

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Civil Action No. 2009-CP-26-3596
)	
Ronald Jarmuth)	
Plaintiff	)	PLAINTIFF'S ANSWER
	)	TO COUNTER-CLAIM
vs.	)	OF DEFENDANT'S AMENDED
	)	COMPLAINT
The International Club)	
Homeowners Association, Inc.,	)	AND ASSERTION OF
et al	)	COUNTER – CLAIM BY
Defendants	)	PLAINTIFF
)	

Plaintiff / Counter-Defendant Ronald Jarmuth (hereafter referred to as "C-Def") answers the Counter – Complaint stated in Defendants' / Counter – Plaintiff's (hereafter referred to as "C-Pl") Amended Answer with Counter-Complaint filed with the Court on or about October 24, 2011, which Counter – Complaint was addressed at a hearing held December 7, 2011 on C-Def's SCRCivP Rule 12(b)(6) Motion – and for which, as of the date of the filing of this pleading, no Order of Court has yet issued. ¹

The Counter – Complaint is set out in paragraphs 50 through 74 of the Amended Answer, thus no response is required to the allegations of the earlier paragraphs which are not part of the Counter – Complaint as stated. To the extent that any earlier paragraphs can be read as being part of the Counter – Complaint, the allegations of the earlier numbered paragraphs are denied.

FIRST DEFENSE

1. Each and every allegation not hereinafter admitted, modified, or qualified is denied and strict proof demanded thereof.
2. Plaintiff admits that "the Defendant HOA is a non-profit corporation organized under and existing by virtue of the laws of the State of South Carolina" as stated in paragraph 50 of the Counter – Complaint. Plaintiff admits the allegation of paragraph 51 that "the Plaintiff, Ronald Jarmuth, is a citizen and resident of the State of South

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EXHIBIT A

Carolina". Plaintiff admits the allegation of paragraph 52 that "the Plaintiff, Ronald Jarmuth, owns Lot 12 of the Pebble Creek at the International Club ("Property")" but clarifies that said lot is within the "International Club Planned Unit Development, formerly known as Lantana Planned Unit Development, and formerly known and initially approved as the Murrells Inlet Golf Plantation. Plaintiff admits the jurisdictional allegations of paragraph 53.

3. Plaintiff admits the allegations of paragraph 54 that "as the owner of the Property, the Plaintiff is subject to the Governing Documents" but clarifies that the use of the property, not the person, is subject to the Covenants running with the land, as amended, specifically including those amendments to the Covenants which were properly enacted. C-Def explicitly rejects any allegation that the putative Bylaws of the International Club Homeowners Association have any legal effect, asserting that no Bylaws of C-PI HOA exist with any legal effect, and further asserting that any acts of C-PI HOA purporting to rely on any such Bylaws or rules are ultra-vires. C-Def asserts that Amendments two (2) through five (5) were enacted in violation of the South Carolina Non-Profit Corporation Act and of the Covenants, and are thus ultra-vires and ineffective.

4. C-Def denies and rejects the allegation of paragraph 55 that "the provisions of the Governing Documents provide that the Defendant HOA governs the International Club subdivision" asserting instead that the Murrells Inlet Golf Plantation Association, Inc (MIGPA) is the HOA which properly governs the PUD per the legally effective covenants. C-Def demands strict proof.

5. C-Def denies the allegation of paragraph 56 that "Section 7.2 of the Declaration provides" for anything, since said Section was "waived" by the First Amendment to the Covenants (the only legally effective Amendment to the Covenants). Plaintiff states further that, per Black's Legal Dictionary, first and any later editions, "waived" equates to "deleted" and alternatively means that any rights or obligations anyone might suffer per Section 7.2 became ineffective and legally incapable of being raised as of the date of the First Amendment. C-Def demands strict proof.

¹ The Court, from the bench, stated it's intention to deny C-Def's Rule 12(b)(6) motion – and directed that counsel for C-PI prepare and submit to the Court an Order following the December 7, 2011 hearing. No such order has been served on C-Def to-date (December 20, 2011).

6. C-Def denies and rejects the allegations of paragraph 57, since those allegations depend on the legally non-existent Section 7.2 of the Covenants.

7. C-Def denies and reject the allegations of Paragraph 58 that Defendant HOA legally enacted any "Architectural Guidelines" prior to the dates of the events complained of in the Counter – Complaint: September through October, 2010 and demands strict proof.

8. C-Def admits the allegations of paragraph 59 to the extent that C-Def filed "Courtesy" applications to the C-Pl putative Architectural Review Board (ARB), said courtesy applications explicitly clarifying that there was no provision under the Covenants requiring such application. C-Def further states that the application in question began with the statement that

"This document set is provided the ARB of the International Club HOA without waiving any objections as to the authority of said ARB or said HOA in this matter. This qualification is made so as not to implicate potential HOA assertions of "waiver" or "estoppel". ... I note that Amendment #1 of the Covenants removed all "Architectural Controls" as well as the requirement to seek prior approval from and ARB for any modifications. I also note that the same Amendment explicitly deleted all controls over fences".

9. C-Def denies the allegation of paragraph 60 that C-Def

"constructed a brick wall on the Property without obtaining the approval of the Defendant HOA or the Architectural Review Board".

C-Def asserts that there is no "brick wall" upon the property and that the lawn edging was explicitly applied for and approved as "red brick edger's for both (the area upon which a fence would ultimately be erected, which did not happen, and in the flower bed, which was built. C-Def asserts that the landscape drawing overlaying a survey of the property, which was submitted as required, depicted a line of "Brick Edging" running from the curb to C-Def's rear property line. Said Brick-Edging was approved by C-Pl's ARB thus C-Pl is complaining about the erection of a line of Brick Edging which C-Pl approved and calling it a "Fence" because the "Fence" was not approved – disregarding that neither a wall nor a fence was ever built.

10. C-Def asserts that the allegations of paragraph 61 violate the requirements of SCRCivP Rule 9(f) in that no specific date of the alleged correspondence is stated in the counter – complaint. Answering further, C-Def denies that he received any letter relating to any "wall or fence" prior to the courtesy meetings of the ARB. C-Def asserts that the

situation on the ground remains the same as before that courtesy application and act of the ARB which on October 8, 2010 approved what is actually on the ground. C-Def denies that the ARB

"sent notice to the Plaintiff that he violated the Governing Documents and the Architectural Guidelines by constructing improvements on the Property without approval from the Architectural Review Board and that the violation subjected him to fines."

11. C-Def denies the allegations of paragraph 62 that he applied to the ARB for approval of anything, stating further that, as explained supra, a "courtesy" set of documents was submitted.

12. C-Def denies the allegations of paragraph 63, since that paragraph asserts the legal viability of Section 7.4 of the Covenants, which section was "waived" in paragraph #11 of Amendment #1 to the Covenants, dated May 10, 2000, at Deed Book 2258 Page 1454. C-Def demands strict proof.

13. C-Def admits the allegations of paragraph 64 to the extent that it states that "The Architectural Review Board approved the Plaintiffs request for the flower bed and edging". Again, paragraph 64 is defective in that it fails to allege the date of the alleged event as required by SCRCivP Rule 12(f). C-Def denies that the ARB denied any request to construct a "wall" as no such request was ever lodged. C-Def denies that he received, at any time, any correspondence which asserted that any disapproval was founded on the basis that any C-Def request of action "did not comply with the general scheme of development for the International Club." C-Def demands strict proof.

14. C-Def denies the allegation of paragraph 65 than C-Pl "demanded that the brick wall be removed from the Property". C-Def demands strict proof.

15. C-Def admits the allegations of paragraph 66 to the extent that he paid, "under protest", a fine so as to give C-Def "liquidated direct damages" under which he could sue C-Pl. C-Def further states that said "fine" was never demanded for constructing any "brick wall" or "fence". C-Def denies that he "attempted to sue the Defendant HOA", stating the he "did" sue the C-Pl.

16. C-Def denies the allegations of paragraph 67, in as much as they are directed at the existence of a disapproved "brick wall". C-Def further states that he never "refused" to do anything; he merely ignored C-Pl and sued to enforce his rights and to enjoin C-Pl from

asserting non-existent rights. Likewise C-Def denies the allegations of paragraph 68 because it too construes the approved "brick edging" as a "brick wall" which was never applied for nor disapproved.

17. C-Def admits the allegations of paragraph 69 that he has "failed and refused to acknowledge the validity of the Governing Documents, the Architectural Guidelines, and the authority of the Defendant HOA and the Architectural Review Board to enforce the same" which is not an actionable position but rather protected speech under the First Amendment to the United States Constitution and protects C-Def from allegations of "waiver and estoppel".

18. C-Def denies the allegations of paragraph 70 and demands strict proof.

19. C-Def denies any allegation of paragraph 71 that the Covenants provide for "attorneys fees" and "costs of collection" for anything other than the enforcement of an explicit provision of the covenants, and further explains that the rules which the Covenants provide for are limited to "regulations governing bodies of water, water courses and other Common Areas".

20. As to the allegations of paragraph 72, C-Def denies the capacity of C-Pl HOA to exercise any right granted by the Covenants to the Murrells Inlet Golf Plantation Association, the HOA for the PUD. Answering further, C-Def admits that the legitimate HOA has the authority under the Covenants to determine and collect assessments for the operation of the common property. As to any other matter, C-Def denies it and demands strict proof. C-Def denies any allegation that he owes C-Pl anything. C-Def likewise denies the allegations of paragraph 73. As to the allegations of paragraph 74, the prior and current Board of the C-Pl HOA is the direct cause of any expense to the HOA because it is frivolously attempting to enforce non-existent ("waived") covenants putatively prohibiting an action ("brick wall") which never took place and relating to "brick edging" which said C-Pl's ARB approved. C-Def asserts further that said former and current Board Members of the HOA should be held personally liable for said expenses.

21. C-Def denies the allegations of paragraph 75 that he "breached the terms of the Governing Documents" which are the legally effective covenants. C-Def further asserts that at the time of the alleged events there were no legally effective ARB Guidelines. C-Def demands strict proof to the contrary. That being the case, C-Def denies that "the

Defendant HOA is entitled to" anything.

SECOND DEFENSE

22. Res Judicata. C-Def demands that the Court dismiss the Counter – Complaint in its entirety because the events complained of are part and parcel of Plaintiff's under-lying Complaint and the Rules provide that any damage which Defendant might have suffered from the same events must be plead as a Counter – Complaint at the time the original answer is filed, or shall be lost forever through res-judicata.

THIRD DEFENSE

23. The allegations of the First and Second Defenses are incorporated herein and made a part and parcel hereof. The C-PI lacks standing to bring the claims asserted in the Counter- Complaint, in that the Defendant is not the HOA for the PUD per the covenants.

FOURTH DEFENSE

24. The allegations of the First through Third Defenses are incorporated herein and made a part and parcel hereof. The C-PI's claims should be dismissed because they are barred by the doctrines of Collateral Estoppel and further that the C-PI has failed to follow its own putative rules.

FIFTH DEFENSE

25. The allegations of the First through Fourth Defenses are incorporated herein and made a part and parcel hereof. The answering C-Def asserts the Doctrines of Estoppel, Waiver, Consent, and Laches as complete affirmative defenses to the allegations contained in the Counter - Complaint.

SIXTH DEFENSE

26. The allegations of the First through Fifth Defenses are incorporated herein and made a part and parcel hereof. There is no underlying contractual basis which grants the C-PI any rights under the Covenants since what would have been the applicable covenants were "waived" through the First Amendment to the Covenants filed with the Recorder of Deeds on May 10, 2000 at Deed Book 2258 Pages 1453 et seq. Further, there is no relief which the Court can grant to the C-PI because the alleged "brick wall" does not exist and thus the Court can nor require its removal. The C-PI has not plead for a restraining order either.

SEVENTH DEFENSE

27. The allegations of the First through Sixth Defenses are incorporated herein and made a part and parcel hereof. All actions of the C-Def were undertaken in good faith and in accordance with the Covenants. C-Def strictly complied with the existing and legally effective covenants and rules.

EIGHTH DEFENSE

28. The allegations of the First through Seventh Defenses are incorporated herein and made a part and parcel hereof. The C-Pl's claims are barred by the doctrine of equitable estoppel.

NINTH DEFENSE

29. The allegations of the First through Eighth Defenses are incorporated herein and made a part and parcel hereof. The counter – claim is barred by the doctrine of Novation through the action of the First Amendment to the Covenants.

TENTH DEFENSE

30. The allegations of the First through Ninth Defenses are incorporated herein and made a part and parcel hereof. The C-Pl's claims are barred by the doctrine of unclean hands.

ELEVENTH DEFENSE

31. The allegation of the First through Tenth Defenses are incorporated herein and made a part and parcel hereof. The Counter – Complaint is barred by the doctrine of laches.

TWELFTH DEFENSE

32. The allegation of the First through Eleventh Defenses are incorporated herein and made a part and parcel hereof. The Counter – Complaint was filed to harass the Plaintiff and for other improper purpose, in further violation of the South Carolina Rules of Ethical Practice applicable to Defense Counsel.

COUNTER – CLAIM BY PLAINTIFF

33. Plaintiff asserts a compulsorily counter – claim as required by SCRCivP Rule 13(a) and as allowed by Rule 15(a). Plaintiff was effectively served an Answer / Counter – Claim ("pleading") following the denial of Plaintiff's Rule 12(b)(6) Motion. Rule 15(a) provides that

"A party may amend his pleading ... within 30 days after a responsive pleading is served"

34. Through the service on April 13, 2009 of Plaintiff's Complaint styled Jarmuth v HOA et al in this Court, 2009-CP-26-3596, Defendants have been on actual notice of the deletion of those provisions of the Covenants upon which Defendants depend for the filing of their Counter – Complaint. Since at least 2006 the Defendants have posted that First Amendment to the Covenants on it's web-site and have referred to it on numerous occasions. The knowing assertion of rights through a Counter - Complaint which rights were obviously deleted years prior to the assertion of those rights constitutes a Frivolous Proceeding as defined by the South Carolina Frivolous Civil Proceedings Sanctions Act, Sections 15-36 et seq of the Code.

35. The Counter – Complaint was filed to harass the Plaintiff and for other improper purpose, in further violation of the South Carolina Rules of Ethical Practice applicable to Defense Counsel.

**36. In accordance with SC Code 15-36-10(G) Plaintiff requests the following sanctions:
(1) an order for the Defendant to pay the reasonable costs and attorney's fees of the Plaintiff**

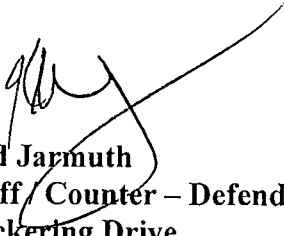
(2) an order for the attorney to pay a reasonable fine to the court; and

(3) a directive of a no monetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith.

**WHEREFORE, having answered the Counter - Claims of the Counter - Plaintiffs,
the Counter - Defendant hereby prays as follows:**

- a. that the Counter - Complaint be dismissed;**
- b. sanctions as requested per paragraph 36 above.**
- c. for such other and further relief as this Court deems just and proper.**

Respectfully submitted,



**Ronald Jarmuth
Plaintiff / Counter – Defendant Pro Se
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355**

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.,)
Rosemary Toth,)
And K.A. Diehl & Associates,)
)
Defendants.)

**DEFENDANTS' MOTION TO
STRIKE PLAINTIFF'S
COUNTERCLAIM TO THE
COUNTERCLAIM**

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-26-11320

Ronald Jarmuth,)
)
Plaintiff,)

vs.)

The International Club Homeowners)
Association, Inc.)
)
Defendant.)

YOU WILL PLEASE TAKE NOTICE that Defendants, The International Club Homeowners Association, Inc. ("HOA"), Rosemary Toth ("Ms. Toth"), and K.A. Diehl Associates ("K.A. Diehl") (collectively hereinafter "Defendants"), by and through undersigned counsel, move before this Honorable Court for an Order striking the pro se Plaintiff's counterclaim contained in the "Plaintiff's Answer to Counter-Claim of Defendant's Amended Complaint and Assertion of Counter-Claim by Plaintiff" in the above captioned matter pursuant to Rule 7(a) and Rule 12(f) of the South Carolina Rules of Civil Procedure ("SCRCP"). This

motion is based upon the grounds that SCRCRCP Rule 7(a) precludes the pro se Plaintiff from asserting a “counterclaim to a counterclaim”.

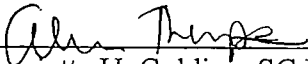
SCRCRCP Rule 7(a) provides “There shall be a complaint and an answer; and a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under Rule 14, and there shall be a third-party answer, if a third-party complaint is served. No other pleadings shall be allowed, except that the court may order a reply to an answer or a third-party answer; and there may be a reply to affirmative defenses as provided in Rule 8(c).” (emphasis added). Rule 7(a) clearly precludes a plaintiff from asserting a counterclaim in a reply to the counterclaim. The pro se Plaintiff’s attempt to circumvent the pleading requirements as set forth in SCRCRCP Rules 7(a) and 15 by asserting a “counterclaim to a counterclaim” instead of moving to amend his complaint is improper, and therefore, the claims contained in the pro se Plaintiff’s reply should be stricken.

The above Motion is based upon the pleadings, memoranda, and other documents that may be submitted prior to or at the time of the hearing of this matter and/or the case law and statutory law of the State of South Carolina.

The undersigned, as counsel for the Defendants, hereby certifies that consultation with the pro se Plaintiff would serve no useful purpose based upon the undersigned’s past dealings with the pro se Plaintiff.

Respectfully submitted,

McNAIR LAW FIRM, P.A.


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Attorneys for the Defendants

Myrtle Beach, South Carolina
December 28, 2011

CERTIFICATE OF SERVICE

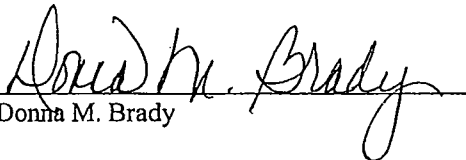
I, Donna M. Brady, an employee of McNair Law Firm, P.A., certify the foregoing document was served via United States Mail, postage prepaid to the Pro Se Party, on this the 28th day of Dec., 2011, as follows:

- Defendants' Motion To Strike Counterclaim To Counterclaim;
- Motion and Order Information Form and Cover Sheet; and
- Certificate of Service.

Addressee(s):

Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576

Pro se Plaintiff


Donna M. Brady

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