The South Carolina Court of Appeals

Blue Ridge Electric Cooperative, Inc., Appellant/Respondent,

v.

Kathleen J. Gresham
(and Steve Gresham) Respondent/Appellant.

Circuit Court Judge R. Lawton McIntosh
Greenville County
Trial Court Case No. 2008-CP-23-05245

Initial Appeal Brief
Of
Respondent/Appellant

Blue Ridge Electrical Cooperative, Inc. v. Kathleen J. Gresham (and Steve Gresham)
Appellate Case No. 2009-14126
2008-CP-23-5245

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Statement of the Case

On July 15, 2008 Blue Ridge Electrical Cooperative, Inc., headquartered primarily in Oconee, Anderson and Pickens Counties of South Carolina, filed a lawsuit for debt collection against Kathleen and Steve Gresham of Greenville County claiming that they had failed to pay power bills for three years. Many disconnect power notices had been sent both by the cooperative and by Plaintiff's attorney and power to the household was set to terminate immediately if the back bills were not paid as submitted. Plaintiffs sought a non-jury action. Plaintiffs sought debt collection, attorney's fees, and costs. Defendants refuted Plaintiffs' claim and further refuted that Defendant Steve Gresham had ever been or was a member of Plaintiff Blue Ridge Electrical Cooperative and was, therefore, an improper party to any lawsuit. Both Defendants sought his removal from the lawsuit. Defendant Kathleen Gresham countersued and alleged trespassing by Plaintiff as to a recently installed power support pole and guy wires by Plaintiffs on her property for which punitive damages were also sought. Defendant Steve Gresham sought costs and sanctions from Plaintiffs. Both Defendants requested a jury trial in their responsive pleadings.

Plaintiffs sought $8,667.64 from Defendants, both pro se, along with all costs and attorneys fees. Defendant Steve Gresham on September 16, 2008 filed a Motion to remove himself from this lawsuit as he had never been nor was a member of Blue Ridge Electrical Cooperative along with Motion for Sanctions against Plaintiffs for naming an improper party to this action, setting out that he had never been a member of Blue Ridge Electrical Cooperative. Such motion was timely served on Plaintiff and on the named co-Defendant. Defendant Kathleen Gresham joined in the motion. A motion hearing was properly noticed and scheduled for November 5, 2008 in Greenville County, the county of residence for Defendants. Plaintiffs failed to appear necessitating a call from the Court, Judge Larry R. Patterson presiding, and thereafter, did appear. Defendants were duly present and both filed with the Court on September 16, 2008, Affidavits in Support of Defendant's motion to dismiss and for Sanctions as wrongfully naming Steve Gresham in this lawsuit. Additional Affidavits in support of the Motion for Sanctions were filed with the Court on November 5, 2009. Additionally, both Defendants presented to the Court that Mr. Gresham was not a member of Plaintiff Electrical Cooperative and was an improper party to the lawsuit as was known to Plaintiff. Plaintiffs argued to the Court that Mr. Gresham was indeed a member of the Electrical Cooperative and was, therefore, a proper party which resulted in the Order of the Court from Judge Patterson maintaining Steve Gresham as a party and not awarding sanctions as sought by Defendant based on Plaintiffs' representation to the Court and their filed Complaint. Judge Patterson's hand written Order reflecting his denial of Defendants' motion was written on November 5, 2008 and filed on November 6, 2008 pursuant to Rule 12 b 6 based on Plaintiffs' counsel assurances that Steve Gresham was properly a party and pursuant to the face of the Complaint. Mary DiGirolamo was the Court reporter.

Each Defendant Gresham filed their separate Answers and Counterclaims, Jury Trial Demanded. Steve Gresham filed his Answer and Counterclaim on September 16,

2008 (with right to supplement or modify following the above referenced Court's motion hearing for dismissal as a party and for sanctions). Plaintiffs mailed their Reply to Defendant Steve Gresham on October 7, 2008, with an unclocked copy, received by him on October 10, 2008.

Defendant captioned Kathleen Gresham filed her Answer and Counterclaim, Jury Trial Demanded, on September 30, 2008 and immediately served on Plaintiffs. Plaintiffs submitted an unclocked copy of their Reply to her Answer and Counterclaim received by her on November 15, 2008.

Defendant Steve Gresham pled that he was not nor had ever been a member of said Blue Ridge Electrical Coop.; that his wife's power bill was promptly and fully paid each month as billed by Plaintiffs for over twenty (20) years, without fail. He sought sanctions, costs, punitive and other damages from this action from Plaintiffs.

Defendant wife captioned as Kathleen Gresham pled she had promptly paid monthly electric bills to Plaintiff Cooperative for over twenty-five (25) years, without fail; that her husband, whom she had married years after her membership in the Blue Ridge Electrical Cooperative, had never been a member of Blue Ridge Electric Coop. as she owned the property prior to marriage and established her own membership; that husband had never been or was ever added to such membership and that the Blue Ridge membership existed in her maiden name alone that she continued to use (i.e. Jennings) and not in a married name as captioned by Plaintiffs. Kathleen demanded a jury trial in her counterclaim for, among other matters, trespass by Plaintiffs due to a support pole and accompanying guy wires placed on her property by Plaintiffs without her permission close to the time of this lawsuit that did not serve her or her property or provide her electrical supply. She also sought all costs, damages, and punitive damages for such trespass along with sanctions for this action.

Discovery occurred, as did mandatory mediation with Attorney Wallace Culp with Defendants required to pay half the costs of mediation. Mediation was held on May 21, 2009. No agreement resulted from mediation. The Jury trial, demanded by Defendants, was held on August 26, August 27 and August 28, 2009 in the Court of Common Pleas, Greenville County, with assignment to Circuit Judge R. Lawton McIntosh of the 10th Judicial Circuit, comprising Oconee and Anderson Counties. Judge McIntosh also conducted the voir dire and jury selection of this matter that occurred on August 24, 2009. Trial judge required both Defendants to split strikes in jury selection, allowing four strikes for Plaintiffs and two strikes for each Defendant. The trial judge allowed one strike for both Defendants combined and one strike for Plaintiffs for the alternate juror. The case proceeded to a three-day jury trial, August 26, 27, and 28 of 2009 in Greenville County Common Pleas Court.

Following Plaintiffs' case wherein it was elicited by Kathleen of Plaintiffs' key witness, Denise McCormick, also custodian of their records that Steve Gresham had never been a member of Blue Ridge Electrical Cooperative, Defendants made motion that Steve Gresham once again be dismissed as a Defendant with his request for costs to remain. The Court ordered the dismissal of Defendant Steve Gresham following Plaintiffs' case in chief and filed his handwritten Order on August 31, 2009. The handwritten Order incorrectly attests that Defendant Gresham dismissed his counterclaim against Blue Ridge that is not accurate or factual and is not borne out in the transcript. Such purported dismissal by Steve Gresham was, sua sponte by the trial judge, added to

the handwritten Order by the trial judge without concurrence by Defendant Steve Gresham and three days after the conclusion of this jury trial by clocked date.

Immediately prior to closing arguments, occurring on the third day of jury trial on August 28, 2009, the trial judge, sua sponte, without notice or motion, ordered that punitive damages long sought by Defendant be disallowed and commanded, over preserved objection that Defendant Kathleen refrain from mentioning them in any way to the jury or face contempt of Court. Punitive damages sought by Kathleen Gresham from Plaintiffs had been long pled from her original Answer and Counterclaim without challenge.

Both counsel for Plaintiffs and Defendant Kathleen had been previously ordered by the Court to maintain their jury arguments and closing statements to the jury within 45 minutes each or face contempt of court. Kathleen protested the last minute prohibition by the trial judge immediately prior to closing statements as to the punitive damages issue, as it had been long pled, without challenge. She preserved her objections on the record. The trial judge charged the jury. The trial judge's proposed jury charge was provided to the parties at the conclusion of the second day of jury trial, August 27th. These proposed jury charges contained the charge as to punitive damages and as to trespass along with debt collection and general jury charge issues. On the following morning, August 28th, the last day of the jury trial, immediately before closing arguments began, the trial judge, sua sponte and without notice, declared that he was refusing to now charge punitive damages that were long and properly pled by Defendants and had been contained in his proposed jury charges furnished to the parties on the afternoon previous in Court. The trial judge ordered Defendant to refrain from any mention of punitive damages in her imminent closing argument or be subject to contempt of court, to which she objected on the record, with running objection, properly preserved for appeal. The trial judge thereafter supplemented his dispersed jury instructions of the afternoon before with a page long hand-written additional jury instruction on the issue of Trespass for the jury to consider in addition to the previous jury charge he had already set forth on the issue of Trespass. Defendant had not viewed this additional Trespass charge prior to this last-minute announcement by the trial judge and placed her objection to the additional Trespass charge on the record, preserved for appeal. The trial judge, noting her objection, moved forward with both Trespass charges and again refused to charge Punitive Damages still requested by Defendant. Defendant maintained a copy of the complete Jury Charges and later made same a part of the appellate record as the jury charges were missing and/or destroyed sometime following this jury trial.

A unanimous jury verdict was returned by the jury in favor of Defendant Kathleen Gresham (Jennings) as to all matters allowed by the trial court to go forward, including a finding for the Defendant that there was no debt owed to Plaintiffs and a finding that there had occurred Trespass by Plaintiffs on Defendant Kathleen's property. The issue of Punitive Damages was not allowed by the trial judge to be submitted to the jury or determined by the jury, despite objections by Defendant, and preserved on the record.

A monetary verdict of $.01 was written by the jury along with their findings for Defendant on the issues of the initiating Complaint for debt and for Defendant's Counterclaim for Trespass against Plaintiffs, in accordance with the facts and law of this case.

Post-trial motions were made by both parties, following the jury trial, which were denied by the trial judge. Judgment NOV or, in the alternative, for a new trial were made by Plaintiffs and motions were made by Defendant, including for the issue of denial of punitive damages, were timely made and were denied by the trial judge with Order filed September 11, 2009. He again denied such motions in open court on April 29, 2013 during record reconstruction.

Appeals and filed notices of intention to appeal were made by the parties. In the pendency of waiting for the transcript and after multiple requests for extensions by Mary E. DiGirolamo, official Court reporter at the three-day trial, the Court reporter advised that part of the transcript was missing and apparently destroyed. The transcript provided by DiGirolamo, numbered 259 pages. Defendant received the partial transcript in September of 2012 though had requested it earlier without success. The original partial transcript was missing, claimed as destroyed by all equipment malfunctioning including backup equipment, by the Court Reporter's reports to the Court and to the parties. The transcript was in tact prior to the testimony of Defendant Kathleen Gresham with missing components from her testimony forward to the completion of trial. The missing transcript, therefore, missed the testimony of Kathleen Gresham, of Fred Smith of Freeman Gas Company in Landrum, of Reply testimony of Ronnie Alexander of Blue Ridge Electrical Cooperative, their cross examinations, comments by the trial judge, jury arguments by both parties, jury charges by the trial judge and other matters through the end of the trial itself.

A Reconstruction Hearing was Ordered by the Appellate Court when it was finally determined that portions of the trial record were missing and destroyed. The original Court Reporter had requested multiple extensions in record preparation thus it took approximately a year before the full extent of the apparently destroyed transcript was realized by the parties and Court. A Reconstruction hearing conference was held with the parties in Anderson County as scheduled by the trial judge with mandatory appearance of the parties on September 25, 2012.

The full Reconstruction Hearing was held also in Anderson County as scheduled by the trial judge, occurring on April 29, 2013, with mandatory attendance by all parties. Plaintiffs' representatives and their counsel, Larry Brandt, were present and both Defendants Gresham were present at this Reconstruction Hearing, though locations and proceedings in Anderson County had been protested by Defendants in lieu of Greenville County, the site of the lawsuit and of Defendants' residence. The transcript of April 29, 2013 was prepared by Renee H. Tollison, Court Reporter, numbered 105 pages and completed for submission by the trial judge to the Court of Appeals. The Court of Appeals, thereafter, set forth its schedule for Initial Briefs, Statement and Issues for both sides, due thirty days from receipt of their Order. Herein, in compliance with that Order, are the First Brief, Issues and Statement of Defendant/Cross-Appellant Kathleen Gresham for the parties Defendants.

Defendant and Cross-Appellant Kathleen requested on several occasions that an investigation into the destroyed/missing transcript matter by the SC Court Administration and/or Clerk's Office be made, with no reply or report received as to such investigation or matter as to this date. Reconstruction of the record occurred with two Court hearings held in Anderson County, despite protests of Defendant, a resident of Greenville County in which the action was brought. A meeting was held on April 29, 2013 and actual

testimony was taken on September 25, 2012. Oral testimony was taken from Defendant Kathleen Gresham and from Ronnie Alexander, employee of Plaintiff Blue Ridge. It was revealed that all of the transcript ending just **before** Kathleen's testimony was missing or destroyed as reported by the Court Reporter to the Court. A witness subpoenaed by Plaintiffs but called by Defendant, Fred Smith of Freeman Gas in Landrum, South Carolina, testimony was also missing. He was not called to the Reconstruction Hearing but his stipulated testimony set forth in writing, marked as Defendant's Exhibit #1 was introduced and made a part of the Appellate record by agreement of the parties and stipulation in lieu of his presence. Kathleen Gresham sought testimony from the court reporter DiGirolamo that did not occur, as she was not present at this proceeding.

Kathleen sought assurances that the multiple exhibits introduced at the three- day jury trial were intact and was advised that the exhibits were held by the Greenville County Clerk of Court. At the September 2012 reconstruction hearing, both Plaintiffs and Defendant were allowed to place into the record other documents from trial that they sought to be considered and were an original part of the proceeding. Defendant Kathleen introduced and placed into the record the judge's jury charge, copy given to the parties in court on August 27, 2009 and placed into the record the trial judge's handwritten additional jury charge on the issue of Trespass he presented in Court on August 28th to expand on his already-submitted issue of Trespass, previously submitted. The expansion of Trespass charge in hand-written form was submitted to the parties just prior to his charging the jury on the last day of trial, August 28, 2009. This hand-written jury charge made by the trial judge was identified by the trial judge as his handwriting at the Reconsideration Hearing on September 25, 2012 and made a part of the reconstruction of the record. Defendant Kathleen had objected to this Trespassing supplemental charge produced by the Judge on August 28, 2009 in the final date of jury trial but such was charged over her objection. Her objections were preserved and also preserved in running fashion and on the record again at the Reconstruction Hearing on September 25 of 2012.

The trial judge submitted the court reporter's transcription of the reconstructed record to the Court of Appeals in June of 2013. Correspondence from the Court of Appeals as to initial briefing deadlines for the parties was received by Defendant on July 5, 2013, commenced the briefing appeal process.

It is IMPORTANT to note that Plaintiffs Blue Ridge Electrical Cooperative, Inc. through their legal counsel, Larry Brandt, announced in Court during the reconstruction hearings of September 25, 2012, and confirming again at the second hearing on the record on April 29, 2013 that Blue Ridge Electrical Cooperative, Inc. has now abandoned, dismissing and withdrawn their claim for any past due bills, debt, or monies from Defendant Kathleen Jennings (Gresham) and for any and all claims for any costs and/or attorneys' fees and costs associated in any way with this matter, with prejudice. (Reconstruction Record page 4, lines 8-17)

Therefore, these issues that initiated this lawsuit brought by Plaintiffs are now withdrawn, dismissed and ended completely by Plaintiffs with prejudice. The issues on Appeal are those issues by Plaintiff are the finding of their Trespass by jury verdict, and by Defendants the issues of Punitive Damages pled by Defendant, denial of due process, sanctions, and costs of Defendants.

APPEAL FROM GREENVILLE COUNTY
ISSUES OF RESPONDENTS/APPELLANTS'
Case No. 2008-CP-23-5245

Issue 1: Did the refusal to charge Punitive Damages by the trial judge as to Trespass sought by Defendant and properly pled with long-standing notice to Plaintiffs, constitute a denial of due process to Defendant and was error, severely prejudicing Defendant, especially in consideration of the verdict for Defendant (now Respondent/Appellant) and on the issue of Trespass?

Issue 2: Did the trial judge err in failing to impose Sanctions against Plaintiffs for improperly and frivolously naming Steve Gresham as a party in the lawsuit, knowingly signing false legal documents, even after Plaintiffs admitted under oath Steve Gresham had no liability towards the Plaintiffs and should not have been a named party, in violation of South Carolina Frivolous Civil Procedure Sanctions Act?

Issue 3: Did the trial judge err in failing to impose sanctions against the Plaintiffs for filing a frivolous lawsuit against Defendant in the matter of an uncollected debt, which was never found to exist by jury trial and abandoned by Plaintiffs on Appeal after losing the case in violation of the South Carolina Civil Procedures Sanctions Act?

Issue 4: Did the trial judge err in his rebuke of Defendant Kathleen Jennings (Gresham) on the witness stand in front of the empaneled jury, interrupting her testimony as to her extended cooperation with Plaintiffs Blue Ridge and prejudicing her case and her in this disruption?

Issue 5: Did the trial judge err in failing to direct verdict for Defendant as to the debt collection allegation for unpaid bills that was the initiating cause of action pled by Plaintiffs in consideration of testimony of Plaintiffs' own witnesses?

Issue 6: Did the trial judge err in failing to impose pled costs, damages, sanctions and other relief sought by Defendants in connection with this matter and issues of Plaintiffs as improperly brought and pursued in light of the testimony of Plaintiffs' own witness(es) in admitting the monthly bills were paid regularly by Defendant on a monthly basis as prepared and billed by Plaintiffs in accordance with the equipment of Plaintiffs' own selection and installation?

Issue 7: Did the trial judge err in failing to order Directed Verdict for Defendant Kathleen Gresham as to the Debt allegation pled by Plaintiffs, which was the essence of their initiating lawsuit, in consideration of the testimony of Plaintiffs' own witnesses?

Issue 1: Did the refusal to charge Punitive Damages by the trial judge as to Trespass sought by Defendant and properly pled with long-standing notice to Plaintiffs, constitute a denial of due process to Defendant and was error severely prejudicing Defendant, especially in consideration of the verdict for Defendant/Cross Appellant and on the issue of Trespass?

The refusal by the trial judge to charge Punitive Damages as to Trespass well pled by Defendant with long-standing notice to Plaintiffs, constituted a denial of due process to Defendant. Such failure also constituted error severely prejudicing Defendant especially in consideration of the resulting verdict from the 12-member jury empaneled in this 3-day trial in favor of Defendant on the issue of Trespass.

The issue of Trespass raised by Defendant as to the support utility pole and guy wires on Defendant's property and outside any highway right of way as testified by Defendant and by others, immediately harkens the issue of damages, both actual and punitive. It is outside the province of authority of the trial judge to arbitrarily remove the punitive damages issue on his own motion, sui sponte, as he did in this trial. There were sufficient issues and clear establishment of the Trespass violation in Defendant's testimony and case for the issue to go to the jury who had been impaneled as the finders of fact and of law. They were in the best position to judge all the evidence, having heard of the testimony, had in their possession all the exhibits, were in the best position to judge the demeanor of the witnesses, to judge who was not called, who was called, what they said or omitted, what was their motivation in so testifying, their body language, their demeanor and their actions, more than any other identity trying to substitute judgment for them. The jury was in a full and complete position to make all determinations in this case that was the reason they were impounded.

For the trial judge to then, at the last minute immediately prior to jury closing arguments, to remove the critical issue of Punitive Damages from their consideration, resulted in a big shutdown of a substantial portion of the case and tossed this segment of the trial as a WIN to the Plaintiffs. The jury was usurped in their province and deprived of their role in making the determination as to all issues of the case. The Plaintiffs had long been on notice of the well-pled Counterclaim as to Trespass and as to Punitive Damages. The Plaintiffs alone structured their case and its presentation, choosing to focus on their debt collection more than on Defendant's Trespass and Punitive Damages issues. Plaintiffs and their vast legal team of unlimited resources and funding, focused their own lawsuit, without regard to Defendants' counterclaim, and then struggled on the third day of trial to halt the issue of Punitive Damages from reaching the jury. The trial judge unfortunately usurped this province from the jury instead of properly allowing this issue to also be determined by the jury so assembled, resulting in prejudice to Defendant and in an error of law and abuse of his discretion.

Correctly, the issue of Punitive Damages should have gone forward to the jury for determination, and then, depending on that aspect of the verdict, the trial judge could have reviewed the punitive damages determination to determine if such was in line with the evidence. The trial judge, sua sponte, jumped the gun in his zeal to accommodate Plaintiffs and unwisely protect them from the proper ends of justice.

The jury acted wisely and as a cohesive group, clearly grasping the evidence and testimony presented but were robbed of their sole ability to make a determination as to

the punitive nature of Plaintiffs' actions regarding damages. The jury was usurped in hearing the definition of punitive damages that were initially to be charged by the trial judge as he had presented the issue in charge form to both parties on the second day of trial, August 27th, at day's end, stating he was going to charge that lengthy charge presented on the next day to the jury. Defendant Kathleen had no reason to imagine that the trial judge was going to unilaterally change his mind and sua sponte decide to eliminate her well-pled counterclaim and evidence that supported punitive damages. Defendant carefully preserved her objections though blindsided with the last-minute refusal by the trial judge to allow her to argue punitive damages, threatening her with contempt of court if she did so.

The Defendant was thus prevented from arguing punitive damages that was a natural and just accompaniment to Trespass, clearly supported by the evidence and law. The jury was thus removed from this due process right of Defendant. The verdict from the jury in favor of Defendant on all issues before them, including Trespass, should stand with the case remanded ONLY as to the issue of Punitive Damages for the Trespass. To mettle with the jury's verdict on the key issue of Trespass, filed in 2008, tried in 2009, would be a renewed travesty. Justice and due process for Defendant, denied to her by the trial judge sua sponte's decision, will come when a jury decides the Punitive Damages issue that was wrongfully removed from their province, violating due process for Defendant. This case can serve as a concrete reminder to the judiciary and to the citizens of this state that due process will be followed; that the trial judge cannot substitute its judgment for a jury by wrongly removing such a substantial issue from the jury's determination when impaneled and testimony presented; that every party has due process rights in the taking of their property; that the Appellate Court intends for its case law to be followed along with the guidelines clearly set out therein; that the Appellate Court expects the trial judges to comply without partiality or favoritism regardless of the esteem or lack thereof they may have for a party or parties to a proceeding; and that fairness and due process will be enforced and correct procedures, prevail.

(continued)

Issue 1: Did the trial judge violate the Defendant/Cross Appellant's constitutional rights of due process and deviate from long-standing federal and South Carolina state case law by an abuse of discretion in the sua sponte decision to prohibit the well-pled punitive damages as part of the trespass cause of action from being presented in the jury instructions and to the empaneled jury?

Argument 1: The sua sponte decision by the trial judge to prohibit the well-pled punitive damages as part of the Trespass cause of action from being submitted to the jury violated the Defendant's constitutional rights of due process and deviated from long-standing federal and state law, resulting in an abuse of discretion by the trial court and usurped the jury from its sole province to decide and award punitive damages.

Punitive Damages are well established in South Carolina and serve as a second tier for damages against a party offender as in the case of a party who commits Trespass on another's land. In the case at hand, Defendant had long pled Trespass in her Counterclaim against Plaintiff and additionally long pled Punitive Damages in connection with Plaintiff's Trespass. The erection of a power support pole and guy wires on Defendant's property, over her objection and without her permission, violated Defendant's property rights as a Trespass. The placement of the support pole and guy wires owned by Plaintiff company was a recent occurrence in close proximity to the time of the initiating lawsuit brought by Plaintiffs claiming unpaid debt to Plaintiffs from Defendant for alleged residential power bills. The erected support pole and guy wires carried no electrical service to Defendant OR to any other Blue Ridge customer and was purely for support for power poles erected across the street from Defendant to a projected and never realized subdivision development, utilizing Defendant's land for additional customers of Plaintiffs without Defendant's permission in this purpose, which was a willful and planned Trespass without regard to Defendant.

In the State of South Carolina, the tort of trespass is a claim in which the Defendant may be entitled to nominal, actual, and punitive damages. *See* Restatement (Second) of Torts § 903, pp. 453-454 (1979). The Supreme Court of the United States has followed long-standing common law that in an "action of trespass...a jury may inflict what are called exemplary, punitive, or vindictive damages." Barry v. Edmunds, 116 U.S. 550, 562 (1886), *citing* Day v. Woodworth, 13 How. 363, 371. Punitive damages are awarded in the "interest of society" to act as "a warning and example to deter the wrongdoer and others from committing like offenses in the future." Gamble v. Stevenson 305 S.C. 104 406 S.E.2d 350 (S.C. 1991).

Punitive damages are determined by wanton, malicious, gross, or outrageous conduct against an aggrieved, as evaluated by the juries as a measure of compensation. Barry at 562; Gamble at 354 *citing* Harris v. Burnside, 261 S.C. 190, 196, 199 S.E. 2d 65, 68. Malice is defined as an act "conceived in the spirit of mischief or of criminal indifference to civil obligations." Id. at 563 *citing* Philadelphia, W. & B. R. Co. v. Quigley, 21 How. 202, 214. Additionally, consciously oppressive, willful, or reckless conduct rises to a claim of punitive damages. Tolleson v. Southern Ry. Co. 88 S.C. 7, 70 S.E. 311 (S.C. 1911) *citing* Chiles v. Railway, 69 S.C. 327, 48 S.E. 252; Myers v. Railway, 64 S.C. 514, 42 S.E. 598. The wrongdoer does not have to actually realize that

he is "invading the rights of another, provided the act [was] committed in such a manner that a person of ordinary reason and prudence would say that it was in reckless disregard of another's rights." Id. at 313. Therefore creating a subjective standard.

It has further been established from common law that the determination of punitive damages is a decision "left to the discretion of the jury, as the degree of the punishment to be thus inflicted must depend on the peculiar circumstances of each case," and "for the sake of public example." Id. The decision of the award of punitive damages is left to the jury as "the appointed constitutional tribunal to award," and "in *no* case is it permissible for the court to substitute itself for the jury." Barry at 565 *citing* Whipple v. Cumberland Manuf'g Co., 2 Story, 661, 670. The Court of Appeals of South Carolina has reiterated common law in that the State "imposes a duty on the jury to award punitive damages." Magnolia North Property Owners' Association Inc. v. Herital Communities, Inc. 397 S.C. 348, 725 S.E.2d 112, 123 (S.C.App. 2012) *citing* Clark v. Cantrell, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000). This analysis is correctly aligned with the law of South Carolina that the court is "required to charge only the current and correct law." Id. The Supreme Court of the United States has taken this matter with the utmost importance so far that it has explicated that "requiring the application of law, rather than a decisionmaker's caprice...assure[s] the uniform general treatment of similarly situated persons that is the essence of the law itself." Cooper Industries Inc. v. Leatherman Tool Group, Inc. 532 U.S. 424, 436 (2001), 121 S.Ct. 1678, 149 L.Ed.2d 674 *citing* Ornelas v. United States, 517 U.S. 690, 697 (1996). This standard of decision making was derived from common law and centuries old decisions in that the award of punitive damages has always have been left to the discretion of the jury, and not the judge, to make the determination based upon the circumstances of each case and is a highly fact-sensitive process. Id. at 445; Day at 371; Barry at 565.

The Supreme Court of South Carolina has outlined that punitive damages are awarded based upon individual circumstances of each case and that the monetary award is to be based upon the complaint, prayer of relief, and proof submitted. Lawton Limehouse, Sr. v. Paul H. Hulsey and The Hulsey Litigation Group LLC. *Citing* Jackson v. Midlands Human Res. Ctr.., 296 S.C. 526, 529, 374 S.E.2d. 505, 506 (Ct. App. 1988). The exact amount of award to be recovered in an action of trespass has no limitation defined by law, and thus is based upon the declaration stated in the demand and upon the evaluation of the jury. Barry at 560. This determination granted in the verdict is a "peculiar function of the jury," but is one that is left solely for the jury. Id. at 565. The amount of punitive damages is not only for a means of compensation, but as a "remedy and prevention for the greater wrong and injury involved in the apprehension of its repetition." Id. at 566, *citing* Huckle v. Money, 2 Wil. 205. Even if nominal damages are minimal or incapable of admeasurement and "no substantial damages has been shown...a verdict for punitive damages alone will stand, since it will be presumed that nominal damages...have merged in the punitive damages." L.O. Hinson v. A.T. Sistare Construction Co. 236 S.C. 125, 345, 113 S.E.2d 341 (S.C. 1960); Cook v. Atlantic Coast Line R. Co., 183 S.C. 279, 190 S.E. 923. Even though the award of all categories of damages is awarded at the same time in the verdict, "they serve distinct purposes." Cooper Industries Inc. at 432. The monetary amount of damages will be distinctly different in enumeration. Therefore, mere determination of the trespass being a willful and deliberate invasion of another's legal rights will sustain an award of punitive

damages. Id. at 344; Smith v. City of Greenville, 229 S.C. 252, 92 S.Ed.2d 639; Matheson v. American Telephone & Telegraph Co., 137 S.C. 227, 135 S.E. 306; Terwilliger v. White, 222 S.C. 176, 72 S.E.2d 169; Davenport v. Woodside Cotton Mills Co., 225 S.E. 52, 80 S.E.2d 740; Clarke v. City of Greer, 231 S.C. 327, 98 S.E.2d 751. There is no bright line mathematical test for the award of punitive damages, but it is a matter of general concerns of reasonableness. Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (S.C. 1991). As punitive damages are made in the "interest of society," and are a "vindication of personal rights." Hinson. The mere presence of a "consciousness of wrongdoing...justifies the assessment of punitive damages against the tort-feasor." Id. at 344 *citing* Rogers v. Florence Printing, 233 S.C. 567, 106 S.E.2d 258, 263. This very Court has affirmed that when there is evidence of a statutory violation, a factual question as to punitive damages arises. Austin v. Specialty Transportation Services, Inc., 358 S.C. 298, 594 S.E.2d 867, 879 (S.C.App. 2004); Wise v. Broadway, 315 S.C. 273, 493 S.E.2d 857 (1993). Therefore, when a violation of the statutory tort of trespass is found, a determination of punitive damages automatically arises and is a factual question sent to the jury, the sole trier of fact. The mere violation of "an applicable statute," one that gives rise to punitive damages, such as trespass in this case, is upheld to be "a proper basis for submitting punitive damages to the trial jury." Id. at 875; Bethea v. Pedro Land, Inc., 290 S.C. 341, 350 S.E.2d 392 (Ct.App. 1986).

However, the amount of punitive damages is not to be so excessive as to offend one's constitutional rights of due process in violation of their Fifth Amendment right of protection against excessive fines, as imposed by the states under the Fourteenth Amendment. Pacific Mutual Life Insurance Company v. Haslip, 111 S.Ct. 1032, 113 L.Ed.2d 1(1991). The Supreme Court of the United States and the Courts of this state have weighed this matter at length, and have determined that there is no fixed amount threshold that violates due process. Gamble. This Court has further determined that there is *no* prohibition against the states from "requiring the jury to impose punitive damages after evaluating evidence and determining the Plaintiff's entitlement." Magnolia at 122. It has further been clarified that, "as long as the discretion is exercised within reasonable constraints, due process is satisfied." Id.

Centuries of punitive damages award analysis has led South Carolina to follow the Supreme Court's modern standard of a *de novo* review. Cooper Industries, Inc. at 424; Mitchell v. Fortis Insurance Company 385 S.C. 570, 686 S.E.2d 176 (S.C. 2009); Ornelas. Previously, South Carolina used an *error of law* standard, however, in an effort of efficiency by the Courts, the standard has been changed to that of *de novo*, following an outline of an eight (8) factor test and three (3) guideposts of analysis. Mitchell at 182; Gamble at 354; BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996); Magnolia North at 122. A *de novo* standard means to perform an analysis of a trial anew. The Supreme Court has outlined three bases for promulgation of the de novo standard; First, punitive damages are "fluid concepts" that are to be assessed from the substantive content on a case-by-case basis; Second, it grants appellate courts the ability to "maintain control of, and clarify, the legal principles;" Third, the standard "unifies precedent and stabilizes the law." Mitchell at 183; Cooper at 436; Ornelas at 697-698.

In some instances, an entire case will be remanded from the Court of Appeals back to the trial court. *However*, and it is to be **made very clear**, in this particular instance of the case at hand, the case does not need to be remanded to a lower court,

because the higher courts have the authority to interfere in performing such analysis. Pacific Mutual Life Insurance Company v. Haslip, 499 U.S. 1 (1991), 111 S.Ct. 1032, 113 L.Ed.2d 1, 59 USLW 4157; Fennell v. Littlejohn 240 S.C. 189. Even if there is to be a question of remand, it would not be in any of the other issues of the case, except for the awarding of punitive damages, as there has been a fully tried case at the lower trial court in a matter of finding of trespass. The justified finding of trespass by the jury is what specifically gives rise to the claims of punitive damages, thereby only making the issue of punitive damages on appeal, rather than the underlying claim of trespass.

It is a matter of public policy that punitive damages are imposed to further a state's legitimate interest in punishing unlawful conduct as a means of protection of its citizens from harmful conduct and to prevent its repletion of occurrence. Gore at 568; Gertz v. Robert Welch, Inc., 418 U.S. 323, 350 (1974); Newport v. Fact Concerts, Inc., 453 U.S. 247, 266-267; Haslip at 22. The Supreme Court has spelled out three guideposts in *Gore* that are followed by the State of South Carolina in analyzing the constitutionality of punitive damages; One, degree of reprehensibility; Two, ratio; Three, sanctions for comparable misconduct. Gore at pp. 574-585; Mitchell at 184. One, the degree of reprehensibility is "the most important indicium of the reasonableness of a punitive damages award...of the defendant's conduct." Gore at 575; Mitchell at 185. The court is to consider the type of harm caused, if the tortuous conduct was a matter of indifference or reckless towards another, whether the target of the conduct has financial vulnerability, if the conduct was a repeated action or isolated incident, whether the harm was intentional. Mitchell at 185; Campbell at 419. Two, the ratio is the "actual harm inflicted on the plaintiff," within a standard of reasonableness. Gore at 579; Haslip at 23. Again, the court has refused to submit a fixed amount, however, the awards have ranged from hundreds of dollars to multi-millions of dollars, from ratios of 2 to 1 to 10 to 1. A spoken evaluation has been made that the lower awards of actual or nominal damages "may properly support a higher ratio." Gore at 582. The Supreme Court has further dictated that, "a higher ratio may also be justified in cases in which the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine." Id. The ratio is to be considered based upon the likelihood that it would deter the tort-feasor from repeating conduct and their ability to pay. Mitchell at 185. Thereby, giving larger businesses a higher ratio, while it still meeting standards of reasonableness. Three, in comparing misconduct to similar cases, the court should consider whether punitive damages are awarded in similar cases of civil actions, the type of harm performed, and "any other factors the court may deem relevant." Mitchell at 185. If there is an absence of a history of noncompliance, a higher ratio of damages may be awarded, as "there is no basis for assuming that a more modest sanction would not have been sufficient to motivate full compliance." Gore at 585.

To ensure that the trial court has followed proper precedent and law in a matter of punitive damages, the Supreme Court of South Carolina has enumerated an eight-factor review that this Court has already ruled is to be followed. Gamble at 354; Magnolia at 128. The eight factors are as follows:

"(1) Defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7)

defendant's ability to pay; and finally, (8) as noted in Haslip, "other factors" deemed appropriate." Gamble at 354.

The establishment of both sets of guidelines, the 3 *Gore* factors in evaluating a due process violation and the 8 *Gamble* factors in reviewing proper protocol by the trial court, have created a comprehensive outline of not just reviewing the monetary award, but a process of removing the decision of such awards from the judge and properly submitting the question of fact to the jury. This Court has stated that all of the guidelines "dovetail with *Sample's* requirement that, 'when a plaintiff proves a willful, wanton, reckless, or malicious violation of his rights, it is not only the *right* but the *duty* of the jury to award punitive damages." Magnolia at 122 *quoting* Campbell at 410.

Overall, the Court of Appeals is to review the trial court's conduct in whether punitive damages are applicable on a case-by-case basis, whether punitive damages are applicable for a tort of trespass, whether there was a violation of a parties' constitutional right of due process, whether the specific instances give rise to punitive damages, whether an award of punitive damages is reasonable as granted by the jury verdict, and whether the trial judge followed precedent in submitting punitive damages to the jury.

In these facts of Blue Ridge Electrical Cooperative, Inc. versus Gresham, a large utility corporation funded by its members and other extensive funding with multiple offices, a large payroll, multi employees, large resources, thousands of account holders, and deep pockets purposefully placed a power support pole and accompanying long guy wires onto Defendant's long-held property without her permission and regardless of her desire that her property be free from such power poles and intrusions that not only disturbed the quiet enjoyment of her property but posed what was in her mind, voiced over almost three decades, an eyesore on her property. This Defendant had, in the 1980's, paid a sizeable fee to this same power company, Blue Ridge, of which she was a long-standing member, to have her power buried, living in a small trailer to afford this burying, in order to avoid power poles on her land. Plaintiffs acknowledged the receipt by Blue Ridge of this large sum, above and beyond the delivery of power, at trial. Defendant had a right to expect her property and her expectations of her property to be continued and respected by Plaintiffs.

This pole in question and accompanying guywires was not a 'power' pole per se but rather a support pole that Blue Ridge erected not long before the company sought to sue Defendant for alleged debt on bills. Defendant protested the pole and wires and pointed out that the offending items were on her land and should be moved. She further objected to such a pole consistent with her position of opposition to them for almost 30 years of living on her property. Defendant is entitled to this enjoyment to her land, free from such obstructions. Defendant is well aware of her property lines and is and has consistently been active in placing fencing, tending to such fencing, cleaning, clearing, and performing general maintenance and upkeep to her property, its borders and lines throughout these almost 30 years. She testified that Blue Ridge's erection of the offending pole, that does not even serve her own power needs OR of any other customer, and its guy wires, interferes with the maintenance of her property and has allowed growth and unsightly debris and vegetation to grow around the pole and wires making it impossible for her to keep it clear or maintained. The pole and guywires were planned by Blue Ridge to serve potential customers thus increasing their revenues for anticipated

power to a development further up Highway 11 from Defendant that did not materialize. Blue Ridge exercised its power to further their own development and profits at the detriment of Defendant in their violation of Defendant's property rights with their Trespass.

According to SC law and case development, it is clear that the trial judge had a duty to submit the well-pled issue of Punitive Damages to the jury so impounded for this trial along with the issue of Trespass. The trial judge was outside his authority in removing the Punitive Damages issue from jury determination and effectively, punished Defendant, usurped the jury's power, violated Defendant's due process rights, and crippled the Defendant and the Court's overriding policy to punish, if appropriate, those who would trespass on another's land for their own purposes. The sole determination for such damages resides in the jury with only a review, under certain circumstances, by the trial court, if such award is determined greatly out of line with the evidence. Herein, the jury was precluded from consideration of punitive damages at the last minute after over a two year notice and well-pled Counterclaim with jury instructions already provided the parties on the afternoon of the second day of trial by the trial judge. The trial judge erred in his last minute decision to not charge or allow the issue of punitive damages.

To cure this error, the verdict regarding the Trespass, fully and completely litigated and presented also with approximately two years of knowledge that such issue was pled by Defendant with ample notice to Plaintiffs, the jury verdict as to the Trespass should be upheld as entered and the issue of Punitive Damages remanded back for jury determination. Precedent demands such action and fairness requires it.

Plaintiffs displayed misconduct in this matter, doggedly insisted on maintaining their support pole and guywires that were offensive to Defendant as they do to this day in a continuing fashion. It would be a simple matter to remove the offending support pole and guywires for placement away from Defendant's property but not done or offered. Plaintiffs have tied Defendant up in Court for many years with their refusal to acknowledge their misconduct and with their limitless financial means and legal resources paid by unsuspecting cooperative members and funds. Defendant has sought correction without success. The only feasible way to convince Plaintiffs of their mistake and their push to collect an assumed debt, Defendant submits was in bad faith, and their Trespass, is to use the tool of punitive damages. There is no case with facts better than this case to justify and even demand the award of Punitive Damages.

It would be an even greater tragedy to allow Plaintiffs Blue Ridge to retry this case and attempt to correct their mistakes and inattention to the facts long pled in Defendant's Counterclaim. Obviously, this is the relief that Plaintiffs seek and to hope that another jury will not find for Defendant or that Defendant will run out of funds or run out of desire to correct Plaintiffs' errors or abandon her principles or live with the offending power support pole and wires and abandon her assertion as to her property rights or become too old to contest the matter as over six years have passed sine this matter has arisen. Plaintiffs with their vast resources is able to shoulder on while a rural mountain family such as Defendant in advanced years with limited resources appearing pro se, is unable to effectively balance the deep pockets of Plaintiffs. Defendant must depend on the Appellate Court, as she had thought she could depend on the trial court, to protect her in the ends to justice. Defendant did depend on the jury system that she demanded in her Counterclaim, without disappointment unsuspecting that the issue of

Punitive Damages would be forcible removed by the trial judge from the jury's determination at the final hour before deliberation. The Appellate Court has the power and ability to correct this lower court error and remand this case, now fully tried by a jury, for determination of the issue of Punitive Damages alone, such only remaining jury issue being prohibited to them to consider, despite objections of Defendant for the exclusion. Defendant submits that the jury would have awarded punitive damages as a duty in light of the facts of this case and in consideration of their unanimous verdict for Defendant as to Plaintiff's Trespass and finding of no debt owed.

Issue 2: Did the trial judge err in failing to impose sanctions against Plaintiff for improperly and frivolously naming Steve Gresham as a party in the lawsuit, knowingly signing false legal documents, even after Plaintiffs admitted under oath Steve Gresham had no liability towards the Plaintiffs and should not have been a named party, in violation of South Carolina Frivolous Civil Procedure Sanctions Act?

The State of South Carolina has imposed a strict rule imposing sanctions for frivolous civil proceedings brought into its courts, entitled the South Carolina Frivolous Civil Proceedings Sanctions Act (SC FCPSA). S.C. Code Ann. §15-36-10 (Supp. 2007). The Act makes clear that any attorney that brings a claim or defense must be warranted under existing law, or based upon a good faith argument, and not be intended to harass a party. S.C. Code Ann. §15-36-10(3). It further exacts, that such "claim or defense upon which the proceedings are based," are not to be for other purpose than "joinder of parties." S.C. Code Ann. §15-36-10(3)(d). An attorney may be sanctioned for violating such rules, and if a "reasonable attorney would believe were not reasonably supported by the facts." S.C. Code Ann. §15-36-10(4). The Act grants the court the ability upon its own motion, or the motion of a party, to sanction an attorney for a frivolous claim or defense, even after the conclusion of a trial. S.C. Code Ann. §15-36-10(C). The court may take into account such things, as: "(1) the number of parties; (2) the complexity of the claims and defenses; (3) the length of time...to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4); (4) information disclosed or undisclosed to the party...; (5) previous violations of the provisions of this section; (6) the response, if any, of the party to the allegation that violated the provisions of this sanction; and (7) other factors the court considers just, equitable, or appropriate under the circumstances." S.C. Code Ann. §15-36-10(E). Sanctions may also include any costs presented by the prevailing party "resulting from the frivolous proceeding." S.C. Code Ann. §15-36-10(G).

In the matter before this court, the Plaintiff had frivolously named Defendant, Steve Gresham, as a party to the frivolous civil action of debt collection. Made very clear and without any question by the Plaintiffs themselves under cross- examination, Steve Gresham was never a member of the Blue Ridge Electrical Cooperative, Inc. R.78, line 13-15. He had never applied for, executed, or in any form pursued membership in Blue Ridge Electrical Cooperative, all well known to Blue Ridge and immediately admitted on cross-examination by Denise McCormick, their customer service director and membership record keeper of long duration. Naming him as a party Defendant was an abuse of process, was a form of calculated blackmail to compel him to pay the unjust bill due to his position of authority and respect in the community that Blue Ridge trampled for over six years, forcing him into a frivolous and unjust lawsuit in the public eye. The lawsuit forced Mr. Gresham to take off many days from work, to attend Court proceedings, to file and schedule a motion hearing and pay for its filing with Blue Ridge, properly noticed, even failing to appear until a call from Judge Larry Patterson demanding to know where they were. Even when arriving at the motion hearing some several hours late with all waiting on them at Court, Plaintiffs' lawyer declared that Mr. Gresham was a Blue Ridge Cooperative member and should be continued in the lawsuit and in accordance with the signed pleadings he had executed and had served at his work, furthering the embarrassment. Clearly, this joinder of a party who had no business being

named a party, was egregious and disrupted the life of this man who was never a member of the Plaintiff Cooperative, as they well knew and later, admitted. The By-Laws of Plaintiff's organization composed by them, clearly revealed that Mr. Gresham was never a party, fit none of the membership criteria as he had never applied for Cooperative membership, was totally precluded by Plaintiffs from receiving information on Jennings' account, could not ask questions on the account as he was not a cooperative member in Blue Ridge's eyes, and never had been. Blue Ridge's conduct was outrageous in falsely claiming he was a cooperative member, was reckless, was clearly not a mistake as Plaintiffs reiterated that Mr. Gresham was indeed a cooperative member to two different judges, Judge Patterson and Judge McIntosh, and continued to stand by this false position until the jury trial and cross-examination in August of 2009 when Defendant's motion for dismissal as a party, leaving in tact his request for sanctions and costs, was finally granted.

This case is the gold standard for erroneously naming a party to a lawsuit without merit and deserves sanctions and costs awarded to Defendant/Cross Appellant as Defendant's case was prejudiced by this action, attempted to focus attention on the couple as being debtors, prejudiced Defendant wife by having to include and serve a co-Defendant who never should have been a co-Defendant, and for creating confusion in the eyes of the jury when a large cooperative such as Blue Ridge Power uses its power, prestige, and deep pockets in pursing a debt collection lawsuit against two powerless individuals with limited resources and defenses.

Continued

Issue 2A Did the trial judge err in failing to impose sanctions and costs against Plaintiffs for improperly and frivolously naming Steve Gresham as a party in the lawsuit, knowingly signing false legal documents, even after Plaintiffs admitted under oath that Steve Gresham had never had liability towards Plaintiffs, in violation of the South Carolina Civil Procedure Sanctions Act?

The trial judge erred in failing to impose sanctions and costs against Plaintiffs for improperly and frivolously naming Steve Gresham as a party in the lawsuit. Plaintiffs knowingly signed false legal documents asserting that Defendant Steve Gresham was a party to this lawsuit claiming that he was a member of Blue Ridge Electrical Cooperative, Inc. when their own Blue Ridge Electrical Cooperative records and membership role clearly established that Steve Gresham was not a member of Blue Ridge Electrical Cooperative, Inc. and in fact, had never been a member of the Cooperative as set forth membership procedures in their own published By-Laws.

When Defendant(s)immediately challenged the naming of Steve Gresham as a party to this lawsuit that was initiated by Plaintiffs in July of 2008. They filed a proper motion even with accompanying affidavits in the Court of Common Pleas stating that Steve Gresham had never been a member of Blue Ridge Electrical Cooperative and was an improper party to any action. Plaintiffs challenged the motion, defended against it with false information to the Court claiming that Defendant was a Blue Ridge Cooperative member and thus a party to the proceeding for debt that they initiated; that Gresham should not be dismissed as a party; that he was a Cooperative member; that he had failed to pay his bills, and that he should be continued in this lawsuit. Plaintiffs refuted the affidavits of Defendants and presentation by Defendants to the Court and to Judge Larry R. Patterson, presiding. Judge Patterson had no choice, based on Plaintiffs' representation via writing and verbally to the Court, but to continue Steve Gresham as a party Defendant in this lengthy lawsuit of many years duration. With such assertions by Plaintiffs, with Plaintiff's counsel being an officer of the court and an attorney in SC, Plaintiffs' attorney who had prepared, executed, and signed the initiating Complaint of this lawsuit, did not act in reasonable fashion. Counsel misled the Court in initiating a claim that was not warranted, did not employ good faith, or he sought improperly to join a party who was not and had never been a member of the Plaintiffs Blue Ridge Electrical Cooperative, Inc. This lack of membership was known to him or should have been known to him with but a mere slight diligence as Steve Gresham's name was never on any account with Blue Ridge Electrical Cooperative and his name was never on any membership roles of Plaintiffs' Cooperative. The Plaintiffs had for many years, in excess of 19 years, failed to provide Steve Gresham any information at all about this or any other account as he was not a Blue Ridge member, all of which was known to Plaintiffs and to their primary customer service manager, Denise McCormick, a primary client for Plaintiffs' counsel in this lawsuit. Counsel's unreasonable action in the naming of Steve Gresham as a party Defendant, subjecting him to a frivolous lawsuit was intended to harass or injure the other party and did so harass and injure him and the co-Defendant.

The original trial transcript resulting from the 3-day jury trial of August 26, 27, and 28, 2009, confirms the unreasonable action in naming Steve Gresham as a party to this lawsuit by the testimony of Plaintiff's own first witness and their chief witness,

Denise McCormick. Ms. McCormick, a 21 year employee of Plaintiffs cooperative, (p 39, line 14) served as manager of customer service and marketing (p 39, line 16) described her duties as supervisor of meter readers (p 40, line 8), supervisor of billings, collection of payments, making sure bills go out in a timely manner, all encompassed in customer service management. (p 40, lines 8-11) She testified that all collection actions and meter readings, bill reconciliation were included in her management responsibility. (p 40, lines 14-24). Further, Ms. McCormack testified that the account in question under litigation for alleged debt collection belonged to and was only listed since its inception in the 1980's in the name of Kathleen Jennings. (page 41, line 12) Ms. McCormack also relayed information that on another occasion, Blue Ridge had overbilled Defendant's power bill and when called about it, had been required to provide a refund. (page 49, lines 1-9) With at least this one occasion, Plaintiffs indicated that they had prior knowledge, before this lawsuit, that the meter on Defendant's property, was in error and that Plaintiffs had overcharged Defendants.

Plaintiffs proceeded to once again change electric meters on Defendant's house placing a meter of their selection, their manufacturer choice, which they declared unequivocally to Defendants could be read from remote access without the necessity of coming on sight, declaring said meter to be state-of-the-art. Previously, Plaintiffs had cut the locks on Defendants' entrance main gate, illegally entered their property, with no notice or request or right-of-way for said purposes given by Defendant, to allegedly access the meter.

Plaintiffs' primary witness McCormick testified that her organization "assumed" that the meter rolled over (page 60, lines 24-25) and based their lawsuit for debt on this assumption. McCormick testified that she "believed it was the correct number" (page 62, line 18) when testifying about the assumption of Blue Ridge as to the meter reading. In cross-examination, McCormick said she was unaware of how many meters Blue Ridge had placed on Defendant's house and would not be surprised if there had been eight meters. (page 66, lines 10-12) McCormick failed to bring the meter (page 67, line 8); failed to bring the meter number, (page 67, line 13), did not know where the meter was or had been (page 68, line 9), expressed surprise as she did not know that Defendant had been told that the meter was lost (page 68, line 12-18), talked with the manufacturer to determine if the meter had rolled over (page 69, line 10-12) and apparently the manufacturer was no help to them in their case as the manufacturer did not testify and such information was not supplied to Defendant in discovery when expert or other witnesses were asked; she did not know if the meter had a number (page 69, line 20-23); was aware that such meters must be calibrated much as a breathalyzer examination testing apparatus (page 70, lines 2 – 10); never asked Defendant if Blue Ridge could access the house to test the meter (page 71, line 3-7) and that Blue Ridge never asked for access to the house and never received a 'no' to any access request as no such requests ever occurred. This failure of Blue Ridge to ask for any access to the meter or to the house was confirmed by the primary Plaintiffs' witness. (page 72, lines 2-4)

The witness also confirmed in cross-examination that Blue Ridge and her office had been regularly provided with the current address change by Defendant including for Ridgeland Drive, Greenville, and years later in October 2005 for the Highway 11 address. (page 74, lines 3-6) The witness admitted that many customers move from their residences and never tell Blue Ridge of their moves or of their addresses and such had not

been the case with Defendant Jennings. (page 74, lines 14-20) The account was never in the name of Kathleen Gresham nor was Blue Ridge membership ever in the name of Kathleen Gresham. The account owner and Blue Ridge coop member was and continued to be Kathleen Jennings. Defendant believes that the lawsuit was erroneously brought and in the name of Gresham, not the legal name of Defendant Jennings, due to a sexist determination by Plaintiffs or counsel that the account should be in a husband's or married name that also contributes to the erroneous determination to add husband Steve Gresham, never a Blue Ridge member, to the lawsuit though he was never a member, that Kathleen Jennings was a Coop member many years before marrying Steve Gresham, and that the membership name or bill responsibility was never changed, all well known to Plaintiffs. Failure to file suit in the correct name, though advised by Kathleen of the wrong name on multiple occasions, failure to accurately reflect the records of membership, and failure to acknowledge that this case was never about a debt collection as the bills were paid each and every month in full, on time, as billed by Plaintiffs, for over 25 years, without exception, amounts to a frivolous lawsuit, to a departure from what a reasonable lawyer would do, and with a likely expectation of harm to the Defendant(s).

McCormick confirmed the Defendant's exhibit of the Blue Ridge Electrical Cooperative By-Laws and that such was a public book that the Cooperative published. (page 74, line 21-25) This Booklet was introduced and marked as Defendant's Exhibit #1 and placed into evidence without objection. (page 75, lines 13-14)

McCormick confirmed on cross-exam that Blue Ridge was an electrical cooperative owned by members as a non-profit. (page 76, lines 2-22) Members pay a membership fee. (page 76, line 17-19) She acknowledged that members likely received a certificate of membership previously. (page 77, lines 1-2) and the By-Laws, she acknowledged, require a membership certificate (page 77, lines 1-23). McCormick acknowledged that the Cooperative does not provide a membership certificate presently and is not operating with the By-Laws that they publish. (page 77, lines 8-12)

McCormick testified that Steve Gresham has never applied for Cooperative membership (page 77, lines 21-23); that Steve Gresham has never been issued a member certificate (page 77-78, lines 24-1); that Steve Gresham has never applied for a membership (page 78, lines 2-3) and that, **most importantly, she testifies that Steve Gresham was not and has never been a member of the Blue Ridge Electrical Cooperative, Inc. (page 78, lines 13-15).** McCormick further testifies that Steve Gresham, being a non-member of the Cooperative, was **never even entitled to ask questions or receive any information about the Kathleen Jennings Account with Blue Ridge as the account was "solely in the name of Kathleen Jennings since the 80's."** (page 16-25 emphasis added)

The crux and honesty of Plaintiffs' case fails immediately here wherein the Plaintiffs primary and key witness, Denise McCormick, the official keeper of Plaintiffs' records, their long-standing customer service representative, meter keeper, supervisor of meter readings, and one who determines power terminations and bad debt accounts, testifies under oath that:

1. The account was always in and still is in the name of Kathleen Jennings;
2. That Steve Gresham was never a member of Blue Ridge Electrical Cooperative, Inc.

3. That Steve Gresham had absolutely no power over this account and could not even ask questions about it or receive information on it as he was never a coop member;
4. That the bills for decades, including the past years, were and have been always paid in full by Defendant as they were billed, each and every month, on time, and in full;
5. That it was Blue Ridge who selected the meter equipment and installed it without input by or from Defendant;
6. That the equipment was professed by Blue Ridge to be state-of-the-art, capable of being read off-site;
7. That Blue Ridge had cut Defendant's gate locks and illegally entered Defendant's property on several occasions without notice to Defendant and without her permission;
8. That Blue Ridge Coop has sent at least 26 disconnect power notices to Defendant (page 79, lines 13-18);
9. And that disconnecting one's power is the most Blue Ridge can do to someone (page 80, lines 10-13)

In this elicited testimony, McCormick dramatically reveals the horrendous injustice of this lawsuit instigated by Blue Ridge Electrical Cooperative, Inc. and the frivolous nature of it or the intended harm to both Defendants. This case is as clear a travesty of justice and abuse of process as ever existed and the exact type of wrongful, ill-advised cause of action to which the SC Frivolous Claims Act is intended to speak.

No reasonable lawyer based on these facts which were easily ascertained from simple and necessary questions, would have filed such a lawsuit against EITHER party. Steve Gresham never was a coop member thus never had standing to be sued, Kathleen Jennings paid her bills in full each and every month exactly as billed by Plaintiffs fully and completely for decades including the period claimed by Blue Ridge as delinquent. The action was malicious, poorly executed, poorly considered, and given the extreme efforts Jennings went to try to convince Blue Ridge of same and to wise up and not file such a lawsuit, Plaintiffs bull-headed ignored such and filed anyway, including her husband in the lawsuit, never even a member. Blue Ridge not only ignored their own By-Laws but also ignored the Rules of Procedure adopted by this Court and State, ignored the fiduciary duty and responsibility to their shareholders and owners in pursing such an expensive and erroneous lawsuit, and violated the due process of Defendant while trampling on the SC Rules of Civil Procedure. Plaintiffs should be sanctioned and in such a firm, harsh way that this case serves as a poyient reminder of the error and folly of such a reckless or frivolous lawsuit.

McCormick further testified and confirmed in questioning by Defendant pro se that an entire section of the By-Laws addresses incorrect meter readings. (page 83, lines 12-17) McCormick also confirmed that she and all other Blue Ridge employees work for members like the Defendant Jennings. (page 83-84, lines 23-6) Defendant argues that because of this relationship wherein all Blue Ridge employees, including McCormick Dalton and all others, work for Defendant Jennings as a Blue Ridge member, and for all other members, the employees owe a substantial duty of care and a fiduciary duty to Blue Ridge members such as Member Jennings in seeing that their monies are spent wisely,

that meter readings are correct, that equipment is correct and maintained, that billings are correct and complete when billed, that there is no policy of estimated bills if workers are too lazy or too busy to make accurate readings or have call-ins as existed without difficulty between Jennings and Blue Ridge for over 15 years prior to this lawsuit; that the funds used to fight such a frivolous lawsuit including 6 years of legal bills, be considered in filing for an assumed debt from a meter just assumed to have rolled over when the glaring proof and facts were that it did not roll over and any notion of a lawsuit was pure folly and certainly, frivolous. This lawsuit is a travesty from its inception through the present.

McCormick further illustrates the frivolity of this action by failing to bring the bills that she claims Defendant has failed to pay; (page 84, lines 20-24), whereupon many were supplied by Defendant while witness was on the witness stand. (page 84, line 25) The witness confirms in testimony that each bill of a large group, collectively introduced as Defendant's Exhibit Number 6, was paid in full, within a few days of its mailing to Defendants (page 86, lines 20-25) Yet, McCormick admits that Defendant received repeated disconnect notices for bills paid to Blue Ridge in full. (page 87, lines 2-18) McCormick acknowledges that Jennings wrote Blue Ridge on multiple occasions prior to this litigation. (page 87, lines 19-22) McCormick confirms that she never met Jennings prior to this litigation. (page 87, line 23-25). Defendant submits that as this customer service manager knew that Jennings had always paid her bills in full without fail, each month as billed, for over 20 years, and that Jennings had written Blue Ridge on multi occasions regarding the matter seeking to straighten it out, that McCormick should have taken it on herself as manager and director of this operation to resolve the issues instead of rushing to lawsuit with Blue Ridge's legal counsel. To take such ill-advised action was frivolous, even reckless and with a disregard of the harm to Defendants, to whom a serious duty of care is owed, and with harm to the entire Cooperative.

Replete in the Plaintiffs' pleadings is that Plaintiffs could not access Defendant's property, which McCormick admits Blue Ridge was never refused when they were asked. McCormick admitted that she has always had a telephone number or numbers for Defendant Jennings and that such house phone number is, in fact, contained on the bills generated by Blue Ridge and their records that were pointed out in Court. (page 90, lines 18-24) This is the same phone number in the phone book for Jennings for over 20 years and known to Plaintiffs since the 1980's.

McCormick acknowledged that Defendant Jennings spent thousands of dollars paying to Blue Ridge to have her power buried on her property in the 1980's. (page 92, lines 18-21) Defendant Jennings paid a substantial sum to Blue Ridge to avoid power poles on her property preferring not to have the eyesore of such poles, preferring her property to be pristine; paying extra for the right; and preferring power be underground.

McCormick confirmed that the power meter was forcibly removed from the Jennings residence, entering her property without permission or notice, removing the meter, and that she, as director of the meter department, had no idea where the meter was. (page 98, lines 4-7) McCormick testified that she knew a pole had been placed around 2007 shortly before discussion about Blue Ridge filing this lawsuit, on Jennings' property but that McCormick had nothing to do with this pole and placement. (page 91-92, lines 24- 4)

McCormick testified that the two men who removed the meter were still employees of Blue Ridge but were not present. (page 98, lines 14-18) She says that she does not know personally if the meter was tested. (page 98, lines 11-13) McCormick admits that Blue Ridge employees have clipped Jennings front gate lock previously. (page 100, lines 9-10)

Ironically, Defendant asked the Court if items would be safe in the courtroom to leave to which the Judge replied that his had been here all week and not disturbed. (page 101, lines 1-4) This is ironic in that the portion of the trial transcript was somehow destroyed and not noticed or not reported for over a year after the conclusion of the trial when appeals were underway.

Plaintiffs further had reason to know that Defendant's meter selected and posted on Defendant's house ran fast. The engineer, Alan Blackmon for Blue Ridge testified on direct exam that the meter ran a "tad bit fast." (page 107, line 14) Blackmon testifies that he has NOT BEEN TO THE PROPERTY, HE DOESN'T REMEMBER A GUARDRAIL WHEN I RODE THROUGH THERE, BUT IT'S – I WOULD SAY IT'S ON THE HIGHWAY EASEMENT. (Page 109, lines 21-24)

Plaintiffs' chief engineer has not even been to Jennings property, is totally unfamiliar with the property, is not even aware of the guardrail along the property and the placement of the support pole and guy wires BEHIND this guard rail on Jennings property thus is not-believable in his testimony, has little to no credibility about the issues of this case; and was likely discounted by the jury in making their determination about the credibility of the witnesses, what they knew and what weight they should give his testimony. This witness offered no help to Blue Ridge and hurt their case. Plaintiffs' attorney had access to this witness prior to any lawsuit and any reasonable attorney would have consulted with him prior to any filing and then, refrained from filing or moved the offending pole and wires to avoid any Trespassing lawsuit.

Blue Ridge argues Defendant entered an agreement for the offending pole and guy wires but such was strongly refuted by Defendant in her testimony. Blue Ridge offered no written agreement between the parties nor was any such written agreement alleged. Then, Blue Ridge argues the pole and guy wires are in highway department right of way. They cannot have it both ways. They cannot argue the pole and wires were placed by agreement on Jennings property (which they were not) and then turn around and argue it was highway right of way. The jury was clever enough to ascertain this fallacy and no highway department official testified nor was any survey presented. It is well established that a landowner may testify about their property lines as did Ms. Jennings and with authority from her 26 years of such property ownership, her fencing of such property in the 1980's, her familiarity of the specific right of way along this stretch of highway 11, her own meeting with highway officials in the 1980's prior to placement of any fencing, her upkeep of this area and her property, and her abhorrence of support or power poles or guy wires in any form for which she paid handsomely to Blue Ridge to avoid.

Plaintiffs rushed to lawsuit well aware that their meter ran fast, that Defendants offered proof prior to lawsuit to them that they lived elsewhere, that they heated with propane; that they had no idea of any claim for estimated bills, that they were assured by the CEO Dalton that their meter was state of the art and could be read off site without assistance by home owners; that the phone number and contact information for Jennings,

the only Blue Ridge member, was always contained on the Blue Ridge records themselves on the face of them, that the meters were solely controlled, selected and placed by Blue Ridge that also controlled their billing, record keeping and power turnoff notices. Armed with even a portion of such information, any reasonable attorney would have looked long and hard at such a proposed lawsuit, conducted a thorough investigation, welcomed any opportunity to meet with the cooperative member especially an excellent member such as Jennings, a fact that McCormick admitted on the witness stand under oath. (page 84, lines 7-9). Even research and intervention by David Thomas, as part of constituent service to Jennings, with Thomas' conclusion after meeting with Blue Ridge officials that the meter had not rolled over and that the lawsuit and claim by Blue Ridge was improvident, Blue Ridge persisted. P 146, lines 8-9; page 147, lines 22-24), page 148, lines 19-22) and (page 154, lines 18-24) Thomas in his thorough investigation, prior to any lawsuit filing, concluded that the meter did not roll over. He testified to the adamancy by Jennings and Gresham and their facts provided to Blue Ridge and the additional facts available to Blue Ridge or anyone on line with public records. Thus, the filing of this lawsuit was not a course a reasonable attorney armed with these facts, easily discoverable from one's own clients, would have undertaken. It was not only bluster, it was foolish, and meant to injure Defendants as it did. Blue Ridge's claim for the fictitious debt should have resulted in directed verdict for both Defendants with costs and sanctions accessed against Blue Ridge, as action should be taken now.

Kenneth Southerlin, the trustee of Blue Ridge Electrical Cooperative who serves as the trustee for Jennings in her district, testified that Jennings made him aware before the lawsuit filed of the problems with her bill. (page 141, lines 5-19)

Charles Dalton, the CEO of Blue Ridge Electrical Cooperative, Inc. testified that he as CEO of Blue Ridge was aware that there were meter reading problems years prior that is why he suggested the meter designed to read off-site. (page 133, lines 7-25) The CEO acknowledges that he received correspondence from Jennings approximately one year prior to any lawsuit trying to resolve any issues when the disconnect notices appeared on her bill that she paid diligently. (page 131, lines 10-14) This testimony is critical for it shows that Blue Ridge knew of potential errors, that Jennings was the one trying to resolve any errors for she was regularly paying her bills, that Plaintiffs had over one year to carefully consider their case if any and to work to resolve their issues that they did not do but rather Jennings tried without success. Plaintiffs were determined to file suit despite the facts and file suit they did, beginning the harassment of Defendants in 2007, one year before the actual filing, with such harassment continuing now in 2013, some six plus years and counting later. Any reasonable attorney, not intent on a sure pay situation case at the expense of Blue Ridge members, would have been repulsed by the idea of such a lawsuit for debt collection given all these facts. Blue Ridge Cooperative has been taken advantage of by those who determined to file suit and those who filed suit and Defendant Jennings has been a whistle-blower as to this fact with this jury trial and on the record and with this Appeal. Sanctions are necessary and entirely in order to prevent actions such as this without appropriate facts and in accord with the mandates of the SC Frivolous Claims Act and the laws and justice of this state. The Court of Appeals is with duty to sanction and to ensure the integrity of the system and judicial process.

The trial judge erred in his failures to sanction Plaintiffs for the reasons set forth herein. The Court of Appeals has the duty to correct these errors in the interest of justice and in accordance with the laws, procedures and rules of our state, for all citizens including pro se Defendants.

Issue 3: Did the trial judge err in failing to impose sanctions against Plaintiff for filing a frivolous lawsuit against Defendants in the matter of an uncollected debt, which was found to never existed by jury trial and abandoned by Plaintiffs on appeal after losing the case in violation of South Carolina Civil Procedure Sanctions Act?

The governing body of South Carolina protects the judicial system in maintaining its efficiency and effectiveness of serving the public through the S.C. Frivolous Civil Proceedings Sanctions Act (SC FCPSA). S.C. Code Ann. §15-36-10 (Supp. 2007). The purpose of this act is to ensure that frivolous lawsuits are not brought, and if they are to allow courts to impose sanctions and create an outlet for reporting violations. The SC FCPSA enumerates that on any legal document an attorney signs, it is to be regarded as certifying that "a reasonable attorney in the same circumstances would believe that under the facts his claim or defense may be warranted under existing law..." and the "civil cause is not intended merely to harass or injure the other party," or be brought in a manner of bad faith. S.C. Code Ann. §15-36-10(A)(3)(b)(c). The Code further outlines that if an attorney participates in a frivoulous civil action they "may be sanctioned for: filing a frivolous pleading, motion, or document." S.C. Code Ann. §15-36-10(A)(4)(a). The court is thereby granted authority "upon its own motion or motion of a party," to sanction said person in amanner that "the court considers just, equitable, and proper under the circumstances." S.C. Code Ann. §15-36-10(B). Such determination may also be made "at the conclusion of trial and a verdict" is rendered." S.C. Code Ann. §15-36-10(C).

The code further establishes considerations of what sanctions may include for a party found to violate the Act. They include, "an order for the party...to pay reasonable costs and attorney's fees of the prevailing party," which costs may include, but are not limited to, "time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasaonbe consequential expenses of the prevailing party resulting from the frivolous proceeding," a "reasonable fine to the court," or a "directive of a nomentary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith." S.C. Code Ann. §15-36-10(G).

In the case at hand, the Plaintiff had brought a frivolous civil action against the Defendant of a debt collection in bad faith, and not based upon any reasonable claims, and was intended as a means to harass and injure the Defendant. In the very opening statement at trial presented by the Plaintiff's attorney, he said that, "This case is a case basically about a bill collection." R. 22, line 1-2. This was stated knowing that in fact, they had no evidence for such a claim, it was a false statement that a bill was owed because every bill was in fact paid in full, and was made to harass and retaliate the Defendant in her opposition of the placement of a support pole and guy wires on her property by the Plaintiff. The Plaintiff's chief witness Blue Ridge Electric's Customer Service Manager, Denise McCormick, even stated under oath, that over "several decades," there was never any "trouble," nor ever a late payment "past 30 days" of any bill by the Defendant and that she was an "excellent customer." R. 84, line 7-9. The electric meter used by the Plaintiff was declared by Blue Ridge CEO, Charles Dalton, as "state of the art," and selected for installation by Blue Ridge on Defendant's house for that purpose. The Plaintiff even admitted that the issue of estimating a bill in that the

electric meter rolled over, which caused a higher bill rate than what was charged and paid in full, cannot actually be proved. R. 63, line 14-17. Therefore, the Plaintiff filed the complaint, and went forth in an entire civil trial knowing there was no support of a claim, making the claim in the most blatant form of bad faith, as a direct violation of the S.C. Frivolous Civil Proceedings Sanctions Act. The jury, in a three-day jury trial, found that there was no debt owing to Plaintiffs Blue Ridge Electrical Cooperative, Inc., exactly how pled by Defendants.

There was never any debt owing to Plaintiffs from Defendant therefore there was never an issue in dispute for such a lawsuit. There was never reason to waste the Court's time, impanel a jury of 12 people for three days, expose the Defendants to a wrongful cause of action, and use the judicial process and system for such an action. This filing for bills paid in full mailed through the United States federal postal system and paid in like return by the United States postal service, was tantamount to using the mails by Plaintiffs in a wrongful manner for a debt that never existed, so found by the impartial jury.

After the jury had found a verdict against Plaintiff, in no uncertain fashion that there was no debt, Plaintiffs have now abandoned their appeal of this issue. Due to the Plaintiff's deliberate actions to harass, injure, and bring an unfounded false claim, the Plaintiff has clearly violated the S.C. Frivolous Civil Proceedings Sanctions Act in bringing a frivolous civil action. These actions fly in the face of public policy and show the utmost disrespect for the judiciary system in thinking that a big company, such as themselves, can take advantage of a private individual without any repercussions.

(Continued)

Issue 3: Did the trial judge err in failing to impose sanctions against Plaintiffs for filing a frivolous lawsuit against Defendant in the matter of an uncollected debt, which was never found to exist by jury trial and abandoned by Plaintiffs on appeal after losing the case in violation of the South Carolina Civil Procedure Sanctions Act?

The trial judge erred in failing to impose sanctions against Plaintiffs for filing a frivolous lawsuit against Defendant(s) in the matter of an alleged uncollected debt, which was never found to exist by jury trial and abandoned by Plaintiffs on appeal after losing the case in violation of the SC Civil Procedure Sanctions Act.

As found by the jury in entering unanimous verdict for the Defendant as to Plaintiffs' filed Complaint alleging, as their counsel termed it in opening statement, "This case is about a bill collection." (page 22, line 1-2) Counsel even admits that Defendant Steve Gresham, whom Plaintiffs have persisted in suing for two years, "did not sign an agreement with the Coop..." (page 22, lines 14-15) but that they believe he is justified as a debtor on the account and thus, able to be sued because he "in fact dealt with the Coop on this very account." (page 22, lines 15-16) Counsel presents to the jury that Defendant Steve Gresham is "jointly and severally liable." (page 22, line 19) erroneously and unreasonably attempting some kind of tort liability to an action for a debt collection that they contend is due them. The period of time Plaintiffs contend the bill is due is for 2003-2007, even likely outside any statute of limitations, though their bills presentation was never clear as bills were not presented at trial as earlier noted with Denise McCormick, Plaintiffs' chief accusing witness. A reasonable attorney should have known of the statute of limitations, properly organized his case to reflect what they claim was due and when, reasons for such delay in its presentation to the Defendant(s) and to the Cooperative he serves, and why the delay in bringing such a lawsuit together with attempts to rectify the action without resorting to any lawsuit much less such a frivolous one as this one. Counsel states that the Greshams refused to pay "that bill" (page 24, line 24) and suggested that Defendants did in fact live at the Highway 11 house, (page 24-25, lines 24-5) when ample documentation had been presented to him, by Senator Thomas and by Defendant that the family lived elsewhere on Ridgeland Drive in Greenville City where Plaintiffs had mailed the power bills for the Highway 11 house for many years, all being promptly paid. Counsel erroneously, from the sworn testimony of their key witness who sat beside Counsel throughout the trial, claimed that the Coop had not received an address that they had moved from the house (page 25, lines 2-4) when McCormick testimony, above referenced, clearly showed such notice and address provided for her billing. He stated that Defendant did not respond in any way (page 25, line 7) which was totally a fabrication as Defendant(s) responded in MANY ways as Plaintiffs' own employees testified, including McCormick, Dalton, Southerlin, and Blackmon. Counsel further presented that the meter rolled over (page 25, line 19) when the key prosecuting witness, McCormick stated in testimony that that roll-over was a mere assumption. Counsel frivolously filed this extensive and costly lawsuit over an assumption that was clearly known or should have been known to Plaintiffs was fraught with doubt and pitfalls especially in light of the voluminous facts known to Plaintiffs BEFORE the lawsuit was even filed. Counsel states that the Highway 11 residence was

taxed as "their main residence," (page 26, lines 19-20) when he knew or had reason to know and as such was easily obtainable through public records in addition to what Defendant had told Plaintiffs prior to any lawsuit, that it was not but rather at 6% with the Ridgeland Drive home being taxed at 4% for the years the family lived there. Counsel had a duty when confronted with another assumption, to check it out in the public records on line, which could have been accomplished within fifteen minutes from his office. Confirmations of facts presented by Defendants should have given a reasonable attorney pause to reconsider such invalid assumptions prior to filing a costly lawsuit using cooperative monies mostly supplied without questions by rural customers. Counsel owed the cooperative a duty of diligence and care, as did the coop employees who, in effect, worked for the Defendant.

Ironically, Plaintiffs' counsel told the jury he did not find the this this case "exciting: (page 27, line 11) but then he was being richly paid by the Blue Ridge Electrical Cooperative on an hourly basis, suing its member, regardless of the frivolity of the lawsuit. The trial judge as well had earlier expressed his opinion about the lawsuit terming the case "not an exceeding complex case..." (page 14, line 3) that taints the jury Defendant submits in favor of Plaintiffs' counsel to whom he accords significant more respect than to pro se Defendant, especially in light of the outburst trial judge makes to Defendant while she is on the witness stand and in consideration of the pretrial comment to Defendant when she is summoned to the front before the trial commences when he tells the Defendant to "why don't you just pay your d--- bill." Defendant believed at this juncture that the trial judge was just not familiar with the pleadings and believed that in hearing the actual facts that the bill was fully paid as billed by Plaintiffs, the trial judge would be corrected in his erroneous belief. (see testimony of Defendant) Defendant, in fact, so answered the judge in this way, at all times showing his position, respect.

Plaintiffs' Complaint, only seeking alleged debt collection, was based on assumption that the meter of their choice rolled over when significant facts along with Plaintiffs' knowledge that the meters were faulty enough where Plaintiffs had an entire laboratory and meter department for faulty meters plus staff to staff it. Additionally, Plaintiffs knew of Defendant's living elsewhere for they had the addresses and phone number that had never changed for 25 plus years. Additionally, Plaintiffs' company, Blue Ridge Security with which they are substantially linked, provided the burglar alarm protection for Defendant at a North Carolina property, with the same current contact information always known to Plaintiffs.

A reasonable attorney, in accordance with the language of the SC Sanctions Act, previously quoted, in the same circumstances would not believe that his claim of bad debt was warranted. A reasonable attorney in the same circumstances would view such a filing was poorly conceived, given these extensive facts over approximately two years discussion and history of faulty and changed meters by Blue Ridge and their own CEO's assertion to both Defendants that the current meter in question was state-of-the-art, capable of being read off-site. A reasonable attorney would see the insistence on clients Blue Ridge Electrical Cooperative, primarily advocated by their chief witness, Denise McCormick, as likely to cause injury or harassment to the parties, especially to a non-member Steve Gresham, as she fully knew he had never been a member of the Cooperative for which she worked and maintained such records.

A reasonable attorney would see that this case pushed by Blue Ridge Electrical Coop was not founded in fact as set forth in the Sanctions Act. To unleash the power and monetary force of Blue Ridge Electrical Cooperative, Inc. has the result of an atomic bomb and explosion on any cooperative member for the member does not have the tools to fight such a large conglomerate, flush with money, filled with employees of substantial benefits, that apparently does not have to comply with Freedom of Information requests or full public scrutiny, and can hide behind bureaucratic barricades. The Cooperative feels free to exercise any approach they chose from the safety of their offices such as directing that private locks on private home gates be cut and access obtained, (page 72, lines 5-13) and (page 100, lines 9-10) not once but at least three or four times, locking out the homeowner, setting off costly burglar alarms, and causing Sheriff's deputies to respond with the homeowner herself locked out from her own home on the road. If the house had burned down during these Blue Ridge lockouts, the Cooperative would have the blame. The Defendant member had always worked with Blue Ridge and was at last classified by the chief prosecuting witness when pushed on the witness stand that Jennings was an excellent customer. (page 84, lines 7-9)

With facts such as known to Plaintiffs by their admission and by facts clearly established at the three-jury trial, it became clear that the case was groundless in substance as to Plaintiff's debt collection case. Clearly, the case was perhaps more "exceedingly complex" as Plaintiffs counsel earlier stated on the record at the trial's commencement for he had failed to do his homework and had not acted as a reasonable attorney would have acted given these same facts. It is for such a case that is such a travesty that the Sanctions Act was created to protect such Defendants as these before this Court of Appeals. To allow such a travesty to stand unsanctioned and without remuneration to both Defendants, could be a continuation of a travesty and a mockery of our justice system. Blue Ridge has freely spent six years and hundreds of thousands of dollars to try to collect a "bad debt" that never existed in the first place. In the course of this unfair treatment of Defendant member and attempt to prejudice a non-member (Steve Gresham) the Cooperative further abused Defendant by wrongfully placing a service support cooperative pole and accompanying long guywires on her property at about the time of this unfair lawsuit, without her permission and against the very standard she long ago set for her property not to have power poles on it, richly paying Blue Ridge in the 1980's for that right.

This action, poorly considered and poorly advised, wrongly labeled Defendants as debtors for over six years and for one year prior to the actual filing by Plaintiffs of their lawsuit as they repeatedly threatened such legal process in a blackmail-type attempt to compel payment for a bill not owed. Such labeling of both Defendants as debtors when in fact the Jennings bill was paid in full, each and every month, as billed without fail, and had been for over 25 years to these Plaintiffs along with thousands of extra dollars in fees for the underground power, was outrageous and abusive.

Plaintiffs also used Defendant's property in an unjust taking for erection of a support pole and guywires that Defendant did not approve ever in Plaintiffs' continuing Trespass. This pole and guywires interrupts Defendant's enjoyment and use of her land. The pole and wires do not serve Defendant but were only conjecture for hopeful power to other customers to a proposed subdivision that did not materialize. The pole and wires should be immediately removed from Defendant's property, the property cleared and

restored by Plaintiffs and just rent paid for the years it was wrongly in place with punitive and other damages for same, as Defendant pled.

Plaintiffs wrongly assert that Defendant Steve Gresham is jointly and severally liable for a power bill of the Blue Ridge actual member as this position is ridiculous as Defendants have repeatedly argued to Blue Ridge without success. There is no provision in the Blue Ridge By-Laws for membership EXCEPT by application, payment of membership fees, issuance of a Blue Ridge certificate from the Board, and acceptance by Blue Ridge. None of these rules were undertaken by Steve Gresham, as was well known to Blue Ridge and finally admitted in McCormick's testimony. Blue Ridge Coop is the issuing entity for the membership certificates. Blue Ridge Cooperative interposes and argues that Steve Gresham should be a party and is, thus, properly sued because he married Defendant Kathleen Jennings approximately 8- 10 years after her membership. If one followed this absurd reasoning of Plaintiffs, then anyone who allegedly paid the bill of a member would be liable and have standing to be sued OR anyone who marries a member would be liable and have standing to be sued OR presumably, if that applies, anyone who would live with a Blue Ridge member would be liable and have standing to be sued. All of these positions are ridiculous and unenforceable. There is no way Blue Ridge Cooperative could police or enforce such an outrageous interpretation as asserted by their legal counsel in his Reply or in his jury argument or to the Court. He knows this is absurd or should have known. In cross examination of Ms. McCormick, she was specifically asked if she knew when Defendant Kathleen Jennings, the Blue Ridge member, married Steve Gresham, and she answered she did not. (page 78, lines 7-8). She was asked, as membership keeper and official Blue Ridge record custodian, does Blue Ridge Electrical Coop keep up with whom their members marry. McCormick answered no. (page 78, lines 4-6) She was asked if Steve Gresham automatically becomes a Blue Ridge Coop member when he marries a member. McCormick answered no. (page 78, lines 9-12) She was asked if Gresham could even receive any information about the Blue Ridge account, long standing in Jennings' name, since he was NEVER a Blue Ridge member and NOT on the account. She answered No to these questions in her sworn testimony. (page 78, lines 16-19) and (page 77, lines 13-23)and (page 81, lines 18-25) and (page 82, line 1).

McCormick testified that she was aware of the Motion Hearing to have Steve Gresham removed as a party Defendant. (page 82, lines 14-18) Being aware of this motion hearing as the primary Plaintiffs' witness and as official custodian of all records regarding membership and payments, McCormick had a duty to advise her legal counsel that Steve Gresham was NEVER a member of Blue Ridge Coop. and Defendant is sure that she did but legal counsel persisted with naming Steve Gresham as a party Defendant for intimidation and blackmail attempting to force payment of this unjust bill. McCormick never even talked with Steve Gresham. (page 81, lines 18-19) McCormick references the Blue Ridge By-Laws in questioning by Defendant Jennings in introducing this booklet as a Court Exhibit. (page 74, lines 21-25) and (page 75, lines 1-10) and Defendant's Exhibit #2 Service Rules of Blue Ridge, (page 83, lines 9-17)

Blue Ridge has absolutely no interest or concern as to who may pay a member's bill or who may write a check for a member for a member's account. McCormick was specifically asked about this issue on (page 88, lines 8-15) McCormick testified that Blue Ridge did not care who wrote the check for a Blue Ridge member for bill payment

and if Donald Trump wanted to pay a member's bill, that would be ok for Blue Ridge. (page 88, lines 12-15) The point of this questioning was to show that joining Steve Gresham as a Defendant party, because he had perhaps written a few checks for a member's power bill thus was justified as a Blue Ridge member, was pure folly. If such absurd reasoning was followed as urged by Plaintiff's legal counsel, then Donald Trump or anyone who perchance paid a Blue Ridge's member bill was automatically a Blue Ridge Cooperative member, which argument is ridiculous. This assertion by Plaintiffs fails miserably and further illustrates the absurdity of their position and what Plaintiffs wrongly attested to two Common Pleas Judges, Judge Patterson and Judge McIntosh, purposefully misleading them and maligning Defendants.

Blue Ridge Cooperative through its concerted efforts to sue Defendant(s) has abused the justice system in an attempt to purportedly collect a debt that was not owed for a meter of their choice that type was known to be faulty, was removed and hidden for years from Defendant and Senator Thomas, could be ascertained unequivocally as having rolled over, and was only assumed, at best, that it did roll over. Lawsuits of any magnitude should not be filed or brought on assumption. Lawsuits of any magnitude, even if classified as "not complex," become complex when the facts are disregarded by the suing party, herein the Plaintiffs.

Defendant(s) have, in fact, performed a significant public and cooperative service in exposing this behavior by an electrical cooperative that was designed to serve its customers not injure or harass them. Defendant(s) have pursued this matter in just fashion, with their rights continuously trampled by Plaintiffs and their counsel not only in the erroneous filing but also in the naming of Steve Gresham, known not to be a member of the cooperative. Defendant(s) have pursued this matter as they had no choice as they were sued in their home county, exposing them to ridicule and classification forever on the Court records as "debtors," and forced to participate in a costly (financially and emotionally) trial, discovery, motion hearing to remove Defendant Gresham (denied because of Plaintiffs' invalid assertion to the Court), and to postpone necessary surgery and medical care to attend to court matters. Defendant has been forced to seek relief from the Trespassing of Plaintiffs, to seek removal of their support pole and guy wires that does not serve Defendant, and to proceed to jury trial, winning same with Plaintiffs still pursuing their nebulous defense. Plaintiffs abandoned their initiating claim and lawsuit, three years after the jury verdict, abandoning the bad debt/collection action claim in September of 2012. This abandonment of their initiating and persistent claim on Defendants was THREE years after the jury verdict against them. This is hardly a reasonable position as the bad debt never existed and should never have been filed in 2008 or threatened to Defendant in 2007.

Plaintiffs' conduct and dogged determination to sue in spite of the facts is a travesty and deserves the whistle blowing undertaken at great personal expense by Defendants. Plaintiffs should not only be sanctioned in the fullest measure but their Trespass found by impartial, unanimous jury in a three-day trial, upheld, the offending pole and guy wires removed with damages paid, the area cleaned up, and Punitive Damages as long-pled by Defendant, awarded with costs and fees.

Issue 4: Did the trial judge err in his rebuke of Defendant Kathleen Gresham on the witness stand in front of the empaneled jury, interrupting her testimony as to her extended cooperation with Plaintiffs Blue Ridge and prejudicing her case and her in this disruption?

The trial judge erred in his rebuke of Defendant Kathleen Gresham as she was testifying on the witness stand. As a pro se Defendant, witness had the difficulty challenge of providing testimony while also directing her testimony to address and cover the points raised by Plaintiffs in their Complaint and in bringing out her own Answer and Counterclaim issues in an explanatory way to fully address the multiple issues before the Court and the before the jury. Kathleen was in the midst of addressing the allegations insisted and pled by Blue Ridge that she was unavailable, refused to allow access to her property, and in general, as pled by Plaintiffs, was a bad customer, who was apparently hiding out from Blue Ridge and refusing to pay her power bills. In the middle of presenting evidence exactly to the contrary about being easily accessible to Plaintiffs and even to their own employees with whom she had had a good relationship even to the point of allowing their children to visit her horses, the trial judge snapped at the witness while on the witness stand, dressed her down in front of the jury, and halted her testimony stating that he remembered her as "difficult" when his former law firm had had cases with her in Anderson. This outburst clearly startled the Defendant witness, interrupted the Court process, frightened the jury, and prejudiced Defendant's case in this unprofessional disruption.

Defendant witness objected on the record to this treatment and verbal abuse and advised the Court that if he had harbored such resentment or opinions he should have recused himself from the trial at the very beginning and should, additionally, not have dressed her down in front of the jury. At that point, the trial judge sent the jury out of the courtroom and continued to dress down the Defendant witness on the witness stand, whereupon he then returned the jury into the jury room and continued with the case and testimony of the witness, who continued to be upset with this judge's outburst.

Defendant believes that the testimony of witness as to her easy accessibility coupled with the prior testimony of Denise McCormick and of CEO Dalton had upset the judge with his apparent misconceptions about what he had perceived as the facts of this case and that he jumped without thinking and not considering his role as the supposed unbiased arbitrator of the law. The trial judge's conduct while admittedly at this time a new member of the judiciary, was unprofessional, rude, and served to prejudice Defendant. Defendant was long ready to get this case behind her and her family as it had dragged on for approximately three years at this time including a year of her attempts to get Blue Ridge to rethink the bringing of the lawsuit, all without success. Defendant shouldered on despite the outburst, confident that the court record with its backup and safeguards would result in eventual justice and apology from the Court. Defendant thus regrets more than anyone that the Court record from her testimony forward has been destroyed as such would have clearly verified the facts and her testimony. Defendant has truthfully recreated this profound event in her life as best she could for it is indelibly etched in her memory.

Continued

Issue 4A Did the trial judge err in his rebuke of Defendant on the witness stand in front of the empaneled jury, interrupting testimony, and prejudicing Defendant's case and Defendant in this disruption?

The trial judge erred in his rebuke of Defendant on the witness stand in front of the empaneled jury, interrupting testimony, and prejudiced Defendant's case in this disruption.

It is imperative that a trial judge, even if he is newly elected by the General Assembly to the bench, demonstrate proper courtesy, decorum, and respect to all parties and witnesses in the Courtroom at all times. If there exists, personal contempt or dislike for one particular party known to the trial judge and he feels he cannot control those feelings and also provide an atmosphere where his personal prejudices and opinions are not shown or acted upon, that trial judge has a duty to recuse himself immediately and prior to any commencement of any stage of the trial. A trial judge at all times should avoid any appearance of impropriety or favoritism. He should be seen and act as impartial arbitrator of the proceeding in not only his demeanor but in his tone and actions.

This trial judge was aware that he was slated to be the presiding judge in this trial for he presided over the parties' jury selection two days prior to the commencement of this trial in a process that took approximately half a day with sounding the jury and selection. The trial judge in that long process on Monday, August 24, 2009, before the jury trial commenced on Wednesday, August 26, 2009, was able to view the parties, including the pro se Defendants who were directed by the Court to appear. During this time on August 24, 2009, the trial judge spoke with pro se Defendant on several occasions and viewed her participation in court. At no time on this day did the trial judge indicate that he knew the Defendant(s), had had any relationship with her, held any ill feelings or bias toward or against her, or that he thought poorly of her case and her defense that she was not a bad debtor. It became clear during the course of jury selection that the trial judge knew Plaintiff's counsel but pro se Defendant counted that as a given in the small counties and area from which, coincidently, that both hailed, in the circuit composing Anderson and Oconee Counties.

It was at the start of the trial, prior to the jury being in the courtroom and out of the presence of the court reporter, who lost/destroyed a portion of the transcript anyway it was learned a year or more after appeal was undertaken, that the trial judge summoned pro se Defendant up to the bench and leaned over the bench and asked this Defendant in a whisper, "Why don't you just pay your d--- bill?" Pro se Defendant was caught off guard and quite did not know how to respond with the trial set to commence after two years of anxious wait, and advised that when his honor reads the answer and hears the facts, it will be clear that she had, in fact, paid the bills and in full for many years.

As the trial got underway, Defendant took care to try at all times to comply with the Court's rulings even when against her, preserving objections dutifully. As she was pro se, Defendant had to testify and anticipate her own questions with answers that needed to be established in line with the facts for the jury to hear as well as be aware and keep in mind the Complaint and testimony allegations of Plaintiffs'

witnesses, especially Ms. McCormick, their chief prosecuting witness, to present Defendant's testimony and response.

McCormick testified that Defendant had been unavailable to the Cooperative even though she had at all times in her records the 25 plus year telephone number of Defendant, also listed in the telephone book. In Defendant's testimony, Defendant was testifying to the frequency that employees of the Blue Ridge Electrical Cooperative called her, even on her cell phone number, to ask for Jennings to unlock her gate and meet them and allow grandchildren or children to see her horses, or to fish in her pond. In the course of this short testimony, which directly contradicted statements by Plaintiffs' key witness of being unable to contact Jennings, the trial judge burst out in the open court with jury present, with Jennings on the witness stand under oath, that he now remembered her (Jennings) and he remembered all the trouble he and his firm had had with her on divorce cases. The witness, Jennings, was shocked and stopped in her testimony abruptly as commanded by the judge who was on her right with the jury facing the judge on witness's left in the courtroom. The trial judge continued to dress down the witness/Defendant pro se and elaborate on how difficult she had been in divorce cases when she practiced law. The Defendant, now greatly upset, turned to the trial judge and said, on the record, words to the effect if he had felt that way, he should have recused himself at the very beginning of the case and further, warned the judge that he was speaking in front of the jury that caused her great prejudice.

The trial judge gave pause; he stood up from the bench, leaning toward the witness/Defendant and the jury and instructed that the jury be removed from the courtroom. After the jury was removed, the trial judge continued in his dressing down and anger toward the witness/Defendant, who had not raised her voice, shown any disrespect for the judge, and had at all times, acted professionally, properly, and had a right to address the issues as she chose. Time had not dragged on and the answers were not long at all or extraordinary in length. They were extraordinary as the answers clearly showed total odds with Plaintiffs and were complete with details and knowledge pertinent to the issues on trial, prejudicing the Defendant.

The jury was returned to the courtroom after witness was thoroughly disrupted and in near tears, to resume her testimony as best she could. Defendant has grave concerns that it was this portion of the trial testimony and forward that the official Court Reporter, Mary DiGirolamo, transcript has been lost/destroyed for it establishes conclusively the conduct described herein. It was approximately well over a year before Defendant(s) learned of any destruction of the trial transcript, despite ordering a copy, and in fact, despite multi requests, she never received the portion of the transcript said to exist for over three years from the trial date. Defendant was then surprised to learn that as much of the transcript existed as was eventually shown to Defendant. Defendant has repeatedly asked for an investigation into the transcript mystery and requested testimony from the court reporter without success. Witness/Defendant has placed in the record via record reconstruction a recreation of her testimony based on her excellent memory and from her trial notes. Defendant has demonstrated to the Appellate Court and to the trial court that she kept meticulous records in this matter for no one else was able to produce the jury charge instructions provided to BOTH parties by the trial judge on the second day of trial, August 27, 2009, not even Plaintiff's attorney, an officer of the court with a large staff. Defendant was also able to produce the hand-written additional jury charge

written by the trial judge during the evening of Thursday, August 27, 2009 or in the early morning of Friday, August 28, 2009, prior to the scheduled jury arguments by the parties. That hand-written jury charge by the trial judge, in his own handwriting for this trial, and those previous jury charges provided by the trial judge himself, were made a part of the trial record for transcript reconstruction and speak for themselves. They are critical in accurate and fair reconstruction of this record.

These jury charges of first hand-out by the trial judge, given to the parties at the end of the day on the second day of jury trial, Thursday, August 27, 2009, pointedly demonstrate that the trial judge had every intention of charging the Punitive Damages issues, long and well pled by Respondent/Appellant. A jury charge on this issue is contained in the judge's packet, provided. The hand-written jury charge reflects an expanded jury charge on the issue of Trespass, which he charged to the jury, over the objection, carefully preserved, by Respondent/Appellant in the actual trial. The judge, when queried about why he was imposing the additional charge that the Defendant thought worked against her and for which she had not prepared in closing argument preparation, answered that that he had talked with someone the night before and reconsidered. This statement was also on the transcript that was destroyed but is vividly remembered by Defendant as it profoundly affected her and her case.

It was during the last day of jury trial, at the ninth hour, immediately before the parties were set to give their closing arguments to the jury, that the trial judge announced that he was disallowing any reference to the issue of Punitive Damages, pled by Defendant, and was prohibiting Defendant from any mention in any form or fashion of Punitive Damages in any way or face contempt of Court. Defendant, in shock at this reversal and in feeling the trial judge pulled the rug out from under her feet, objected strenuously, asked him to reconsider, explained that the Punitive Damages issue had long been pled and was not contested at any times by Plaintiffs. The trial judge, had sua sponte, removed the issue of Punitive Damages on his own volition, severely prejudicing the Defendant(s) and her right to have this issue considered by the jury in connection with her counterclaim for Trespass and costs. In taking such extraordinary, sua sponte action, the trial judge deprived the Defendant pro se of her due process rights and continued to prejudice the Defendant. The relief sought by Defendant is remand of the Punitive Damages aspect of the case only, with the jury verdict of Trespass to stand. Further, Defendant seeks that the trial judge refrain from such treatment of other parties and contain any chastisement of a party on the witness stand or otherwise, out of the hearing of the jury as causing prejudice to that party. The trial judge should at all times avoid the appearance of favoritism or leanings or attempt to impose his judgment on the trial or facts by tone, inflection, command, statement, mannerisms, or rulings. The Court of Appeals herein should properly address the sanctions and costs additionally requested in Respondent/Appellant's Appeal along with remand of the Punitive Damage issue for jury determination.

Issue 5: Did the trial judge err in failing to direct verdict for Defendant as to the debt collection allegation for unpaid bills that was the initiating cause of action pled by Plaintiffs in consideration of testimony of Plaintiffs' own witnesses?

The trial judge erred in failing to direct verdict for Defendant Kathleen Jennings (Gresham) as to the debt collection allegation for unpaid bills that was the initiating cause of action pled by Plaintiffs in consideration of testimony of Plaintiffs' own witnesses.

Plaintiffs' own primary and key witness, Denise McCormick, the record custodian as to accounts who also served as customer service manager, marketing manager, and directed billing and collections among her duties with 21 years of employment by the Cooperative, testified that Jennings, the only now-acknowledged Cooperative member of this lawsuit, paid her bills in full, as billed by Plaintiffs' in their regular course of business for over 25 years and including all bills from 2003 forward through 2007. This claim of unpaid debt was the initiating and only issue for Plaintiffs in their lawsuit filed in 2008 with threats of it against Defendant(s) for a year before in 2007.

McCormick, the only witness from Plaintiffs who had any details, records or supposedly-pertinent information about the alleged debt testified under oath that Jennings had regularly paid her monthly bills exactly as billed. Plaintiffs' case was **initiated solely** on the assumption that Jennings' power meter **had rolled over** and thus owed Plaintiffs a balance. Testimony established that Plaintiffs had knowledge or should have known from at least one past error they had made in such assumptions and their own estimates of power bills, that their equipment was defective and was not properly read each month. (page 48-49, lines 19-9) when Plaintiffs had to pay Defendant a refund because Blue Ridge had overestimated the bill. This estimation billing disturbed Defendant who took the matter up with CEO Dalton due to past assurances that the equipment was capable of reading off-site and was state-of-the-art. Blue Ridge replaced the meter again and assured Defendant that this meter they alone selected was indeed state-of-the-art and was capable of access off-site even from their Blue Ridge office. CEO Dalton himself made this assurance to Defendant and Defendant had a right to rely on this official representation and find comfort that all was indeed proper. Jennings even confirmed this matter in writing with CEO Dalton due to Blue Ridge's past problems. (Exhibit introduced at trial (page 133, 134)) CEO Dalton is the highest Blue Ridge official at the Cooperative and has long served in this capacity, overseeing McCormick and all other employees, the Board, policies, procedures, and other matters. Defendant has never been advised to the contrary that the meter readings continued to be estimates as testified at trial by McCormick (page 51, line 21) and never received any correspondence to the contrary of what CEO Dalton had assured her. McCormick acknowledged this fact in her testimony. (page 51, lines 6-18) Plaintiffs even added late penalties for their bill estimates even though the bills exactly as they billed them were paid in full and on time each and every month for over 25 years including for the time in question. (page 62, lines 16-22) The account was fully paid in full each and every month and the addition of late fees was abusive and meant to frighten the Defendants into paying with this financial terrorism.

Plaintiffs' case was built upon an estimate of a balance they Plaintiffs conjectured and assumed was due based upon a meter and meters -they installed at least four and maybe eight meters- (page 66, lines 10-15) that they selected and they stood behind the technology to file their costly and damaging lawsuit. Plaintiffs acknowledged through their chief witness McCormick that there is and was no way that they could prove that the meter rolled over – no way. (page 63, lines 7-16) It is absolutely incredible that anybody, much less a huge conglomerate such as Blue Ridge Electrical Cooperative, in business allegedly for service to their customers among whom is Jennings, and with a huge budget and hundreds of employees with legal staff on retainer at all times, could dare to file such a lawsuit against one of their own members and fabricate about the membership of another, based on something as flimsy and as speculative as this meter that they could not even prove rolled over! Blue Ridge made threats about their lawsuit to Plaintiffs and to others for a year prior to filing it, which Respondents/Appellants also believe to be objectionable and scandalous.

Directed verdicts against both Defendants should have been firmly ordered at the disgusting close of Plaintiffs' case that was motivated by lack of good faith, propelled by stubbornness, championed by McCormick who could not bring herself to admit she had made mistakes, led by legal counsel who failed to provide insightful leadership and probing questions to ascertain the real truth, and carried to a ridiculous degree against an excellent, long-time customer who relied on Blue Ridge to be fair, accurate and honest. Blue Ridge in their haste to sue on wrongful assumption especially as they had facts that they ignored that were critical to an accurate determination, cared more about teaching the Defendants some type of lesson than serving the best interests of the Cooperative and all its members. The lawsuit pushed by Plaintiffs and McCormick cost Blue Ridge Electrical Cooperative hundreds of thousands of dollars over this six-year period, from 2007 when Plaintiffs began their harassment of Defendants through 2013 and their Appeal.

The trial judge should have studied this testimony, listened closely and dismissed this ridiculous cause of action. He erred in failing to do so and subjected these Defendants and the court system as well as the Cooperative members unaware of this travesty to more years of judicial and personal abuse and terrorism. The trial judge should have awarded costs to Defendant for this abusive filing and actions in the same amount Blue Ridge had/has spent prosecuting and pushing the lawsuit. Defendant has repeatedly sought this amount of money spent by Blue Ridge in attorneys' fees, costs, and all related expenses in discovery and in requests as a member without response from Blue Ridge.

Defendant cannot be held responsible for the erroneous assumption of Plaintiffs regarding their own meters. Meters were so often in error that Plaintiffs had an entire department charged with replacing, repairing and changing meters that were constantly being changed with different models. There was a group of designated employees charged with meter repair, removal, equilibration, and replacement as McCormick testified (page 67, lines 18-25) and (page 68-69, lines 7-25, 1-12) McCormick admits on cross-examination that she, the one in charge of the meters, never even asked Jennings for access to the meter. (page 72, lines 2-4)

Defendant was likely owed money in refund by Plaintiffs, as had previously been the case for overbilling. As Defendant and her family had shut down the Highway 11

house for many years, in excess of 14 years, primarily due to the illness of their son and such personal reasons, the Highway 11 house was closed, the water lines drained, and the propane setting that heated the house set on the lowest possible setting. The house was not fully electric as was known to Blue Ridge as they had conducted an energy inspection at the request of Defendant when the house was being constructed so that the most efficient energy rating could be realized in the construction. McCormick also admitted that Jennings had kept Plaintiffs advised of an address to send the Highway 11 bills on a regular basis (page 73-74, lines 16-25, 1-13) McCormick admitted that someone like Jennings who kept Blue Ridge advised of their address for bill submission/mailing purposes was a "pretty good customer." McCormick admitted that she was. (page 74, lines 14-17)

McCormick admitted that some customers just move out and do not tell Blue Ridge at all where they are and hope Blue Ridge never finds them to get them to pay their bills. (page 74, lines 14-17) McCormick admitted that Kathleen Jennings had never been a customer such as that who moved without telling Blue Ridge or failed to provide an address for billing purposes. (page 74, lines 14-20)

McCormick further admits that Steve Gresham was never a Cooperative member (page 78, lines 13-15) and could not even receive any information about Jennings account with Blue Ridge BECAUSE he was NEVER a Blue Ridge member. (page 78, lines 16-25) The Blue Ridge account, she testifies has only been in the name of Kathleen Jennings since the 1980's, a fact known to Blue Ridge. (page 78, lines 23-25)

McCormick admits that Jennings has NEVER even been late with her bill payment to Blue Ridge, not in several decades. (page 79, lines 1-7) McCormick admitted that a citizen/customer has a right to expect that power bills from an electrical coop to think that at some time the bills are FINAL. (page 79, lines 8-12)

McCormick admits that there have been at least 26 disconnect notices to Defendant sent by Blue Ridge. (page 79, lines 13-16) She also admits that disconnecting power shuts off everything in the house powered by electricity, in effect amounting to the most damage and harm that Blue Ridge can do to someone. (pages 79-80, lines 17-21 and lines 10-13)

McCormick admits that she has never even talked with Steve Gresham, one of the Defendants she and Plaintiffs sued in this matter. (page 81, lines 18-19) The reason this is significant is because McCormick is THE customer service manager of long duration (more than 19 years) and if Steve Gresham had arguably been a Blue Ridge Coop member, she would have wanted to talk to him as McCormick also is in charge of the accounts and payment that she alleges he has not paid. McCormick then testifies that she could not talk with Steve Gresham because his name is not on the account as he is not a member or account holder. (page 81, lines 18-25) and (page 82, line 1). Ridiculously and unbelievably, Plaintiffs filed suit against Steve Gresham whom they could not even talk to about this or any other account as he was NEVER a Blue Ridge Coop member BUT they could presume to SUE him! This testimony is scandalous and deserved an immediate sanction from the trial judge and immediate dismissal of both Defendants.

Defendants submit that the errors of the trial judge in failing to take the appropriate actions of dismissal and levy of costs was likely because of the stature of Plaintiffs Blue Ridge Electrical Cooperative, their power in the communities and even in the circuit from which this judge hails and their legislative power through their lobbying

and other statewide work and lobbying efforts. Such a Plaintiff of such extraordinary power intimates most, serves to aid such a Plaintiff in such an abusive lawsuit, and serves to intimidate most from any challenge to them even in the light of facts obviously totally counter to Plaintiffs' pleading. This is a classic case of David versus Goliath with Defendant(s) who dare to challenge a huge conglomerate with huge powers and deep funding who do not have to account to the public but only to a tightly controlled Board of Trustees whom they also pay. (page 81, lines 11-17) and as contained in the Blue Ridge By-Laws, made an exhibit in this trial. The defense to this unjust lawsuit by Defendants and exposure of this outrageous lawsuit initiated aggressively by Plaintiffs, serves a deep interest of the public, of the legislature, of the Court system, and of the Cooperative members as well as being necessary for the integrity of the Defendants.

Plaintiffs' testimony, especially that of their key witness, Denise McCormick, brought shame to the Plaintiffs, exposed injustice of the Cooperative, and exposed the shamble of waste, errors and wrongful assumption behind this lawsuit. The trial judge erred in failing to immediately shut it down as to Plaintiffs' cause of action (i.e. the alleged bad debt/collection action) and allowing justice to prevail.

Issue 6: Did the trial judge err in failing to impose pled costs, damages, sanctions and other relief sought by Defendants in connection with this matter and issues of Plaintiffs as improperly brought and pursued in light of the testimony of Plaintiffs' own witness(es) in admitting the monthly bills were paid regularly by Defendant on a monthly basis as prepared and billed by Plaintiffs in accordance with the equipment of Plaintiffs' own selection and installation?

The trial judge erred in failing to impose the pled costs, damages, sanctions and other relief sought by Defendants in connection with this case in accordance with testimony of Plaintiff's own witnesses who admitted under oath under cross-examination that the monthly bills of Defendant were, in fact, paid on a regular basis in monthly fashion as prepared and billed by Plaintiffs in accordance with the equipment of Plaintiff's own selection and installation.

Plaintiffs acknowledged that Defendant had been in fact, an "excellent customer," and had so been for in excess of 25 plus years. The testimony of the Plaintiff's witness in chief, Ms. Denise McCormick, should have raised outrage in the trial judge who should, out of the presence of the jury, admonished Plaintiffs and their trial counsel that this case should never have been brought in the first place, that Defendants both should never have been exposed to several years of expensive and time-consuming litigation, which continues now approximately six years later, and that the exhaustive efforts of Defendant Kathleen Gresham in futilely attempting to dissuade Plaintiffs for approximately one year from filing and bringing this unjust action should have been heeded. Defendant presented testimony of efforts to dissuade Plaintiffs from bringing this lawsuit that were met without success, thus tying up the Court system for over six years and the lives of the Defendants not to mention the monetary resources of the Blue Ridge Electrical Cooperative and its members that include Defendant Kathleen Jennings, erroneously sued as Gresham by Plaintiffs in a conscious decision for lawsuit caption. The Membership name for Defendant is and has always been for 25 plus years, Kathleen Jennings, not Gresham, all being known to Plaintiffs. (testimony attached)

The trial judge should have swiftly imposed costs, damages and sanctions against Plaintiffs who entered this lawsuit with unclean hands and continued their abuse of process for several years to the detriment of Defendants, both financially and emotionally forcing them to postpone much needed medical surgeries and care in order to accommodate this lawsuit and its rigorous time scheduling demands.

Issue 7: Did the trial judge err in failing to order directed verdict for Defendant Kathleen Gresham as to the Debt allegation pled by Plaintiffs, which was the essence of their initiating lawsuit, in consideration of the testimony of Plaintiffs' own witnesses?

The trial judge erred in failing to order a directed verdict for Defendant Kathleen Gresham as to Debt allegation pled by Plaintiffs, the crux of their lawsuit, in consideration of the testimony of Plaintiffs' own witnesses. Replete through the testimony of Plaintiffs' key witness, Denise McCormick, is testimony that this lawsuit was initiated on an assumption only that Defendant(s) had used so much power that the electrical meter, solely selected, installed and calibrated by Plaintiffs, had rolled over and that Defendant(s) had used substantially more power than the meter of the Plaintiffs suggested. It is a lawsuit steeped in Plaintiff's own fiction and failure to allow the actual facts of this case get in their way in their charge to sue this family.

From the beginning of this tragedy of a case, Plaintiffs led by McCormick, targeted this family as they had done before, refusing to accept the facts this family presented that they had not even lived in the house for approximately 13 plus years, had closed the house down, and moved to another house in the city of Greenville to be near their child who was dying of leukemia. The Plaintiffs, led by McCormick, refused to believe that the family at the Highway 11 house, heated with propane, not electricity, and continued to refuse to believe this fact even when presented with propane records from Freeman Gas in Landrum, SC, whose records and long-time, excellent business relationship with Defendant Kathleen went back for over 25 years. (stipulated testimony of Fred Smith attached

The Plaintiffs, led by McCormick had unreasonably fixed an agenda in their collective minds and refused to be swayed by facts. Extensive efforts to thwart this lawsuit in the interest of fairness and facts, made no dent in the Plaintiffs' drive to sue or to press their erroneous assumption. Lawsuits should not be brought on a mere assumption. The life and course of a lawsuit of such a nature as debt collection wields great destruction and power, disrupting lives, requiring large blocks of time and of money to defend, carried a bad stigma of being a "debtor," who refuses to pay one's bills, is automatically geared against the alleged debtor and especially when such debt allegations are made by a vast company who spends money to enhance their image including the employment of lobbyists and image-makers as does Blue Ridge Electrical Cooperative, Inc. This case is a tragic lawsuit of over six years of abuse toward one excellent Blue Ridge member (Jennings) fortified by the vast financial resources of a supposedly not-for-profit electrical cooperative who had an assumption that the meter they themselves selected on this non-suspecting and trusting member, in fact had turned over.

original testimony destroyed by Court reporter)

From the beginning of this case, Plaintiffs asserted that this case was "not exceedingly complex," (p 14, line 3) as that is the message they sought to convey for it presented the Plaintiffs as astute deciders of the facts and presented the Defendants as rip-off dummies who refused to pay their bill. Nothing could be farther from the truth as the testimony established and as the wise jury so found in unanimous fashion.

This case was about a member (Jennings) being subjected to years of bullying and abuse by the very not-for-profit, but exceedingly profitable, electrical cooperative of which she had been a long-standing, excellent and dependable member of over 25 years. This case was about principle and the trial judge erred profoundly when he failed to grasp Plaintiff's own testimony from their own key witness, McCormick, and grant the directed

verdict motion, ending Plaintiffs' ill-advised lawsuit. McCormick was so smug in her assertion that the meter had clearly rolled over that she failed or refused to grasp any other factual explanation of the matter despite over a year of attempts to peacefully resolve the matter. As a result, Plaintiffs entered this matter in bad faith, failed to prove their case, failed to establish their version of the facts by their witnesses' own testimony, and failed to establish that this case was "basically about a bill." (p 20, line 12) This case was about unbridled power and bullying that could have and may have occurred to other Blue Ridge customers who were not committed or able to counter such roughshod tactics as this Defendant(s) was able to do in sheer perseverance.

Plaintiffs' entire case was filled with errors and mistakes from the outset such as asserting Mr. Gresham was a member and then trying to claim his membership status with his wife's, a Blue Ridge member long before their marriage, was jointly and severally liable. (p 22, line 14-21) This claim flies in the face of Plaintiff's own publication of By-Laws and rules and is ridiculous in its nature. The Trial Judge was in a good position to shut down this train-wreck of a case at the stage of directed verdict and erred when he failed to do so. This case has an example of the trial judge's own sua sponte decision that he could have, and should have employed at this stage even if pro se Defendants had failed to do so. The interest of justice would have been happily served.

Plaintiffs then argue that their bills were "estimated" and that Defendants refused to pay them when a fell-swoop bill of many years in accumulation that Plaintiffs prepared, arrived in the United States mail. Defendants, solely dependent upon Plaintiffs' good business practices that did not apparently exist, relied upon the CEO Dalton's promises that the equipment was state-of-the-art and could be easily read from afar. This was never a case of Defendants' refusing to pay bills for they were paid in full, each and every month without fail and on time. This was a case of Plaintiffs' going to an expensive lawsuit on a faulty assumption when they knew or should have known that the meters chosen by them were faulty, often gave false readings, required calibration such that they had their own laboratory to conduct such and were so backed up in the testing that meters were months behind.

McCormick, the manager of customer service and marketing and Plaintiffs' key witness, gave no assistance to Defendants in customer service and represents the sums of monies Plaintiffs spend on improving and protecting their image to the detriment of cooperative members. She arrived at Court in a case that had already dragged on for several years with no records, appears in Court with no bills (p 84, lines 22-24,), does not have the meter number in question, (page 67, line 8), does not know where the meter is when queried by pro se Defendant/Blue Ridge member whom she serves, (p 68, line 9), admits that the meter was not tested, (page 70, line 18), did not write Defendant Jennings, their long-time member, about the meter, (page 71, line 7-13), admitted that Blue Ridge clipped the locks on Defendants' gates, gaining illegal access to Defendant's property without permission, (page 72, lines 7-13) and could have done so "more than one time." (p 72, line 7-13).

McCormick admitted that Defendant Jennings furnished the Cooperative a change of address to Ridgeland Drive for the bill to be sent for over ten years for the Highway 11 house, supporting Defendant's position that the Highway 11 house was closed down and the family living on Ridgeland Drive in the City of Greenville as Defendants had long stated. (p 74) McCormick identified the Blue Ridge Electrical Cooperative By-Laws

publication over which she reigns as customer service and marketing manager and as custodian of the records, which was introduced and marked as Defendants' Exhibit #1. (p 75) along with the Blue Ridge written membership certificate requirement. (p 77, line 9) By this witness's own testimony and in accordance with their own publications, Defendant Steve Gresham was not and had never been a member of the Blue Ridge Electrical Cooperative, that there existed no "joint or severally liability," and that such claims were intended as fancy theories and words to justify a wrongful joining and harassment calculated to punish Defendants and achieve the Blue Ridge objective of a windfall sum for power never used. The actions in pushing for such monies using the federal mails and power of an organization designed to serve the cooperative members approaches fraud and should have been immediately seen by the trial judge who impartially and fairly should have directed verdict for Defendants in all particulars of Plaintiffs' ill-advised lawsuit.

McCormick admits that Defendant was never late on her bill (p 79, line 5), admits that Defendant received at least 26 disconnect power notices (page 79, lines 13-16) that is an awesome and intimidating power of an electrical cooperative to use on a rural family or on any family dependent on any form of electricity to survive. In effect, Plaintiffs were using their power to terminate the livelihood and lives of Defendants and their livestock, all based on their erroneous and rigid assumption that their own meter, known to be faulty collectively, had rolled over, refusing to accept the facts even when they were shown the facts in attempts to avoid such a costly lawsuit.

McCormick admits under oath that Defendant member Jennings, wrongfully captioned as Gresham, had been an "excellent customer," (p 84, line 8), never met Kathleen prior to the Court proceedings (p 87, line 25) thus has apparently not attempted to work out this matter or arrive at a just conclusion without resorting to lawsuit, and admits that it does not matter to Blue Ridge who pays the power bills. (p 88) Their witness also admits that she met with David Thomas, sent by Defendant as a friend to get to the bottom of the matter as a constituent service, (p 88), that McCormick admits that she has long had Defendant's telephone number that is contained on the very bills generated by Blue Ridge (p 90, line 20) and has had such telephone number for decades, which information elicited under oath of Blue Ridge's key witness flies in the face of the allegations contained in Plaintiffs' own Complaint.

McCormick also testified and acknowledged that the meters have reading human errors (p 95-96), that Plaintiffs have been instructed to clip Defendants' locks before (p 100) and gain access to the farm. The Trial Judge, should have been aghast at the testimony he was hearing from Plaintiff's primary witness and regarding their case in chief, taken immediate steps to halt the travesty and misuse of the court system, and direct verdicts for both Defendants followed by immediately imposed sanctions also as pled by Defendants. Such actions would be well within his discretion, totally supported by the testimony and evidence, upheld the dignity of the justice system and legal process, and resulted in a deterrent to such frivolous and reckless actions in the future. Word would have gotten around that the court would not tolerate such abuses of process and such misuse of process in pleadings that have very little resemblance to the truth. Instead, the trial judge failed to act and abused his discretion and committed error of prejudice to the named Defendants, to the membership of Blue Ridge, and to the judicial system.

Blue Ridge Electrical Cooperative, Inc. versus Kathleen and Steve Gresham
CLOSING STATEMENT

Travesty is the one takeaway term that best describes the case of Blue Ridge Electrical Cooperative against one of its long-time members, Kathleen Jennings (Gresham) and her husband, Steve Gresham. This is a case of overreach, overkill, and over-the-top willfulness and misjudgment by a powerful electrical cooperative with unlimited budget, resources, and money to cram their position down the throat of a rural family who relied on the Cooperative for electrical power and a monthly bill that was always and religiously paid in full as billed, and for common decent business practices. This family has been subjected to a trip to Hell in a poorly advised and considered lawsuit based on an erroneous assumption that Blue Ridge employees should have known was faulty in light of the many facts presented to them prior to lawsuit filing.

Blue Ridge Cooperative, through their primary moving employee ironically couched as the Customer Service and Marketing Manager, managed to jump to a wrong conclusion about their own selected and installed power meter that than disappeared for four-plus years, assuming that the meter rolled over and refusing to allow facts get in the way of this assumption. The lawsuit was on at that point and no amount of persuading was going to deter the process. Justice should be made of sterner stuff.

As a result of this erroneous assumption, a family, grieving for a deceased son and hoping for a happier life, moved back to their rural home, where they had diligently maintained their power bill even when they were absent and not living in this home for over 13 years. The family was flabbergasted when a myriad number of power disconnect notices began arriving at their house with deadlines that their power was to be turned off, claiming that their power bills had not been paid for several years. Nothing could have been further from the truth. In fact, the power bills had been dutifully and promptly paid each and every month, in full and as billed by Blue Ridge, without fail, prompting even the primary witness for Blue Ridge to testify that Defendant was an excellent customer.

Excellence on the part of Plaintiffs did not fit in with these facts. In fact, the action was wrongfully brought, improvidently pursued, and glibly called a simple bill and debt collection by what Plaintiffs apparently believed were deadbeats who lied about where they lived and lied about the power. This case was way beyond a debt collection and was actually about an abuse of power and authority that bordered on terrorism. Terrorism can take many forms as in the power to disconnect power, the power to remove, conceal, and reveal power meters at will, the power to hire legal counsel without regard to finances and budget, the power to intimidate members, the power to claim membership is where it clearly is not, the power to disregard one's own By-Laws and Rules and Regulations; the power to erect power support poles and guywires without regard to private property and ownership; the power to disrupt long-standing aesthetic goals and and objectives; the power to dismember and disrupt lives for years on end and ignore due process and fundamental fairness in the process.

Blue Ridge Electrical Cooperative, Inc. should not have brought this lawsuit in the first place. It was a grave mistake based on a flawed assumption that their chosen meter had turned over when reasonable theories pointed that it had not. I blind desire to crush and teach a member a lesson was a motivating factor apparently for Blue Ridge and their efforts to do so resulted in an abuse of process and violation of ethic codes and common decency of fairness on many levels. Additionally, this case is compounded as in a John Grisham novel that would almost defy belief, that the trial judge, sui sponte, involved himself in refusing to allow a critical issue of Punitive Damages go to the impaneled jury already gathered in a three-day trial on these issues. In so exercising this abuse of discretion, the trial judge played into the direction of Blue Ridge Coop by removing the very issue that could reform their actions and serve as a reminder to check first, act in a true fiduciary capacity in wise fashion, and serve the best interest of the Cooperative's members for whom they work. Instead, the trial judge usurped the jury's role and decried that the issue of Punitive Damages was not to be addressed.

Interestingly and as a continued form of terrorism, the Plaintiffs Blue Ridge, after several intense years of pushing for power cut-offs of this rural family member who dared to question their data and process, decided to totally abandon with prejudice their claim for alleged debt collection, attorneys' fees and costs in September of 2012, some 4-5 years after they had begun the process. Defendants are happy that this abandonment has occurred to be sure but question the methods and reasons for this abandonment that had this Defendant fighting for so many years at great personal and financial expense. Defendant submits that this too is a form of terrorism and a violation of her due process right and contrary to the rules of justice and of this Court.

Defendant Steve Gresham was wrongly made a party to this proceeding in any fashion and should be made whole. Both Defendants should have been granted Directed Verdict so this action was nipped in the bud quickly by an impartial Court after hearing the testimony of Plaintiff's own witnesses.

The jury should have been allowed to determine all the facts before them along side the debt issue, the Trespass issue and the Punitive Damages issues. Punitive damages, long pled by Defendant, is a proper way to dissuade such actions as committed by Plaintiffs and to require a second review before such actions are filed, taking the time, efforts and money of the Court not to mention the disruption of trusting Blue Ridge members. Private property rights are private, sacrosanct, and rightly protected in a just society.

The system failed in this case. It further failed and is compounded by the destruction and/or loss of a portion of the official trial transcript not revealed until approximately one year after the jury trial with all in-place backup systems and equipment also apparently failing. Despite multiple requests for investigation into this matter of the Court Administration and others, this dangle is still dangling and the Defendants forced to endure even more with a case that should not have brought by them in the first place.

To add insult to injury, about the time of the ill-advised lawsuit filing by Plaintiffs, the Plaintiffs without permission of the Defendant landowner of almost three decades of ownership, erected a power support pole and long guywires on

Defendant's property, upsetting her long-held goals of aesthetic beauty for which she has richly paid Blue Ridge to bury her power to avoid the visuals of power poles. A person has a right to carry out her goals on her own property and a right to avoid power poles as Defendant has done, at her expense, since the early 1980's. Plaintiffs unilaterally, trespassed on Defendant's property with the erection of this pole without owner's permission, taking this property with compensation, and placing the pole and wires outside the right-of-way that is well known to this landowner of decades of ownership and property upkeep.

Ironically and necessary to understand in this matter is that this Blue Ridge pole in question does NOT serve anyone, much less the Defendant property owner, any power needs. It is a support pole and guywires projected to bring in more customers for Blue Ridge for an anticipated subdivision development that did NOT occur. The pole and guywires merely supports power poles Blue Ridge erected across the street from Defendant landowner to support only, not provide power. The pole could be easily moved and repositioned on other land apart and away from this landowner that has been suggested on more than one occasion to Blue Ridge without success. The terrorism and firm adherence to their own agenda by Blue Ridge, continues and at great financial and emotional costs.

This case is an opportunity for the Court of Appeals to set the record straight; to restore credibility to the rules and court processes; to correct an injustice, and to set a powerful and free-spending electrical coop that should be intent on wise fiscal restraint and services to its members and the public, on the right road without regard to politics and abuses. This case should be upheld as to the Trespass issue found justly in weighing the facts and applying the law as the jury did; and the prohibited issue of Punitive Damages remanded for a consideration in light of the Trespass found. Plaintiffs should be rebuked and penalized for their abuse of processes through sanctions and in ways to be determined by this Court. Defendant(s) should be awarded their costs and efforts in this case that has comprised over six years of their lives, postponing needed health matters and surgeries because of it, and facing total disruption and malignment of their names.

The Court of Appeals has a real opportunity to lead by example with this case and to protect the rights of everyday citizens unable to fight the well-greased and moneyed machinery of a giant electrical cooperative that has not been cooperative. Defendant(s) urge the Court of Appeals to correct this matter and set justice and adherence to rules as the standard, not the exception.

Respectfully submitted,

K Kathleen Jennings

Kathleen Jennings (wrongly captioned as Gresham)
Defendant/Cross Appellant
pro se
1524 Highway 11
Landrum, SC (Greenville County)

and Adam Gresham
Defendant/Cross Appellant
JULY 30, 2013

CONCLUSION

The issue of **Punitive Damages** as to the jury-adjudicated conclusion of Trespass by Plaintiffs onto the land of Defendant must be remanded to the trial court for damages determination. The jury verdict from three-day jury trial as to the finding of Trespass should be upheld as carefully considered and unanimously found by twelve jury members present for all testimony and presentations, therefore in the best positions to judge the facts of the matter, the witnesses or lack thereof, the credibility of the parties, and to apply appropriate law. This process is not only established precedent in South Carolina jurisprudence but more compelling due to the partially lost/destroyed transcript from this jury trial, reconstructed, but with the empaneled jury of the 2009 trial best able to observe, make factual, legal and other determinations in direct and timely fashion in 2009, the year of the jury trial, and render a deliberate and just verdict. The other appeal issues of Defendant(s) concern Sanctions and related issues such as Directed Verdict(s) and Costs and should be handled by this Court based upon the Rules, their authority, interests of justice, protection and regard of the legal system together with the upholding of the jury determination, which was carefully made in our established system of justice and should be allowed to stand.