

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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DEC 02 2013

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.

RESPONDENTS' REPLY TO APPELLANT'S RETURN TO
PETITION FOR REHEARING AND/OR
MOTION TO SUPPLEMENT THE RECORD

The Respondents, The International Club Homeowners Association, Inc., Rosemary Toth, and K.A. Diehl & Associates, Inc. ("Respondents"), hereby submit this Reply to the Return to Respondents' Petition for Rehearing and/or Motion to Supplement the Record of the Appellant, Ronald Jarmuth ("Appellant").

Appellant attempts to confuse the issue presented by Respondents' underlying Petition by mischaracterizing the procedural background of this matter. Such mischaracterization does not rebut the Respondents' argument that the Order dated May 16, 2012, which denied Respondents' Motion to Dismiss or Strike and which is attached

as Exhibit "A" to Respondents' underlying Petition for Rehearing ("May 16, 2012 Order"), should be included in the Record on Appeal. Regardless of the parties' understanding of the May 16, 2012 Order, pursuant to Rule 210 of the South Carolina Appellate Court Rules, Respondents' designation of the May 16, 2012 Order requires that it be included in the Record.

In his Return, Appellant argues that May 16, 2012 Order does not deny Respondents' Motion to Dismiss, but instead, grants his Motion to Amend the Complaint. Appellant's perspective regarding the effect of the May 16, 2012 Order is simply beside the point as it relates to matter at hand. The intent of the Respondents' designation was to include the May 16, 2012 Order in the Record, regardless of Appellant's understanding of the aforementioned Order. Nevertheless, Appellant contends that by designating the May 16, 2012 Order as an "Order Denying Respondents' Motion to Dismiss", Respondents are precluded from including it in the Record pursuant to Rule 210, S.C.A.C.R. The May 16, 2012 Order clearly did not deny Appellant's Motion to Amend the Complaint. Therefore, Respondents properly designated the aforementioned Order in its designation of the Record.

To fully understand the fallacy of Appellant's argument, an explanation of the procedural background is necessary. In December 2011, Appellant filed a Counterclaim to Respondents' Counterclaim in which he asserted a cause of action for Violation of the South Carolina Frivolous Proceedings Act. Exhibit "A", Appellant's Counterclaim to Respondents' Counterclaim. Because Appellant failed to comply with the South Carolina Rules of Civil Procedure by filing a Motion to Amend his Complaint to add an additional claim and because it lacked merit, Respondents filed a Motion to Strike, or in other

words, a Motion to Dismiss the Appellant's Counterclaim¹ on December 28, 2011, which is attached hereto as Exhibit "B".

After the Motion to Strike was filed, Appellant filed a Motion to Amend his Complaint to add causes of action for breach of fiduciary duty, breach of the implied obligation of good faith and fair dealing, extortion, and violation of his privacy rights in March 2012, which is attached hereto as Exhibit "C". The grounds for this motion were different than the Counterclaim asserted in Appellant's Reply filed in December 2011 and sought to add different claims. Appellant never filed a Motion to Amend the Complaint to add a claim for Violation of the South Carolina Frivolous Proceedings Act.

On May 16, 2012, a hearing was held on several outstanding motions, including the Appellant's Motion to Amend the Complaint and the Respondents' Motion to Strike. The Court addressed the Motions in several different Orders. The Respondents' Motion to Strike was denied pursuant to the May 16, 2012 Order. Although not explicit in the text of the May 16, 2012 Order, the Court ruled that Respondents' Motion to Strike was denied; however, the Court acknowledged the procedural deficiencies in filing a "counterclaim to a counterclaim" at the hearing and ruled that the claim was added to the Complaint. With respect to Appellant's Motion to Amend the Complaint, the Court denied the Motion pursuant to a separate Order, which is attached hereto as Exhibit "D". As reflected in the filings of this case, Appellant's argument that the May 16, 2012 Order granted his Motion to Amend the Complaint is incorrect. Accordingly, Appellant's argument that Respondents improperly designated the May 16, 2012 Order by referring

¹ Appellant makes much of that fact that Respondents refer to the December 28, 2011 Motion as a Motion to Dismiss rather than a Motion to Strike in its Designation of Record and Initial Brief. The Motion was styled as a Motion to Strike, but it requested the dismissal of Appellant's claim based on procedural defects. Appellant's distinction is without a difference.

to it as an “Order Denying Respondents’ Motion to Dismiss” is also incorrect. The May 16, 2012 Order was entered pursuant to Respondents’ Motion to Strike, and therefore, Respondents properly designated it as “Order Denying Respondents’ Motion to Dismiss”.

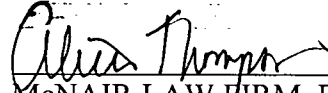
To the extent the Respondents’ designation was unclear to Appellant, he could have contacted counsel for the Respondents to gain clarification as to what was intended by the designation. Appellant instead included a different Order in the Record. When Respondents’ counsel brought this issue to the attention of the Appellant and asked to supplement the Record with the May 16, 2012 Order, Appellant refused.

The inclusion of the May 16, 2012 Order in the Record clarifies that Appellant’s claim for Violation of the South Carolina Frivolous Proceedings Act is part of his pleadings. Including the Order attached to Respondents’ Petition for Rehearing helps explain the procedural history of this case.

Respondents also deny Appellant’s claim that Respondents falsified the service date on the Proof Service for the Petition for Rehearing so that Appellant would have less time to file a Return. This was a mere clerical error and oversight, as reflected in the Affidavit of Donna M. Brady, which is attached hereto as **Exhibit “E”**. The fact that the Proof of Service was dated incorrectly by a mistake is obvious, as the cover letter filing the Petition and the Petition itself was dated November 12, 2013.

For the reasons set forth above and in the Respondents’ Petition for Rehearing and/or Motion to Supplement the Record, the Respondents respectfully request that the Record be supplemented with the May 16, 2012 Order attached to the Respondents’ Petition as Exhibit “A”.

Respectfully submitted,



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Date: November 25, 2013

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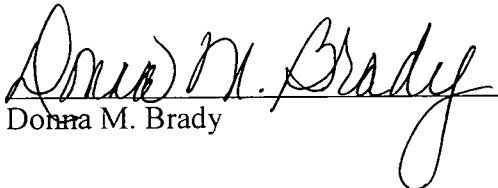
The International Club Homeowners
Association, Inc., Rosemary Toth, and
K.A. Diehl & Associates, Inc., Respondents.

PROOF OF SERVICE

I, Donna M. Brady, an employee of McNair Law Firm, P.A., certify that I have served the Respondents' Reply to 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., Exhibit A, 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 25th day of November, 2013.

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Donna M. Brady

Myrtle Beach, South Carolina