

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 REPLY TO
APPELLANT'S
MOTION TO SUPPLEMENT THE RECORD

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SC Court of Appeals

1. The Appellant hereby Replies to the Return of Respondents relating to Appellant's Motion to Supplement the Record.

Relevance to the Issues Under Appeal

2. The documents in question are Orders entered by the same judge who tried the case under appeal concerning the same covenants as applied to the same subdivision where Appellant's property is located.

a. In CitiMortgage Inc v Robert Bullock, Shannon Bullock and Murrells Inlet Golf Plantation Association, ("MIGPA") Hon. Judge Ralph Stroman determined that MIGPA, not the Respondent International Club Homeowners Association, ("IHOA") is the homeowners association as defined in the Covenants, and specifically that MIGPA, not the IHOA, is the association entitled to levy assessments and to enforce the covenants. In the case on appeal the same Hon. Judge Ralph Stroman identified the respondent IHOA as the association entitled to levy assessments and to enforce the covenants.

b. In their Return to the Motion Respondents never controverted this interpretation of the CitiMortgage Orders, nor Appellant's assertion that the "new thinking" as to which non-profit corporation is "the association" as defined by the covenants is relevant to the Appellate Panel's resolution of that very issue in this appeal, and determinative of many other issues under appeal such as the requirement by the IHOA that homeowners buy cable tv and garbage collection service from Respondents, and IHOA's attempts to enforce the covenants (supported by Hon. Judge Stroman in the case under appeal although IHOA is not actually named in the covenants, MIGPA being the association actually named.)

c. The Orders of Hon. Judge Stroman in the CitiMortgage case should be given particular weight by the Appellate Panel because Hon. Judge Stroman made a finding of fact that counsel for CitiMortgage had dutifully examined the covenants, deeds, and related records, because both sides were represented by counsel, and because in August 2013 Hon. Judge Stroman was personally knowledgeable of the facts and arguments of this case, having presided over the trial. In addition, the documents supporting the CitiMortgage case were reviewed under the Context of the federal Home Affordable Modification Program (HMP).¹

Procedural Issue

3. SCRAP Rule 212(b) mandates (“shall”) that parties must bring to the Appellate Court’s attention any decision of a court which was entered after the filing of initial briefs which bear on “an issue” under appeal.

a. A central role of an Appellate Court is to resolve conflicts between decisions on the same issue by lower courts. A purpose is to resolve the question as to which interpretation should be followed in the future, and in this capacity the Appellate Court’s resolution acts in the same manner as a Declaratory Judgment – resolving the duties and obligations of parties. The latest decision by Hon. Judge Stroman decided differently the same question raised on appeal – is it MIGPA or IHOA which has the legal capacity under the covenants to enforce them, and to exercise the rights and obligations which the covenant imbues “The Association” (as defined in the covenants). A homeowner might reasonably believe that the later opinion, based on a case argued by opposing licensed counsel, should control – and

¹ Finding of Fact #19, page 4, August 15, 2013 CitiMortgage Order by Hon. Judge Stroman..

that “The Association” is thus MIGPA.²

b. SCRAP Rule 208(b)(7) espouses the doctrine that the Appellate Panel is entitled to the later³ thinking of courts (on an issue under appeal) which have had the opportunity to examine the facts and the law. Appellant’s Initial Brief was filed on April 27, 2013. The three new court documents which Appellant desires to put before the Appellate Panel were filed on August 15, 2013 (Exhibit A to Motion), August 19, 2013 (Exhibit B to Motion), and September 23, 2013 (Exhibit C to Motion).

c. Per SCRAP Rule 208(b)(7) Appellant has cited to “an issue to which the citation pertains”.

d. It is entirely appropriate to set the actual later court documents before the Court by Supplement (SCRAP Rule 212(b)) so that the Appellate Panel can determine on it’s own the import and applicability of Hon. Judge Ralph Stroman’s latest thinking to the determination in this case of whether MIGPA or IHOA is “The Association”.

The Case Under Appeal is The Case to Resolve the Conflicting Decisions

4. Of the two cases, only the case under appeal will present an opportunity to resolve the two conflicting interpretations.

a. None of the parties in CitiMortgage will appeal because they have no appealable issues personal to them. CitiMortgage Inc. successfully foreclosed and

² In the final order under appeal Hon. Judge Stroman conceded that MIGPA is the association as named in the covenants but asserted that because IHOA had usurped MIGPA’s capacity for many years IHOA had supplanted MIGPA without benefit of an amendment to the covenants.

³ “Later” being after the filing of initial briefs.

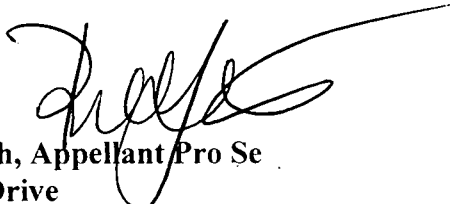
stands to recover the entire debt due it. The Murrells Inlet Golf Plantation Association (MIGPA) did not allege any assessments were due and thus was not deprived of unpaid assessments; MIGPA was named, to its satisfaction, as "The Association" entitled to levy and collect assessments under the covenants. Ralph and Sharron Bullock did not controvert the CitiMortgage decision. More than thirty (30) days has elapsed from the last order in the CitiMortgage case and thus no appeal from that case will be brought before this Court.

b. The issue with conflicting decisions by the same judge has been brought before the court in the case under appeal. Appellant, and other home owners within the community, are entitled to a resolution of the conflicting opinions. The Appellate Court procedurally has the subject and personal jurisdiction to resolve the conflict set up by the trial court judge.

c. Respondents have not controverted that such a conflict of opinions by the same judge on the same issue exists, and they thus concede it.

CONCLUSION

5. The conflicting CitiMortgage opinion authored by Hon. Ralph Stroman, the trial court judge who authored the decision in the case under appeal, should be brought before the Appellate Panel through a Supplementation of the Record.



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November 19, 2013

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PROOF OF SERVICE

I certify that on November 19, 2013 I served Appellant's Reply to Appellant's Motion to Supplement the Record on Appeal 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

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