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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Steven H. John, Presiding Judge

Case No. 2009-CP-26-10523

Appellate Case No. 2012-213287

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AUG 05 2013

SC Court of Appeals

Elizabeth A. Crotty and James K. Orzech..... Appellants,

v.

Windjammer Village of Little River,
Property Owners' Association, a South Carolina
Eleemosynary Corporation..... Respondent.

RETURN TO RESPONDENT'S MOTION TO STRIKE MATTER

INCLUDED IN APPELLANTS' AMENDED DESIGNATION OF MATTER

Appellants Elizabeth A. Crotty and James K. Orzech, hereby, submit our RETURN TO RESPONDENT'S MOTION TO STRIKE MATTER INCLUDED IN APPELLANTS' AMENDED DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL, asking that Respondent's MOTION be denied.

Background

On October 18, 2012, we, as *Pro Se* Appellants, served a NOTICE OF INTENT TO APPEAL the Trial Court's ORDER UPON PLAINTIFFS' MEMORANDUM REQUESTING

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THAT THE COURT RE-VISIT THE 'FINAL ORDER' IN THE NAME OF JUSTICE (*Court accepted as a Rule 60(b), SCRCP Motion*), and by direct inference, the underlying 'FINAL ORDER,' emanating from the TRIAL of June 22-23, 2011.

We filed our original INITIAL BRIEF and DESIGNATION OF MATTER on March 13, 2013. Then two days later, Respondent's attorney filed a PETITION FOR AN EXTENSION OF TIME TO FILE ITS INITIAL BRIEF AND DESIGNATION OF MATTER. On March 29th, the South Carolina Court of Appeals sent an ORDER signed by Chief Judge John Cannon Few, extending Respondent's time to May 13, 2013.

Rather than producing Respondent's INITIAL BRIEF by the due date, attorney Moss filed Respondent's MOTION TO DISMISS, OR IN THE ALTERNATIVE, TO STRIKE MATTER FROM APPELLANTS' INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL on April 29, 2013. In that MOTION, just like in Respondent's prior MOTION TO STRIKE, dated December 19, 2012, which the Court of Appeals already denied, attorney Moss attempted to confound the Honorable Court with heaps of documents, involving the awarding of Costs, which are not part of this Appeal, trying to interject a **decoy** issue into the equation, so as to misdirect the Court away from the true matters actually on Appeal.

In our RETURN of May 9, 2013, we, as Appellants, agreed that our DESIGNATION OF MATTER could be shortened for the sake of simplicity, noting our intention to review the DESIGNATION that we sent to the Court of Appeals along with our INITIAL BRIEF on March 13, 2013, and then, if necessary, to submit a MOTION to amend it. To that end, we submitted our MOTION TO AMEND AND REPLACE

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APPELLANTS' DESIGNATION OF MATTER with its accompanying (Amended) DESIGNATION OF MATTER TO BE INCLUDED on May 24, 2013, stating,

“In order to eliminate any confusion over which Documents rightfully belong in this DESIGNATION OF MATTER, as well as to thin out and to better arrange this material in a more logical way, in anticipation of the RECORD ON APPEAL, Appellants submit this revision. Defendant’s (now Respondent’s) MOTION and the lower Court’s ORDER involving Costs are not included, except that **(a)** The narrative of the oral argument on that issue is preserved in the TRANSCRIPT of the August 30, 2012 HEARING (our Document #15) and **(b)** Attorney Moss’ AFFIDAVIT OF PLAINTIFFS’ COMPLIANCE WITH THE COURT’S FEBRUARY 22, 2012 ORDER (*e.g.* Costs paid in full) has been added as our Document #16.”

On July 2, 2013, the South Carolina Court of Appeals issued an ORDER signed by Associate Judge Jasper M. Curitan, stating,

“Respondent has filed a Motion to Dismiss, or in the Alternative, to Strike Matter from Appellants’ Initial Brief and Designation of Matter. After careful consideration, we find Appellants’ Initial Brief contains material that does not comply with the requirement of Rule 208(b)(1)(b), SCAR, that the Statements of Issue on Appeal ‘be concise and direct to each issue.’ Accordingly, we grant Respondent’s motion and strike pages 1 and 2, as well

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as the non-enumerated paragraphs on page 3, from Appellants' Initial Brief.

Appellant shall file an Amended Initial Brief within ten days."

Then Judge Curitan then went on to say,

"Appellants have filed a Motion to amend their Designation of Matter, which Respondent does **not** oppose. Appellants' Motion is hereby **granted**."

We, as Appellants, then submitted our Amended INITIAL BRIEF within the allotted time, together with our Amended DESIGNATION OF MATTER, which Judge Curitan already had approved for inclusion, to the Court of Appeals, on July 12, 2013.

Meanwhile, after missing the deadline to file a RETURN opposing Appellants' MOTION TO AMEND AND REPLACE APPELLANTS' DESIGNATION OF MATTER, attorney Moss belatedly filed Respondent's MOTION TO STRIKE MATTER INCLUDED IN APPELLANTS' AMENDED DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL -- on July 8, 2013 -- six days after the Honorable Court had granted Appellants' MOTION to amend our DESIGNATION OF MATTER.

Arguments against Respondent's Motion

For much of the first three pages of Respondent's MOTION TO STRIKE MATTER INCLUDED IN APPELLANTS' AMENDED DESIGNATION OF MATTER, attorney Moss recites the same old arguments, while yet again challenging the prior decisions of the Honorable Court, that were made in response to his previous two MOTIONS TO DISMISS

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and three MOTIONS TO STRIKE, all of which were **denied**, except for the removal of two pages from Appellants' INITIAL BRIEF. In addition, Respondent's attorney asserted,

“The Appellants' Amended Designation of Matter fails to comply with **Rules 209 and 210(c)**, SCACR, in that it refers to matters that were not raised properly before the trial court when the **Rule 60(b)** Order was heard and issued and thus may not be properly raised before the Honorable Court.”

However, those Rules do not agree with what attorney Moss is claiming. For example, **Rule 209** DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL states,

“**(b) Content.** The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]. A party shall not include any matter in his Designation, which is not relevant to the appeal.”

Rule 210 RECORD ON APPEAL goes on to say,

“**(c) Content.** The Record on Appeal shall include all matter designated to be included by any party under **Rule 209** and shall comply with the requirements of **Rule 267**. The Record shall not, however, include matter, which was not presented to the lower court or tribunal.”

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In other words, **per Rules 209 and 210**, the designated MATTER: **(a)** Must be what the Party wants in the RECORD ON APPEAL, **(b)** May include portions of the transcript, pleadings, orders, exhibits, or other materials, **(c)** Must be relevant to the APPEAL, **(d)** Must be in compliance with **Rule 267** FORM OF PAPERS, and **(e)** Must have been presented to the lower court or tribunal.

Significantly, these Rules do not specify when, in what manner, at what time, or during which of many related PROCEEDINGS the designated MATTER should have been presented to the lower Court, such as just at a Rule 60(b) HEARING, as Respondent's attorney Moss contends. **Rule 60** RELIEF FROM JUDGMENT OR ORDER paragraph **(b)** MISTAKES; INADVERTENCE; EXCUSABLE NEGLIGENCE; NEWLY DISCOVERED EVIDENCE; FRAUD, ETC. specifies,

“On motion and upon such terms as are just, the court may **relieve** a party or his legal representative from a final judgment, order, or proceeding ...”

Therefore, the Rule 60(b) HEARING was about **relief** from the FINAL ORDER, as well as from other related JUDGMENTS, ORDERS and PROCEEDINGS, and not an end in itself, as attorney Moss contends. Consequently, it follows that the MATTER designated by Appellants may have been presented to the lower Court at the Rule 60(b) HEARING of August 2012, the TRIAL in June 2011, **or** at any of the other PROCEEDINGS, involving Circuit Court Case No. 2009-CP-26-10523, from its inception with a VERIFIED COMPLAINT in October 2009, to include the TEMPORARY-INJUNCTION HEARINGS of October and November 2009, and the CONTEMPT-OF-COURT HEARING of March 2010.

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Rule 208 INITIAL BRIEFS paragraph (C) STATEMENT OF THE CASE specifies,

“The statement shall contain a concise history of the proceedings, **insofar as necessary to an understanding of the appeal.** The statement shall not contain contested matters and shall contain, as a minimum, the following information: the date of the commencement of the action or matter; the nature of the action or matter; the nature of the defense or of the response; the action of the court, jury, master, or administrative tribunal; the date(s) of trial or hearing; the mode of trial; the amount involved on appeal; the date and nature of the order, judgment or decision appealed from; the date of the service of the notice of appeal; the date of and description of such orders, judgments, decisions and proceedings of the lower court or administrative tribunal that may have affected the appeal, or may throw light upon the questions involved in the appeal; ...” [Emphasis added.]

In other words, per **Rule 208**, the Appeals process encourages Appellants to cite ORDERS and DECISIONS generated by lower-Court PROCEEDINGS, impacting on the APPEAL in the INITIAL BRIEF. By direct inference, associated lower-Court Documents then may be included in Appellants’ DESIGNATION OF MATTER, as well as in the RECORD ON APPEAL, “insofar as necessary to an understanding of the appeal.” This interpretation is strongly contrary to Respondent attorney’s narrowly focused assertions.

All of the Documents associated with, or generated by, the above Court PROCEEDINGS should be on the Judge’s desk (or on his computer screen) for consideration in preparation for and at every subsequent event on the Court’s docket, by

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way of the Clerk of Court, since each Document constitutes an integral part of the history of the Case. Consequently, Appellants cited these Documents in the 'Statement of the Case' in our (Amended) INITIAL BRIEF, and listed them in our (Amended) DESIGNATION OF MATTER, so that they could be known by and available to the Judges on the Court of Appeals, too, when they rule on Appellate Case No. 2012-213287.

The Seventeen Documents in Question

The above class of Documents includes Appellants' #4 VERIFIED COMPLAINT, along with Exhibits A through C; #5 ORDER FOR TEMPORARY INJUNCTION; #6 ORDER (extending Temporary Injunction); #7 PETITION FOR ORDER AND RULE TO SHOW CAUSE (Contempt of Court); #8 ORDER (Contempt of Court); #10 FINAL ORDER; #11 PLAINTIFFS' MOTION FOR RECONSIDERATION; #12 ORDER UPON PLAINTIFFS' MOTION FOR RECONSIDERATION; #13 RECORDING MEMORANDUM; #14 PLAINTIFFS' MEMORANDUM REQUESTING THAT THE COURT RE-VISIT THE FINAL ORDER IN THE NAME OF JUSTICE (Court accepted as a RULE 60(b) MOTION), along with attachment A through F; #15 TRANSCRIPT OF RECORD; #16: Respondent's AFFIDAVIT OF PLAINTIFFS' COMPLIANCE (Costs paid in full) and #17: ORDER UPON PLAINTIFFS' MEMORANDUM REQUESTING THAT THE COURT RE-VISIT THE FINAL ORDER IN THE NAME OF JUSTICE (Court accepted as a Rule 60(b), SCRCF Motion).

Of the seventeen (17) numbered Documents listed in Appellants' (Amended) DESIGNATION OF MATTER dated May 24, 2013, Respondent's attorney Moss only approved five (5). These include: #10, #12, #13, #15 and #17, all of which are part of the

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above class of Documents that were associated with, or generated by, Court PROCEEDINGS. However, attorney Moss left out the other seven (7) similar Documents, specifically #4, #5, #6, #7, #8, #14 and #16, which Appellants contend rightfully should be included, “insofar as necessary to an understanding of the appeal” per **Rule 208**.

For example, Document #16 (above) is necessary for inclusion because attorney Moss repeatedly inserted the lower Court’s ORDERS on Costs that were in his favor in Respondent’s various prior MOTIONS, but he never acknowledged that Appellants did in fact pay those Costs (\$1,933.24). Further, Appellants now are asking that these Costs be returned to us as part of the Remedy in the Conclusions Section of our INITIAL BRIEF.

Document #14, which the Court accepted as a Rule 60(b) MOTION, along with Attachments A through F, *somehow* was not on Respondent’s ‘approved list,’ despite the fact that it was *the* primary Document actually in Judge John’s hands during the Rule 60(b) HEARING in August 2012. As such, it served as the very basis for his Rule 60(b) ORDER (Doc. #17), now on Appeal, making it the central Documents in Appellants’ DESIGNATION OF MATTER. Further, its six Attachments include Documents that are key to Appellants’ arguments, frequently being cited in our (Amended) INITIAL BRIEF.

Of special note are Documents #7 PETITION FOR ORDER AND RULE TO SHOW CAUSE (Contempt of Court) with Exhibits A through D, and #8 ORDER (Contempt of Court). They highlight Respondent Windjammer Village POA’s endemic corporate arrogance, as exposed in Doc. #7 Exhibit C and D, providing the Court with situational awareness “insofar as necessary to an understanding of the appeal” per **Rule 208**.

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Also of special note are **#4** VERIFIED COMPLAINT with Exhibits A through C, **#5** ORDER FOR TEMPORARY INJUNCTION with its companion **#6** ORDER (extending Temporary Injunction). These Documents involve the inception on this Case with Appellants seeking an INJUNCTION to prevent Respondent Windjammer Village POA from illegally ripping out the access road to our home, *The B00 House*, intending to stop us from parking in the convenient spots near our front door, while at the same time preventing Emergency Vehicles from reaching our home. The Doc. **#4** Exhibits include the core references in this dispute, including the Title to Real Estate, the Warranty Deed and the Plat, along with papers that expose the tyrannical way in which the Windjammer Village POA Board went about its business. Appellants cite Doc. **#5** ORDER FOR TEMPORARY INJUNCTION repeatedly throughout our INITIAL BRIEF, even suggesting in the Conclusions Section that it be made permanent, becoming the very model for the 'Remedy' for which we are asking the Court of Appeals to provide for us.

Other Documents that Respondent's attorney claimed were either (A) "Not admitted into the evidence of the underlying trial, or at the Aug. 30, 2012 hearing;" or (B) "Even if presented to the trial court in the underlying action, ... are not relevant to Appellants' appeal to the trial court's Rule 60(b) Order, and should be stricken," include: **#1**: The POA's Restrictions-Rules-Regulations (rev. 2009), including, as Attachment 1, Declaration of Restrictions & Easements (rev. 1997); **#2**: The POA's By-Laws (rev. 2009); and **#3**: Photo Album of Windjammer Village Parking Patterns. Contrary to attorney Moss' assertions, these governing Documents and clarifying Photographs often were cited by both Parties at the TRIAL and at the MOTIONS-FOR-RECONSIDERATION HEARING, "insofar as necessary to an understanding of the appeal" per **Rule 208**.

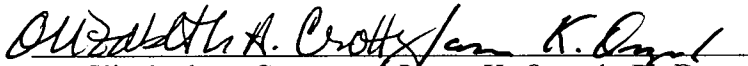
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Conclusions

Attorney Moss already has filed two MOTIONS TO DISMISS and three MOTIONS TO STRIKE without much success, but he continues to do so, brazenly and redundantly challenging prior decisions of The Honorable Court. To date Respondent's attorney has never addressed *Pro Se* Appellants' logical arguments, as we defined them in the four PROPOSITIONS presented in our INITIAL BRIEF. The time has come for Respondent's attorney to make his case in opposition to issues that Appellants have actually put on Appeal, and to cease fretting over matters of procedure and style, most of which already have been corrected and/or decided against him.

For all of the above reasons, Appellants Elizabeth A. Crotty and James K. Orzech pray that the Court will not strike any of the seventeen carefully selected Documents included in our DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL (Revised May 24, 2013), and that Respondent's MOTION be denied.

Respectfully submitted,


Elizabeth A. Crotty and James K. Orzech, Ph.D.
Pro Se Appellants

The B00 House
2148 Gamecock Circle
Little River, SC 29566
Tel: (843) 281-2299

Little River, South Carolina
August 2, 2013

Attorney for Respondent
Kenneth R. Moss, Esq.
628A Sea Mountain Highway
North Myrtle Beach, SC 29582
Tel: (843) 281-9901

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas of the Fifteenth Judicial Circuit

Steven H. John, Presiding Judge

Case No. 2009-CP-26-10523

Appellate Case No. 2012-213287

Elizabeth A. Crotty and James K. Orzech, Appellants,

v.

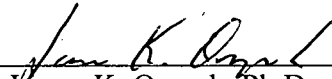
Windjammer Village of Little River, Property Owners' Association, a South Carolina
Eleemosynary Corporation, Respondent.

PROOF OF SERVICE

I certify that I have served a copy of Appellant's RETURN TO RESPONDENT'S MOTION TO STRIKE MATTER INCLUDED IN APPELLANTS' AMENDED DESIGNATION OF MATTER and Proof of Service of same in the above-captioned Appeal to Respondent's Counsel of Record by United States Mail, with sufficient first-class postage affixed, addressed as follows:

Kenneth R. Moss, Esq.
Wright, Worley, Pope, Ekster & Moss, PLLC
628A Sea Mountain Highway
North Myrtle Beach, SC 29582

Respectfully submitted,


James K. Orzech, Ph.D.
Pro Se Appellant

2148 Gamecock Circle

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SC Court of Appeals

The B00 House
2148 Gamecock Circle
Little River, SC 29566
August 2, 2013

VIA U.S. MAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
Clerk of Court

Re: Elizabeth A. Crotty and James K. Orzech vs. Windjammer Village of
Little River, South Carolina, Property Owners' Association

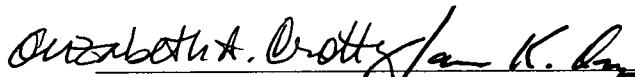
C/A No. 2009-CP-26-10523

Appellate Case No: **2012-213287**

Dear Ms. Kitchings:

Please find enclosed for filing an original and six (6) copies of Appellants' RETURN TO RESPONDENT'S MOTION TO STRIKE MATTER INCLUDED IN APPELLANTS' AMENDED DESIGNATION OF MATTER. The Proof of Service is also enclosed.

Sincerely,


Elizabeth A. Crotty and James K. Orzech
Pro Se Appellants

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SC Court of Appeals

Cc: Kenneth R, Moss, Respondent's attorney