THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph P. Stroman, Special Referee

Case No.: 2009-CP-26-3596
Consolidated With
Case No.: 2010-CP-26-11320
Appellate No.: 2013-000714

Ronald Jarmuth, ... *Pro Se* Appellant,

v.

The International Club Homeowners
Association, Inc., Rosemary Toth, and
K.A. Diehl & Associates, Inc.,..... Respondents.

INITIAL BRIEF OF RESPONDENTS THE INTERNATIONAL CLUB HOMEOWNERS ASSOCIATION, INC., ROSEMARY TOTH, AND K.A. DIEHL & ASSOCIATES, INC.

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INDEX

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITES

STATEMENT OF ISSUES ON APPEAL

I. Are Jarmuth's Issues on Appeal preserved?

II. Did the Special Referee abuse his discretion by admitting Respondents' evidence and limiting the duration of trial?

III. Were the Special Referee's findings of fact and legal conclusions reasonably supported by the evidence?

IV. Should the Final Order be reversed to address meritless legal arguments asserted by Jarmuth?

STATEMENT OF THE CASE

Civil Action Nos. 2009-CP-26-3596 and 2010-CP-26-11320 arise out of a dispute between the Appellant, Ronald Jarmuth ("Jarmuth"), and the Respondents, International Club Homeowners Association, Inc. ("Association"), Rosemary Toth, a former president of the Association ("Toth"), and the Association's property management company, K.A. Diehl & Associates, Inc. ("K.A. Diehl") (collectively hereinafter "Respondents"), regarding the Association's authority to govern the International Club community pursuant to the Declaration of Covenants and Restrictions for the International Club ("Declaration") filed in Deed Book 2117 at Page 1353 in the Horry County Register of Deed's Office on February 8, 1999. (**2009 Complaint; 2009 Amended Complaint; 2010 Complaint; Jarmuth's Counterclaim**).

Jarmuth owns a home in the International Club Community ("International Club" or "Community") located in Murrells Inlet, South Carolina. (**Respondents' Exhibit 25**). The Association, the governing body for the International Club, was created by the Association's Articles of Incorporation and the Declaration. (**Respondents' Exhibits 3, 105**). The Declaration grants the Association architectural review rights, the right to assess for services, and the right to maintain property. (**Respondents' Exhibit 3**).

On April 7, 2009, Jarmuth commenced Civil Action No. 2009-CP-26-3596 seeking an order that the Declaration is unenforceable and/or that the Association breached the Declaration in various ways and that its president, Toth, breached her fiduciary duty to the Association and its members. (**2009 Complaint**). The Complaint was amended on June 9, 2009 to add K.A. Diehl and Henrietta Golding as defendants, and to add defamation, outrage, and invasion of privacy as causes of action. (**2009**

Amended Complaint). Ms. Golding was subsequently dismissed. (**Respondents' 8/12 Pre-Trial Brief, p. 2**).

Civil Action No. 2010-CV-261072943 was filed in Magistrate's Court on October 12, 2010 seeking a declaratory judgment that the Association does not have the authority to act under the Declaration, the Association waived its architectural review rights, and the Association breached the Declaration by denying his application for improvements. (**2010 Complaint**). The 2010 case was removed to circuit court and assigned a new case number, Civil Action No. 2010-CP-26-11320, by order of the Court on December 1, 2010. (**Removal Order Dated December 1, 2010**).

The Respondents answered in both cases and asserted several affirmative defenses, including the business judgment rule, immunity, absolute and qualified privileges, waiver, estoppel, and unclean hands. (**2009 Amended Answer & Counterclaims; 2010 Amended Answer & Counterclaims**). The Association also counterclaimed for breach of the restrictive covenants and injunctive relief due to Jarmuth's failure to remove unapproved improvements on his International Club lot. (**2009 Amended Answer & Counterclaims; 2010 Amended Answer & Counterclaims**).

In reply to the Respondents' counterclaims, Jarmuth asserted a cause of action for Violation of the South Carolina Frivolous Proceedings Act. (**Jarmuth's 2009 Counterclaim; Jarmuth's 2010 Counterclaim**). The Association moved to dismiss, and the Court ordered that the Counterclaim be added as a cause of action. (**Order Denying Association's Motion to Dismiss**).

Civil Action Nos. 2009-CP-26-3596 and 2010-CP-26-11320 ("Consolidated Cases") were consolidated on August 22, 2011. (**Order Consolidating Cases**). The Consolidated Cases appeared on the non-jury trial roster for January 11, 2012. In preparation for trial, the parties exchanged pre-trial briefs. (**Transcript, p. 92**). Jarmuth filed a motion for a continuance, and the circuit court granted his motion.[1] (**Respondents' 8/12 Pre-Trial Brief, pp. 3-4**). Most of Respondents' witnesses and exhibits admitted at the trial of the Consolidated Cases were listed in Respondents' January 2012 brief. (**Transcript, p. 92**).

The parties agreed by consent order to refer the Consolidated Cases to Special Referee, Ralph Stroman, and scheduled the trial. (**Consent Order of Reference**). Before trial, the parties exchanged revised pre-trial briefs that included exhibit and witness lists. (**Parties' 8/12 Pre-Trial Briefs**). The trial began on August 8, 2012 at 9:00 a.m. and concluded on August 10, 2012 at 5:30 p.m. (**Transcript, p. 1029**). At the beginning of the trial, the Special Referee ruled that all evidence would be entered subject to the parties' objections, including the parties' trial exhibits. (**Transcript, pp. 74-79**). The Special Referee also stated that, at the conclusion of the trial, the parties must submit proposed orders and that he would sign one order. (**Transcript, pp. 1028-1035**). No objections were made to the Special Referee's rulings. (**Transcript, pp. 74-**

[1] Jarmuth also filed a Petition for Writs of Mandamus and Prohibition with the Supreme Court of South Carolina on December 22, 2011 requesting that the Supreme Court order a continuance. (**Respondents' 8/12 Pre-Trial Brief, pp. 3-4**). Then Jarmuth filed a Motion to Stay with the Supreme Court on January 5, 2012 seeking a stay of the Consolidated Cases. (**Respondents' 8/12 Pre-Trial Brief, pp. 3-4**). The Supreme Court denied his Petition and the request for the stay of the Consolidated Cases by Order dated January 13, 2012. (**Respondents' 8/12 Pre-Trial Brief, pp. 3-4**).

79, 1028-1035). After the trial, the parties submitted proposed orders as instructed. (**Proposed Orders**).

The final order dismissing Jarmuth's claims and awarding judgment in favor of the Association in the amount of $7,326.00 and granting injunctive relief ("Final Order") was signed and filed on September 10, 2012 and Jarmuth was served with a copy. (**Final Order**). On September 19, 2012, Jarmuth filed his Post-Trial Motions accusing the Special Referee of misconduct.[2] (**Post-Trial Motions**). While "wholeheartedly den[ying] bias or misconduct", the Special Referee recused himself from hearing the Post-Trial Motions. (**Order of Recusal**). As a result, the Post-Trial Motions were heard by the Honorable Steven H. John, Chief Administrative Judge for the Fifteenth Judicial Circuit. (**Order Denying Post-Trial Motions**).

After Judge John reviewed the entire record and the parties' briefs, Jarmuth's Post-Trial Motions were denied by a written Order filed on March 11, 2013. (**Order Denying Post-Trial Motions**). Judge John specifically ruled as follows:

> The findings of fact challenged by [Jarmuth] are supported by the evidence. Additionally, the Final Order is consistent with the record, the pleadings, the legal arguments made at trial and in the parties' pre-trial and post-trial briefs.

(**Order Denying Post-Trial Motions, p. 5**). The Order also specifically addresses all of the legal issues on appeal, affirming the Special Referee's Final Order. (**Order Denying Post-Trial Motions**). Jarmuth timely filed an appeal of the Final Order on April 3, 2013, however, he failed to appeal the Order Denying the Post-Trial Motions. (**Notice of Appeal**).

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[2] Jarmuth filed a second Petition for Writs of Mandamus and Prohibition seeking the same relief as the Post-Trial Motions, which was dismissed. (**Respondents' Memorandum in Opposition to Post-Trial Motions, p. 5**).

STATEMENT OF THE FACTS

I. The International Club And The Association

Jarmuth resides in the International Club, a residential community consisting of single family and multi-family phases. **(Respondents' Exhibits 3, 4, 7, 8, 13, 17, 32; Transcript, pp. 850-54; Final Order, p. 2)**. This Community is located off of Tournament Boulevard, a road that connects Highway 707 and Highway 17 in Horry County approximately ten (10) miles south of Myrtle Beach. **(Final Order, p. 2; Respondents' Exhibit 2; Transcript, p. 338)**.

The Community's original name was "Murrells Inlet Golf Plantation", the name reflected in the Declaration. **(Respondents' Exhibit 3)**. The Declaration also contemplated that an association by the name of Murrells Inlet Golf Plantation Association, Inc. would be formed to govern the Community. **(Respondents' Exhibit 3)**.

The Community was developed by Plantation A.D., LLC ("Plantation A.D."), the original developer and declarant named in the Declaration. **(Respondents' Exhibit 3; Final Order, p. 2)**. When the Declaration was filed in 1999, Pebble Creek, the single-family phase of the Community that Jarmuth resides in, was specifically incorporated into the Community by reference to its property description in Exhibit "A" to the Declaration. **(Respondents' Exhibit 3)**. On the same day, after the Declaration was filed, Plantation A.D. conveyed the property that constitutes Pebble Creek to Sunbelt & Associates, Inc. ("Sunbelt") by deed recorded in Deed Book 2117 at Page 401 in the Horry County Register of Deeds Office. **(Jarmuth's Exhibit 545)**. The Pebble Creek deed set forth that "[t]he property is conveyed subject to the Declaration of Covenants

and Restrictions for Murrells Inlet Golf Plantation..." (**Jarmuth's Exhibit 545**). Sunbelt was the designated builder for Pebble Creek as defined by the Declaration.

The International Club Declaration required the formation and existence of an architectural review board ("ARB"). (**Respondents' Exhibit 3; Final Order, p. 8**). Beginning in the early 2000's, the ARB members were appointed by the Association Board of Directors. (**Final Order, p. 8**). The Declaration specifically requires "any building, structure, fence, sidewalk, wall, drive, exterior lighting, painting, and landscaping, or other improvement,...vegetation cover, landscaping, grading, filling, or any other item...upon any portion..." of the Community. (**Respondents' Exhibit 3; Final Order, p. 8**).

On May 9, 2000, the Community's name was changed to International Club pursuant to the first amendment to the Declaration ("First Amendment") filed in the Register of Deeds Office in Deed Book 2258 at Page 1453. (**Respondents' Exhibit 4**). The First Amendment also changed the name of the governing association to the "International Club Association". (**Respondents' Exhibit 4**). Subsequently, Articles of Incorporation for the Association were filed with the Secretary of State on March 1, 2001. (**Respondents' Exhibit 105**). The Association was formally named "International Club Home Owners Association" pursuant to its Articles. (**Respondents' Exhibit 105**). Although the name of the Association contained in the Declaration and the Articles of Incorporation were not identical, the Association has exercised the rights and privileges of International Club Association under the Declaration since its incorporation in 2001. (**Transcript, pp. 129-144, 999-1000).**

The First Amendment also brought into the Community Villas Horizontal Property Regime, a multi-family parcel. (**Respondents' Exhibit 4; Final Order, p. 3**). With respect to the Villas Horizontal Property Regime only, the Amendment waived Plantation A.D.'s rights under the Declaration. (**Respondents' Exhibit 4; Final Order, p. 3**). Those rights included architectural review authority under Article VII of the Declaration. (**Respondents' Exhibits 3, 4**).

Before the Declaration and the First Amendment were filed, the Declaration of Special Covenants for Highway 17 Connector Road Maintenance District Association, Inc. ("Connector Road Declaration") were filed on December 29, 1998 in Deed Book 2105 at Page 607 in the Horry County Register of Deeds Office. (**Respondents' Exhibit 2**). The Connector Road Declaration contains covenants that bind several neighborhoods on Tournament Boulevard for the purpose of maintaining the Boulevard. (**Respondents' Exhibit 2; Transcript, p. 338**). It was signed by Plantation A.D., as well as the other developers of the surrounding neighborhoods. (**Respondents' Exhibit 2**). Pursuant to the Connector Road Declaration, the entity that has the authority and obligation to maintain Tournament Boulevard is the Connector Road Maintenance District Association, Inc. ("Connector Road Association"). (**Respondents' Exhibit 2**). This association assesses governing associations, including the Association, for funds to maintain Tournament Boulevard. (**Respondents' Exhibit 2**). The Association assesses each International Club homeowner approximately $6.50 a year for the Connector Road Association assessments. (**Transcript, p. 1003**).

In January 2003, Sunbelt dedicated the roads in Pebble Creek to Horry County, South Carolina. (**Jarmuth Exhibits 401, 408, 413-14**). The resolutions of Horry County

reflect that the roads were accepted into the Horry County system. (**Jarmuth's Exhibits 401, 408, 413-14**). Other roads in the International Club were dedicated to Horry County subject to the Declaration by the successor developer, D.R. Horton, Inc. (**Final Order, p. 4**).

II. Jarmuth's Disputes With The Association

On October 23, 2006, Jarmuth purchased his Pebble Creek home from Cheryl Essex. (**Respondents' Exhibit 25**). Ms. Essex bought the home in September, 2001. (**Transcript, p. 241**). The deed to Jarmuth included the following language:

> This conveyance is made subject to that certain Declaration of Covenants and Restrictions of Murrells Inlet Golf Plantation dated January 31, 1999 and recorded February 8, 2000 in Deed Book 2117 at page 1353; also subject to that certain Amendment to Declaration of Covenants and Restrictions for Murrells Inlet Golf Plantation (Now International Club) and Additional Property thereto dated May 8, 2000 and recorded in Deed Book 2358 at page 1453, Office of Register of Deeds for Horry County, South Carolina.

(**Respondents' Exhibit 25; Transcript, pp. 129-132**).

Initially, Jarmuth did not dispute that the Association is the governing entity of the Community. Jarmuth paid Association assessments and accepted its services, including garbage collection, cable television, use of the Amenity Center and Pool, and maintenance of the Common Areas. (**Transcript, pp. 129-144**). In September 2007 and September 2008, he ran for a director position with the Association, however, neither time was he elected. (**Final Order, p. 4**). Jarmuth also attended board meetings held at the Community's Amenity Center. (**Final Order, p. 7**). Beginning in 2009, his family attended the Friday socials held at the Amenity Center. (**Transcript, p. 664**). Since 2006, Jarmuth submitted applications to the ARB for a variety of matters. (**Final Order,**

p. 26). He sought approval, and obtained approval, for planting a palm bed, installing an outside bench, and a flower bed. (**Final Order, p. 26**).

Jarmuth's position as to the Association's validity changed over time. From June 2008 through April 2009, Jarmuth began corresponding with President Toth and K.A. Diehl, the property manager, for the purpose of requesting the Association's documents and other information related to the Association's governance. (**Respondents' Exhibits 29-31, 33-53**). These requests included, but were not limited to: 1) request for voter's lists; 2) information related to the ownership of International Club roads; 3) information regarding the Connector Road Association; 4) requests for financial records; 5) information related to the cable services provided to the Community; 6) K.A. Diehl's management contracts; and 7) requests to inspect all board minutes. (**Respondents' Exhibits 29-31, 33-53**). K.A. Diehl provided Jarmuth with all of the documents he requested. (**Transcript, 999-1003**).

The purpose of the document requests became clear when Jarmuth filed his Complaint with the Clerk of Court's Office in Horry County on April 7, 2009. (**2009 Complaint**). Shortly after service of the Complaint, the Association Directors met with the Association's attorney, Henrietta Golding. (**Transcript, pp. 685-693**). The Board requested that Ms. Golding prepare a letter regarding Jarmuth's claims that included information that could be provided to the Community members. (**Transcript, pp. 685-693**). On May 27, 2009, Ms. Golding sent a letter to the Board of Directors outlining the Association's position as to the various claims asserted by Jarmuth as well as providing information as to Jarmuth's involvement in previous litigation. (**Final Order, p. 7**). A list setting forth cases that Jarmuth was a party to was included, as well as published

Court decisions. **(Final Order, p. 7)**. The Directors, except for the President Toth, instructed K.A. Diehl to mail Ms. Golding's letter to all Community members. **(Final Order, p. 7)**.

Also, after commencement of this legal action, Jarmuth directed a letter to K.A. Diehl seeking a membership list containing the members' email addresses, phone numbers and their delinquency status. **(Respondents' Exhibit 53; Final Order, p. 7)**. This request was denied by the Association's attorney due to Jarmuth seeking email addresses, phone numbers and information regarding a member's payment of assessment as well as Jarmuth's failure to set forth a good faith basis for requesting the list. **(Respondents' Exhibit 53; Final Order, p. 7)**. Further, the Association maintains a website for its members, and the members list was readily available to Jarmuth; however, he refused to access the website for he does not want to disclose his email address or accept the website's privacy policy. **(Transcript, pp. 680-81, 1000-1013).** Jarmuth also received the membership list in the past and accessed the Association's website through other Community homeowners. **(Final Order, p. 8; Respondents' Exhibit 35)**.

On April 20, 2010, the Association's Board of Directors granted a power line easement to Central Electric Power Cooperative, Inc. ("Central Electric"). **(Respondents' Exhibits 75-77; Final Order p. 8)**. As consideration for this easement, the Association received $83,000.00 as well as an agreement from Central Electric that it would maintain the easement area in good condition as required by a landscape mitigation agreement with the Association. **(Respondents' Exhibits 75-77; Final Order p. 8)**. Part of the consideration that the Association received from Central Electric was distributed to the members, for each member received $75.00. **(Transcript, pp. 701-08,**

928-33). The Association shared the proceeds with its members to refund the assessments that the members annually paid because the Association received unbudgeted revenue for 2010. (**Transcript, pp. 701-08, 928-33**).

In July 2009, Jarmuth applied for the installation of a swing set to be placed on the side of his house. (**Respondents' Exhibit 58**). The ARB denied his request, for his application had the swing set positioned in the side yard and visible to the street. (**Respondents' Exhibit 60; Transcript, pp. 895-96; Deposition of Toth, pp. 1, 101-102**[3]). As a result of this denial, Jarmuth filed a discrimination claim with the South Carolina Human Affairs Commission contending that the Association discriminated against him due to his foster children. (**Respondents' Exhibit 63**). This discrimination claim was dismissed by the South Carolina Human Affairs Commission when it issued its determination of no reasonable cause on December 11, 2009. (**Respondents' Exhibit 63**).

In the fall of 2010, Jarmuth undertook to modify an existing landscape bed as well as install a brick/stone addition to his yard along the property line. (**Respondents' Exhibit 82; Final Order, p. 9**). The ARB issued a Notice Violation requiring Jarmuth to submit an application. (**Respondents' Exhibit 82; Final Order, p. 9**). Subsequently, Jarmuth submitted an application for a 6 foot high vinyl side yard fence with a brick foundation to be installed on his property line and a flower bed with red brick edgers. (**Respondents' Exhibit 83; Final Order, p. 9**). The ARB approved the request for the flower bed and edging in the County easement near a power box as long as Jarmuth had

[3] Jarmuth filed all the depositions taken in this case before the trial. During the trial, he moved to admit the filed depositions as exhibits and the trial court granted his motion. (**Transcript, pp. 886-87**).

an encroachment permit but denied his request to install a 6 foot vinyl fence with a brick foundation. (**Respondents' Exhibits 84-86; Final Order, p. 9**). Additionally, the ARB fined Jarmuth $50.00 for constructing the brick foundation. (**Respondents' Exhibit 82; Final Order, p. 9**). Jarmuth, by letter dated October 11, 2010, disputed the authority of the ARB to deny his request for the fence as well as assess $50.00. (**Respondents' Exhibit 86; Final Order, p. 9**). He further stated that he disputed the necessity of any appeal. (**Respondents' Exhibit 86; Final Order, p. 9**).

Jarmuth refused to remove the brick foundation as required by the ARB, and as a result, he was fined $100.00 a month. (**Final Order, p. 9; Transcript, pp. 903-07**). Jarmuth refused to pay the monthly fine, and as of the trial date, he owed the Association the sum of $2,326.00. (**Final Order, p. 9; Transcript, pp. 903-07**)

In February 2012, Jarmuth applied to the ARB for a landscape modification. (**Respondents' Exhibit 95**). By letter dated March 16, 2012, the ARB informed Jarmuth that his application was deferred due to the existing violation that could be remedied by removing the brick work along the property line and restoring the sod. (**Respondents' Exhibits 96-97**). The letter further stated that his account balance as of the date of the letter was $1,735.00. (**Respondents' Exhibits 96-97**). Jarmuth asserts that a quorum did not exist at the ARB meeting, because Charles Roche, Toth's husband and an ARB member, was not able to vote on his application due to a conflict of interest. (**Transcript, pp. 795-96**).

The Association paid $5,000.00 to the McNair Law Firm in attorneys' fees to seek Jarmuth's compliance with the Declaration. (**Respondents' Exhibits 62, 79**).

STANDARD OF REVIEW

I. Tort Actions

On appeal, Jarmuth challenges the dismissal of his tort actions. (**Jarmuth's Brief, *supra***). An action in tort is generally an action at law, unless equitable relief is sought. Culler v. Blue Ridge Electric Cooperative, Inc., 309 S.C. 243, 246, 422 S.E.2d 91, 93 (1992). Therefore, with respect to Jarmuth's tort actions, the findings of fact of the Special Referee will not be disturbed upon appeal unless found to be without evidence which reasonably supports the Special Referee's findings. Townes Associates, Ltd. v. The City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

II. Declaratory Judgment Action

Jarmuth also challenges the declaratory judgments contained in the Final Order that the Declaration is in his chain of title, and the Association did not breach the covenants. "A declaratory judgment action is neither legal nor equitable in nature, but it takes on the tenor of the underlying action." Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991); Seabrook Island Property Owners Association, v. Marshland Trust, Inc., 358 S.C. 655, 661, 596 S.E.2d 380, 383-84 (Ct.App. 2004). "[U]nless the cause of action and the relief sought in a declaratory judgment action are distinctly equitable, the action will be considered one at law." Harvey v. South Carolina Dept. of Corrections, 338 S.C. 500, 507, 527 S.E.2d 765, 769 (Ct.App. 2000). "To determine whether an action is legal or equitable, this court must look to the action's main purpose as reflected by the nature of the pleadings, evidence, and character of the relief sought." Cullen v. McNeal, 390 S.C. 470, 481, 702 S.E.2d 378, 384 (Ct.App. 2011).

The determination of the scope of restrictive covenants is an action that lies in equity and will be reviewed *de novo*. Hardy v. Aiken, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006); Cullen, 390 S.C. at 481, 702 S.E.2d at 384. However, "[t]he determination of the existence of an [restrictive covenants] is a question of fact in a law action and subject to an any evidence standard of review when tried by a judge without a jury." See Hardy, 369 S.C. at 166, 631 S.E.2d at 542; See also, Morrow v. Dyches, 328 S.C. 522, 492 S.E.2d 420 (Ct.App. 1997). The question of a delivery of a deed is also legal in nature and subject to the any evidence standard. Godfrey v. Godfrey, 182 S.C. 117, 188 S.E. 653, 655 (1936). Furthermore, when the relief sought is monetary in nature, a claim for breach of the covenants is legal rather than equitable. O'Shea v. Lesser, 308 S.C. 10, 14, 416 S.E.2d 629, 631 (1992).

The primary purpose of Jarmuth's lawsuits is to challenge the existence of the Declaration in his chain of title based on the delivery of the deed from the developer to Sunbelt and to seek monetary damages for the Association's alleged breach of the covenants; accordingly, his claims are at a law. Therefore, the findings of fact of the Special Referee will not be disturbed upon appeal unless found to be without evidence which reasonably supports the Special Referee's findings. Townes Associates, Ltd., 266 S.C. at 86, 221 S.E.2d at 775. Moreover, although Jarmuth arguably invoked the trial court's equity jurisdiction by praying for injunctive relief in the Complaint, the essential legal character of the underlying cause of action remains. Harvey, 338 S.C. at 507, 527 S.E.2d at 769, citing Felts, 303 S.C. at 356, 400 S.E.2d at 782.

III. Trial Rulings And Award Of Attorney's Fees

On appeal, Jarmuth challenges several rulings of the Special Referee, including the admission of evidence, the request for proposed orders in lieu of closing arguments, the request that opening arguments be waived, the allowance of witnesses out of order, and the award of attorneys' fees. Trial issues are matters left to the discretion of the judge and, absent clear abuse, rulings on such issues will not be disturbed on appeal. See Carlyle v. Tuomey Hosp., 305 S.C. 187, 407 S.E.2d 630 (1991) (holding that the admission of evidence will not be disturbed on appeal absent abuse of discretion); see also, Yoho v. Thompson, 345 S.C. 361, 548 S.E.2d 584 (2001) (holding that an abuse of discretion required to disturb a ruling on scope of cross-examination). Similarly, an award of attorney's fees based on restrictive covenants is left to the discretion of the judge and will not be disturbed on appeal absent an abuse of discretion. Seabrook Island Property Owners Association, Inc. v. Berger, 365 S.C. 234, 240, 616 S.E.2d 431, 434 (Ct.App. 2005).

ANALYSIS

I. Jarmuth's Issues On Appeal Are Not Preserved

Jarmuth's appeal should be dismissed, because many of the Issues on Appeal were not timely raised with specificity and ruled upon by the trial court. Several Issues on Appeal are also abandoned due to Jarmuth's failure to cite to legal authority and under the two issue rule.

A. Jarmuth Failed to Timely Raise the Issues to the Trial Court with Specificity

The first step in preserving an issue for appellate review is to actually raise it to the lower court. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731,733 (1998).

The specific grounds for an objection must be stated. Id. The lower court must also rule upon the issue for it to be preserved for review. Id. A party cannot use a Rule 59(e) motion to present an issue that could have been raised prior to the judgment but was not raised. Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 27, 609 S.E.2d 506, 510 (2005). Nor can a party make an objection to a ruling after the trial judge had an opportunity to address it; objections must be contemporaneous with the ruling at issue. State v. Aldert, 333 S.C. 307, 312, 509 S.E.2d 811, 813 (1999).

Jarmuth failed to raise several objections to the Special Referee's rulings contemporaneously with his ruling on the issue. No objections were made to taking Respondents' witnesses Denise Ambuhl and Maureen Sullivan out order, submitting proposed orders in lieu of summation, the time limitation on trial, and admitting all evidence subject to the parties' objections.[4] (**Order Denying Post-Trial Motions, pp. 3-4**). Additionally, Jarmuth never attempted to call Toth as a witness at trial or object to the lack of time available to examine her. (**Order Denying Post-Trial Motions, p. 4**). Although these issues were raised in his Post-Trial Motions, because Jarmuth failed to lodge a contemporaneous objection at trial, the grounds are not preserved for appeal. See, Fields, 363 S.C. at 27, 609 S.E.2d at 510.

Jarmuth also raises several legal issues for the first time on appeal without providing the lower court with an opportunity to rule. Some of these issues are also not set forth as Issues on Appeal. The unpreserved issues include: 1) Whether a reasonableness standard, rather than the business judgment rule, should be applied when

[4] These issues are also barred by the two issue rule, because the trial court held that they were not preserved, and Jarmuth failed to appeal this ruling. (**Order Denying Post-Trial Motions, p. 3-4**).

reviewing the actions of the Association's Board pursuant to the Restatement of Servitudes (**Jarmuth's Brief, pp. 16-17**); 2) Whether the Villas is subject to the Declaration (**Jarmuth's Brief, pp. 16-17**); 3) Whether resignation from a non-profit corporation must be unconditional under S.C. Code Ann. §§ 33-31-601 and 33-31-620 (**Jarmuth's Brief, pp. 30-32**); 4) Whether the Association is liable for Tortuous Interference with Jarmuth's Social Relationships (**Jarmuth's Brief, pp. 35-36**); 5) Did Sunbelt dedicate the roads in Pebble Creek in fee simple without the Declaration in the chain of title? (**Jarmuth's Brief, pp. 36-39**); and 6) Is Jarmuth entitled to attorneys' fees under S.C. Code Ann. § 33-31-720?[5] (**Jarmuth's Brief, pp. 43-45**). Because Jarmuth failed to raise these issues timely, and no ruling exists, the issues were not properly preserved on appeal. Wilder Corp., 330 S.C. at 76, 497 S.E.2d at 733. To the extent that these issues were before the trial court, Jarmuth failed to raise these issues with specificity and contemporaneously with the ruling, and failed to obtain a ruling from the Court; accordingly, the issues are unpreserved. Id.

B. Jarmuth's Short Conclusory Arguments Without Authority are Abandoned

Jarmuth abandoned arguments by his failure to provide any legal authority in support. See Fields v. Melrose Ltd. Partnership, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct.App. 1993) (holding that short conclusory arguments are abandoned on appeal). The abandoned arguments include: 1) The Special Referee improperly ignored the "Statutory Judgment Act" (**Jarmuth's Brief, p. 20**); 2) The Special Referee relied on facts not in

[5] Jarmuth is a pro se party without legal representation. Therefore, this issue is also unnecessary question that need not be addressed by the Court. See I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000).

evidence[6] (**Jarmuth's Brief, p. 20**); 2) K.A. Diehl misappropriated funds from the Association (**Jarmuth's Brief, p. 49**); 3) The Association is liable for Tortuous Interference with Jarmuth's Social Relationships (**Jarmuth's Brief, pp. 35-36**); 4) The Special Referee violated Jarmuth's due process rights (**Jarmuth's Brief, p. 20**). Jarmuth's failure to provide a legal analysis supporting these arguments constitutes an abandonment of the arguments on appeal.

C. The Two Issue Rule Bars Jarmuth's Issues on Appeal

Because Jarmuth failed to appeal the circuit court's grounds for denying his Post-Trial Motions, many of his arguments are barred by the two issue rule.

It is a fundamental rule of law that an appellate court will affirm a ruling by a lower court if the offended party does not challenge the ruling. See Biales v. Young, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993). Failure to challenge the ruling is an abandonment of the issue and precludes consideration on appeal. Id. An unappealed order, right or wrong, is ordinarily the law of the case. Charleston Lumber Co. v. Miller House Corp., 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000); Resolution Trust Corp. v. Eagle Lake & Golf Condominiums, 310 S.C. 473, 475, 427 S.E.2d 646, 648 (1993) (the trial judge's procedural ruling is the law of the case since it has not been appealed).

"Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903-04 (2010); see also, Anderson v. Short, 323 S.C. 522, 476 S.E.2d

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[6] The Order Denying Jarmuth's Post-Trial Motions specifically held that the Final Order is supported by the Record. (**Order Denying Post-Trial Motions, p. 5; Memorandum in Opposition to Jarmuth's Motions, Exhibit "I"**).

475 (1996) (where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case). The two issue rule is applicable in non-jury cases. Id.

Jarmuth's various arguments that the Declaration and Connector Road Declaration are invalid are barred by the two issue rule.[7] Pursuant to the Order Denying Jarmuth's Post-Trial Motions, Jarmuth lacks standing to challenge the validity of these documents. (**Order Denying Post-Trial Motions, p. 8**). Because Jarmuth did not appeal the circuit court's ruling that he lacks standing, the ruling is the law of the case, and therefore, Jarmuth effectively abandoned his right to challenge the validity of the Declaration and the Connector Road Declaration on appeal.

Another issue abandoned by Jarmuth is whether the Association violated § 13.3 of the Bylaws by imposing fines without a hearing. (**Jarmuth's Brief, pp. 45-47**). Although he appeals the Final Order's ruling that the Board does not have to hold a hearing under § 13.3, he failed to appeal the Order Denying his Post-Trial Motions, which held that he waived his right to an appeal. (**Jarmuth's Brief, pp. 45-47; Order Denying Post-Trial Motions, p. 12**). Therefore, the holding is the law of the case, and the argument is barred by the two issue rule.

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[7] Jarmuth argues that the Declaration is invalid and unenforceable against his property. (**Jarmuth's Brief, pp. 27-29**). He also argues that the provision of the Declaration providing the Association with the authority to collect assessments for the amenity center, cable television, garbage collection, and the Connector Road Declaration assessments are personal service contracts that do not "run with the land", and therefore, the provision is invalid. (**Jarmuth's Brief, pp. 36-39**). Jarmuth's Brief also makes the argument that the Declaration conflicts with the Non-Profit Corporation Act by requiring Jarmuth to be a member of the Association by virtue of his ownership of an International Club property. (**Jarmuth's Brief, pp. 30-32**). Lastly, he challenges the provisions of the Declaration that provides the Association with the authority to restrict parking. (**Jarmuth's Brief, pp. 36-39**).

II. The Special Referee Did Not Abuse His Discretion

The Initial Brief argues that Jarmuth was not provided a fair trial due to the Special Referee's ruling on evidentiary and procedural issues at trial, the ruling that no opening or closing arguments were needed, and the time limitation on trial. However, the record reflects that Jarmuth was afforded a full and fair opportunity to present his case and was not prejudiced by the Special Referee's rulings. (**Order Denying Post-Trial Motions, pp. 3-5**).

A. The Special Referee Properly Admitted Evidence

The trial court has broad discretion in controlling the examination of witnesses and the admission of evidence. North Greenville College v. Sherman Const. Co., Inc., 270 S.C. 553, 556, 243 S.E.2d 441, 442 (1978); Hartfield v. Getaway Lounge & Grill, Inc., 388 S.C. 407, 413-14, 697 S.E.2d 558, 561 (2010). However, an abuse of discretion amounting to an error of law warrants reversal. Id.

Jarmuth argues that several exhibits and witnesses were not identified in discovery, and accordingly, the Special Referee erred by admitting this evidence. Although the objectionable evidence was not identified by Jarmuth at trial, his Initial Brief argues that the admission of testimony from Chris Sullivan, Maureen Sullivan and Denise Ambuhl, and Respondents' Exhibits 105 through 108 and A through J was improper.[8] (**Jarmuth's Brief, pp. 21-22**). The basis of Jarmuth's argument is that the Respondents amended their pre-trial brief served in January 2012 to include additional

[8] Jarmuth's objections to Respondents' witnesses and exhibits were vague and lacked specificity. At trial, he generally objected to exhibits and witnesses upon the basis that they were not provided in discovery, however, he did not specifically identify the objectionable evidence. (**Transcript, pp. 74-93**). Because Jarmuth did not specifically object to the admission of this evidence contemporaneously with its admission at trial, the objections are not preserved on appeal. Aldert, 333 S.C. at 312, 509 S.E.2d at 813.

witnesses and exhibits. (**Transcript, pp. 79-93**). However, the record reflects that Respondents produced all trial exhibits and identified all witnesses in their responses to Jarmuth's discovery requests. (**Transcript, pp. 79-93**). Because all of the evidence was previously produced, Respondents' amendment of their pre-trial brief before trial does not provide a basis for objecting to the aforementioned evidence. (**Order Denying Post-Trial Motions, p. 4**). Paradoxically, the exhibits objected to are matters of public record, for some of the documents are recorded and others are South Carolina Secretary of State records. (**Respondents' Exhibits 105-108, A-J**). Moreover, Jarmuth made many of the documents exhibits at trial. (**Jarmuth's Exhibits 449-466, 552**). As a result, the Special Referee did not abuse his discretion by allowing the evidence to be admitted.

Jarmuth also argues that the Special Referee abused his discretion by taking Chris Sullivan out of order. The Order Denying Jarmuth's Post-Trial Motions specifically held that this ruling did not prejudice Jarmuth. (**Order Denying Post-Trial Motions, p. 4**). Mr. Sullivan's direct examination was brief and did not limit Jarmuth's ability to present his case. (**Transcript, pp. 283-304; Order Denying Post-Trial Motions, p. 4**). Accordingly, the Special Referee did not abuse his discretion or commit an error of law by allowing the witness to be taken out of order.

B. The Special Referee Properly Limited the Duration of Trial and Opening and Closing Arguments

Ordinarily, a trial court's rulings on closing arguments will not be disturbed. State v. Sweet, 342 S.C. 342, 347, 536 S.E.2d 91, 93 (Ct.App. 2000). In a non-jury action, whether to permit closing argument is in the sound discretion of the trial judge. Clark v. Clark, 293 S.C. 415, 417, 361 S.E.2d 328, 329 (1987).

The decision to limit trial to three days with no opening and closing arguments "was in the sound discretion" of the Special Referee. Jarmuth was given the opportunity to present all of the witnesses he attempted to call. (**Order Denying Post-Trial Motions, pp. 3-4**). He also testified for over 2 days, and much of his testimony included legal arguments. (**Transcript, *supra*).** A large portion of his exhibits included legal authorities. (**Jarmuth's Pre-Trial Brief & Exhibit List**). Although he was not given the opportunity to regurgitate his legal analysis in closing argument, he did submit a proposed order and a lengthy brief. (**Jarmuth's Proposed Order; Jarmuth's Brief in Support of Proposed Order**). Accordingly, the limitations on trial did not prejudice his ability to present his a case. Jarmuth was afforded a fair trial.

III. The Findings Of Fact And Legal Conclusions In The Final Order Are Reasonably Supported By The Evidence

In his Initial Brief, Jarmuth asserts that several findings of fact and legal conclusions in the Final Order are unsupported by the evidence presented to the lower court. The record contains ample evidence to support the facts and conclusions of law contained in the Final Order. (**Order Denying Post-Trial Motions, p. 5**).

A. The First Amendment to the Declaration Did Not Waive Association's Rights with Respect to the Whole Community

Jarmuth argues that Final Order is in error by containing the following language: "I find that the Developer's waiver of certain rights was solely with respect to the Villas Horizontal Property Regime and did not waive applicability of the covenants to the rest of the Community..." (**Jarmuth's Brief, p. 24; Final Order, pp. 23-24**). The evidence reasonably supports the Special Referee's finding that the First Amendment's waiver only affected the Villas Horizontal Property Regime.

South Carolina law is clear that restrictive covenants are voluntary contracts and will be enforced according to their terms. Reyhani v. Stone Creek Cove Condominium II Horizontal Property Regime, 329 S.C. 206, 210, 494 S.E.2d 465, 467 (Ct. App. 1998). The main guide in interpreting restrictive covenants is to ascertain and give legal effect to the intention of the parties as expressed in the language of the covenants. Cullen, 390 S.C. at 481, 702 S.E.2d at 384. If the Declaration's language is clear and capable of legal construction, this Court's function is to interpret its lawful meaning and the intent of the parties as found in the Declaration. Id.

In the Whereas Clauses of the First Amendment, the purpose of the amendment, to add a multi-family parcel to the International Club, is clearly expressed. (**Respondents' Exhibit 4**). Although the multi-family parcel was not identified, the designated builder of the property was named, International Club Villas, LLC.[9] (**Respondents' Exhibit 4**). Several provisions of the First Amendment waived the Association's rights with respect to the multi-family parcel, which included certain architectural review rights. (**Respondents' Exhibit 4**). These waivers make sense in the context of a multi-family parcel, because the multi-family parcels have their own associations, and individual owners cannot modify the exterior of the regime building. (**Respondents' Exhibits 3-4**). Other provisions of the Declaration were deleted, which affected the whole Community. (**Respondents' Exhibit 4**). Construing the First Amendment as a whole, and giving effect to the intent of the parties, the Special Referee

[9] For the first time on appeal, Jarmuth argues that the Villas was not subjected to the Declaration. The record is devoid of this argument. Because Jarmuth failed to raise this argument with specificity and the lower court did not issue a ruling, it is not preserved on appeal. Jarmuth also does not have standing to challenge the First Amendment pursuant to the Order Denying his Post-Trial Motions. (**Order Denying Post-Trial Motions, p. 8**).

did not err by holding that the waiver only applied to the Villas Horizontal Property Regime and not the Community as a whole. Palmetto Dunes Resort v. Brown, 287 S.C. 1, 6, 336 S.E.2d 15, 18 (Ct.App. 1985).

If the Court finds that the First Amendment is unclear on its face, which Jarmuth asserts in his brief, "parol evidence is admissible to ascertain the true meaning and intent of the parties." Cullen., 390 S.C. at 481, 702 S.E.2d at 384. Additional persuasive evidence supports the lower court's finding. R. Scott Pyle, a principal of the original developer who drafted the First Amendment, testified that the purpose of the First Amendment was to waive rights only under certain circumstances. (**Respondents' Exhibit 109, pp. 1, 46-47; Transcript, p. 885**). Likewise, Jeffrey King, Respondents' expert witness, testified that the waiver of architectural review rights was not with respect to the whole subdivision, but instead, only with respect to the builder of the multi-family parcel being annexed by the First Amendment. (**Transcript, pp. 873-877**).

The evidence establishes that the Association enforced its architectural review rights consistent with the Court's ruling. (**Transcript, pp. 999-1000; Final Order, pp. 23-24**). The developers and the ARB have continually required applications for all improvements from single family homeowners, including fences and swing-sets, and in fact, Jarmuth applied for several improvements on his property before objecting to the Association's ability to exercise architectural review rights. (**Transcript, pp. 999-1000; Final Order, p. 9**). From 2005 to the present, Architectural Guidelines have been enforced against the homeowners. (**Respondents' Exhibits 28, 94**). Based on the ample extrinsic evidence in the record, the First Amendment was not intended to waive rights with respect to the whole Community.

Jarmuth also asserts that the Special Referee misapplied the principle that restrictive covenants must be construed in favor of free use of the property by holding that the First Amendment did not waive all architectural review rights. Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1998); Hardy, 369 S.C. at 166, 631 S.E.2d at 542. However, as noted in the Order Denying Jarmuth's Post-Trial Motions, the rule of strict construction should not be used to defeat the plain and obvious purpose of the restrictive covenants. Id. (**Order Denying Post-Trial Motions, p. 10**).

The Final Order's finding that the Association did not waive its rights with respect to the whole community is reasonably supported by the record.

B. The Association is the Governing Body for the International Club

Another ground asserted for reversing the Final Order is that, under the First Amendment, the governing body for the Community is International Club Association under the First Amendment. (**Jarmuth's Brief, pp. 24-27**). His position is that, pursuant to the First Amendment, "Murrells Inlet Golf Plantation" was deleted and "International Club" was inserted in the Declaration, making the new name "International Club Association" rather than "International Club Home Owners Association".[10] (**Jarmuth's Brief, pp. 24-27**). Therefore, the Association is not a party to the Declaration and cannot enforce any rights contained therein.

A corporation may be known by several different names in the transaction of business. Griffin v. Capital Cash, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct.App.

[10] Jarmuth testified that he incorporated "International Club Association". (**Transcript, pp. 143**-151). Part of the relief that he seeks is an order that his association is the entity entitled to enforce the Declaration. (**Transcript, pp. 143-151**). He also seeks a refund of all assessments he and his predecessor in title paid to the Association. (**Transcript, pp. 143-44**).

1992). Consequently, the misnomer of a corporation generally will not be treated by the courts as material if the identity of the corporation is reasonably clear or can be ascertained by sufficient evidence. Fletcher Cyclopedia of the Law of Corporations, 6 Fletcher Cyc. Corp. § 2444 (2013). In other words, slight departures from the name used by the corporation, such as the omission of a part of its name or the inclusion of additional words, generally will not affect the validity of contracts or other business transactions as long as the identity of the corporation can be reasonably established from the evidence. Id.; see also, Sumter Tobacco Warehouse Co. v. Phoenix Ins. Co., Ltd., Of London, 76 S.C. 76, 56 S.E. 654 (1907).

The Supreme Court of South Carolina addressed the issue of a misnomer in a deed in Sumter Tobacco Warehouse Co., 76 S.C. 76, 56 S.E. 654, 656 (1907). The issue was whether a deed conveying property to a corporation was valid, where the deed named the grantee as "Sumter Tobacco & Cotton Warehouse Co." instead of the name in the corporate charter, "Sumter Tobacco Warehouse Co." Id. Like this case, the deed conveying the property was dated before the charter for the corporation was filed with the Secretary of State. Id. In holding that the deed of conveyance was effective the Supreme Court noted the following:

> It is the duty of courts to give effect to deeds made in good faith rather than destroy them on technical grounds. A deed to a corporation made before the charter will have effect as soon as the charter is obtained, on the ground that its acceptance should be presumed as soon as the corporation is competent to accept it. The slight change in the name of the corporation can make no difference.

Id.

The record is clear that the Association is the entity entitled to enforce rights under the Declaration. It was incorporated in 2001 by the original developer, and since that time, it has continually acted as the governing organization for the International Club. **(Order Denying Post-Trial Motions, p. 7; Transcript, pp. 126-44, 234, 241; Respondents' Exhibit 105)**. Since 2001, the Association collected assessments, held meetings, and provided services to the International Club community members. **(Order Denying Post-Trial Motions, p. 7; Transcript, pp. 126-44, 234, 241)**. The evidence supports the Special Referee's finding that the Association is the proper entity to enforce the terms of the Declaration.

C. Pebble Creek is Subject to the Declaration

The Special Referee did not err by holding that Pebble Creek is subject to the Declaration. Jarmuth's argument on appeal is that no "meeting of the minds" existed that the property was subject to the Declaration. **(Jarmuth's Brief, pp. 27-30)**. He also asserts that the Declaration did not exist when the property was conveyed to Sunbelt, because it was not recorded, and as a result, the Declaration does not bind Pebble Creek. **(Jarmuth's Brief, pp. 27-30)**. The deed from Plantation A.D. to Sunbelt conveying the Pebble Creek property, is dated January 29, 1999 and recorded on February 8, 1999 at 3:27 p.m. **(Jarmuth's Exhibit 545)**. The Declaration was filed two minutes earlier at 3:25 p.m. on February 8, 1999. **(Respondents' Exhibit 3)**.

The Pebble Creek deed was recorded after the Declaration was recorded, and therefore, the Declaration is in Pebble Creek's chain of title. "It is a well established rule of law that a deed is not legally effective until it has been delivered." First Union Nat. Bank of South Carolina v. Shealy, 325 S.C. 351, 355, 479 S.E.2d 846, 847

(Ct.App.1996), citing Johnson v. Johnson, 44 S.C. 364, 22 S.E. 419 (1895); Durham v. Blackard, 313 S.C. 432, 438 S.E.2d 259 (Ct.App.1993). That is, an effective delivery of a conveyance contains two parts: (1) an intention to deliver, and (2) an act evincing a purpose to part with control of the instrument. Shealy, 325 S.C. at 355, 479 S.E.2d at 847 citing Powers v. Rawles, 119 S.C. 134, 112 S.E. 78 (1922). The recording of a deed serves as prima facie evidence of delivery. See Johnson, 44 S.C. 364, 22 S.E. 419. Because Plantation A.D. filed the Declaration at 3:25 p.m. on February 8, 1999, before it delivered the Pebble Creek deed to Sunbelt Associates at 3:27 p.m. by recording the deed, the Declaration existed at the time the Pebble Creek property was delivered to Sunbelt.

Moreover, even if the Pebble Creek deed was delivered to Sunbelt before the Declaration was recorded, Plantation A.D.'s and Sunbelt's intention that the Declaration run with the land is clear from the Pebble Creek deed that states "[t]he property is conveyed subject to the Declaration of Covenants and Restrictions for Murrells Inlet Golf Plantation." (**Jarmuth's Exhibit 545**). Jarmuth's deed also states that his property is subject to the Declaration. (**Transcript, pp. 128-30; Respondents' Exhibit 25**). The language in the Pebble Creek deed and Jarmuth's deed subjecting the property to the Declaration is controlling. Charping v. J.P. Scurry Co., Inc., 296 S.C. 312, 315, 372 S.E.2d 120, 122 (Ct.App.1988) (holding that a restrictive covenant is enforceable if there is "an indication that the parties intended for the covenant to run with the land").

The Special Referee did not err by holding that Pebble Creek is subject to the Declaration.

D. The Association's Assessments for Cable, Garbage Collection, Maintenance of the Amenity Center, and the Connector Road Association Services are Valid

The Special Referee did not err by holding that the Association has the right to assess Jarmuth for cable and garbage collection services, maintenance of the amenity center, as well as the Connector Road Association dues.

The Declaration, Section 6.1, mandates that assessments must be used for well being of the members, including the provision of services. (**Respondents' Exhibit 3, p. 14**). Section 3.1 of the Declaration further clarifies that those services include cable T.V., garbage collection, and maintenance of property in and near the International Club. (**Respondents' Exhibit 3, pp. 7-8**). The Amenity Center consists of 1.56 acres of Common Area owned by the Association. (**Respondents' Exhibit 6**). Under the Declaration, sections 5.3 and 6.2, all Common Area is to be maintained by the Association with assessments collected from owners, including "Recreational Amenities". (**Respondents' Exhibit 3, pp. 13-14**).

The Connector Road Declaration requires that the Association pay assessments to the Connector Road Association on behalf its members. (**Respondents' Exhibit 2**). The Connector Road Association assessments are used to maintain an adjacent roadway to the International Club. (**Respondents' Exhibit 2**).

Jarmuth argues that the assessments are invalid, because the provisions granting the Board with the authority to assess for these services are not covenants that runs with the land. (**Jarmuth's Brief, pp. 47-49**). "Restrictive covenants differ from contracts in that they 'run with the land' meaning that they are enforceable by and against later grantees." Queen's Grant II Horizontal Property Regime v Greenwood Development

Corp., 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct.App. 2006). Covenants that "require grantees to pay assessments for the upkeep of a particular parcel of property are held to be real covenants which 'touch and concern' land, and therefore, run with the land." Id. Assessments for maintenance, garbage collection, and cable television clearly "touch and concern" the land, and therefore, run with the land under South Carolina law.

Courts in other jurisdictions have held that covenants requiring payment of assessments for cable television are valid. See D'Elia v. Association of Apt. Owners of Fairway Manor, 2 Haw.App. 347, 349 632 P.2d 296, 297 (Haw.Ct.App. 1981) (assessment for installation and operation of cable television is common expense for maintenance, repair, rebuilding, and restoration of common elements within meaning of covenant; court has no power to amend declaration to provide fairer basis for assessing common expenses); see also, River Park House Owners Association v. Crumley, 47 A.3d 870, 874 (Pa. Commw. Ct. 2012) (holding that Pennsylvania law did not prohibit an association from entering a bulk cable contract and assessing for cable television services so long as the Board had the authority to assess for that purpose under its governing documents); Ocean Sands Property Owners Association, Inc. v. Munns, 2005 WL 589483 at, *3-4 (N.C.App. 2005) (holding that the association had the authority to assess for cable television services if properly voted upon by the members of the association). These Courts recognize the validity of restrictive covenants granting an association the authority to assess for cable television services and implicitly hold that such covenants touch and concern the land and run with the land.

Based on established jurisprudence, the Special Referee did not err in holding that the Association may assess owners for cable television, garbage collection, and maintenance of property in and near the International Club.

E. The Pebble Creek Roads are Subject to the Declaration

For the first time on appeal, Jarmuth argues that Pebble Creek is not subject to the Declaration, because Sunbelt dedicated the property to Horry County in "fee simple".[11] (**Jarmuth's Brief, pp. 36-39**). As discussed above, the Declaration was filed in 1999 before Pebble Creek was conveyed to Sunbelt. (**Respondents' Exhibit 3; Jarmuth's Exhibit 545**). Therefore, at the time Sunbelt dedicated Pebble Creek to Horry County in January 2003, the property was subject to the Declaration. (**Jarmuth's Exhibits 401, 408, 413-14**).

Although South Carolina has not specifically addressed this issue, American Jurisprudence, Second Edition, explains that "[a]n owner of land subject to a right of way may dedicate what he or she owns, at least where such dedication does not adversely affect the rights of the dominant owner." 23 Am. Jur. 2d Dedication § 14 (2013); see also, Armiger v. Lewin, 216 Md. 470, 475, 141 A.2d 151, 154 (Ct.App. 1958) (holding that there is no doubt that the owner of a fee has capacity to make a grant of his land, *subject to a dominant easement*).

Sunbelt had the capacity to make a grant of title to the roads to Horry County, *subject to the dominant covenant, the Declaration.* At the time the roads were dedicated,

[11] The record includes resolutions of Horry County accepting the Pebble Creek roads and drainage in the County System, however, the deeds conveying the roads from Sunbelt to Horry County were not admitted as evidence at trial. (**Jarmuth's Exhibits 401, 408, 413-14**). Therefore, no evidence substantiates Jarmuth's argument that the roads were conveyed "fee simple".

rights were reserved to the Association pursuant to the Declaration, and accordingly, Sunbelt was incapable of conveying those rights to Horry County. Moreover, dedications cannot "adversely affect the rights of the dominant owner", the Association in this case. See Am. Jur. 2d Dedication § 14.[12] Because Sunbelt dedicated Pebble Creek subject to the Declaration in the chain of title of the property, Jarmuth's argument that Sunbelt's dedication is not limited by the Declaration is implausible.

F. Jarmuth's Request for the Membership Information was Properly Denied by the Association

Jarmuth asserts that the lower court erred by holding that one of his three requests for the Association's membership information was properly denied, because he failed to provide a good faith basis for his request under S.C. Code Ann. § 33-31-720. (**Jarmuth's Brief, pp. 39-41**). His argument is that this code provision does not require a good faith reason for inspecting the membership list. (**Jarmuth's Brief, pp. 39-41**). He also asserts that the Final Order is in error for holding that he has access to the membership list on the Association's website. (**Jarmuth's Brief, pp. 39-41**)

The Final Order properly held that the membership list was on the Association's website. (**Transcript, pp. 680-81**). At trial, Maureen Sullivan, a former Association board member and a homeowner, and Beckie Abel, a K.A. Diehl property manager, testified that the website for the International Club includes all homeowners' names and addresses. (**Transcript, pp. 680-81, 1000-1013**). Beckie Abel also testified that Jarmuth could access members' names and addresses if he simply signed up for the Association's

[12] Horry County acknowledges that restrictive covenants may encumber dedicated road systems. (**Respondents' Exhibit 92**). The County does not interfere with the association's rights to enforce covenants. (**Respondents' Exhibit 92**).

website, however, Jarmuth refused because he did not want owners to be able to access his information. (**Transcript, pp. 1000-1003**).

The Association also properly denied Jarmuth's request for the voter's list in April 2009 for failure to state a good faith reason for his request pursuant to S.C. Code § 33-31-1602. (**Respondents' Exhibit 53**). Contrary to Jarmuth's assertions, S.C. Code Ann. § 33-31-720 is irrelevant; it is only applicable where a meeting of the Association has been noticed. S.C. Code Ann. § 33-31-720 ("The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning the day after notice is given of the meeting for which the list was prepared..."). Nothing in the record reflects that a meeting was noticed before Jarmuth made his request. On a different occasion, Jarmuth requested a voter's list before the election without providing a good faith basis for his request, and the list was provided to him. (**Transcript, pp. 1000-1003**).

Moreover, Jarmuth's request was not for a membership list as defined by the Act, but instead, sought private information, including the owners telephone numbers, account status, and email addresses. (**Respondents' Ex. 53; Transcript pp. 1000-1003, 1013**). The Association properly denied his request for private information of the members.

G. Toth is not Liable to the Association for the Refund of Assessments to Members

In his Brief, Jarmuth argues that the Association's payment of $75.00 to each member of the Association was an unlawful distribution and violated S.C. Code Ann. § 33-31-1301.[13] (**Jarmuth's Brief, pp. 41-43**). He asserts that the trial court erred in

[13] S.C. Code Ann. 33-31-1301 provides: "Except as authorized by Section 33-31-1302, a corporation may not make any distributions."

failing to hold Toth personally liable for voting in favor of the transaction,[14] and by holding that the payment was not a distribution under South Carolina law.

The record clearly reflects that the payment was not a distribution pursuant to the Non-Profit Corporation Act, S.C. Code Ann. § 33-31-140(11):

> "Distribution" means the direct or indirect transfer of assets or any part of the income or profit of a corporation to its members, directors, or officers. **The term does not include**:
> (a) the payment of compensation in a reasonable amount to its members, directors, or officers for services rendered;
> (b) **conferring benefits on its members in conformity with its purposes**; or
> (c) repayment of debt obligations in the normal and ordinary course of conducting activities.

(Emphasis added). The official comment to S.C. Code Ann. § 33-31-1302, defining distributions that are lawful, specifically states the following: "the return of an overcharge or the providing of services for which members have paid is not a distribution."

According to the testimony of Maureen Sullivan, a former Board member, the Board considered crediting the owners' accounts, but instead, decided to pay owners funds directly. (**Transcript, p. 704**). Similarly, Mr. Freiboth testified that the funds were returned to the homeowners to confer a benefit. (**Transcript, pp. 920, 932**). The Association's refund was intended to "confer[] benefits on the members in conformity with its purposes", not to distribute profits to its members.

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[14] Jarmuth did not properly plead a claim under the Non-Profit Corporation Act with respect to the $75.00 payment. He also failed to establish at trial that Ms. Toth voted in favor of the disputed transaction, but instead, referred to the minutes of the 2010 special meeting.(**Transcript, pp. 273-75**). According to the minutes, the Association members voted to grant an easement to Central Electric, but no specific motion was made to refund money to the homeowners. (**Respondents' Exhibit 72**).

As additional sustaining grounds, Toth is not liable to the Association pursuant to S.C. Code Ann. § 33-31-833:

> a) **Unless a director complies with the applicable standards for conduct described in Section 33-31-830**, a director who votes for or assents to a distribution made in violation of this chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

(Emphasis added). Toth complied with S.C. Code Ann. § 33-31-830, and accordingly, is not liable under § 33-31-833. Under S.C. Code § 33-31-830(a), a director "shall discharge his duties as director...1) in good faith; 2) with the care of an ordinarily prudent person in a like position would exercise under similar circumstances; and 3) in a manner the director reasonably believes to be in the best interests of the corporation." The board member is "entitled to rely" on "legal counsel" "in discharging his duties." Id.

Another Board member and the current Association president, William Freiboth, testified that the Board believed the agreement with Central Electric was in the best interests of the Association, because it conferred benefits on the homeowners. (**Transcript, p. 888, 918**). In refunding the money, the Board relied on the advice of counsel. (**Deposition of William Freiboth, pp. 1, 92-93**). Because the evidence establishes that Toth acted in good faith, in the best interests of the Association, and relied on the advice of professionals, no error occurred by holding that Toth is not liable.[15]

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[15] S.C. Code Ann. § 33-31-833 states that "[a] director held liable for an unlawful distribution...is entitled to contribution...from each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter." If you accept Jarmuth's argument, he is also liable for the refund he received.

H. The Evidence Reasonably Supports the Finding that the Association did not Defame Jarmuth

Next, Jarmuth asserts that the Special Referee erred by holding the Association is not liable for defamation due to alleged statements made by William Fletcher and Mike Templeton. (**Jarmuth's Brief, pp. 32-35**). According to Jarmuth, the record reflects that Fletcher called Jarmuth a child molester, and Templeton told homeowners to stay away from Jarmuth. (**Jarmuth's Brief, pp. 32-35**).

However, nothing contained in the record evidences that Fletcher or Templeton were agents of the Association at the time the alleged statements were made. Furthermore, as the trier of fact, the Special Referee was in a better position to weigh the evidence, and accordingly, deference should be granted to his weighing of the evidence in favor of the Association.

I. K.A. Diehl is Protected by a Qualified Privilege

Jarmuth contends that the Final Order errs by holding that K.A. Diehl's communications to the Association's members on behalf of the Board are protected by a qualified privilege. (**Jarmuth's Brief, pp. 32-35**). To the extent that this issue is preserved, Jarmuth's argument is without merit.

"Under South Carolina law, communications between servants, business associates, officers, or **agents** of the same corporation enjoy a qualified privilege." Bell v. Evening Post Publishing Company, 318 S.C. 558, 560, 459 S.E.2d 315, 317 (Ct.App. 1995). (Emphasis added). The elements of this qualified privilege are as follows:

> Good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only. **The privilege** arises from the necessity of full and unrestricted communication concerning a matter in which the parties

> have an interest or duty, and **is not restricted within any narrow limits.**

Prentiss v. Nationwide Insurance Company, 256 S.C. 141, 147, 181 S.E.2d 325, 327 (1971). (Emphasis added).

The qualified privilege applies to K.A. Diehl's communications to members about this lawsuit, including Jarmuth's past legal disputes. The representations were made as an agent of the Board at its direction in good faith to the members of the Association by mail to their home addresses. (**Transcript, pp. 685-690**). Because the Board had a duty to inform Association members about the lawsuit, and the members had an interest the substance of the dispute, as it involved the Community and the Declaration as well as the assessments paid to fund the lawsuit, the communications are protected by a privilege. (**Final Order, p. 42; Order Denying Post-Trial Motions, p. 13**).

J. K.A. Diehl is not Liable for Mishandling Association Funds

Another theory for holding K.A. Diehl liable is that the property manager misappropriated or otherwise failed to account for the Association's funds properly. Jarmuth's brief generally asserts that K.A. Diehl is liable without providing any evidentiary or legal basis. (**Jarmuth's Brief, p. 49**). Contrary to Jarmuth's unsubstantiated generalizations, Beckie Abel, the property manager, testified that independent audits are conducted of the Association's financial records on an annual basis, and the C.P.A. who conducts these audits never found that K.A. Diehl misappropriated, embezzled, or stole funds from the Association. (**Transcript, p. 1004**). Mr. Freiboth, the Association's president, also testified that he reviewed the capital contributions collected by D.R. Horton on behalf of the Association and determined that K.A. Diehl did not steal any funds. (**Transcript, pp. 913-14**). The Special Referee did

not err by rejecting Jarmuth's argument that K.A. Diehl stole funds. **(Order Denying Post-Trial Motions, p. 13)**.

K. The Association Properly Reviewed Jarmuth's Applications for Improvements

Jarmuth contends that the Association denied his applications for a fence and swing set and deferred his application for an extension of his palm bed arbitrarily and capriciously. Therefore, the Special Referee erred by finding that the Association's denial of the applications was proper.

"When a covenant provides an architectural review board with broad authority for approval of improvements, the architectural review board's discretion is constrained only by reasonableness and good faith." River Hills Prop. Owners Ass'n, Inc. v. Amato, 326 S.C. 255, 259, 487 S.E.2d 179, 181 (1997)(holding that an association board acted reasonably and in good faith in denying approval of a landowner's plan to build a fence and pool based upon aesthetic reasons). The courts will uphold an architectural review board's rejection of a homeowner's improvements based on aesthetic considerations when the board's decision is not arbitrary but bears a sufficient relation to the subdivision's general plan of development. Sea Pines Plantation Company v. Wells, 294 S.C. 266, 271, 363 S.E.2d 891, 894 (1987).

First, the ARB has broad approval rights for all improvements in the International Club under Section 7.2 of the Declaration:

> No...structure, fence, sidewalk...shall be commenced...nor shall any exterior addition or change be made until the plans and specifications...shall have been submitted to and approved in writing as to the harmony of the external design and location in relation to the surrounding structures and topography by the Developer..this right of approval shall be transferred to an Architectural Review Board for

> the Association....Refusal or approval of plans, specifications, and plot plans or any of them may be based on any grounds, including purely aesthetic grounds, which in their sole and uncontrolled discretion the Developer or the Architectural Review Board deem sufficient....

Also, Section 7.4 of the Declaration specifically prohibits Jarmuth's proposed fence:

> No fences whatsoever shall be erected or allowed to remain in the Subdivision except privacy patio fences or walls approved by the Developer and the Architectural Review Board...

(**Respondents' Exhibit 3**). Clearly, under Sections 7.2, the ARB has the authority to prohibit certain structures within the Community based on purely aesthetic grounds. The Declaration also prohibits the erection of fences, like Jarmuth's, pursuant to Section 7.4.

Secondly, Jarmuth's fence and swing set were denied based on aesthetic considerations. (**Respondents' Exhibits 59, 60, 63; Transcript, pp. 895-96, 900-01**). The evidence is that the fence was denied because the proposed location was in the front yard and close to his property line. (**Transcript, pp. 900-01; Jarmuth's Post-Trial Motions, p. 40; Respondents' Exhibit 83**). The swing set was denied because its proposed location was the side yard. (**Respondents' Exhibits 59, 60, 63; Transcript, pp. 895-96**). Although Jarmuth argues that the record is replete with evidence that the ARB acted arbitrarily and capriciously, he fails to identify any credible evidence in support. Under South Carolina law, absent bad faith, reasonable ARB decisions based on aesthetic considerations must be upheld. Sea Pines Plantation Company, 294 S.C. at 271, 363 S.E.2d at 894.

Next, Jarmuth asserts that the ARB's deferral of his application for a palm bed extension was improper, because the deferral constitutes a denial of his application.

(**Jarmuth's Brief, pp. 45-47**). The record reflects that a quorum of the ARB did not exist to vote on the transaction. (**Transcript, pp. 795-96**). As a result, the ARB had no choice but to defer Jarmuth's application. (**Order Denying Post-Trial Motions, p. 11**). No evidence exists to support Jarmuth's contention that the deferral was effectively a denial. Because the deferral was reasonable, the Final Order should not be set aside.

L. The Association's Fines Comply with § 13.3 of the Bylaws

Jarmuth's Brief asserts that the Special Referee erred by holding that the Association properly fined Jarmuth for unapproved improvements under § 13.3 of the Bylaws.

Jarmuth argues that the fines levied against him for his modifications without ARB approval are invalid under § 13.3, because he was not afforded a hearing. The provision provides:

> "Except with respect to failure to pay Assessments, the Board shall not impose a fine, suspending voting rights, or infringe upon or suspend any other rights of an Owner or other occupant of the Subdivision for violations of the Declaration, By-Laws, or any rules and regulations for the Association, unless and until the following procedure is followed:
> 1)written demand to cease and desist from an alleged violation...
> 2)**the Board may serve such Owner with written notice of a hearing to be held by the Board in executive session**..."

(**Respondents' Exhibit 3, Ex. C**). (Emphasis added). Jarmuth is incorrect, because Section 13.3 states that the Board **may**, but is not required, to hold a hearing before imposing fines. (**Order Denying Post-Trial Motions**).

As an additional sustaining ground, the ARB imposed the fine, and § 13.3 of the Bylaws does not require the ARB to hold a hearing before imposing fines. (**Transcript,**

p. 892). Under sections 7.2 and 8.1 of the Declaration, the Declarant and the ARB have the authority to adopt architectural guidelines and impose fines for infractions without a hearing.[16] (**Respondents' Exhibit 3, pp. 16-17**). Jarmuth was fined pursuant to the fine policy adopted by the Declarant, and accordingly, a hearing is unnecessary. (**Respondents' Exhibit 18, Ex. "B", p. 9; Transcript, p. 892**).

A second additional sustaining ground is that Jarmuth waived any right that he had to a hearing. (**Respondents' Exhibit 87; Transcript, pp. 902-903; Order Denying Post-Trial Motions, p. 12**). He refused to acknowledge the Association's authority to exercise architectural review rights and disputed the necessity of an appeal in his correspondence to the Association.[17] (**Respondents' Exhibit 87**). Then he filed his lawsuit challenging the ARB's authority to act under the Declaration. (**2010 Complaint**). Such actions constitute a waiver. (**Order Denying Post-Trial Motions, p. 12**).[18]

Accordingly, Jarmuth's argument that § 13.3 of the Bylaws bars the fines levied against him is without merit.

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[16] Section 7.2 states "[t]he Architectural Review Board shall have the right and authority to establish, amend and enforce architectural guidelines, rules and regulations, to aid the Architectural Review Board and Owners in establishing an orderly and efficient procedure for accomplishing its duties and powers hereunder." (**Respondents' Exhibit 3, pp. 16-17**). Under Section 8.1, "[t]he Developer and the Association as the case may be, shall have the right to establish, assess, and collect reasonable fines and penalties for violations of this Declaration, which shall be liens against Units and improvements thereon in the same manner as Assessments as provided herein. Such fines shall not exceed $50.00 per violation per day." (**Respondents' Exhibit 3, p. 25**).

[17] Jarmuth's letter to the Association, Respondents' Exhibit 87, states: "I reserve my right to take parallel recourse at law or in equity, since by disputing the authority of the Association in this matter I am disputing the necessity of an appeal." This language constitutes a waiver of any right he had to a hearing under § 13.3 of the Bylaws.

[18] Jarmuth's waiver of any right to a hearing is the law of the case, and therefore, this issue is barred by the two issue rule. (**Order Denying Post-Trial Motions, p. 12**).

M. The Award of Attorneys' Fees to the Association is Proper

The Special Referee did not abuse his discretion by awarding the Association $5,000 in attorneys' fees pursuant to the Declaration. Jarmuth contends that defending his claims does not constitute "enforcement of the Declaration" under §§ 8.1 and 8.9 of the Declaration. (**Jarmuth's Brief, pp. 43-44**).

The Declaration and Bylaws contain provisions that clearly provide the Association is entitled to attorneys' fees when it employs legal counsel to enforce any of the rules of the Association, including the Declaration, Bylaws, and Rules and Regulations.[19] In Seabrook Island Property Owners Association, this Court acknowledged that the term "enforcement" in an attorneys' fees covenant has broader implications than filing suit. 365 S.C. at 237, 616 S.E.2d at 433. "Enforcement" includes any attempts by an attorney to seek the removal of unapproved improvements, including correspondence sent before a case commences. Id.

Under Seabrook Island Property Owners Association, the term "enforcement" encompasses defending lawsuits initiated by Jarmuth challenging the Association's authority to enforce the Declaration architectural review rights. (**2009 Complaint; 2010 Complaint; Respondents' Exhibit 63**). It certainly includes filing a counterclaim. (**2009 Amended Answer and Counterclaims; 2010 Amended Answer and**

[19] Under the Declaration, Section 8.9, "[s]hould any person employ counsel to enforce any of the foregoing covenants, conditions, reservations, or restrictions, because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee of counsel shall be paid by the Owner of such Unit or Units in breach thereof." (**Respondents' Exhibit 3, p. 27**). Section 8.1 similarly grants the Association enforcement rights. (**Respondents' Exhibit 3, p. 24**). Likewise, the Bylaws Section 13.4, provides that "[s]hould the Developer or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner." (**Respondents' Exhibit 3, Ex. "C"**).

Counterclaims). Jarmuth's initiation of the lawsuit before the Association asserted its claim should not preclude the Association from recovering its fees. (**Order Denying Post-Trial Motions, p. 6**).

IV. The Final Order Should Not Be Disturbed to Address Meritless Claims

Jarmuth asks that the Final Order be reversed to address unsubstantiated claims. (**Jarmuth's Brief, pp. 30-32, 44-46**). Pursuant to South Carolina Appellate Court Rule 220(c), the Court of Appeals "may affirm any ruling, order, decision, or judgment upon any ground(s) appearing on the Record on Appeal." Jarmuth's meritless grounds do not provide a basis for reversing the Final Order.

A. Declaration is Consistent with the Non-Profit Corporation Act

Jarmuth's Brief asserts that the Final Order is in error, because it does not contain a legal conclusion that the Declaration is inconsistent with the Non-Profit Corporation Act. (**Jarmuth's Brief, pp. 30-32**). In his Post-Trial Motions, Jarmuth made this argument, and it was rejected by the circuit court. (**Order Denying Jarmuth's Post-Trial Motions, p. 7-8**).

Under S.C. Code Ann. § 33-31-620, members of a non-profit corporation may resign at any time. At trial, Jarmuth argued that the Declaration is invalid under the Non-Profit Corporation Act, because it requires owners of International Club property to be members of the Association. (**Jarmuth's Brief, pp. 30-32**). The Declaration does not prohibit Jarmuth from resigning from the Association; he has the ability to resign from the Association at any time by selling his International Club property. (**Respondents' Exhibit 3; Order Denying Post-Trial Motions, p. 8**). Because there is no merit to this

contention, the Final Order should not be disturbed to address it. S.C.A.C.R. Rule 220(c).

B. K.A. Diehl did not Violate Jarmuth's Privacy Rights

Jarmuth contends that the Final Order should be reversed, because it failed to hold that K.A. Diehl violated his invasion of privacy rights by disclosing his account information and past violations to the ARB. (**Jarmuth's Brief, pp. 44-46**). Invasion of privacy is the unwarranted appropriation or exploitation of one's personality, the publicizing of one's private affairs with which the public has no legitimate concern, or the wrongful intrusion into one's private activities, in such a manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities. Meetze v. The Associated Press, 230 S.C. 330, 335, 95 S.E.2d 606, 608 (1956). As an arm of the Association, the ARB is entitled to information related to Jarmuth's violations and fines. (**Respondents' Exhibit 3; Order Denying Post-Trial Motions, pp. 6, 11).** Accordingly, K.A. Diehl did not "publicize Jarmuth's private affairs" justifying a reversal of the Final Order.

CONCLUSION

For the foregoing reasons, this Court should affirm the Final Order dismissing Jarmuth's claims against the Respondents and awarding judgment against Jarmuth in the amount of $7,326.00 and granting injunctive relief.

SIGNATURE BLOCK – NEXT PAGE

Respectfully submitted,

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Myrtle Beach, South Carolina
Date: June 3, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph P. Stroman, Special Referee

Case No.: 2009-CP-26-3596
Consolidated With
Case No.: 2010-CP-26-11320
Appellate No.: 2013000714

Ronald Jarmuth, ... *Pro Se* Appellant,

v.

The International Club Homeowners
Association, Inc., Rosemary Toth, and
K.A. Diehl & Associates, Inc.,..... Respondents.

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD OF RESPONDENTS THE INTERNATIONAL CLUB HOMEOWNERS ASSOCIATION, INC., ROSEMARY TOTH, AND K.A. DIEHL & ASSOCIATES, INC.

The Respondents, The International Club Homeowners Association, Inc., Rosemary Toth, and K.A. Diehl & Associates, Inc. ("Respondents"), designate the following materials to be included in the record on appeal pursuant to Rule 209 of the South Carolina Appellate Court Rules:

ORDERS

a. Removal Order for C.A. No. 2010 filed December 1, 2010
b. Order Consolidating Civil Action No. 2009-CP-26-3596 ("C.A. No. 2009") & Civil Action No. 2010-CP-26-11320 ("C.A. No. 2010") filed August 22, 2011
c. Order Denying Respondents' Motion to Dismiss filed May 16, 2012

d. Consent Order of Reference filed June 15, 2012
e. Final Order Dismissing Jarmuth's Claims and Awarding Judgment Against Jarmuth in the Amount of $7,326.00 and Granting Injunctive Relief
f. Order Referring C.A No. 2009 and C.A. No. 2010 to Judge John filed October 17, 2012
g. Order Denying Plaintiff's Post-Trial Motions filed on March 11, 2013

PLEADINGS

a. C.A. No. 2009 Complaint
b. C.A. No. 2010 Amended Complaint
c. C.A. No. 2010 Complaint
d. C.A. No. 2009 Amended Answer & Counterclaim
e. C.A. No. 2010 Amended Answer & Counterclaim
f. C.A. No. 2009 Reply & Counterclaim to Counterclaim
g. C.A. No. 2010 Reply & Counterclaim to Counterclaim

TRANSCRIPTS

a. Trial Transcript

EXHIBITS

a. Respondents' Exhibits 2-8
b. Respondents' Exhibits 11-13
c. Respondents' Exhibits 16-20
d. Respondents' Exhibit 25
e. Respondents' Exhibits 28-54
f. Respondents' Exhibits 58-63
g. Respondents' Exhibits 72
h. Respondents' Exhibits 75-77
i. Respondents' Exhibits 79-80
j. Respondents' Exhibits 82-87
k. Respondents' Exhibit 92
l. Respondents' Exhibits 94-97
m. Respondents' Exhibits 99-101
n. Respondents' Exhibits 105-109
o. Respondents' Exhibits A-J
p. Jarmuth's Exhibit 316
q. Jarmuth's Exhibit 318
r. Jarmuth's Exhibit 320
s. Jarmuth's Exhibit 334
t. Jarmuth's Exhibit 355
u. Jarmuth's Exhibit 401
v. Jarmuth's Exhibit 408
w. Jarmuth's Exhibits 413-414

x. Jarmuth's Exhibts 449-466
y. Jarmuth's Exhibit 458
z. Jarmuth's Exhibit 545
aa. Jarmuth's Exhibit 552
bb. Jarmuth's Exhibit 556

MEMORANDA AND OTHER MATERIALS

a. Respondents' Pre-Trial Brief & Witness & Exhibit Lists dated January 11, 2012
b. Jarmuth's Pre-Trial Brief dated July 16, 2012
c. Jarmuth's Exhibit List dated July 31, 2012
d. Respondents' Pre-Trial Brief & Witness & Exhibit List dated August 6, 2012
e. Jarmuth's Proposed Order
f. Jarmuth's Brief in Support of Proposed Order
g. Respondents' Proposed Order
h. Respondents' Brief in Opposition to Jarmuth's Post-Trial Motions and Exhibits "A" through "I" dated January 23, 2013
i. Deposition of R. Scott Pyle (Exhibit 109), pp. 1,46-47
j. Deposition of William Freiboth, pp. 1, 92-93, 109
k. Deposition of Rosemary Toth, pp. 1, 27-28, 40, 46, 80, 101-02
l. Deposition of Peter Pizzi, p. 1

CERTIFICATION

We certify that this Designation contains no matter which is irrelevant to this Appeal.

Respectfully submitted,

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PROOF OF SERVICE

I, Donna M. Brady, an employee of McNair Law Firm, P.A., *Pro Se* Appellant Ronald Jarmuth in the above-entitled action, certify that I have served the Initial Brief of Respondents The International Club Homeowners Association, Inc., Rosemary Toth, and K.A. Diehl & Associates, Inc., Designation of Matters, and Proof of Service on all parties to this matter by depositing a copy in the United States Mail, first class postage prepaid on the 3rd day of June, 2013.

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