

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

70306

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

v.

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

**RESPONDENT'S MOTION TO EXTEND TIME
IN WHICH RESPONDENT MAY FILE ITS INITIAL BRIEF
AND DESIGNATION OF MATTER**

Respondent Windjammer Village of Little River, South Carolina, Property Owners' Association, by and through its counsel, hereby moves for an Order granting Respondent's Motion to Extend Time In Which Respondent May File Its Initial Brief and Designation of Matter. Specifically, Respondent seeks an Order granting an extension of time to file its initial brief and designation of matter in response to

RECEIVED

NOV 07 2013

SC Court of Appeals

Appellant's Amended Initial Brief and Amended Designation of Matter. In support of its motion seeking an extension, the Respondent would show and allege as follows:

PROCEDURAL HISTORY

- (1) The Appellants filed and served their Initial Brief and Designation of Matter on March 13, 2013.
- (2) The Respondent filed and served a Petition for an Extension of Time to file its initial brief and designation of matter on March 15, 2013; thereafter, the Appellants timely filed their Return to Respondent's Petition. The Court's Order of March 29, 2013 granted the Respondent's Petition and extended the due date for filing and service of Respondent's initial brief and designation of matter until May 13, 2013.
- (3) After reviewing the copious amount of material referenced in the Appellants' Initial Brief and Designation of Matter, on April 29, 2013 the Respondent filed and served a Motion to Dismiss, or in the Alternative to Strike, Matter from Appellants' Initial Brief and Designation of Matter; thereafter, the Appellants timely filed and served their Return to Respondent's Motion.
- (4) While Respondent's April 29, 2013 Motion to Dismiss, or in the Alternative to Strike, was pending determination by the Court, the Appellants filed and served a Motion to Amend and Replace their Designation of Matter on May 24, 2013.

- (5) Inasmuch as the appeal was stayed pending the Court's determination on Respondent's April 29, 2013 Motion to Dismiss, or in the Alternative to Strike, the Respondent did not file a Return to the Appellants' May 24, 2013 Motion to Amend and Replace their Designation of Matter.
- (6) On July 2, 2013, the Court issued its Order on Respondent's April 29, 2013 Motion to Dismiss, or in the Alternative to Strike, Matter from the Appellants' Initial Brief and Designation of Matter. The Court found that the Statement of the Issues on Appeal in the Appellants' Initial Brief contained material that did not comply with Rule 208(b)(1)(B), SCACR, and granted the Respondent's Motion, in part, by striking pages 1, 2, and a portion of page 3 of Appellants' Initial Brief. The Court's Order directed the Appellants to file an Amended Initial Brief within ten days. Further, the Court's Order granted the Appellants' Motion to Amend their Designation of Matter.
- (7) Respondent filed and served its Motion to Strike Matter Included in the Appellants' Amended Designation of Matter on July 8, 2013.
- (8) Pursuant to the Court's Order, the Appellants timely filed and served their Amended Initial Brief on July 12, 2013.
- (9) While aware that a Motion to Strike does not stay the time for perfecting an appeal, on July 29, 2013 the Respondent filed a Petition requesting the Court grant the Respondent additional time to prepare, file, and serve its initial brief

and designation of matter. The Respondent's Petition was precipitated by several events.

(a) The Appellants revised the pages as specified in the Court's July 2, 2013 Order, and filed their Amended Initial Brief on July 12, 2013. However, the Appellants' Amended Initial Brief also included significant revisions not specified or authorized by the Court's July 2, 2013 Order. The Appellants, in filing an Amended Initial Brief as required by the Court, took the liberty of amending their entire Initial Brief, as filed on March 13, 2013, to include matters not previously asserted.

(b) The Respondent's Petition was also due in part to the office relocation of Respondent's counsel's on July 1, 2013, which caused his Firm to experience unanticipated problems when moving its computer systems and server, thereby significantly impacting the workflow of the Firm.

(10) On September 27, 2013, Respondent's counsel wrote to the Court to confirm the substance of a telephone conversation between staff persons of Respondent and the Clerk of the Court. Specifically, it was requested that the Motion to Extend Time dated September 3, 2013 be reinstated for consideration by the Court after the Court had ruled upon the Respondent's Motion to Strike. A copy of the letter of Respondent's counsel is attached hereto as Exhibit A.

(11) On October 28, 2013, the Court denied Respondent's Motion to Strike Matter Included in Appellant's Amended Designation of Matter.

ARGUMENT

Respondent respectfully and specifically requests an extension, through November 12, 2013, during which Respondent may file its Initial Brief and Designation of Matter. Because Respondent's Initial Brief will necessarily be responsive to the materials included in Appellants' Amended Designation of Matter, Respondent asserts that it was just and reasonable to await the disposition of Respondent's Motion to Strike before finalizing and filing its Initial Brief and Designation of Matter. November 12, 2013 will be the fifteenth day after the Court's Order denying Respondent's Motion to Strike was dated. Further, it was the intention of Respondent's counsel to file Respondent's Initial Brief and Designation of Matter after resolution of Respondent's Motion to Strike, as evidenced by the letter of Respondent's counsel dated September 27, 2013, a copy of which is attached hereto as Exhibit A.

Respectfully submitted,

**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**



Kenneth R. Moss, SC Bar # 15520
628A Sea Mountain Highway
North Myrtle Beach, SC 29582
Tel: (843) 281-9901, ext. 103
Email: KennethMoss@wwpemplaw.com

North Myrtle Beach, South Carolina
November 4, 2013

WRIGHT, WORLEY, POPE, EKSTER & MOSS, PLLC

ATTORNEYS AT LAW
628A SEA MOUNTAIN HIGHWAY
NORTH MYRTLE BEACH, SOUTH CAROLINA 29582
Telephone (843) 281-9901 - Fax (843) 281-9903

O. RICHARD WRIGHT, JR.*
DENNIS T. WORLEY*
HAROLD G. "Butch" POPE*
PAUL J. EKSTER**
KENNETH R. MOSS
MICHAEL T. SMITH++
RICK W. SCOTT*
MARTHA HENLEY SLEDGE*
MELANIE C. NICHOLSON ***
KELLY SANSONE-GALLEY***
NAPOLEON B. BAREFOOT, JR.*
ELIZABETH W. EMBREY**
BOYD T. WORLEY*
D. F. McGOUGAN, JR.
(1921 - 1994)

OTHER OFFICES
TABOR CITY, NC
WHITEVILLE, NC
SHALLOTTE, NC
WILMINGTON, NC
SURFSIDE BEACH, SC

*licensed only in NC
**licensed in NC, DC & SC
**DRC-Certified Family Financial Mediator
** licensed in NC & SC
*** Certified Family Court Mediator, Guardian *ad Litem*

September 27, 2013

VIA U.S. MAIL

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

RECEIVED

NOV 07 2013

SC Court of Appeals

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
Our file no. SC-2156.009A

Dear Ms. Kitchings:

With regard to the above referenced Appeal, on September 24, 2013 I received a copy of the Court's September 23, 2013 Order granting the Respondent an extension of time until October 7, 2013 to serve and file its Initial Brief and Designation of Matter. The Order disposed of the Respondent's September 3, 2013 *Motion to Extend Time Pending the Court's Disposition of Respondent's Motion to Strike Matter Included in Appellants' Amended Designation of Matter to be Included in the Record on Appeal*. My paralegal contacted your office to inquire regarding the Court's disposition of the Respondent's *Motion to Strike* and was informed that the Motion was still pending before the Court, and that the September 23, 2013 Order was mailed before it came to the attention of your staff. The purpose of this letter is to reaffirm that I am unable to serve and file the Respondent's Initial Brief and Designation of Matter for the reasons set forth in the Respondent's September 3, 2013 *Motion to Extend Time Pending the Court's Disposition of Respondent's Motion to Strike*, and that the Motion is not for purposes of



The Honorable Jenny Abbott Kitchings
September 27, 2013
Page 2

delay. For the reasons set forth above, I respectfully request reinstatement of the Respondent's September 3, 2013 *Motion to Extend Time* for consideration by the Court.

Of course, please do not hesitate to contact me should you have any questions regarding this request.

With best regards, I am

Sincerely yours,



Kenneth R. Moss

KRM:rb
cc: Elizabeth A. Crotty, *pro se* Appellant
James K. Orzech, *pro se* Appellant
Client (*via email only*)

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

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

v.

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

PROOF OF SERVICE

I certify that I have served a copy of the *Respondent's Motion to Extend Time In Which Respondent May File Its Initial Brief and Designation of Matter*, and Proof of Service of same in the above-captioned appeal on the following individuals by United States Mail, with sufficient first-class postage affixed, addressed as follows:

Elizabeth A. Crotty
2121 Brunswick Circle
Little River, SC 29566
Pro se Appellant

James K. Orzech
2148 Gamecock Circle
Little River, SC 29566
Pro se Appellant

RECEIVED
NOV 07 2013
SC Court of Appeals

*** signature page follows ***

Respectfully submitted,

**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**

A handwritten signature in black ink, appearing to read "K. R. Moss", is written over a horizontal line.

Kenneth R. Moss, SC Bar # 15520

628A Sea Mountain Highway

North Myrtle Beach, SC 29582

Tel: (843) 281-9901, ext. 103

Email: KennethMoss@wwpemplaw.com

North Myrtle Beach, South Carolina
November 4, 2013

WRIGHT, WORLEY, POPE, EKSTER & MOSS, PLLC

ATTORNEYS AT LAW
628A SEA MOUNTAIN HIGHWAY
NORTH MYRTLE BEACH, SOUTH CAROLINA 29582
Telephone (843) 281-9901 - Fax (843) 281-9903

O. RICHARD WRIGHT, JR.*
DENNIS T. WORLEY*
HAROLD G. "Butch" POPE*
PAUL J. EKSTER**
KENNETH R. MOSS
MICHAEL T. SMITH++
RICK W. SCOTT*
MARTHA HENLEY SLEDGE*
MELANIE C. NICHOLSON ***
KELLY SANSONE-GALLEY***
NAPOLEON B. BAREFOOT, JR.*
ELIZABETH W. EMBREY**
BOYD T. WORLEY*
D. F. McGOUGAN, JR.
(1921 - 1994)

OTHER OFFICES
TABOR CITY, NC
WHITEVILLE, NC
SHALLOTTE, NC
WILMINGTON, NC
SURFSIDE BEACH, SC

*licensed only in NC

**licensed in NC, DC & SC

**DRC-Certified Family Financial Mediator

** licensed in NC & SC

*** Certified Family Court Mediator, Guardian *ad Litem*

November 4, 2013

VIA CERTIFIED MAIL #7007 0710 0003 9853 9474;

RETURN RECEIPT REQUESTED

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

Re: Elizabeth A. Crotty and James K. Orzech vs. Windjammer Village of Little River,
South Carolina, Property Owners' Association
Appellate Case No. 2012-213287

Dear Ms. Kitchings:

Please find enclosed for filing an unbound original and six (6) copies of *Respondent's Motion to Extend Time In Which Respondent May File Its Initial Brief and Designation of Matter* in the above referenced case. Also enclosed is the Proof of Service and filing fee in the amount of \$25.00.

I have enclosed an additional copy of the Proof of Service and would appreciate you returning a clocked copy to me in the enclosed self-addressed, stamped envelope I have provided for your convenience.

With kindest regards,


Kenneth R. Moss

KRM:tm

Enclosures as stated

cc: Elizabeth A. Crotty, *pro se* Appellant (via U.S. Mail)
James K. Orzech, *pro se* Appellant (via U.S. Mail)
Client (via email only)

RECEIVED

NOV 07 2013

SC Court of Appeals