases that I wanted. My first week as an intern, I witnessed the Charleston Judicial System jury selection process. I was able to make friends with the Bailiffs, officers in the courtroom that assist the Judge, who took me to my first ever jury-trial, a criminal case. Over the next three days, I was stunned and intrigued as I sat in the pews and observed a South Carolina State prosecutor convince

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eleven individuals that a man was guilty of possessing illegal drugs and weapons. The

persuasive and smooth prosecutor was organized and effectively used Police, DEA,

and Forensic Lab experts to convict a man who was sentenced to thirty years in prison.

Immediately I was introduced to judicial court procedures and the challenging legal

language that I would be hearing over the course of the summer.

During my 4th week under Judge Scarborough, we spent the entire week in one of the most important and oldest buildings in the state of South Carolina, the Historic Courthouse in Charleston (1753). The neoclassical architecture and elegant portraits of past Judge's and attorneys created an 18th century Colonial Rule sensation where the only missing aspect were the white British wigs. Over the course of the week, I witnessed a class action lawsuit where Charleston homeowners from Ellington Woods (Plaintiff) were suing the Dunes West Homeowners Association (Defendant) for overpaid assessment fees. Ellington Woods is a Homeowners Association outside of the gates of Dunes West, which is a privately owned gated community in Charleston, SC. Dunes West issues assessment fees to Ellington Woods homeowners for maintenance, security, and electricity that Ellington Woods feels is unnecessary and excessive as the fees do not allow them to use any property inside of the gated community. Ellington Woods and Dunes West argued to find percentages and numerical figures to what is being paid compared to what benefits are actually received from the yearly assessment fees. I found this case very significant and the complexity of the trial intrigued me as I witnessed some of the best attorneys argue their client's position as a \$1.98 million judgment was ultimately decided by Judge Scarborough.

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Through the process of motions, discovery, breach of covenants, and the wide range of detailed exhibits, Judge Scarborough stated two terms that posed the biggest question mark in the outcome of this trial: intra or ultra vires. Being unfamiliar with these terms, I referred back to *Black's Law Dictionary* where intra vires states, "Within the powers of authority" (Garner, 380). Ultra vires states, "Unauthorized, beyond the scope of power allowed" (Garner, 741).

The question regarding these two terms was whether or not Dunes West has the power to enforce these assessment fees on Ellington Woods based upon the Business Judgment Rule. According to *Black's Law Dictionary*, the Business Judgment Rule states, "The presumption that in making business decisions not involving direct self-interest, corporate directors act on an informed basis, in good faith, and in honest belief that their actions are in the corporations best interest" (83). This rule allows for the directors of Dunes West to be protected from any liability from damages or losses that may have occurred from their corporate decisions.

Ellington Wood's defense believes that this is an ultra vires case because Dunes West breached a covenant that is "beyond the power" and ineffective based on the business judgment law. Ellington Wood's believes that Dunes West has failed to accurately state to Ellington Wood's homeowners what they are specifically paying for based upon the corporation's covenants. The plaintiff states that they should only be paying for services outside of the Dunes West gate and should not be held accountable for what is outside of their jurisdiction, which are the services inside of the private Dunes West gate.

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Dunes West defense believes that the case is *intra vires* and within the “powers of authority” because they are acting upon the Business Judgment rule as they feel the covenant and fees are in Ellington Wood’s best interests. Dunes West argued that the fees are reasonable as the amenities inside and outside the gate benefit both parties and allow for reserve funds that will affect future developments. Dunes West defense feels that there are no damages to be recovered by the Plaintiff as their assessments are based upon “good faith” and is an asset to their whole community.

After a long week of observing and analyzing this trial, both parties argued their positions appropriately and efficiently enough to prove their case. Ellington Woods is searching for an equitable solution and recovery of damages from Dunes West, who feels it has done nothing less than effectively benefitted both parties. Although there is no definitive ruling thus far, I found it interesting how much each party was able to sway my opinion with each argument. *Ultra* and *intra vires* are very difficult concepts to understand and digest, as the court has to act within the Law when telling corporations the way in which they should act. I thoroughly enjoyed observing this class action lawsuit, and I look forward to seeing Judge Scarborough’s ruling as he confronts this question of *ultra intra vires*.

When reflecting on my experience in the Master in Equity office, it is difficult to put an exact number on the numerous beneficial lessons I have learned from this internship. The one thing I can for certain take away from this internship is that the Charleston Master in Equity office and Judge Scarborough are genuine and

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understanding individuals that go over and beyond to work for the people. Judge

Scarborough greets his courtroom with respect and integrity as he works to pursue every available option of helping an individual beat the terrible economy. Men and women leave his courtroom with tears of joy and relief knowing that the Charleston Master in Equity office and Judge Scarborough are working to help individuals keep their homes and give them time to fix their financial issues. When entering this job, my primary goal was to learn, observe, and become more knowledgeable about the judicial system.

Although I have two more years left at Sewanee, I feel certain that pursuing law school after college could be the right path for me. I was constantly eager to listen to deliberations and arguments that were taking place each day and grew to steadily grasp onto the dense legal language. I admired the work and practice that I was privileged enough to witness under Judge Mikell Scarborough and his staff. I do hope that if I choose to go to law school and become an attorney, I will go to the same extremes to help individuals who are suffering and looking for guidance like I was able to witness during my outstanding seven-week internship.