

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

Ralph P. Stroman, Special Referee

**Case Number 2009-CP-26-3596
Consolidated With
Case Number 2010-CP-26-11396
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.**

**APPELLANT'S RETURN IN OPPOSITION TO
RESPONDENTS' "PETITION FOR REHEARING
AND / OR MOTION TO SUPPLEMENT THE RECORD"**

**Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
Appellant, Pro Se**

**Henrietta U. Golding
Alicia Thompson
McNair Law Firm
2411 Oak Street; Suite 206
Myrtle Beach, SC 29577-3164
843-444-1107
Attorneys for Respondents**

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SC Court of Appeals

1. The Appellant hereby prays the Court to deny Respondents' "Petition for Rehearing and / or Motion to Supplement the Record" filed on or about November 8, 2013 but mailed ¹ to Appellant on November 12, 2013. See paragraph 9, below..

2. Respondents' Petition is Frivolous and even if granted is about an Order of the Trial Court which has nothing to do with the issues under Appeal and contributes nothing to the understanding of the case.

3. Order granted Appellant's / Plaintiff's then pending Motion to Amend.

"In a nutshell" Respondents' desire to include in the Record on Appeal an Order (filed May 17, 2012 and dated May 16, 2012), Appellant Exhibit A, which granted Appellant's (as Plaintiff) then pending Motion to Amend the Complaint by adding a claim that Respondents (as Defendants) violated the Frivolous Proceedings Act. The Order did not "deny" anything and referred to "Defendant's Motion to Strike". This Order is Respondent "Exhibit A" to Respondents' Petition. The Order is referred to in the Docket of the Trial Case (Appellant Exhibit B, page 2, top) as "Order / Order Allow Amendment" and the docket dates it as May 17, 2013.

4. Respondent Designated a Non-Existent Order Denying a Non-Existent Respondents' / Defendants' "Motion to Dismiss".

a. As Respondents' "Exhibit C" (Appellant's Exhibit C, page 1 bottom) Respondent cites to their "Designation of Matter to be Included in Record ..." dated June 3, 2012. On Respondents' Page 1, last line, category "Orders"

¹ The Certificate of Service claims it was mailed on November 8, 2013. The envelope was imprinted with a postage sticker by Respondent's Counsel on November 12, 2013. See Appellant's Exhibit G.

Respondents' stated they desired the inclusion of "c. Order Denying Respondents' Motion to Dismiss filed May 16, 2012". In May, 2012 there was no pending Respondents' / Defendants' Motion to Dismiss.

b. Months earlier Respondents / Defendants had filed a "Motion to Strike" (Docket, Appellant's Exhibit B, page 3 top) on December 28, 2011, which the Docket relates was "Completed" March 7, 2012. The Order at issue neither denied nor granted that earlier "Motion to Strike" (which was not a Motion to Dismiss).

c. The Docket (Appellant's Exhibit B, Page 2, middle) relates that the Appellant's (as Plaintiff) "Motion to Amend / Alter ... " which was referred to by the Order at issue was filed on March 20, 2012. The docket entry for the May 17, 2016 Order granting the motion uses the same language as the docket entry for the Motion which brought on the Order.

d. Counsel for Respondents is clearly knowledgeable about the difference between a Motion to Dismiss and a Motion to Strike. On July 8, 2009 (Appellant's Exhibit D) Respondents' Counsel filed a "Motion to Dismiss" on behalf of co – Respondent / Defendant K.A. Diehl which was ultimately denied by an Order Denying that Motion to Dismiss.

5. Respondents' Brief does not refer to the Order that Respondents seek to add to the Record on Appeal.

Respondents' Brief does not refer to their motion in the trial court to strike nor to any order acting on that motion in any way.

6. Respondents are attempting to correct an embarrassing error in the Initial Response Brief filed by Respondents' Counsel by wrongly pleading Appellant's

**putative failure to include a designated document instead of dealing with a blunder
by Respondents' Counsel**

The real problem is that Respondents' Counsel is trying to avoid admitting that they referred to a non-existent motion and a non-existent order in their designation of the record and in their initial response brief.

a. It has been shown that Respondents' Counsel designated a non-existent order.

b. In Respondents' Initial Response Brief, "Statement of the Case", page 2, bottom (Appellants' Exhibit F) Respondents wrote:

"The Association moved to dismiss, and the Court ordered that the Counterclaim² be added as a cause of action. (Order Denying Association's Motion to Dismiss".

c. To reiterate, the Association did not move to dismiss. While the Trial Court ordered that Appellant / Plaintiff's Proposed Amendment was entered, it not do so through an "Order Denying Association's Motion to Dismiss" – such an order being non-existent – but rather through the Order allowing an amendment and not denying anything. The problem contemplated by Respondents' Counsel is how to insert references to the Record on Appeal when transposing Respondents' Initial Brief into a Final Brief.

d. SCRAP Rule 211(b) Final Briefs, Content, commands without exception that

"The final brief(s) shall be identical to the brief(s) previously served under Rule 208, except for the following:"

e. Appellant takes this to mean that when preparing the final brief a party may

² The Counter-Claim was that of Appellant as Plaintiff. It was a Plaintiff "counter – claim to the counter – claim of Defendants, and could alternatively have been termed as an additional cause of action in the Complaint.

not refer to a different order or pleading than was found in the initial brief, or more specifically, the text must be left exactly alone. To cite to a Motion to Strike or an Order Permitting Amendment would be more than the Appellate Rules allow.

f. Respondents have not filed a motion for leave to correct an error on their part. Respondents position is an assertion that the motion to dismiss exists and that an order denying the motion to dismiss exists, and implicitly want to correct their erroneous text by including in the Record on Appeal an order other than the one they designated, as if it was the Order they erroneously claim to exist denying the motion they erroneously claim to exist.

g. The Appellate Rules do not permit a correction of this sort, and Respondents have not sought the good will of Appellant or of the Court in making any otherwise not permitted correction to the text of their initial brief.

(1) The Appellate rule goes on to state that (b)(1) a party “shall” insert into the brief a reference to the actual page and line (if appropriate) in the Record on Appeal “where the material appears in the Record on Appeal.”

(2) The Appellate rules prohibit changes to the text of a brief: SCRAP Rule 211(b)(2) states

“(2) Correction of Typographical Errors and Misspellings. The party may correct obvious typographical errors and misspellings which were contained in the initial brief. No other changes may be made. “

7. The Order in question is superfluous to the matter on appeal.

a. Respondents did not file a cross-appeal and did not appeal the trial court’s denial of their non-existent “Motion to Dismiss” nor of their actual “Motion to Strike”. They do not argue that the Order in any way affected the outcome of the case. The reference to the “motion to dismiss” is purely “historical” and is

contained in Respondents' "Statement of the Case".

b. The disputed Order is not referred to or depended on elsewhere in either party's brief.

8. The issue has already been fully briefed and decided by the Appellate Court.

a. Respondent's Petition makes no new argument not previously presented by Respondent to the Appellate Court (Appellant's Exhibit E).

b. Respondent's sole argument is that (Respondents' Petition, page 3, middle)

"The May 16, 2012 Order is necessary for the Court's understanding of the procedural history of the case"

This argument is stated without any attempt to explain how the order is in any way determinative. In point of fact the order makes no findings of fact nor conclusions of law which controlled later proceedings.

9. Respondents delayed service of their Petition (on Appellant) by four days and fraudulently claimed delivery four days before it was even mailed to Appellant in order to hinder a Return in Opposition by Appellant.

a. Respondents' Certificate of Service (Appellant's Exhibit G, page 2) claims that it was served on Appellant November 8, 2013. The Certificate is required by SCRAP Rule 240(c)(1) which requires that it state "the date of service upon all parties." Respondent's Certificate of Service states that service was made upon Appellant

"by depositing a copy in the United States Mail, first class postage prepaid, on the 8th day of November, 2013."

b. The envelope was imprinted at McNair's offices with first class postage using a postage imprint machine with the date of "November 12, 2013" (Appellant's Exhibit G, page 1). This is no mere oversight and is not the result of depositing a

stamped envelope in a drop box after the mail pickup, but rather proves that Respondents' Counsel didn't even attempt to get the petition "out the door" until November 12, 2013.

c. Appellant lives in the same postal service area as Respondents' counsel. Appellant received the Petition on November 13, 2013. If the Petition was mailed November 8th, 2013 Appellant would have received it November 9, 2013.

d. The significance of this is found in SCRAP Rule 240(e), Motions and Petitions Generally, Return to Motion:

"(e) Return to Motion. Any party opposing a motion or petition shall have ten (10) days from the date of service thereof to file ... his return with the clerk ... Failure of a party to timely file a return may be deemed a consent by that party to the relief sought in the motion or petition."

e. By falsely certifying to the Court that the Petition was served on November 8, 2013 and actually serving (mailing) it November 12, 2013, Respondent's Counsel deprived Appellant of five of the ten days which Appellant is entitled to with which to oppose the Petition. This disparity in dates is not the sort of one day clerical error which happens when a certificate is signed and an attempt is made to mail that day by getting a letter weighed and stamped at the Post Office only to find that the Post Office has shortened it's hours, which is frequently the case now.

f. The Appellate Court is asked to consider this issue when deciding this matter.

Conclusion

10. Respondents Petition should be denied.



Ronald Jarmuth, Appellant Pro Se
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
November 13, 2013

Appellant's Exhibits:

- A – May 17, 2012 Order Permitting Appellant to Amend the Complaint.
- B – Docket of the trial case (showing the referenced Orders and Motions).
- C – 2013-06-03 McNair Designation of the Record on Appeal (partial)
- D - 2009-07-08 Respondent K.A. Diehl's Motion to Dismiss by Respondent Counsel.
- E - 2013-07-31 Respondent's denied Motion To Amend filed in this Court.
- F – Respondents' Initial Brief, pages 1 and 2.
- G - Respondents' Certificate of Service and Envelope with Postmark.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2009-CP-26-3596

Ronald Jarmuth

vs.

The International Club

PLAINTIFF(S)

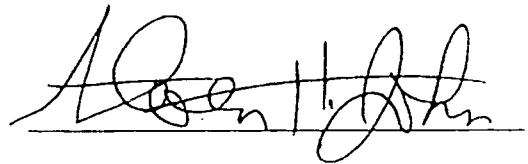
DEFENDANT(S)

FILED
COUNTY
MAY 17 AM 8:42
CLERK OF COURT
FRIVOLOUS PROCEEDINGS WARD

ORDER
DISPOSITION OF MOTIONS

Pursuant to the Defendant's Motion to Strike the Court will allow an amendment to Plaintiff's claims to add a claim of violation of the Frivolous Proceedings Act.

IT IS SO ORDERED.



The Honorable Steven H. John
Chief Administrative Judge
Court of Common Pleas

May 16, 2012 CONWAY, SC

Ronald Jarmuth, Pro Se

Henrietta Golding

ATTORNEY(S) FOR PLAINTIFF

ATTORNEY(S) FOR DEFENDANT

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MAY 21 2012

McNair Law Firm, P.A.

EXHIBIT A



Horry County Fifteenth Judicial Circuit Public Index



Horry County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Ronald Jarmuth VS International Club Homeowners Association Inc , defendant, et al					
Case Number:	2009CP2603596	Court Agency:	Common Pleas	Filed Date:	04/07/2009
Case Type:	Common Pleas	Case Sub Type:	Judgment/Other 799	File Type:	Non-Jury
Status:	Judgment	Assigned Judge:	Special Referee G S And C P		
Disposition:	Judgment	Disposition Date:	09/10/2012	Disposition Judge:	Special Referee G S And C P
Original Source Doc:		Original Case #:		Restore Reason:	Reopened Case
Judgment Number:	2009CP2603596	Court Roster:			

Case Parties

Click the icon to show associated parties.

Name	Address	Race	Sex	Date Of Birth	Party Type	Party Status	Last Updated
Dillard, W. Kyle	Ogletree Deakins Nash Smoak&Stewart, PC P.O. Box 2757 Greenville SC 29602				Other Party to Case		05/07/2012
Ellis, Todd Raymond	7911 Broad River Rd., Ste. 100 Irmo SC 29063				Defendant Attorney		03/13/2013
Golding, Henrietta U.	PO Box 336 Myrtle Beach SC 29578				Defendant Attorney		03/13/2013
Golding, Henrietta					Defendant		09/27/2011
International Club Homeowners Association Inc					Defendant		09/11/2012
Jarmuth, Ronald	249 Pickering Drive Murrells Inlet SC 29576				Plaintiff		09/19/2012
Jarmuth, Ronald	249 Pickering Drive Murrells Inlet SC 29576				Plaintiff Pro Se		11/10/2011
K A Diehl & Associates Inc					Defendant		05/13/2010
Merrell, John T	Ogletree Deakins Nash Smoak & Stewart Pc P O Box 2757 Greenville SC 29602				Other Party to Case		02/27/2012
Stepp, Robert E.(Inactive)	Sowell Gray Stepp & Laffitte, LLC P.O. Box 11449 Columbia SC 29211				Defendant Attorney		04/20/2012
Thompson, Alicia E.	Po Box 336 McNair Law Firm, PA Myrtle Beach SC 29578				Defendant Attorney		01/05/2012
Toth, Rosemary					Defendant		05/13/2010

Judgments

For:	International Club Homeowners Association Inc	Against:	Jarmuth, Ronald	Judg. Amount:	\$7,326.00	Judgment Date:	09/10/2012
Description:	Judgment/Judgment	Disposition:		Disp. Date:		Date Entered/Last Changed	09/11/2012 --
Notes:	None						

Judgment Details

Claims Code	Detail Desc.	Detail Amount	Detail Date
None			

For:	Golding, Henrietta	Against:	Jarmuth, Ronald	Judg. Amount:	\$1,089.46	Judgment Date:	09/23/2011
Description:	Judgment/Judgment	Disposition:		Disp. Date:		Date Entered/Last Changed	09/27/2011 --
Notes:	None						

Judgment Details

Claims Code	Detail Desc.	Detail Amount	Detail Date
None			

Associated Cases

Agency	Case #	External	Relationship	Description	Case Filed Date	Disposition Date	Case Status	Disposition
Common Pleas	2010CP2611320	N	CNTR	Consolidate for Trial	12/03/2010	09/16/2011	Dismissed	Other / Circuit Civil

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Jarmuth, Ronald	COC Mailing Copies of Order / Denying Post-Trial Motions	Action		03/13/2013-11:30		
Jarmuth, Ronald	Certificate / COC Mailing Copies of Court Orders 2 / 14 / 13	Action		03/11/2013-14:28		
Jarmuth, Ronald	Order / Denying Plt's Post-Trial Motions	Order		03/11/2013-12:08		
Jarmuth, Ronald	Letter / 2nd request for copying file - response from COC	Filing		03/08/2013-12:39		

EXHIBIT B

Jarmuth, Ronald	Order/Order motion cont.	Order		05/17/2012-08:42	09/10/2012-15:05
Jarmuth, Ronald	Order/Order motion to compel is granted	Order		05/17/2012-08:42	09/10/2012-15:06
Jarmuth, Ronald	Order/Order /allow amendment	Order		05/17/2012-08:42	05/22/2012-15:00
Jarmuth, Ronald	Motion/Continuance/Cert of Service/Exh	Motion		05/16/2012-08:35	05/17/2012-08:38
Jarmuth, Ronald	Letter/Letter	Filing		05/10/2012-15:15	09/10/2012-08:21
Jarmuth, Ronald	Motion/Protective Order	Motion		05/07/2012-11:39	05/17/2012-11:39
Jarmuth, Ronald	Deposition Of/Louis S. Astorino	Filing		04/20/2012-13:52	09/10/2012-09:12
Jarmuth, Ronald	Deposition Of/Peter Pizzi	Filing		04/20/2012-13:52	09/10/2012-09:14
Jarmuth, Ronald	Deposition Of/Jane Pizzi	Filing		04/20/2012-13:52	09/10/2012-09:15
Jarmuth, Ronald	Deposition Of/Michael Butryn	Filing		04/20/2012-13:51	09/10/2012-09:16
International Club Homeowners Association Inc	Filing/Filing Of transcript of record	Filing		04/20/2012-13:51	09/10/2012-10:16
Jarmuth, Ronald	Filing Of/Rule 32/Depositions Certain Witnesses For	Filing		04/20/2012-10:34	09/10/2012-10:34
Jarmuth, Ronald	Letter/Regarding Order Reference Hearing	Filing		04/20/2012-09:15	09/10/2012-09:19
Jarmuth, Ronald	Motion/Order of Reference	Motion		04/17/2012-09:11	04/23/2012-09:11
Jarmuth, Ronald	Motion/Continuance/exhibits	Motion		04/12/2012-13:24	04/12/2012-13:24
Jarmuth, Ronald	Filing/Filing Of depositions/cert of svc.	Filing		04/04/2012-08:27	09/10/2012-10:17
Jarmuth, Ronald	COC Mailing Copies of Order/on Motions (filed 3-26-12)	Action		03/26/2012-08:45	09/10/2012-16:38
Jarmuth, Ronald	Order Granting Motion/Reconsider, Grants Motion/Quash	Order		03/26/2012-08:40	09/10/2012-16:31
Jarmuth, Ronald	COC Mailing Copies of Order/on Motion/Compel (filed 3-23-12)	Action		03/23/2012-13:55	09/10/2012-16:11
Jarmuth, Ronald	Order/Order on Motion/Compel Granted In Part	Order		03/23/2012-13:54	09/10/2012-16:10
Jarmuth, Ronald	Motion/Alter and/or Amend/aff of svc./exhibits	Motion		03/20/2012-13:59	06/15/2012-13:59
Jarmuth, Ronald	COC Mailing Copies of Order/Denying Motion (filed 3-19-12)	Action		03/19/2012-13:54	09/10/2012-13:03
Jarmuth, Ronald	Order/Denying Motion/Relief	Order		03/19/2012-13:54	09/10/2012-13:03
Jarmuth, Ronald	Notice of Case Roster Publication Sent	Action		03/13/2012-13:21	09/10/2012-13:21
Golding, Henrietta U.	Notice of Case Roster Publication Sent	Action		03/13/2012-13:21	09/10/2012-13:21
Thompson, Alicia E.	Notice of Case Roster Publication Sent	Action		03/13/2012-13:21	09/10/2012-13:21
Ellis, Todd Raymond	Notice of Case Roster Publication Sent	Action		03/13/2012-13:21	09/10/2012-13:21
Stepp, Robert E.	Notice of Case Roster Publication Sent	Action		03/13/2012-13:21	09/10/2012-13:21
Jarmuth, Ronald	Response to Motion for Protective Order/ Cert of Ser	Filing		02/27/2012-13:36	09/10/2012-15:57
International Club Homeowners Association Inc	Motion/Protective Order/ Cert of Service	Motion		02/22/2012-16:21	09/10/2012-16:23
Jarmuth, Ronald	Filing/Filing Of Plaintiff's Deposition Notice & Cert	Filing		02/08/2012-13:35	09/10/2012-09:41
Jarmuth, Ronald	COC Mailing Copies of Order/Denying Motion/SJ (filed 2-2-12)	Action		02/02/2012-13:35	09/10/2012-10:03
Jarmuth, Ronald	Order Denying Pt's Motion/Summary Judgment & Preliminary	Order		02/02/2012-13:31	09/10/2012-09:59
Jarmuth, Ronald	Service/Certificate Of Service	Filing		02/02/2012-13:31	09/10/2012-10:02
Jarmuth, Ronald	Motion/Relief/Cert of Service/Exh	Motion		02/01/2012-12:21	03/07/2012-12:20
Jarmuth, Ronald	COC Mailing Copies of Order/on Motion filed 12/29/11	Action		01/27/2012-13:35	09/10/2012-09:36
Jarmuth, Ronald	Order Granting Pt's Motion/Continuance & Denying Remaining	Order		01/27/2012-13:33	09/10/2012-09:35
Jarmuth, Ronald	Order/Letter	Order		01/19/2012-09:37	09/10/2012-11:10
Jarmuth, Ronald	Pt's Return of Service of Subpoenas for Trial/Cert of Ser.	Filing		01/17/2012-08:39	09/10/2012-12:10
Jarmuth, Ronald	Reply to Return to Petition for Writ of Prohibition &	Filing		01/11/2012-13:32	09/10/2012-10:36
Toth, Rosemary	Notice/Hearing Notice-3 and Cert of Service/Motion for Stay	Filing		01/05/2012-13:45	09/10/2012-15:24
Jarmuth, Ronald	Letter/Letter/Pt's Addendum to Motion for Continuance of	Filing		01/04/2012-08:44	09/10/2012-11:53
Jarmuth, Ronald	Plaintiff's Response To Def Motion to Strike Plaintiff's	Filing		12/30/2011-08:27	09/10/2012-11:22
Jarmuth, Ronald	Motion/Continuance /Letter/Cert of Service	Motion		12/29/2011-11:52	01/27/2012-11:52

Jarmuth, Ronald	Notice /Petition for Writ of Prohibition & Mandamus/Complaint	Filing		12/28/2011-10:44	09/10/2012-11:59
International Club Homeowners Association Inc	Motion/Strike	Motion		12/28/2011-13:14	03/07/2012-13:14
International Club Homeowners Association Inc	Motion/Strike/Cert of Service	Motion		12/28/2011-13:13	03/07/2012-13:13
Jarmuth, Ronald	Certificate/Of COC Mailing Copies of Court Orders	Action		12/21/2011-10:32	09/10/2012-10:32
Jarmuth, Ronald	Order/Order	Order		12/20/2011-16:41	09/10/2012-16:32
Jarmuth, Ronald	Reply/Cert of Service/Exhibits	Filing		12/20/2011-12:47	09/10/2012-10:42
Jarmuth, Ronald	Answer to Counterclaim and Assertion of Counter-Claim	Filing		12/20/2011-12:46	09/10/2012-09:46
Jarmuth, Ronald	Notice of Case Roster Publication Sent	Action		12/19/2011-08:26	09/10/2012-08:26
Golding, Henrietta U.	Notice of Case Roster Publication Sent	Action		12/19/2011-08:26	09/10/2012-08:26
Stepp, Robert E.	Notice of Case Roster Publication Sent	Action		12/19/2011-08:26	09/10/2012-08:26
Ellis, Todd Raymond	Notice of Case Roster Publication Sent	Action		12/19/2011-08:26	09/10/2012-08:26
Thompson, Alicia E.	Notice of Case Roster Publication Sent	Action		12/19/2011-08:26	09/10/2012-08:26
Jarmuth, Ronald	Motion/Default Judgement Plaintiff's Cert of Service,	Motion		12/14/2011-14:05	03/07/2012-14:05
Jarmuth, Ronald	Letter/Letter	Filing		12/02/2011-15:23	09/10/2012-14:39
Ellis, Todd Raymond	Motion/Reconsider/Exh	Motion		11/30/2011-14:25	03/07/2012-14:23
Ellis, Todd Raymond	Motion/Protective Order	Motion		11/30/2011-14:23	03/07/2012-14:23
Jarmuth, Ronald	Motion/Motion For hold/Exh \	Motion		11/16/2011-13:06	03/07/2012-13:05
Ellis, Todd Raymond	Notice of Motions Roster Publication Sent	Action		11/10/2011-09:59	09/10/2012-09:59
Thompson, Alicia E.	Notice of Motions Roster Publication Sent	Action		11/10/2011-09:59	09/10/2012-09:59
Stepp, Robert E.	Notice of Motions Roster Publication Sent	Action		11/10/2011-09:59	09/10/2012-09:59
International Club Homeowners Association Inc	Motion/Reconsider/Cert of Service	Motion		11/07/2011-15:59	03/07/2012-15:58
Jarmuth, Ronald	Notice of Motions Roster Publication Sent	Action		11/02/2011-11:59	09/10/2012-11:59
Golding, Henrietta U.	Notice of Motions Roster Publication Sent	Action		11/02/2011-11:59	09/10/2012-11:59
Stepp, Robert E.	Notice of Motions Roster Publication Sent	Action		11/02/2011-11:59	09/10/2012-11:59
Ellis, Todd Raymond	Notice of Motions Roster Publication Sent	Action		11/02/2011-11:59	09/10/2012-11:59
Thompson, Alicia E.	Notice of Motions Roster Publication Sent	Action		11/02/2011-11:59	09/10/2012-11:59
Jarmuth, Ronald	Motion/Dismiss Counterclaim in Defendants Amended Ans to Com	Motion		10/31/2011-14:30	12/07/2011-14:30
Toth, Rosemary	Amended Answer and First Amendment to Complaint &	Filing		10/24/2011-13:13	09/10/2012-14:44
International Club Homeowners Association Inc	Amended Answer and First Amendment to Complaint &	Filing		10/24/2011-13:13	09/10/2012-14:44
Jarmuth, Ronald	Certificate/Of COC Mailing Copies of Court Orders	Action		10/14/2011-11:31	09/10/2012-11:31
K A Diehl & Associates Inc	Answer to Complaint & First Amendment to Complaint, Cert/Ser	Filing		10/12/2011-13:12	09/10/2012-09:08
Jarmuth, Ronald	Order/Order	Order		10/11/2011-13:11	09/10/2012-11:31
Jarmuth, Ronald	COC Mailing Copies of Order/Exempting Case from Mediation	Action		10/10/2011-15:15	09/10/2012-12:24
Jarmuth, Ronald	Order/Consent Order Exempting The Cases from Mediation	Order		10/10/2011-15:10	09/10/2012-12:22
Jarmuth, Ronald	Affidavit/Affidavit of Beckie Abel (Supplemental)	Filing		10/05/2011-13:16	09/10/2012-09:38
International Club Homeowners Association Inc	Motion/Motion For Exemption from Mediation/order	Motion		09/28/2011-13:56	10/10/2011-13:56
Golding, Henrietta	Judgment/Judgment	Judgment		09/23/2011-11:57	09/10/2012-08:42
Jarmuth, Ronald	Judgment/Judgment	Judgment		09/23/2011-11:57	09/10/2012-08:42
Jarmuth, Ronald	COC Mailing Copies of Order/Consolidate (filed 9-16-11)	Action		09/19/2011-15:07	09/10/2012-15:07
Jarmuth, Ronald	Order Granting Defendants Motion to Consolidate Cases--	Order		09/16/2011-13:13	09/10/2012-08:44
Jarmuth, Ronald	Notice of Motions Roster Publication Sent	Action		09/09/2011-16:07	09/10/2012-16:07
Jarmuth, Ronald	Notice of Motions Roster Publication Sent	Action		09/09/2011-16:07	09/10/2012-16:07
Jarmuth, Ronald	Notice of Motions Roster Publication Sent	Action		09/09/2011-16:07	09/10/2012-16:07
Jarmuth, Ronald	Notice of Motions Roster Publication Sent	Action		09/09/2011-16:07	09/10/2012-16:07
Jarmuth, Ronald	Notice of Motions Roster Publication Sent	Action		09/09/2011-16:07	09/10/2012-16:07

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

EXHIBIT C

- 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

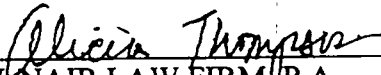
MEMORANDA AND OTHER MATERIALS

- 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,



McNAIR LAW FIRM, P.A.
Henrietta U. Golding
Alicia E. Thompson
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(843) 444-1107
Attorneys for Respondents
The International Club, Inc., Rosemary
Toth, and K.A. Diehl & Associates, Inc.

Myrtle Beach, South Carolina
Date: June 3, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-26-3596

Ronald Jarmuth,)
)
Plaintiff,)

vs.)

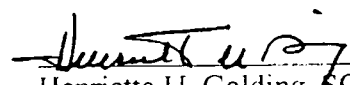
The International Club Homeowners)
Association, Inc. and)
Rosemary Toth,)
And)
Henrietta Golding,)
And K.A. Diehl & Associates,)
Defendants.)

DEFENDANT K.A. DIEHL &
ASSOCIATES, INC.'S
MOTION TO DISMISS

Defendant, K.A. Diehl & Associates, Inc. hereby moves for an Order dismissing it as a Defendant, pursuant to South Carolina Rule of Civil Procedure 12(b)(6), on the grounds that the claims asserted against K.A. Diehl & Associates, Inc. fail to state facts sufficient to constitute a cause of action against it and the moving Defendant is a Property Management Company for the Defendant The International Club Homeowners Association, Inc.

This motion is based upon the Plaintiff's complaint, his amended Complaint, and other matters that may be submitted prior to or at the time of the hearing of this motion.

McNair Law Firm, P.A.



Henrietta U. Golding, SC Bar #2173
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Email: hgolding@mcnair.net

Myrtle Beach, South Carolina
July 8, 2009

*Attorneys for the Defendants
The International Club HOA, Inc.; Rosemary Toth;
and K.A. Diehl & Associates, Inc.*

EXHIBIT D

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.

RESPONDENTS' MOTION TO AMEND THE RECORD

The Respondents, The International Club Homeowners Association, Inc., Rosemary Toth, and K.A. Diehl & Associates, Inc. ("Respondents"), hereby move before this Honorable Court for an Order requiring the Appellant to amend the Record on Appeal pursuant to SCACR, Rules 210(c) and 212(b). The Record should be supplemented to include the entire trial transcript and other documents designated by the Respondents as reflected in the Designation attached hereto as Exhibit "A". The items omitted from the Record include the following:

1. Order Denying Respondents' Motion to Dismiss filed May 16, 2012:

EXHIBIT E

2. Trial Transcript pp. 1012, 1014, 1016, 1018, 1020, 1022, 1024, 1026, 1028, 1030, 1032, and 1034;
3. An unaltered copy of Respondents' August 8, 2012 Witness and Exhibit Lists;
4. A complete copy of Respondents' Exhibits 53;
5. An unaltered copy of Respondents' Exhibits 88;
6. An unaltered copy of Appellant's Exhibit 556.

Attached hereto as Exhibit "B" is a proposed Appendix to the Record that includes copies of the omitted matters. Appellant has consented to the supplementation of the Record with numbers 2 and 3 above as set forth in his correspondence attached hereto as Exhibit "C".¹

Furthermore, the Appellant included materials that are irrelevant to the appeal, were not before the trial judge, and/or are duplicative. Matters that should be stricken from the Record include the following:

1. Duplicate copies of Record pp. 101, 1972, 1973, 1974, and 2852;
2. Duplicate copy of the Respondents' proposed Final Order, pp. 611 through 658;
3. Duplicate copy of Respondents' Exhibit 28, Record pp. 4207 through 4215;
4. Respondents' Witness and Exhibit Lists, Record pp. 859 through 864, 3065 through 3070, and 3089-3099 that include Appellant's notations and that were not before the trial court;
5. Appellant's Exhibit 556 with his notations, R. pp. 3795 through 3798, that was not before the trial court.

Appellant has consented to striking the matter listed in number 2 above as reflected in Exhibit "C".

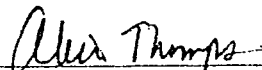
¹ The Appellant requests that the Record be supplemented with his Post-Trial Brief in Support of his Proposed Order, proposed Record pages 4425 through 4647, however, that document is reflected in the Record, pp. 928 through 1054.

Finally, the following errors in the Record should be corrected pursuant to Rule 210, SCACR:

1. Record pp. 2452 through 2500 and 2853 through 2876 are not in numerical order;
2. Unfiled Memorandums, Briefs, Proposed Orders, and Correspondence of the Parties should be included in other material at the end of the Record rather than with the pleadings, Record pp. 300 through 658, 757 through 927, and 2901 through 3107.

WHEREFORE, having fully set before this Court the grounds for this motion, the Respondents move for an Order requiring Appellant to amend the Record to include all matters designated by the Respondents, to strike irrelevant and duplicative matters, and to address the errors listed above pursuant to SCACR, Rule 210. In the alternative, Respondents move this Court to adopt the Appendix to the Record attached hereto as Exhibit "B" and to note the deficiencies set forth herein when reviewing the Record on Appeal.

Respectfully submitted,



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Alicia E. Thompson

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(843) 444-1107

Attorneys for Respondents

The International Club Homeowners

Association, Inc., Rosemary Toth, and K.A.

Diehl & Associates, Inc.

Myrtle Beach, South Carolina

Date: July 31, 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.: 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.

McNAIR LAW FIRM, P.A.
Henrietta U. Golding, SC Bar #2173
Alicia E. Thompson, SC Bar #77056
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Attorneys for Respondents
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Association, Inc., Rosemary Toth, and K.A.
Diehl & Associates, Inc.

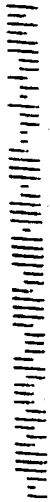
Amended Complaint). Ms. Golding was subsequently dismissed. (**Respondents' 8/12 Pre-Trial Brief, p. 2**).

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**).



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ATTORNEYS | www.mcnairstna.com

Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576

EXHIBIT G

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

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SC Court of Appeals

Ronald Jarmuth,

Pro Se Appellant,

v.

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

Respondents.

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 Petition for Rehearing and/or Motion to Supplement the Record of Respondents The International Club Homeowners Association, Inc., Rosemary Toth, and K.A. Diehl & Associates, Inc., Exhibits A-E, 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 5th day of November, 2013.

Pro Se Appellant of Record:

Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576
Email: ronaldjarmuth@hotmail.com

Donna M. Brady

Myrtle Beach, South Carolina

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

Ralph P. Stroman, Special Referee

CASE NUMBER 2009-CP-26-3596

Ronald Jarmuth, Appellant,

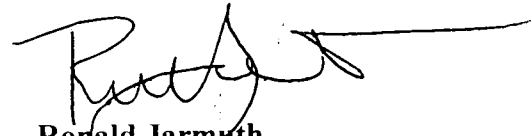
v.

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

PROOF OF SERVICE

I certify that on November 14, 2013 I served Appellant's Return in Opposition to Respondents' "Petition for Rehearing and / or Motion to Supplement the Record" by depositing a copy of same in the United States Mail, postage prepaid, addressed to Respondent's common counsel, Henrietta Golding and Alicia Thompson; McNair Law Firm, P.A.; 2411 Oak Street; Suite 206; Myrtle Beach, SC 29577-3164

November 14, 2013


Ronald Jarmuth
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843-314-4355
Appellant, Pro Se

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SC Court of Appeals