

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

Case No. 2009-CP-26-10523

Appellate Case No. 2012-213287

RECEIVED
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SC Court of Appeals

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

v.

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

RECORD ON APPEAL

Elizabeth A. Crotty and James K. Orzech, Ph.D.

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Little River, SC 29566

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Attorney for Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION # 2009-CP-26- 10523

Elizabeth A. Crotty and James K.
Orzech,

Plaintiffs,

vs.

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

Defendant.

ORDER FOR
TEMPORARY INJUNCTION

2009 OCT 28 PM 4:49
HERRY COUNTY
CLERK OF COURT

This matter comes before me upon Plaintiffs' Verified Complaint alleging immediate and irreparable injury loss were damage will result to the applicant because Defendant has given Plaintiffs notice that it plans to immediately begin excavation of the driveway in front of Plaintiffs' house and convert that driveway into a park, denying Plaintiffs' use and access rights to that driveway which was shown and depicted upon the recorded Plat by which Plaintiffs acquired title from Defendant.

Further it appears South Carolina Common Law clearly recognizes those rights Plaintiffs' claim in and to the driveway described in the Plat by which Plaintiffs took title; and that the threatened action by Defendant appears to be in deregation of Plaintiffs' vested property rights under South Carolina Law pursuant to the following decisions:

1. *Newington Plantation Estates Association v. Newington Plantation Estates, et al.*, 318 S.C. 362, 458 S.E.2d 36
2. *Francis W. Davis v. Gene B. Epting*, 317 S.C. 315, 454 S.E.2d 325
3. *Mildred B. Giles v. Timothy L. Parker and Billy H. Craig*, 304 S.C. 69, 403 S.E.2d 130
4. *Carolina Land Company, Inc., et al. v. Dr. Maynard W. Bland and Myra D. Bland*, 265 S.C. 98, 217 S.E.2d 16

5. *Immanuel Baptist Church of North Augusta v. C. H. Barnes, et al.*, 274 S.C. 125, 262 S.E.2d 142

6. *Claude M. Epps, et al. v. William H. Freeman, et al.*, 261 S.C. 375, 200 S.E.2d 235

7. *Blue Ridge Realty Company, Inc., et al. v. Wendell McGregory Steacy Williamson and Enola Kathryn Williamson*, 247 S.C. 112, 145 S.E.2d 922

8. *Outlaw, et al. v. Moise*, 222 S.C. 24, 71 S.E.2d 509

9. *Billings, et al. v. McDaniel*, 183 S.C. 261, 60 S.E.2d 592

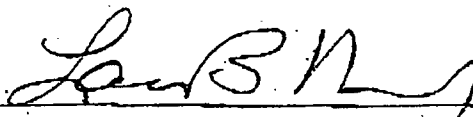
In light of the Verified Complaint, and the Exhibits attached thereto, and legal authority vested in me - See *Fuller-Ahrens Partnership v. S.C. Dep't of Highways and Public Transportation*, 311 S.C. 177, 182, 427 S.E.2d 920, 923 (Ct. App. 1993) ("The granting of preliminary injunctive relief is within the sound discretion of the trial court and will not be overturned absent an abuse of that discretion"); see also *Transcontinental Gas Pipeline Corp. v. Porter*, 252 S.E. 478, 481, 167 S.E.2d 313, 315 (1969) - Plaintiffs' Verified Complaint for preliminary relief is hereby granted and Defendant is enjoined on a temporary basis and until such time as this matter can be heard on November 3rd, 2009 at 9:30 AM from in anyway disturbing, uprooting, blocking or impairing Plaintiffs' access in, and over the driveway shown and depicted on the Plat by which Plaintiffs took title, without any limitation as to directional use, notwithstanding any physical postings to the contrary.

Based upon the Summons, Verified Complaint and Exhibits and Rule 65 of the South Carolina Rules of Civil Procedure, I direct that a bond be filed with the Court in the amount of One Hundred and 00/100 (\$100.00) Dollars, subject to further order of this Court.

Violation of this Order for Temporary Injunction shall result in severe sanctions, to include civil and/or criminal contempt being imposed upon Defendant, its officers and directors.

This Order Issuing Temporary Injunction shall remain in full force and effect until modified or rescinded by the Court. NOT TO EXCEED 10 days (HSA)

IT IS SO ORDERED, ADJUDGED AND DECREED.



Presiding Judge
Fifteenth Judicial Circuit

Conway, South Carolina

28 day of Oct., 2009

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Elizabeth A. Crotty and James K.
Orzech,

Plaintiffs,

vs.

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

Defendant.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION # 2009-CP-26-10523

ORDER

FILED
HORRY COUNTY
2009 NOV -14 AM 10:22
HILLARIE HUGHES-WARD
CLERK OF COURT

This matter came before me for hearing pursuant to a Ex Parte Temporary Injunction issued by the Honorable Larry B. Hyman, Jr. dated October 28, 2009 restraining the Defendant from either impairing the access of Plaintiffs or in anyway physically altering or destroying the traffic circle adjacent to Plaintiffs' residence.

Plaintiffs appeared represented by Richard M. Lovelace, Jr. and Defendant was represented by Roger P. Roy.

Based upon the presentation made to me by counsel for each party, and after deliberation by me and consent by the counsel for the parties, the Temporary Injunction shall remain in full force and effect until this matter can be fully heard on the merits.

Accordingly, the Temporary Injunction shall remain in full force and effect in accordance with its terms, pending the outcome a merits hearing and the Non-Jury Clerk is directed to place this matter on the Non-Jury Trial Docket.

IT IS SO ORDERED, ADJUDGED AND DECREED.

S/

Honorable Benjamin H. Culbertson
Presiding Judge

Conway, South Carolina
4th day of November, 2009

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION # 2009-CP-26-10523

Elizabeth A. Crotty and James K. Orzech,

Petitioners,

vs.

Windjammer Village of Little River,
South Carolina, Property Owners'
Association, a South Carolina
Eleemosynary Corporation, Barbara
Tanner, William Fongeallaz, Charles
Nill and Frank Spehr, Individually
and as Directors,

Respondents.

ORDER

HORRY COUNTY
10 APR 28 PM 2:42
CLERK OF COURT

This matter came before me for hearing at 2 p.m. on April 21, 2010 pursuant to an Order and Rule to Show Cause issued by me on April 14, 2010 requiring not only the Defendant Windjammer Village of Little River, South Carolina, Property Owners' Association but also its individual Directors...Barbara Tanner, William Fongeallaz, Charles Nill and Frank Spehr, to appear before me and show cause, if any they could, why they should not be held in both civil and criminal Contempt and subject to fines or other sanctions for their alleged violation of the Orders of this Court dated October 28, 2009 and November 4, 2009.

Present at the hearing were the Petitioners, together with their lawyer, Richard M. Lovelace, Jr. The Respondents were present and represented by Roger P. Roy.

This action was originally initiated by the filing of a Verified Complaint on October 28, 2009 at which time I issued an Order for Temporary Injunction, requiring, among other things "...Respondents be enjoined...from in anyway disturbing, uprooting, blocking or impairing Plaintiffs access in and over the driveway shown and depicted on a plat by which Petitioners took title, **"...without any limitation as to directional use, notwithstanding any physical postings to the contrary". (emphasis added)** in my Order dated October 28, 2009 and further provided in pertinent part **"Violation of this Order for Temporary Injunction shall result in severe sanctions, to include civil and/or criminal contempt being imposed upon Defendant, its officers and directors". (emphasis added).**

On November 4, 2009 and within 10 days within the original Temporary Restraining Order a hearing was held before Honorable Benjamin H. Culbertson, Jr. when, after hearing from parties for both Petitioners and Respondents he issued his Order declaring "...the Temporary Injunction shall remain in full force and effect in accordance with its terms, pending the outcome of a merits hearing..."

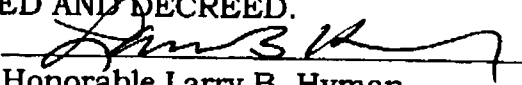
The Petitioners' testimony at the hearing was uncontroverted and proved to my satisfaction that notwithstanding the issues of the two Orders of the Court dated October 28, 2009 and November 4, 2009, Respondents at the March, 2010 Board of Directors of Windjammer Village of Little River, South Carolina, Property Owners' Association voted to impose fines upon Petitioners for utilizing the driveway in front of their home and, subsequently, the Board of Directors sent letters to both Petitioners imposing fines and threatening other sanctions thereby violating both previous Order of the Court.

The Respondents presented no testimony in either defense or mitigation of their acts.

In light of Respondents' flagrant acts, I have two alternatives, one is to find them in contempt of court and impose substantial fines upon all Respondents for Contempt of Court, or alternatively, to find the Respondents in Contempt of Court, but allow them to purge themselves of contempt finding by adopting a course of conduct which is to run from the date of today's hearing through the date of the hearing on the merits under which Respondents immediately abate the fines or other sanctions which have been imposed or threatened against the Petitions and that Respondents do no act in any kind or nature whatsoever, either directly or indirectly, to impair Petitioners' rights to the driveway in front of their home or to issue threats or otherwise to attempt to intimidate Petitioners from exercising their property rights with regard to the subject paved driveway, to include, but not limited to, the use of the driveway to access their property, from any direction, pending a hearing on the merits.

On the record, the Respondents chose to accept the finding of contempt but to avail themselves of the opportunity to purge themselves of the contempt finding by conforming their conduct with regard to the driveway at issue in accordance with my Order dated October 28, 2009 and Judge Culbertson's Order dated November 4, 2009, and consistent with the terms of this Order. This Court will monitor the conduct of the Respondents to ensure their compliance and, in the event of failure of strict compliance reserve the right to impose all available sanctions within its power.

IT IS SO ORDERED, ADJUDGED AND DECREED.


Honorable Larry B. Hyman
Presiding Judge

Conway, South Carolina

4-27-2010

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
2009-CP-26-10523

Elizabeth A. Crotty and James K.
Orzech,

Plaintiffs,

vs.

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

Defendant.

FINAL ORDER
(Ending Action)

FILED
HORRY COUNTY
2011 AUG -5 AM 9:00
JULIANE HUGGINS-WARD
CLERK OF COURT

The above-captioned matter was tried before this Court in a bench trial on June 22 and 23, 2011. After receiving the evidence and testimony, the Court hereby makes the following:

Findings of Fact

From the record and evidence, the Court finds that the Plaintiffs are members of the Windjammer Village of Little River Property Owners' Association, Inc., and are members because of their status as owners of real property within the Windjammer Village subdivision in Little River, South Carolina.

The Court finds further that Plaintiff Elizabeth Crotty and the Defendant entered into that certain Contract of Sale, dated May 13, 2002, pursuant to which Plaintiff Crotty agreed to buy and the Defendant agreed to sell certain real property within the Windjammer Village subdivision. The Contract of Sale, entered into evidence in the trial of this case as Plaintiffs' Exhibit No. Three (3), incorporated by reference an Exhibit "A" upon which was drafted the legal description of the subject property of the Contract. The legal description further incorporated by way of reference a plat of survey prepared by C. B. Berry, R. L. S., dated November 16, 1998. In addition, and of particular relevance

to this action, Page two (2) of the Contract of Sale further included the following provisions:

Purchaser does hereby acknowledge that the property described in Exhibit "A", attached hereto, is subject to the Declaration of Covenants and Restrictions for Windjammer Village of Little River Subdivision. Any proposed construction, alteration, or modification to the structure located on the property shall be submitted to the Windjammer Village of Little River Homeowners Association, Inc. as stated in the Restrictions and By-Laws for Windjammer Village of Little River. The premises may not be used as a bathhouse and shall be converted to a single family dwelling and shall conform with the R-7 Zoning regulations of Horry County, South Carolina. The Purchaser shall locate all underground utility lines prior to any construction. It is further agreed that access to this property shall be from Gamecock Circle. **This paragraph shall survive the closing.**

The Contract of Sale by which Plaintiff Crotty acquired title to her lot restricted her access to the Property "from Gamecock Circle". The Contract of Sale further provided that it "survive the closing". The Court has determined that the Contract of Sale is in no way vague or contradictory and, therefore, it is the duty of the Court to construe the Contract within the four corners of the instrument and without resort to or consideration of extrinsic evidence. The Plaintiff Crotty the Plaintiff James K. Orzech, who received an interest in the property, both had knowledge of the contractual limitation, and are not permitted to void obligations previously incurred, regardless of subsequent events.

The Contract of Sale was closed on or about July 15, 2002, at which time the Defendant issued and delivered to Plaintiff Crotty, or caused to be issued and delivered to Plaintiff Crotty, that certain Title To Real Estate which was recorded in the records of Horry County, South Carolina in Deed Book 2499 at Page 0759. A copy of the Title To Real Estate was admitted into evidence in this case as Plaintiffs' Exhibit No. Two (2).

Plaintiff Crotty's Title To Real Estate is a warranty deed of conveyance of Lot A, Block E of Windjammer Village, in which deed the real property was further described by way of reference to the plat of survey referenced in the parties Contract of Sale, which

plat was recorded in the records of Horry County, South Carolina in Plat Book 159 at Page 70, and admitted into the evidence of this case as Plaintiff's Exhibit No. One (1). In addition to the property purchased by Plaintiff Crotty, the referenced plat of survey includes a depiction of Defendant's retained Parcel B, on which there is depicted and shown a roadway or driveway, labeled "Paved Driveway," which lies nearly adjacent to Plaintiff Crotty's Parcel A.

Another survey, prepared by Harry F. Bruton & Associates and admitted into the evidence in this case as Defendant's Exhibit No. Three (3), reveals that the edge of the Paved Driveway lies three and 01/10 feet (3.1') from Plaintiffs' property boundary on one line, and five and 07/10 feet (5.7') on another property line. Defendant's Exhibit No. Three (3) further reveals that the Paved Driveway is varying in width and is eleven and 00/10 feet (11.0') wide at or near the eastern end and twelve and 03/10 feet (12.3') wide at or near the northern end.

After purchasing Parcel A, Plaintiff Crotty undertook to remodel the structure situated on the Parcel A, a former community bathhouse, into a single-family residence. Subsequently, Plaintiff Crotty, together with the assistance of Plaintiff Orzech, financial and otherwise, undertook to design and construct on Parcel A a two-car garage with a small amount of living space, which is attached to the single-family residence by a breezeway or covered walkway. The record in this case further evidences that on or about September 14, 2005, Plaintiff Crotty issued and delivered to Plaintiff Orzech, or caused to be issued and delivered to Plaintiff Orzech, a deed for a one-half (1/2) undivided interest in Parcel A. This deed is recorded in the records of Horry County, South Carolina in Deed Book 2976 at Page 0935.

The evidence and testimony presented reveals that very shortly after Plaintiff Crotty's purchase of Parcel A in 2002, the parties began to dispute Plaintiff Crotty's asserted right to utilize the Paved Driveway for access to her Parcel A and for parking. The evidence further reveals the parties' disputes have continued since Plaintiff Crotty's purchase and have escalated into this action.

Plaintiffs initiated this action seeking injunctive relief and to prevent the Defendant from removing the Paved Driveway situated on Defendant's Parcel B. The Plaintiffs have asserted in their pleadings that they have a private easement by implication in and to the Paved Driveway for their permanent and unfettered use. The Defendant asserted counterclaims in this action for Breach of Contract, Slander of Title and Nuisance.

While not pled in this action, the Plaintiffs presented to the Court that there has been discriminatory enforcement of a particular rule or regulation within the Windjammer Village subdivision. To do that, one asserting such a claim must demonstrate arbitrary and purposeful discrimination in the administration of the matter being enforced. A party asserting such a claim cannot assume something is not being enforced equally. The fact that there may be some unequal treatment does not in and of itself rise to the level of a violation of some protected interest. Even assuming that there could be shown some conscious exercise of selectivity in enforcement, that fact in and of itself is not dispositive of the matter. Absent proof by the required standard that arbitrary treatment and selectivity in enforcement was deliberately done based on some unjustifiable and protected standard such as, race, religion, or other protected classification, there can be no recovery or intervention by the Court. The record before the Court reveals that there is absolutely no evidence of arbitrary treatment or selectivity in enforcement by the Defendant in their action with the Plaintiffs.

Also, and while not pled in this action, the Plaintiffs have suggested and presented to the Court that treatment of Plaintiff Crotty by the Defendant has violated the American Disabilities Act. The Court's Order does not address any aspect of the American Disabilities Act. The Court gave the American Disabilities Act no consideration as it is not part of the pleadings in this case and is not an issue in this case. Accordingly the Court's Order herein should not be construed in any manner to address the applicability of the American Disabilities Act, the entitlement of Plaintiffs to the protections of the Act, or whether or not any violation of the Act may have occurred.

The Plaintiffs in this action have presented or asserted that the Defendant might be somehow estopped by the recording statute, S.C. Code 30-7-10, *et seq.*, because neither the Contract of Sale, nor any other document evidencing the parties' agreement concerning access restrictions, was recorded in the public records of Horry County. The Court finds that the recording statute is inapplicable in this case. As to this matter, we are not dealing with unknown or innocent third parties who might be able to assert the legal status of an innocent purchaser for value. The parties to this lawsuit are in fact the parties to the purchase and sale transaction that has given rise to this dispute. While not initially a grantee, Plaintiff Orzech admitted in his cross-examination that at relevant times he was in regular communication with Plaintiff Crotty; provided sums expended by Plaintiff Crotty in the construction of improvements upon Plaintiffs' property; and most importantly, he was aware of the issues and dispute concerning the access to the property that are the subject of this action prior to receiving interest in the property. Accordingly, Plaintiff Orzech cannot be considered an innocent purchaser for value.

Plaintiff Orzech accepted his deed for a one-half (1/2) undivided interest in the property from Plaintiff Crotty. Therefore, the Court finds that Plaintiff Orzech has no greater or lesser rights than Plaintiff Crotty, especially considering the fact from his testimony that he knew of the Contract, the situation, and the access problems prior to purchasing the property.

The Plaintiffs also challenged the right of the Defendant to declare a road open only to one way traffic. The Defendant Property Owners' Association, by and through its duly elected Board of Directors, had the ability and the authority to declare road known in all documents as the "Paved Driveway", a one-way road. There has not been established by the facts of this case any easement or any right to use the Paved Driveway as a two-way road, or for two-way traffic. Looking at all the evidence, including Plaintiffs' deeds, plat, and all other documentation, the Court finds that no easement exists as to a two-way traffic pattern upon the Paved Driveway and by its duly authorized and recorded powers, the Board of Directors had the ability to declare it a one way road only.

The Plaintiffs do have an easement to use the Paved Driveway as it currently exists pursuant to the Plaintiff Crotty's deed from the Defendant for her property, the plat incorporated into Plaintiff Crotty's deed by reference, and other evidence presented in this case. The Defendant Property Owners' Association deeded the property directly to Plaintiff Crotty and established particular rights to her by the transfer. Therefore, the Court finds that Plaintiff Crotty and all members of the POA were in fact granted private easement rights over the driveway in question; however, this easement is not unlimited. The testimony and evidence overwhelmingly establish that it was always the intention of the parties that Plaintiff Crotty would access her deeded property from Gamecock Circle and not from the Paved Driveway. The Court finds that the Plaintiffs' have abandoned and contractually relinquished their rights to use the Paved Driveway in any other way. The Court finds that the Plaintiffs voluntarily and purposefully entered into an agreement that restricted their rights. This was evidenced by the parties' Contract, Plaintiffs' Exhibit No. Three (3), and also many other documents, including but not limited to Defendant's Exhibit Nos. Twenty-four (24), Twenty-five (25), Twenty-seven (27), Twenty-eight (28), Twenty-nine (29), Fifty-seven (57), Thirty (30), Thirty-one (31), Thirty-three (33), Thirty-five (35), Thirty-six (36), Forty-two (42), Forty-three (43), and Forty-eight (48).

At the conclusion of the trial, the Defendant abandoned its counterclaim for Nuisance, which the Court finds was a proper action considering the testimony and evidence presented. As to the Defendant's counterclaims for Breach of Contract and Slander of Title, the Court finds that these claims have not been proven by a preponderance of the evidence. The Court therefore declines to grant any relief upon those claims.

Conclusions of Law:

In analyzing the facts and theories of this case, the following principles are important:

- a. When examining implied easements, the intentions of the parties to the transaction are the overriding focus.

- b. When a deed describes land as shown on a certain plat, that plat becomes part of the deed.
- c. When the deed references the plat, the grantee acquires a private easement for the use of all streets on the map.
- d. The grantee receives a private easement in any streets referenced in the plat at the time of conveyance.
- e. Where lands are platted and sales are made with reference to the plat, the acts of the owner in themselves merely create private rights in the grantees entitling the grantees to the use of the streets and ways laid down on the plat or referred to in the conveyance.
- f. Without any evidence of the seller's intent to the contrary, a private easement by implication over the streets depicted in a map referenced by the conveyance is created with respect to the purchaser of the conveyance regardless of whether there is a commitment to public use.

Murrells Inlet Corp. v. Ward, 378 S.C. 225, 662 S.E.2d 452 (Ct. App. 2008); and

Inlet Harbour v. South Carolina Dep't of Parks, Recreation & Tourism, 377 S.C. 86, 659 S.E.2d 151 (2008).

Therefore, it is

ORDERED, ADJUDGED AND DECREED

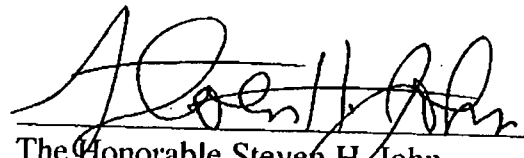
1. That the Defendant, Windjammer Village of Little River, South Carolina Property Owners' Association of South Carolina, an eleemosynary corporation, its successors and assigns, is permanently enjoined and restrained from closing the Paved Driveway, the one-way road used to access the mailboxes as it currently exists. The Court is not requiring that the Defendant must permanently use the Paved Driveway for mailbox access, but the Defendant is permanently enjoined and restrained from closing the Paved Driveway as it currently exists.
2. The Plaintiffs, their heirs, assigns and anyone claiming by and through them, or either of them, are permanently restrained from utilizing the Paved Driveway to

access Plaintiffs' property, or as a parking area, or as a driveway for vehicles. This restriction shall also apply to Plaintiffs' visitors, guests, contractors, and/or other service providers. Plaintiffs' access to their property, parking and driveway for vehicles shall be, with the exception of mailbox access, only over and through the driveway which enters into their property off of Gamecock Circle.

3. The Court declines to grant Defendant relief upon Defendant's counterclaims for Breach of Contract and Slander of Title.
4. A memorandum of this Order shall be filed in the Office of the Register of Deeds in and for the County of Horry, and indexed in the names of all parties hereto, in order that the within restrictions will be a matter of record in the real property records of Horry County.
5. The Clerk of Court shall update her records to indicate that this case is hereby ended.

IT IS SO ORDERED!

August 3, 2011
Conway, South Carolina


The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION # 2009-CP-26-10523

Elizabeth A. Crotty and James K.
Orzech,

Petitioners,

vs.

Windjammer Village of Little River,
South Carolina, Property Owners'
Association, a South Carolina
Eleemosynary Corporation, Barbara
Tanner, William Fongellaz, Charles
Nill and Frank Spehr, Individually
and as Directors,

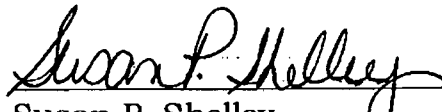
Respondents.

CERTIFICATE OF MAILING

I, Susan P. Shelley, an employee of Law Offices of Richard M. Lovelace, Jr.,
PA, attorney for Petitioners, in the above captioned action, certify that I have
served a copy of the specified documents by causing copy of the same being sent
via United States Mail on August 8, 2011, postage prepaid to the addresses as
follows:

DOCUMENTS: Final Order

ADDRESSED TO: Kenneth R. Moss, Esquire
THE McGOUGAN LAW FIRM, LLC
P. O. Box 250
Little River, SC 29566


Susan P. Shelley

Conway, South Carolina

2011 06 23 Notes on Judge John's Spoken Order from the Bench

"Thank you very much. Take a seat. Thank you.

... As to this particular matter, I appreciate both counsels willingness today to develop this to a setting forth a special orders that we'll have to work on for when I'm done here Friday.

I believe this matter has gone on for extended period of time. The parties need at least this resolution of it. I believe, understanding that there may be some further processing, as regard to your parties ..., which you can pursue, but I think that ... it's some; it's the beginning to some end and closure to it.

First off there seems to be in it some reservation to the Court, some indication for what there are assumed to take for a precedent to follow a future set of rules and regulations.

To do that one must demonstrate arbitrary and purposeful discrimination in the administration of the matter in Court. **Even assuming something (like parking in WJV) is not being enforced equally; the fact that there is some unequal treatment does not in and of itself rise to the level of some kind of binding order of protection.** The conscious selectivity in enforcement is not in and of itself by required. As to proof of the standard or arbitrary selectivity based on some unjustifiable standard such as race, religion or other that exists in the record of this case.

As to this matter we are not talking about unknowing who wants. Decision affects each party the court finds that the defendant POA by its duly elected Board of Directors has declared a one-way road. **It has not been established by this case that the easement or right to exercise the road as a two-way road. No other document exists as to two-way traffic pattern.**

Second, WJV Association of Little River SC Corporation can use a one-way road to access the mailboxes, as it currently exists. **They cannot close that that one-way road.**

The Plaintiff has an easement to use that roadway as it currently exists pursuant to the deed to her property and her plat is the other evidence in this case. ??? Situation of property rights ???

The association itself deeded this property to the plaintiff in establishing particularly a transfer by the POA. However, this easement is not ???

Plaintiff (Crotty) is restrained and may not use this ('Paved Driveway') to access her property or as a parking area, for ...Plaintiff's parking area and driveway area is off Gamecock Circle, whether or not they had rights to use this roadway.

The Plaintiff has given up contractual rights to use the roadway. They purposely entered into an agreement to purposely restrict their movement by the contract and any number of other documents on this subject (Defendant's Exhibits 25,36 27, 42 43.)

When the Plaintiff Orzech took one half interest in the property from the other main Plaintiff, he stepped into the shoes of this contract and has no greater or lesser rights than the plaintiff because of his testimony he knew of the contract/situation/access problem prior to purchasing the property.

The Defendant's claims for damages under breach of contract and nuisance are denied. I find they are denied collecting damages.

My order does not address any aspect or merits; I gave it no consideration at all with the Americans with Disabilities Act (ADA). It is not an issue in this case. **I am making no decision at all on ADA.**

What the Court today does is put into effect the intentions and the contract of the parties and the law of private easements and easements by implication. The Court considered the following cases in making these decisions:

[All cases cited by attorney Lovelace in the Original Complaint.]

The Court finds that pursuant to the law as set forth in those cases, that the Court's ruling in this matter is as previously set out.

Also, I understand this is obviously not a decision that neither the Plaintiff and Defendant? ???

What I am going to ask you to do is Moss I am giving you the initial responsibility to write up, prepare what reflects the court's order and forward to Mr. Lovelace within 20 days of today's date of this order.

I want from you an order that reflects the court's order especially *Murrells Inlet Corp vs Ward* and *Inlet Parker vs SC Parks, Recreation and Tourism*. If you cannot agree, or if there is some item in there you disagree on, bring it to my attention and I will advise you with that about on the 6th of August.

I appreciate that this matter has gone on long enough, much longer than it should have. I prefer you look at the situation, I am not telling you what to do, but I don't need to explain to you that the board should look at the cost, the delay what would happen to this action. But at some point in time you all have to put this to bed. There is no sense in living your lives fighting and wasting your time on what in reality are insignificant items. You need to examine your priorities to see if this is the most important thing in your lives, if so, you need to come up with something different! **You need to put this to bed."**

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2009-CP-26-10523

Elizabeth A. Crotty and James K.
Orzech,

Plaintiffs,

vs.

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

Defendant.

**ORDER UPON PLAINTIFFS'
MOTION FOR RECONSIDERATION
PURSUANT TO RULE 59(e), SCRPC**

FILED
HORRY COUNTY
12 FEB 27 PM 3:35
MELANIE L. JONES-VAAR
CLERK OF COURT

The above matter came before me for hearing on February 13, 2012 upon Plaintiffs' Notice of Motion and Motion for Reconsideration Pursuant to Rule 59(e), SCRPC, which was filed with the Court on August 12, 2011. In their Motion, the Plaintiffs' seek reconsideration of the Court's Final Order dated August 3, 2011 that was filed with the Clerk of Court in and for Horry County on August 5, 2011. Specifically, the Plaintiffs seek reconsideration:

- (1) of the impact of the Order on emergency or public safety providers;
- (2) on so much of the Court's Order of August 3, 2011 as permanently restrains contractors and/or other service providers from utilizing the "Paved Driveway" as referenced in that Order; and
- (3) the provision in the Court's Order which requires a memorandum to be filed with the Office of the Register of Deeds so the Order of the Court

would be a matter of record in the real property records in Horry County and binding on the successors and assigns of the Plaintiffs.

The Court has received and reviewed the Plaintiff's written Motion, the Defendant's Reply, and the supporting and opposing Memoranda submitted by the parties' respective attorneys. After oral arguments the Court does clarify its Final Order herein as follows:

Nothing in the Court's Final Order dated August 3, 2011 shall be construed in any way to limit, impede, or interfere with emergency or public safety providers such as Police, Fire, or Emergency Medical Services from providing services to Plaintiffs' in the manner deemed appropriate by those responders. The Court is aware that emergency public safety providers often and necessarily deviate from applicable rules and regulations, and it would be unwise for the Court to issue any Order to the contrary. It was never the intent of the Court in its Final Order to limit, impede, or interfere with emergency or public safety providers in the performance of their duties.

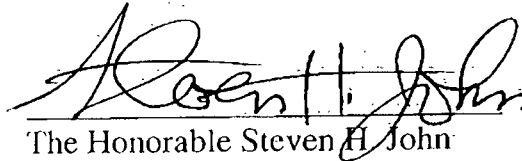
The Plaintiffs have also argued that the Court's Final Order dated August 3, 2011 should be reconsidered to the extent that the Order would prevent contractors and/or service or utility providers from accessing the Plaintiffs' property from "the Paved Driveway" referred to in the Court's prior Order. The Court finds the provision restricting "service providers" from using the Paved Driveway may conflict with the applicable restrictive covenants, rules, and regulations of the Windjammer Village subdivision. The Court finds the applicable restrictive covenants, rules, and regulations

of the Windjammer Village subdivision are the controlling authority concerning whether or not "service providers" may utilize common areas to access not only the Plaintiffs' property, but all properties within the Windjammer Village subdivision. The Court clarifies that its prior Order shall in no way restrict or impede the ability of service providers companies to access the Plaintiffs' property. Rather, any restrictions that would be applicable to these providers must be found within the applicable restrictive covenants, rules, and regulations of the Windjammer Village subdivision.

The Court's Final Order dated August 3, 2011 does properly restrict the Plaintiffs and the Plaintiffs' visitors, guests, and invitees from accessing the Plaintiffs' property via the Paved Driveway referred to in the Court's prior Order. Therefore and accordingly, the Court declines to reconsider its prior Order on this issue.

Finally, the Plaintiffs' request that the Court remove from its Final Order dated August 3, 2011 the provision requiring a memorandum to be recorded in the Office of the Register of Deeds in and for Horry County. The Court so declines. The Court finds the recording of a memorandum in the Office of the Register of Deeds makes it more likely that the Court's Final Order will be found by innocent third parties such as purchasers, lessees, title examiners, and attorneys. Inasmuch as a memorandum will only make what is a public record more readily found, the Court finds that the memorandum is an appropriate measure and method to protect innocent third-parties. Therefore, the Court will not reconsider that portion of its prior Order.

IT IS SO ORDERED!



The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

February 22 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Elizabeth A. Crotty and James K.
Orzech,

Plaintiffs,

vs.

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

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2009-CP-26-10523

**ORDER UPON PLAINTIFFS'
AUGUST 23, 2012 MEMORANDUM
REQUESTING THAT THE COURT
RE-VISIT THE FINAL ORDER IN
THE NAME OF JUSTICE**

*(Court accepted as a Motion Pursuant
to Rule 60(b), SCRPC)*

The above case came before me for hearing at 9:00 a.m. on August 30, 2012, at which time a hearing upon the Defendant's Motion seeking an Order and Rule to Show Cause was scheduled. The Plaintiffs, Elizabeth A. Crotty and James K. Orzech, were present, representing themselves *pro se*; counsel for the Defendant, Kenneth R. Moss, Esquire, was present, along with the Defendant's representative, Cindy Dassoulas.

In response to the Defendant's Motion, the Plaintiffs' prepared and caused to be forwarded to the undersigned a document dated August 23, 2012 and entitled "Re: August 30th Rule to Show Cause Hearing: Plaintiffs' Memorandum Requesting That the Court Re-visit the Final Order in the Name of Justice." The Plaintiffs' Memorandum was never filed with the Clerk of Court nor accompanied by a Motion Cover Sheet or the requisite motion filing fee.

After reviewing the Plaintiffs' Memorandum, the Court finds that the Memorandum essentially sets forth a motion that the Court should reconsider its Final Order in the above-captioned case; however, no motion has actually been filed. The procedural history of this case is as follows.

PROCEDURAL HISTORY

The above-captioned matter was tried before me in a bench trial on June 22 and 23, 2011. On June 23, 2011 the Court made its ruling in this matter. The Court signed and issued its Final Order on August 3, 2011; the Defendant filed the Order with the Clerk of Court for Horry County and served a copy upon Plaintiffs' counsel on August 5, 2011.

On August 12, 2011, Plaintiffs filed a Notice of Motion and Motion for Reconsideration Pursuant to Rule 59(e), *SCRCP* (hereinafter "Plaintiffs' Motion for Reconsideration"). On August 15, 2011, the Defendant filed a Post-Trial Motion for Attorney's Fees and Costs Pursuant to Rule 54, *SCRCP* (hereinafter "Defendant's Post-Trial Motion"). The costs incurred were supported by receipts and the Affidavit of Defendant's counsel, and receipts and the Affidavit of Angela Marcotte, which were attached to the Defendant's Post-Trial Motion. A copy of the Defendant's Post-Trial Motion, with attachments, was served on Plaintiffs' counsel on August 15, 2011. On August 29, 2011, the Defendant filed a Return to Plaintiffs' Motion for Reconsideration. On October 7, 2011, the Plaintiffs filed with the Clerk of Court for Horry County a Memorandum in Opposition to Defendant's Post-Trial Motion and Memorandum in

Support of Plaintiffs' Motion for Reconsideration, both bearing the date of October 6, 2011. A hearing on the Plaintiffs' Motion for Reconsideration and the Defendant's Post-Trial Motion was scheduled for November 1, 2011; however, Plaintiffs' counsel had received a 90-day suspension from the practice of law and was unable to appear. The hearing was continued until such time as Plaintiffs' counsel would be able to attend. On February 2, 2012, the Defendant filed a Memorandum in Opposition to Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Reconsideration.

A hearing on the parties' Motions was held before the undersigned at 2:00p.m. on February 13, 2012. The Court heard oral argument from the parties on Plaintiffs' Motion for Reconsideration, whereby the Plaintiffs' requested the Court reconsider portions of its Final Order dated August 3, 2011 and filed August 5, 2011. Thereafter, the Court heard oral argument on Defendant's Post-Trial Motion. Defendant's counsel handed up to the Court a Supplemental Affidavit of Attorney's Fees and Costs dated January 23, 2012, and signed by Kenneth R. Moss, Esquire. The Supplemental Affidavit itemized attorney's fees and costs the Defendant had incurred with Mr. Moss' law firm as of January 23, 2012.

After reviewing the Memoranda submitted and hearing argument from both parties on the Motions before the Court, the Court issued its written Orders on the Plaintiffs' Motion for Reconsideration and the Defendant's Post-Trial Motion for Attorney's Fees and Costs, dated February 22, 2012 and filed February 27, 2012. On March 7, 2012, the Defendant served Plaintiffs' counsel with a copy of the Court's Order Denying Defendant's Request for Attorney's Fees but Allowing Defendant to Recover Its Costs.

3.12
29

On April 30, 2012, counsel for the Defendant filed a Motion seeking an Order and Rule to Show Cause. In response to the Defendant's Motion, Plaintiffs forwarded a Memorandum to the undersigned dated August 23, 2012 and entitled "Re: August 30th Rule to Show Cause Hearing: Plaintiffs' Memorandum Requesting That the Court Re-visit the Final Order in the Name of Justice."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

There is no question that more than one (1) year has elapsed since August 3, 2011, the date on which this Court issued its Final Order [Ending Action], which Order was filed and timely served upon the Plaintiffs' counsel on August 5, 2011. Even though the Plaintiffs' Memorandum dated August 23, 2012 is not styled or titled a motion, nor was it filed as a motion, the Court is persuaded that the Plaintiffs intended the document as a motion for relief from a judgment or order under Rule 60(b), *SCRCP*. Upon inquiry by the Court, counsel for the Defendant confirmed he had received a copy of Plaintiffs' Memorandum. Even though Plaintiffs' Memorandum was not filed as a motion, the Court directed that the Plaintiffs' Memorandum be filed with the Clerk of Court. In support of their position, the Plaintiffs assert three (3) grounds. First, the Plaintiffs have asserted that there is newly discovered evidence of which they were not aware until after the trial of this action that would dramatically clarify the issues that were before the Court during the trial. Second, Plaintiffs have asserted that the improper interpretation of the words "access from" and "entrance" by the Court is proper grounds for relief from this Court's previous Order. Third, Plaintiffs have asserted the ineffective representation

of them by their former attorney is a grounds or basis for which the Court should grant them relief from this Court's previous Order.

In relevant part, Rule 60(b) of the *South Carolina Rules of Civil Procedure* provides expressly that

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. ...

In this action, the Court issued its Final Order on August 3, 2011. Inasmuch as the Plaintiffs' Memorandum requesting the Court Re-Visit the Final Order in the Name of Justice was dated August 23, 2012, and not actually filed with the Clerk of Court, the Plaintiffs' Memorandum was not and could not have been received by the Court until

after one (1) year had elapsed. Accordingly, under Rule 60(b), *SCRCP*, it would not be proper for the Court to entertain the Plaintiffs' request, even if it were in fact a motion.

Even if the Court could consider Plaintiffs' Memorandum to be a motion under Rule 60(b), *SCRCP*, the Court is not persuaded that the Plaintiffs would be entitled to the relief requested in their Memorandum. As to the first of Plaintiffs' asserted grounds, the Court is not persuaded that the facts the Plaintiffs have characterized in their Memorandum as newly discovered evidence is in fact newly discovered evidence within the meaning of Rule 60(b), *SCRCP*. The documents referred to by the Plaintiffs in their Memorandum, and in the oral arguments made to the Court, in fact did exist prior to the trial of this action and could have been discovered by the Plaintiffs or their counsel in response to proper discovery requests. Therefore, even if the Court were to consider the Plaintiffs' Memorandum as a timely Rule 60(b) motion, the Plaintiffs would not be entitled to the relief they are requesting based on newly discovered evidence.

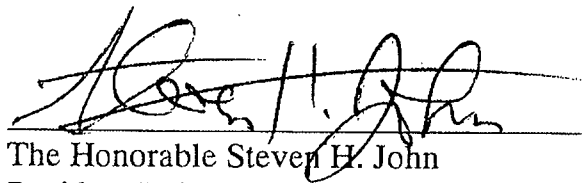
As to the second of Plaintiffs' asserted grounds, mainly that there was confusion at the trial brought about by the interpretation of the words "access from" and "entrance," those matters were fully litigated at the prior trial, and the Plaintiffs had the full and fair opportunity through their counsel and through their own testimony to present their arguments concerning the interpretation of those words. Thus, even if the Court were to consider the Plaintiffs' Memorandum a timely motion, the Plaintiffs are not entitled to any relief based upon the second of their asserted grounds.

With respect to the last of Plaintiffs' asserted grounds, namely that they were ineffectively represented by their former attorney at trial, the Court finds that Plaintiffs'

Memorandum and arguments concerning ineffective assistance of their counsel are not proper before this Court, and this is not the forum for the Plaintiffs to voice those concerns. The Plaintiffs have simply not brought those claims forward in the proper procedural posture and this Court cannot entertain the Plaintiffs' assertions.

The Court issued its Final Order on August 3, 2011, and Plaintiffs never filed an appeal of that Order. The Plaintiffs, by and through their former attorney, did file a Motion seeking to Alter or Amend this Court's previous Order, and the Court did partially clarify its prior Order. Inasmuch as more than one (1) year has elapsed since this Court's prior Order, and because the Plaintiffs never appealed any provision of the Court's prior Order, the law of this case is set forth in this Court's prior Order dated August 3, 2011, as clarified on February 22, 2012. The Plaintiffs' arguments currently before the Court are not legally founded, even assuming that the Court would accept as true all of the arguments made by the Plaintiffs. Therefore the relief requested in Plaintiffs' Memorandum dated August 23, 2012 is hereby denied.

IT IS SO ORDERED!



The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

September 14, 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2009-CP-26-10523

Elizabeth A. Crotty and James K.
Orzech,)
)

Plaintiffs,)
)

vs.)

Windjammer Village of Little River,
South Carolina, Property Owners'
Association, a South Carolina
Eleemosynary Corporation,)
)

Defendant.)
)

AFFIDAVIT OF PLAINTIFFS'
COMPLIANCE WITH THE
COURT'S FEBRUARY 22, 2012
ORDER

AFFIDAVIT OF KENNETH R. MOSS

PERSONALLY APPEARED BEFORE ME, Kenneth R. Moss, Esquire, who being duly sworn, does hereby state and affirm as follows, having actual knowledge of all matters set forth herein:

1. I am the attorney of record for the Defendant, Windjammer Village of Little River, South Carolina, Property Owners' Association, and I am familiar with all matters surrounding this action.

2. The trial of this matter was held on June 22-23, 2011 before the Honorable Steven H. John. The Court's Final Order was signed on August 3, 2011 and filed with the Clerk of Court on August 5, 2011.

3. On August 15, 2011, Defendant's timely filed a Post-Trial Motion for Attorney's Fees and Costs Pursuant to Rule 54, *SCRCP*, which was heard by the Honorable

HORRY COUNTY
12 NOV -5 AM 8:45
HELANE JUDICIAL CLERK OF COURT

Steven H. John on February 13, 2012. The Court signed its Order Denying Defendants' Request for Attorney's Fees But Allowing Defendants to Recover Its Costs on February 22, 2012, and filed the Order with the Clerk of Court on February 27, 2012. The Court allowed the Defendant to recover \$1,933.24 in taxable costs as defined under Rule 54(e), *SCRCP*.

4. On April 30, 2012, Defendant's filed a Motion for an Order and Rule to Show Cause due to Plaintiffs failure and refusal to abide by the Court's Order.

5. A hearing on Defendant's Motion for an Order and Rule to Show Cause was held before the Honorable Steven H. John on August 30, 2012. The Court made clear to the Plaintiffs that it expects compliance with its February 22, 2012 Order and will not tolerate non-compliance. The Court signed its Order Upon Defendant's Motion for an Order and Rule to Show Cause on September 14, 2012, and filed the Order with the Clerk of Court on September 18, 2012. In its Order the Court declined to hold the Plaintiffs in contempt of Court at this, and directed the Plaintiffs to comply fully with the Court's February 22, 2012 Order within ninety (90) days.

6. The Plaintiffs have delivered payment in the amount of \$1,933.24 to my office, and therefore have complied fully with this Honorable Court's February 22, 2012 Order.

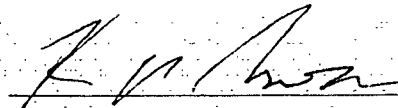
FURTHER AFFIANT SAYETH NOT!

**** signature page follows ****

*Affidavit of Plaintiffs Compliance
with the Court's February 22, 2012
Order*

Respectfully submitted,

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



Kenneth R. Moss, SC Bar # 15520

1180 Highway 17 North, Suite 2

P.O. Box 250

Little River, SC 29566

Tel: (843) 281-9901

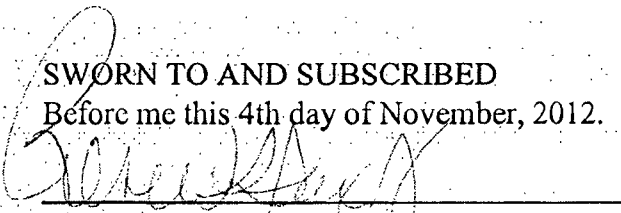
Fax: (843) 281-9903

Email: kennethmoss@wwpemlaw.com

Little River, South Carolina
November 4, 2012

SWORN TO AND SUBSCRIBED

Before me this 4th day of November, 2012.



Notary Public for South Carolina

My Commission Expires: 12-10-17

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Elizabeth A. Crotty and James K.
Orzech,

Plaintiffs,

vs.

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

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2009-CP-26-10523

RECORDING MEMORANDUM

CERTIFIED COPY
FILED
HORRY COUNTY
12 MAY 15 PM 4:22
MELANIE HOSKINS-WARD
CLERK OF COURT

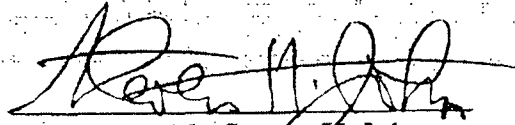
TO: REGISTER OF DEEDS IN AND FOR HORRY COUNTY:

NOTICE is hereby given that Lot A, Block E of Windjammer Village of Little River as appears upon a plat of said property prepared by C. B. Berry, R.L.S. dated November 16, 1998 and recorded in Plat Book 159 at Page 70, records of Horry County, is subject to that certain Final Order issued by the undersigned which is dated August 3, 2011 and recorded August 5, 2011 and that certain Order Upon Plaintiffs' Motion for Reconsideration Pursuant to Rule 58(e), SCRCF issued by the undersigned which is dated February 22, 2012 and recorded February 27, 2012 in Civil Action Case No. 2009-CP-26-10523.

The Register of Deeds, pursuant to this Court's Orders of August 5, 2011 and February 27, 2012 in the above-referenced matter, shall cause this Recording Memorandum be filed and indexed in the names of Elizabeth A. Crotty, James K.

Orzech, and Windjammer Village of Little River, South Carolina, Property Owners'
Association, with all parties being indexed as Grantor and Grantee.

IT IS SO ORDERED!



The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

May 8, 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION # 2009-CP-26-_____

Elizabeth A. Crotty and James K.)
Orzech,)

Plaintiffs,)

vs.)

Windjammer Village of Little River,)
South Carolina, Property Owners')
Association, a South Carolina)
Eleemosynary Corporation,)

Defendant.)

VERIFIED COMPLAINT

The Plaintiffs complaining of Defendant herein, would show unto this Honorable Court as follows:

1. Plaintiffs are citizens and residents of Horry County, South Carolina.
2. Defendant is a South Carolina Not-for-Profit Corporation situate and doing business in Horry County, South Carolina, and is the duly constituted property owners association for the Windjammer Village of Little River Subdivision and is charged with conduct of its operation pursuant to its Bylaws and South Carolina Law.
3. The real property which is the subject of this controversy is located wholly in Horry County, South Carolina and both the parties and subject matter are within the jurisdiction of this Honorable Court.
4. Heretofore, on or about July 15, 2002, Defendant did, by General Warranty Deed filed for record in the Office of the ROD for Horry County South Carolina in Real Estate Deed Book 2499 at Page 0759, convey to Plaintiff Elizabeth A. Crotty, Lot A, Block E of Windjammer Village of Little River, as shown and depicted on a plat of said property prepared by C.B. Berry, RLS dated November 16, 1998 and recorded in Plat Book 159 at Page 70 in the Office of the RMC for Horry County, South Carolina. The Deed and Plat referred to herein are attached hereto and incorporated herein as consolidated Exhibit "A".

5. The Plat by which the property which is the subject of this dispute was conveyed to the Plaintiffs shows and depicts a paved circular driveway.

6. Subsequently, Plaintiff Elizabeth A. Crotty did, for valuable consideration, convey the identical property previously conveyed to her by Defendant to Elizabeth A. Crotty and James K. Orzech, as joint tenants, and this conveyance is filed of record in the Office of the ROD for Horry County, South Carolina in Real Estate 2976 at Page 0935.

7. Recently, Defendant has made known at public forums and other venues, and in direct communications with other lot owners in Windjammer Village, its intention to remove the circular driveway shown and depicted on Exhibit "A" and that intention is evidenced by a newsletter sent out to lot owners/association members. A copy of said newsletter is attached hereto and incorporated herein as Exhibit "B".

8. Further, in order to authorize the removal of said driveway, Defendant has undertaken to send out to various homeowners/members of the Association a ballot, which in Provision 2 seeks association approval to "Remove the existing mailbox circle road and use the property to enlarge the present garden keeping the POA property intact and enhancing the entrance to the Village." A copy of said Ballot with attached before and after renderings are attached hereto and incorporated herein as consolidated Exhibit "C".

9. Plaintiffs are informed and believe that the Defendant has contacted sitework contractors and obtained bids for the removal of the circular driveway in front of their home, and Defendant is both posturing and imminently poised to undertake the closure of the driveway.

10. Plaintiffs are informed and believe that an individual or entity which acquires title to real property referencing a plat is entitled to a private easement by implication with respect to the public street, alleyway or traffic circle shown and depicted on that Plat.

11. Plaintiffs are informed and believe that a conveyance of land that references a plat depicting streets, traffic, circle and right-of-way conveys to a purchaser (i.e., the Plaintiffs), as a matter of law, a private easement by implication, whether or not there is a dedication to public use, and the conveyance by Defendant to Plaintiffs have effected a complete and irrevocable dedication of that circular driveway to the Grantees' permanent and unfettered use.

12. As a direct and proximate result of Defendant's manifestation of not only its intent, but also its overt action to deny Plaintiffs access to their property and use of the driveway described in the conveyance to them by Defendant, Plaintiffs will and are imminently threatened to suffer irreparable injury to its property rights which damage is difficult to quantify with legal damages, and that irreparable harm will result to Plaintiffs if Defendant's present course of conduct is allowed to continue, and that an even greater injury will be inflicted upon Plaintiffs by denial of temporary injunctive relief than would be inflicted upon Defendant by granting such relief.

13. Plaintiffs have no adequate remedy at law, and based on the clear and unequivocal case law in South Carolina, Plaintiffs are likely to prevail on the merits of this Complaint.

14. Without a temporary injunction protecting Plaintiffs' common law property rights, immediate irreparable harm is inevitable.

15. Plaintiffs are informed and believe that injunctive relief, both temporary and permanent, is an appropriate remedy for the current threat to and prospective misappropriation of their vested property rights.

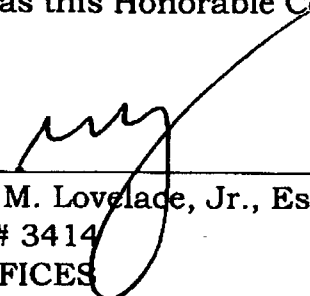
16. Plaintiffs are further informed and believe that time is of the essence in resolving the issues now before the Court and to avoid further irreparable harm to Plaintiffs, Plaintiffs respectfully request that the Court issue a Temporary Injunction and set a date, within ten (10) days after the issuance and filing of the Temporary Injunction Order for a hearing as to whether it is just and proper to dismiss this Complaint or make the preliminary injunctive relief permanent.

17. The driveway which is the subject of this controversy has been in place in the Windjammer Village Subdivision for at least ten (10) years, and Plaintiffs are informed and believe that the granting of the relief sought can or in no way result in any financial harm or economic hardship to Defendant and is, accordingly, informed and believe that only a nominal bond is necessary as the Court, in its discretion, may approve.

WHEREFORE, Plaintiffs pray for relief against Defendant as follows:

a. That this Court immediately issue a temporary injunction order and simultaneously schedule, within ten (10) days, a hearing at its first available convenience to take testimony with regard to the issues in controversy and either dismiss the preliminary relief granted or enter its Order for a permanent injunction; and

b. For such other and further relief as this Honorable Court may deem just and proper.



Richard M. Lovelace, Jr., Esquire
SC Bar # 3414
LAW OFFICES
RICHARD M. LOVELACE, JR., P.A.
Post Office Box 1704
Conway, S.C. 29528
Telephone: (843) 248-7321
Attorney for Plaintiffs

Conway, South Carolina
20th day of October, 2009

VERIFICATION

PERSONALLY appeared before me the undersigned, who, being first duly sworn, deposes and says that they have read the facts contained in the foregoing Verified Complaint; and that they know the same to be true of their own knowledge and belief.

Elizabeth A. Crotty
Elizabeth A. Crotty

James K. Orzech
James K. Orzech

SWORN to and subscribed before me
this 28 day of October, 2009.

Susan L. Shelley (L.S.)

Notary Public for South Carolina

My Commission Expires: 12/19/11

81724

FILED
STATE OF SOUTH CAROLINA
COUNTY OF HORRY
REGISTER OF DEEDS

TITLE TO REAL ESTATE

WHEREAS, pursuant to the Declaration of Covenants and Restrictions of Windjammer Village of Little River, the Windjammer Village of Little River, South Carolina, Property Owners' Association, at a duly called meeting of its members and by an affirmative written vote of a majority of its members, was authorized to take bids upon and sell the below described property to the highest bidder;

WHEREAS, it is the express intent of this conveyance that the below described property shall cease to be a common element of the subdivision and shall be considered a single family lot subject to the Declaration of Restrictions of Windjammer Village of Little River and the By-Laws of the Windjammer Village of Little River, South Carolina, Property Owners' Association;

WHEREAS, Elizabeth A. Crotty was the highest bidder on said property and does hereby expressly agree to be bound by the Declaration of Restrictions of Windjammer Village of Little River and the By-Laws of the Windjammer Village of Little River, South Carolina, Property Owners' Association

WHEREAS, Windjammer Village of Little River, South Carolina, Property Owners' Association hereby desires to sell and Elizabeth A. Crotty hereby desires to purchase the below described property; and

NOW THEREFORE, KNOWN ALL MEN BY THESE PRESENTS, That It, Windjammer Village of Little River, South Carolina, Property Owners' Association in the State aforesaid, for and in consideration of the sum of Thirty-five Thousand One and No/100 (\$ 35,001.00) Dollars to it paid by Elizabeth A. Crotty, 2121 Brunswick Circle, Little River, South Carolina 29566, in the State aforesaid, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Elizabeth A. Crotty, her heirs and assigns forever, the following described property, to wit:

DEED
2499 0759

STATE 92³⁰ COUNTY 39⁰⁵
EXEMPT YES ☒ NO ☐
ASSESSOR 1 44

8
759

ALL AND SINGULAR, all that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in Little River Township, Horry County, South Carolina, being designated as LOT A, Block E of Windjammer Village of Little River, as appears upon a plat of said property by C. B. Berry, R.L.S., dated November 16, 1998 and recorded in Plat Book 159, Page 70, Horry County Records.

SUBJECT to the Declaration of Covenants and Restrictions appearing of record for Windjammer Village of Little River, Horry County Records.

The above described property shall no longer be considered a common element of Windjammer Village of Little River and shall be used as a single family residence, shall be subject to monthly dues and special assessments and shall be subject to all the rules and regulations of the By-Laws of Windjammer Village of Little River, South Carolina, Property Owners Association, including but not limited to, the architectural and other committees authorized from time to time by the Board of Directors.

BEING a portion of the identical property as conveyed unto the Grantor herein by Deed recorded in Deed Book 780, Page 660, Horry County Records.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

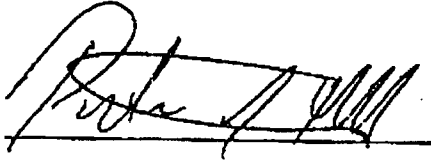
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Elizabeth A. Crotty, her Heirs and Assigns forever,

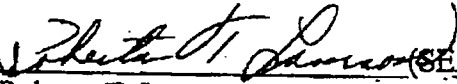
And it does hereby bind itself and its Successors, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Elizabeth A. Crotty, her Heirs and Assigns, against it and its successors and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

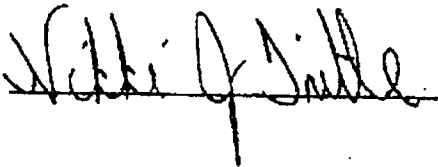
WITNESS our Hands and Seals this 15th day of July in the year of our Lord two thousand and two and in the two hundred and twenty seventh year of the Sovereignty and Independence of the United States of America.

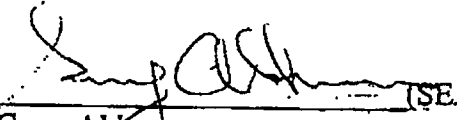
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Windjammer Village of Little River,
South Carolina, Property Owners'
Association



By:  (SEAL)
Roberta T. Lamson
Its: President



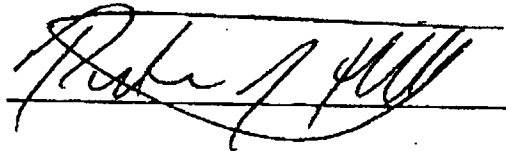
By:  (SEAL)
Garry Alderman
Its: Second Vice-President

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

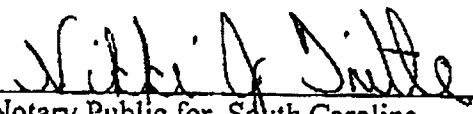
)
)
)

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that (s)he saw the within-named Windjammer Village of Little River, South Carolina, Property Owners' Association, by its duly authorized officers, sign, seal and as its act and deed deliver the within written Deed for the uses and purposes therein mentioned and that (s)he with the other witness whose name is subscribed above, witnessed the execution thereof.



SWORN to before me this
15th day of July, 2002.

 (L.S.)
Notary Public for South Carolina
My commission expires: 3-25-2006

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. Property located at Lot A, Block E, Windjammer Village of Little River, Little River, South Carolina 29566, bearing Horry County Tax Map Number 119-09-02-025 was transferred by Windjammer Village of Little River, South Carolina, Property Owners' Association to Elizabeth A. Crotty on July 15, 2002.

The transaction was (Check one):

XX an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was \$35,001.00.

 not an arm's length real property transaction and the fair market value of the property is \$*.

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10 et seq. because the deed is: N/A.

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Purchaser.

I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars and imprisoned not more than one year, or both.

Elizabeth A. Crotty
Elizabeth A. Crotty

SWORN to before me this 15th
day of July, 2002.

William J. Little
Notary Public for South Carolina
My commission expires: 3-25-2006

- The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

Prepared by and return to:
Law Offices of James E. Bain, P.C.
PO Box 4264
N Myrtle Beach, SC 29597

FILED
HORRY COUNTY, S.C.

✓ 2003 SEP 14 PM 2:56

525883
EXEMPT

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that I, **ELIZABETH A. CROTTY** (Grantor), for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, to the Grantors in hand paid at and before the sealing of these presents by **ELIZABETH A. CROTTY AND JAMES K. ORZECH** (Grantees), 2148 Gamecock Circle, Little River, SC 29566, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto the said Grantees, **ELIZABETH A. CROTTY AND JAMES K. ORZECH**, for and during the term of their joint lives, and upon the death of either of them, then to the survivor of them, their Heirs, Successors and Assigns forever in fee simple, together with every contingent remainder and right of reversion, all of my right, title and interest in and to the following described property, to wit:

ALL AND SINGULAR, all that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in Little River Township, Horry County, South Carolina, being designated as **Lot A, Block E of Windjammer Village at Little River**, as appears upon a plat of said property by C. B. Berry, R.L.S., dated November 16, 1998 and recorded in Plat Book 159, Page 70, Horry County Records.

✓ This being the identical property conveyed to Elizabeth A. Crotty by Deed of Windjammer Village of Little River, South Carolina, Property Owner's Association dated the 15th day of July, 2002, and recorded in Deed Book 2499, Page 759, Horry County Records.

HORRY COUNTY ASSESSOR
TMS # 119-09-02-025

Map Blk Parcel 9-15-05 *jl*

DEED
2976 0935

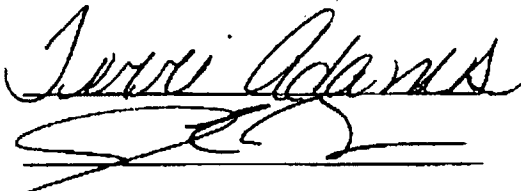
**THIS DEED WAS PREPARED WITHOUT THE BENEFIT
OF A TITLE EXAMINATION**

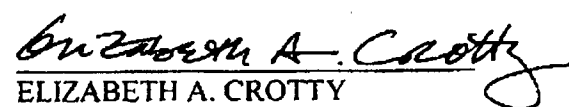
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantees. **ELIZABETH A. CROTTY AND JAMES K. ORZEC**, for and during the term of their joint lives, and upon the death of either of them, then to the survivor of them, their Heirs. Successors and Assigns forever in fee simple, together with every contingent remainder and right of reversion.

And we do hereby bind ourselves and our Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

✓WITNESS our Hands and Seals this 5th day of September, 2005

Signed, Sealed and Delivered in the Presence of:




ELIZABETH A. CROTTY

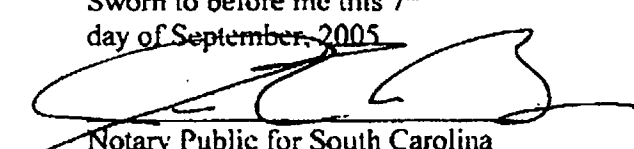
STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

PROBATE

PERSONALLY appeared before me Terri Adams and made oath that she saw the within named ELIZABETH A. CROTTY, sign, seal and as their act and deed, deliver the within written instrument for the uses and purposes therein mentioned, and that she with James E. Bain witnessed the execution thereof.


Sworn to before me this 7th
day of September, 2005


Notary Public for South Carolina
My Commission Expires: 08/25/08

THIS DEED WAS PREPARED WITHOUT THE BENEFIT
OF A TITLE EXAMINATION

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. Property described as 2148 Gamecock Circle, Little River, SC 7566, bearing Horry County Tax Map Number 119-09-02-025, was transferred by ELIZABETH A. CROTTY, on September 7, 2005

The transaction was (check one):

___ An arm's length real property transaction and the sales price paid or to be paid in money or money's work was \$ _____.

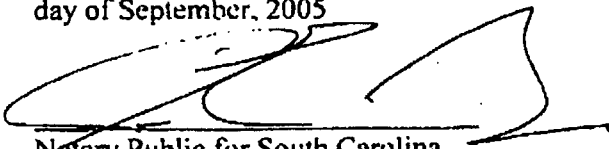
___ Not an arm's length real property transaction and the fair market value of the property is \$ _____.

XX The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10 et. seq. because: As per §12-24-40(14), this Deed is transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal. This Affidavit serves to establish the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.

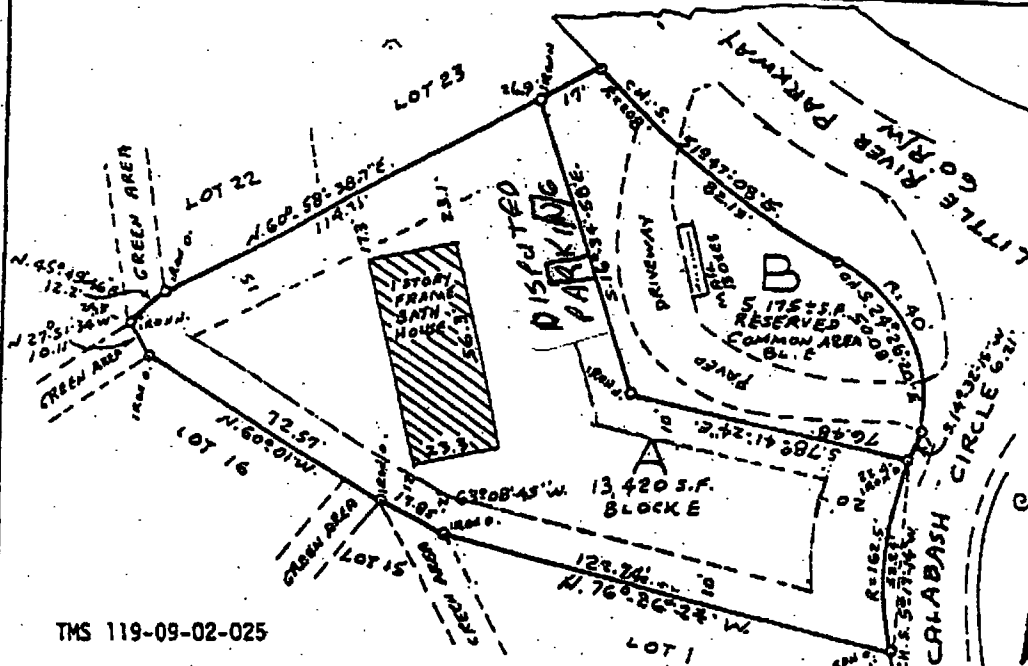
As required by Code Section 12-24-70, We state that we are responsible persons who were connected with the transaction as the Grantors. We further understand that persons required to furnish this affidavit who willfully furnish a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned no more than one year, or both.


ELIZABETH A. CROTTY

Sworn to before me this 7th
day of September, 2005


Notary Public for South Carolina
My Commission Expires: 08/25/08

THIS DEED WAS PREPARED WITHOUT THE BENEFIT
OF _____



TMS 119-09-02-025

THIS PROPERTY IS ZONED R-7
BUILDING SETBACKS ARE:
FRONT 20'
REAR 15'
SIDES 10'

THIS PROPERTY IS LOCATED IN FLOOD ZONE X
COMMUNITY PANEL NO. 450104 0367 F
EFFECTIVE DATE: SEPT. 3, 1992

MAP SHOWING DIVISION
OF COMMON AREA LOT IN
BLOCK E OF WINDJAMMER VILLAGE
NEAR LITTLE RIVER

CERTIFICATE OF OWNERSHIP & DEDICATION
WE HEREBY CERTIFY THAT WE ARE THE OWNERS
OF THE PROPERTY SHOWN AND DESCRIBED HEREON
AND THAT WE HEREBY ADOPT THIS PLAN OF
SUBDIVISION WITH OUR FREE CONSENT, ES-
TABLISH THE MINIMUM BUILDING RESTRIC-
TION LINES AND DEDICATE ALL STREETS,
ALLEYS, WALKS, PARKS AND OTHER OPEN
SPACE TO PUBLIC OR PRIVATE USE AS
NOTED.

LITTLE RIVER TOWNSHIP - HORRY COUNTY, S. C.

REF: DEED RECORDED IN DEED BOOK 780,
PAGE 660, HORRY COUNTY RECORDS.

OWNED BY
WINDJAMMER VILLAGE PROPERTY OWNERS ASSOCIATION

FOR WINDJAMMER VILLAGE PROPERTY
OWNERS ASSOCIATION

DATE

ELEVATIONS ARE FROM U. S.
QUADRANGLE MAP "CALABASH."

APPROVED FOR
RECORDING

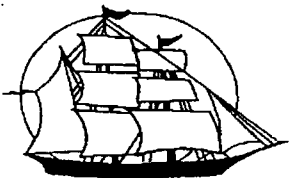
SCALE OF FEET

1" = 40'

40 20 0 40

I hereby state that to the best of my knowledge,
information, and belief, the survey shown herein
was made in accordance with requirements of
the Minimum Standards Manual for the practice
of land surveying in South Carolina and meets or
exceeds the requirements for a Class B survey
as specified therein; also there are no visible
encroachments or projections other than

C. B. BERRY, R.L.S., S.C. NO. 2075
NORTH MYRTLE BEACH, S.C. 29582
(803) 272-6303
NOVEMBER 16, 1998



The Windjammer Village Breeze

windjammerpoa.com
opinions@windjammerpoa.com
wjvpoa@sc.rr.com
843-249-2460
Fax: 843-280-4840
Emergency: 843-742-7749

September 2009

Volunteer of the Month!

Don't bug her when she's out in the truck spraying! **Judy Panarello** is on a mission, as our first line of defense, declaring a war on bugs. Thank you **Judy** for your efforts to rid our neighborhood of those pesky insects which leave us itching and twitching!

THANK YOU



The Village People!

Condolences...

to the families of **Marjorie Dathyn**, Calabash Circle, and **Reid Baker**, Adams Circle, on their recent passing.

A memorial celebration will be held Oct 2 for long-time resident **Bettie Aiken** by her family from 3pm to 5pm at the clubhouse. Light refreshments will be served. All who knew **Bettie** are welcome.

.....
If you have an item you'd like to see here - birthday, anniversary, etc., please drop it at the office, call or email Pat Pelton at patpelton@verizon.net

Board

It was decided at our September 15th meeting of the BOD to make a motion to remove Rosanne Pazoga from the board and suspend her until the vote of the membership is counted. There have been ongoing differences between Rosanne and the rest of the members of the board, Village volunteers and employees. We therefore, decided for the good of the Village to remove Rosanne. We will be preparing a ballot asking the members to support us in this decision to remove Roseanne. Article 5-4 of the by-laws states: Any Director may be removed at any time with or without cause by a majority vote of the members of the Association. Action to remove a director may be initiated by a majority of the Board of Directors or upon submission of a petition by 25% of the qualified voting Members. A majority of those voting is required for removal.

Also, there has been an ongoing argument with the owners of BOO, Elizabeth Crotty and James Orzech, as to the way they access their property. They continue to park in front of their house using the mailbox driveway for access to their property. Every other home in Windjammer Village must use the circle roads to access property. This has resulted in ongoing legal bills. The contract of purchase had stated the property must be accessed from Gamecock Circle. It was stated in writing and the bid was reduced by \$3000 due to the fact they were going to have to install a long driveway. The current Board of Directors feels it is too important to make the decision on its own, and we will be sending it out to the membership for a vote. Some thoughts that we are entertaining are:

- 1 Enforce the current contract.
2. Move the mail boxes down to become parallel with the road like all other mailboxes in the community with ample room to park off the road. Remove mailbox circle road and use property as another garden/park. This would be a nice entrance to our Village. This will keep the lot intact, eliminate anyone from driving on POA property and could be sold in the future, if necessary. Members have voiced their concerns regarding the parking on this property.

Fines:

2 - \$300 fines for throwing a homemade bomb; 1 - \$100 fine for underage driving; 1 - \$100 fine for still allowing a cat to roam free; 3 letters for overgrown lots; and 1 letter for leaving a trailer on the property

Beautification

.....
The contract for the front entrance maintenance was signed.

ADOPT A HIGHWAY PICKUP - SC 179 to North Carolina Border; Meet at POA Office Saturday, September 26th 8:00am - 10:00am. Wear long pants and bring gloves. Vests and bags will be provided. You are encouraged. A good project for teens who need to do community

in Phalen 249-4862

WINDJAMMER VILLAGE CONCERNS FORM

October 8, 2009

To: Windjammer Village Board of Directors

We have several serious concerns regarding the *Windjammer Village Breeze* for September 2009. It contains many misleading or untrue statements about our property and about us. We simply cannot let these falsehoods go unchallenged.

The front-page article under the title 'Board' states,

"Also, there has been an ongoing argument with the owners of B00, Elizabeth Crotty and James Orzech, as to the way they access the property. They continue to park in front of their house using the mailbox driveway for access to their property. Every other home in Windjammer Village must use the circle roads to access property. This has resulted in ongoing legal bills. The contract of purchase has stated the property must be accessed from Gamecock Circle. It was stated in writing and the bid was reduced by \$3,000 due to the fact they were going to have to install a long driveway. ..."

The **truth** is that:

- There may have been an ongoing argument for seven years, but it has been resolved in our favor. Even the POA's own attorney Roger Roy has repeatedly told Windjammer board members that we do have a legal right to access our property along the 'Paved Driveway' and to park in our front yard. The law is on our side.
- The so-called 'mailbox driveway' is identified only as the 'Paved Driveway' in Horry County records. It was built expressly to access the former bathhouse, now our home, from either Little River Drive or Gamecock Circle, not just the mailboxes.
- The contract-of-sale states that we must 'access' the property from Gamecock Circle. However, at the time of the purchase in July 2002, the only way to access it from Gamecock Circle was along the 'Paved Driveway.' The location of the current garage and driveway was cleared of dense forest just in April 2005, nearly three years later.
- Some members of the board put up one-way signs on the so-called 'mailbox circle' in August 2007, expressly to deny us our contractually guaranteed access to our property along the 'Paved Driveway' from Gamecock Circle. This clumsy action in effect only made the phrase that access must be 'from Gamecock Circle' in the contract-of-sale legally 'null and void.'
- Every homeowner in Windjammer Village uses a 'circle road' to access their property, but the 'circle roads' too are common property. Further, the land on each side of the 'circle roads,' to about six feet off the pavement, is also common property.
- There have been ongoing legal bills, both for the POA and for us. We don't like paying them, but the board has provoked us into taking legal measures to protect our rights. So far we have refrained from filing a civil lawsuit, but if we do, WJV's board

members will be squandering POA money for the defense of their irrational vendetta against us, and likely you will lose.

- There never was a bid-reduction of \$3,000 to build a long driveway. In 2002 the POA accepted bids for the B00 property starting at \$35,000. Liz Crotty made the only bid of \$35,001 and won. There was nothing in the contract-of-sale or any other document requiring her to build a 'long driveway' or offering her \$3,000 to do so. **This is an absolute fabrication!**

The *Village Breeze* article then goes on to say,

"The current Board of Directors feels it is too important to make the decision on its own, and we will be sending it out to the membership for a vote. Some thoughts that we are entertaining are:

1. Enforce the current contract.
2. Move the mailboxes down to become parallel with the road like all other mailboxes in the community with ample room to park off the road. Remove mailbox circle road and use property as another garden/park.

This would be a nice entrance to our Village. This will keep the lot intact, eliminate anyone from driving on POA property and could be sold in the future, if necessary. Members have voiced their concerns regarding parking on this property."

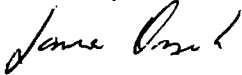
The **truth** is that:

- If the current contract is enforced, we can continue benignly parking in our own front yard without any further harassment from Windjammer Village, as the POA's own attorney Roger Roy has repeatedly advised our board-of-directors.
- This is not an important board decision that should be sent to the membership for a vote. It is contract law – pure and simple. The membership cannot vote away our contractually guaranteed right to access our property without compensating us.
- We have no problem with Windjammer moving its mailboxes.
- However, the proposed 'garden/park' is a thinly guised cover story to trick the Windjammer membership into voting to build a wall at POA expense along our property line just inside what is now the 'Paved Driveway,' as part of the board's weird, irrational vendetta against us.
- If somehow the membership voted for anything that restricted our right to access our home with a 'garden/park' or wall or under any other ruse, we certainly would be forced to file a lawsuit and seek a court injunction to stop it.
- No one has voiced concern about our parking, except those few of you who for some unknown reason have made it your business to keep this issue alive, no matter what.

- Why would any sane person from 'Vereen Circle,' like Charlie Nill or Hugh Cotcamp, care one way or another about us parking in front of our home?

Therefore, we demand that you immediately correct your misleading and libelous statements about us from the September *Village Voice* by sending out a retraction in the October edition, with this response letter as an attachment, and by making sure that it is distributed to the entire membership.

Sincerely,



James Orzech
2148 Gamecock Circle (B00)
(843) 281-2299

Further, we strongly support Rosanne Pazoga as board president. She is unpopular with some board members because she alone wants to restore the rule-of-law to Windjammer Village. She is courageously insisting that our covenants and by-laws, not the personal whims of board members like Charlie Nill, be observed; and that *Robert's Rules of Order* be followed at board meetings.

Windjammer Village Concerns Form (843) 249-2460 Fax: (843) 280-4840	
To be used by any member wishing to formally express CONCERN that someone or activity is violating one or more of Windjammer's Covenants, or Rules and Regulations. This should be prepared by a member(s) and turned in to the Village's office.	
To: WJV Board of Directors	Date Received: (FOR OFFICE USE ONLY)
I am CONCERNED about the following: September 2009 Village Breeze.	
Date & Time Concern/Violation Occurred: September 2009 Village Breeze	
Where Violation Occurred: In Newsletter text	
License # if applicable, or description of vehicle, animal, or other:	
Nature of Event: The Board of Directors has allowed false information about the 2148 Gamecock Circle purchase and parking situation in the Village Breeze.	
There was NO \$3,000.00 discount on the property. This is a complete lie.	
The WJV lawyer has repeatedly told the BOD that we can legally park in front of our property as do all other residents. You rescinded the \$100 fine you imposed 9/09 because of the legal facts told to you by the WJV lawyer Roger Roy. We request the return of the \$100 fine for the same situation paid in protest July 6th	
2007 which was also an illegal fine. Our letter is attached. Please retract lies in the 9/09 newsletter in the 10/09 newsletter & refund the 7/07 \$100 fine with interest.	
The continued harassment because of this situation because of the BOD refusal to Accept the legal advice paid for is costing WJV unnecessary legal fees and the BOD is liable personally and collectively. The BOD has created this problem not us.	
I have spoken to the subject of this Concern about the problem stated herein: YES X NO	
A full disclosure of all names and concerns will be made available to individuals involved in said complaint. Please sign this form; it is required so that we may hold "proof in hand" as to the actual validity of the complaint.	
Signed Liz Crotty	
Address 2148 Gamecock Circle	
4/08	



Windjammer Village of Little River, Inc.
2200 Little River Drive
Little River, SC 29566-9119
Voice: 843-249-2460 Fax: 843-280-4840
E-mail: wjvpoa@sc.rr.com

You are being asked to vote on the following two issues.

1. Removal of a Board of Directors Member

By-Law Article V #4 states: Any Director may be removed at any time with or without cause by a majority vote of the members of the Association. Action to remove a director may be initiated by a majority of the Board of Directors voting in a duly called and conducted meeting of the Directors or upon submission of a petition by 25% of the qualified, voting Members. A majority of those voting is required for removal.

The current Board of Directors needs your vote on the matter of the removal of Rosanne Pazoga from the Board of Directors. We feel that due to irreconcilable differences among the Board of Directors, employees and volunteers, it is in the best interest of the Windjammer Village POA that Rosanne Pazoga is removed from the Board of Directors.

2. Mailboxes at Gamecock Circle

Move the mailboxes that service Calabash Circle, Gamecock Circle and Dykman Circle down to become parallel with the road like all the other mailboxes in the Village with ample room to park off the road. Remove the existing mailbox circle road and use the property to enlarge the present garden keeping the POA property intact and enhancing the entrance to the Village.

To be eligible to vote, current POA dues, assessments and fines, including late payments, must be made by Tuesday, November 10, 2009. Do not include payments with this ballot.

1. Are you in favor of Rosanne Pazoga's removal from the Board?

☒ Yes
☒ No

☐ Yes
☒ No

2. Are you in favor of moving the mailboxes and enlarging the garden?

☐ Yes
☒ No

☐ Yes
☒ No

Please place this ballot in the envelope marked "BALLOT". Place the ballot envelope into the one with your return address and return to the POA Office.

DEADLINE TO RETURN BALLOTS - NOVEMBER 14, 2009.

Ballots with no return address will not be counted.

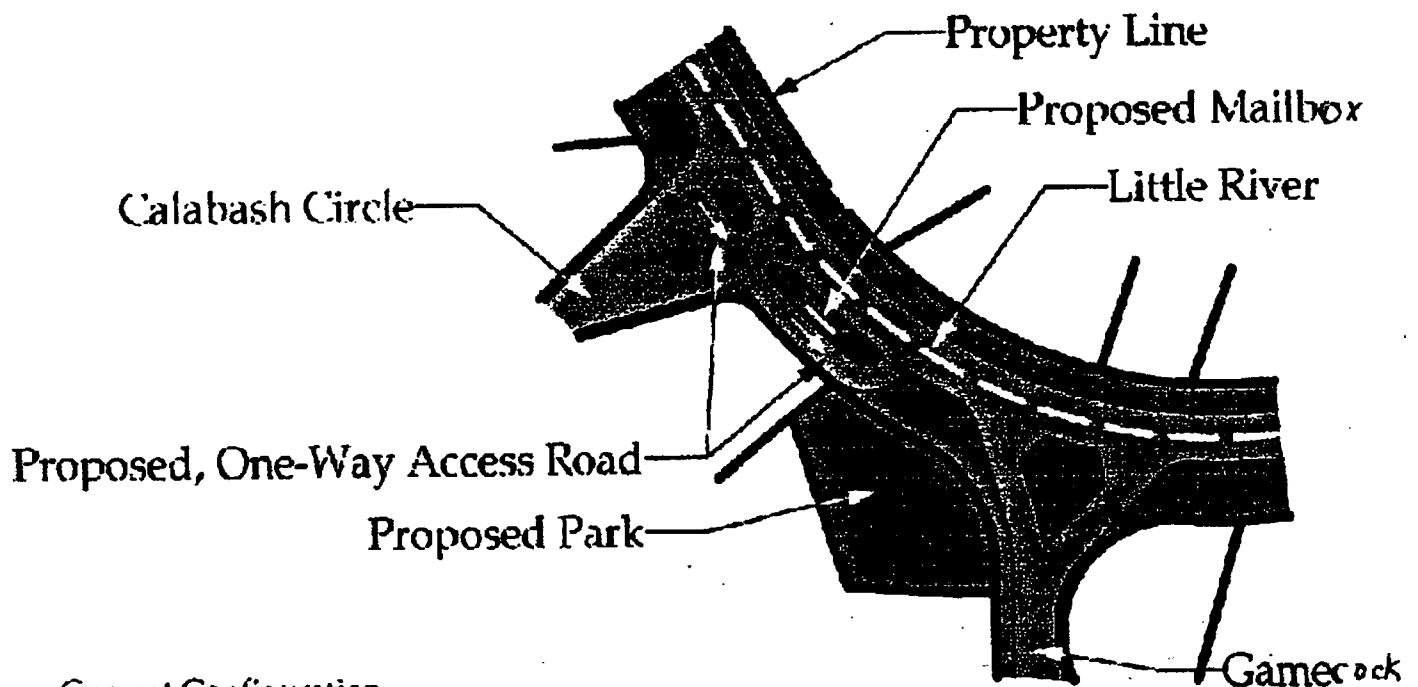
Below please find a preliminary proposal of how we will move the mailboxes. We will be meeting with the Postmaster when this is approved.

The Goal is to make a nicer entrance to Windjammer Village.

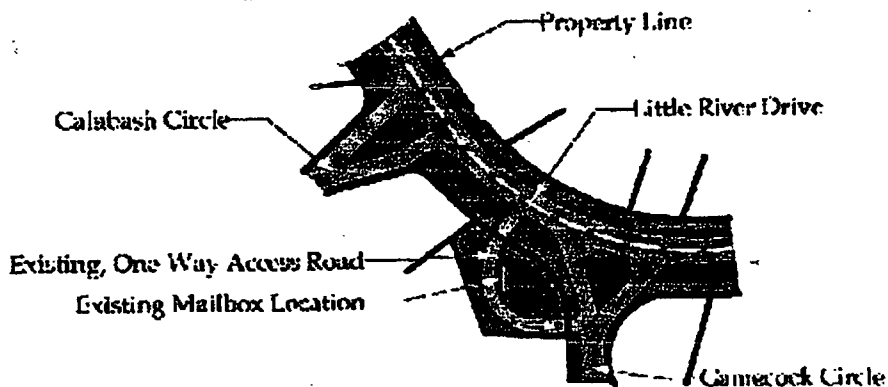
Over the past 2 year we have been working on and planning to update the Circle entrances, Paving the Roads, Circles and Rework the mailboxes throughout the village. We are working with the already approved street budget and it will not affect your dues.

The mailbox placement will allow you to turn in pick up your mail and return back to little river road without being in the traffic of Little River Road. The existing POA property will be used as a park and enhance our village entrance

Proposed Configuration



Current Configuration



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL COURT ACTION 2009-CP-26-10523
	)	
	)	DEFENDANT'S ANSWER AND
	)	COUNTERCLAIM
Elizabeth A. Crotty and James K.	)	
Orzech,	)	
Plaintiffs,	)	
	)	
Vs.	)	
	)	
Windjammer Village of Little River,	)	
South Carolina, Property Owners'	)	
Association, a South Carolina	)	
Eleemosynary Corporation,	)	
	)	
<u>Defendant,</u>	)	

The Defendants, replying to the Complaint of Plaintiffs and by way of Counterclaim would respectfully show and allege unto this Honorable Court as follows:

1. That the allegations of Paragraphs 1 thru 8 are admitted.
2. That the allegations of Paragraph 9 thru 17 are denied and strict proof demanded thereof.

**FOR A FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)**

3. That each and every allegation set forth in the preceding paragraphs are realleged and incorporated herein by reference to the extent not inconsistent herewith.

4. That on or about May 13, 2002, Plaintiff Crotty and Defendant did enter into a binding contract for the purchase of the bath house property (attached as Exhibit "A").

5. That pursuant to the terms of the contract, Plaintiffs agreed to enter the subject property from Gamecock Circle. The Plaintiffs fail to enter their property off of Gamecock Circle, thereby breaching a term of the contract.

6. That as a direct and proximate result of the Plaintiffs' breach, the Defendant has suffered damages as a result of the Plaintiffs' actions.

**FOR A SECOND CAUSE OF ACTION
(SLANDER OF TITLE)**

7. That each and every allegation set forth in the preceding paragraphs are realleged and incorporated herein by reference to the extent not inconsistent herewith.

8. That the Property Owners' Association property on Exhibit "A" is for their use of which is inconsistent with the uses of the other property owners within the Windjammer Village Subdivision. Plaintiffs have continued to drive the wrong way on the posted driveway that is inconsistent with the rules and regulations of the Windjammer Village Property Owners' Association.

9. That the Plaintiffs continual use is harmful to the use of the Defendant and the Complainant knows that this action is in reckless disregard to the intended use of the property by the Defendant and its members.

10. That the Plaintiffs continual use disparages and diminishes the quality and value of the property.

11. That the Plaintiffs conduct has been reckless and in wanton disregard of the rights of the other property owners and is without legal justification.

12. That the Defendants are entitled to specific damages that are a direct result from the conduct of the Plaintiffs.

**FOR A THIRD CAUSE OF ACTION
(NUISANCE)**

13. That each and every allegation set forth in the preceding paragraphs are realleged and incorporated herein by reference to the extent not inconsistent herewith.

14. That the Plaintiffs have reasonably interfered with the Defendant's use of and enjoyment of the said parcel that is know as the common area on the plat attached with Exhibit "A". Plaintiff has unreasonably interfered with the property by entering the property the wrong way that is inconsistent with the one way street signs that are posted.

15. That the actions by the Plaintiffs are the natural and proximate cause of limiting the Defendant's use of this property.

16. That the Defendant is entitled to actual and punitive damages as a result of the Plaintiffs nuisance.

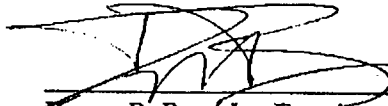
17. That the Defendant will seek a mandatory injunction ordering Plaintiffs to discontinue with their unreasonable interference of this property.

WHEREFORE, Defendant, Windjammer Village of Little River, South Carolina, Property Owners' Association prays that this Honorable Court will find for them under the Cause of Action by Plaintiffs and dismiss this actions plus reasonable costs and attorney's fees, and other such relief as this Court deems just and proper.

WHEREFORE, Defendant under its First Cause of Action for Breach of Contract prays for a judgment against Plaintiffs for actual, consequential damages and attorney's fees as this Court may deem just and proper and for other such and further relief as this Honorable Court may also deem just and proper.

Respectfully Submitted,

Cook and Roy, LLC

A handwritten signature in black ink, appearing to read 'R. Roy, Jr.', is written over a horizontal line.

Roger P. Roy, Jr., Esquire

Cook & Roy, LLC

Attorney for Defendant

PO Box 4086

N Myrtle Beach, SC 29597

(843) 663-1200

N. Myrtle Beach, South Carolina
May 28, 2010

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION # 2009-CP-26-10523

Elizabeth A. Crotty and James K.
Orzech,

Petitioners,

vs.

Windjammer Village of Little River,
South Carolina, Property Owners'
Association, a South Carolina
Eleemosynary Corporation, Barbara
Tanner, William Fongeallaz, Charles
Nill and Frank Spehr, Individually
and as Directors,

Respondents.

PETITION FOR ORDER AND
RULE TO SHOW CAUSE

HORRY COUNTY
10 MAR 24 AM 10:58
MELANIE HUGGINS-WARD
CLERK OF COURT

The Petitioners, complaining of the Respondents allege as follows:

1. On or about October 28, 2009, and pursuant to a Verified Petition, the Honorable Larry B. Hyman, Jr., Presiding Judge of the 15th Judicial Circuit did issue his Order for Temporary Injunction, a copy of said Injunction is attached hereto and incorporated herein as Exhibit "A".
2. At the time of the issuance of his Order, Judge Hyman required that the Hearing be set for 9:30 a.m., November 3, 2009.
3. On November 3, 2009, there appeared before me Petitioners and their attorney, Richard M. Lovelace, Jr., and Respondent Windjammer Village of Little River South Carolina, Property Owners' Association a South Carolina Eleemosynary Corporation ("Windjammer Village of Little River POA") appeared in the person of one or more of its Board members, and was represented by Roger P. Roy.

4. As a result of that hearing on November 3, 2009 by the Honorable Benjamin H. Culbertson issued his Order, by consent of Counsel of both Plaintiffs and Defendant/Respondent, continuing the Temporary Injunction in full force and effect in accordance with its terms pending an outcome of a Merits hearing. A copy of said Order is attached hereto and incorporated as Exhibit "B".

5. At a meeting of the Board of Directors for Windjammer Village of Little River POA on March 16, 2010, Respondent Charles Nill raised the issues of fining the Petitioners for "illegally" entering their property across the driveway which is the subject of this action for failing to enter the property using Gamecock Circle, and imposing upon the Petitioners' assessments for the legal expenses/damages from the Petitioners as the result of Petitioners petitioning the Court for relief and the Court granting that relief. A partial and unofficial transcript is attached hereto and incorporated by reference as Exhibit "C", and a tape recording of the relevant portions of that board meeting will be introduced into evidence in support of this Petition.

6. Subsequently in that meeting, the Board voted to fine the Petitioners \$100.00 each for a total of \$200.00 and directed that a notification be sent to each.

7. The Respondent Windjammer Village of Little River POA, by and through its Board of Directors, did forward to Petitioners two letters notifying each of the \$100.00 assessment being made against them for "...not accessing your property from Gamecock Circle as per the contract", and further notifying Petitioners that the amount of the fine would be due and owing within 10 days after the notice of imposition of the penalty and that if payment were not received, then the Petitioners' privileges (use of the pool, fishing pier, clubhouse and boat/RV trailer storage facility and attendance at meetings) would be suspended. A copy of these letters are attached hereto and incorporated herein as consolidated Exhibit "D".

8. In imposing upon the Petitioners' fines for using the driveway which was the subject of both the preliminary and interim restraining orders, and by threatening Petitioners in an open meeting of the Board of Directors, the Respondents seek, in a high-handed and oblique fashion, to obviate the previous mandates of the Court and assess the Petitioners penalties for exercising rights implicitly granted to them in the prior Orders of the Court in this action and settled juris prudence in this State.

9. The original Verified Complaint arose from the fact Respondent Windjammer Village of Little River POA has given Petitioners notice that it planned to immediately begin excavation of the driveway in front of Petitioners' house and convert that driveway into a park, denying the Petitioners' use and access rights to that driveway, which was shown and depicted on that recorded plat by which Petitioners acquired title from Windjammer Village of Little River and which driveway/easement area had been in existence and had been used by not only Petitioners but all other property owners in Windjammer Village of Little River who accessed their mailboxes which were and are situate on that circle for more than 20 years.

10. In Judge Hyman's Order dated October 28, 2009 he specifically provided that Respondents be enjoined...from in anyway disturbing, uprooting, blocking or impairing Plaintiffs access in and over the driveway shown and depicted on a plat by which Petitioners took title, **"...without any limitation as to directional use, notwithstanding any physical postings to the contrary"**. (emphasis added)

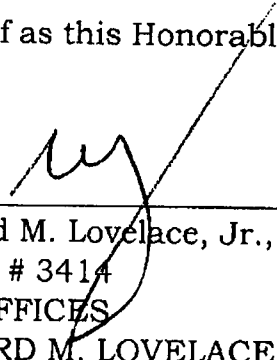
11. Judge Hyman's Order of October 28, 2009 as affirmed by the Consent Order of Judge Culbertson dated November 4, 2009 further provided in pertinent part **"Violation of this Order for Temporary Injunction shall result in severe sanctions, to include civil and/or criminal contempt being imposed upon Defendant, its officers and directors"**. (emphasis added).

12. Petitioners are informed and believe that the vote by the Respondents to fine the Petitioners the demand for payment of fines and accompanying threats for additional sanctions, to include money damages and assessments for Respondents' attorney's fees for funds expended by Respondents in the defense of this action are clear, unequivocal and egregious violations of the Orders of the Court as attached as Exhibits "A" and "B", and evidence a disdain for the Court and its orders, thereby displaying conduct not only violative of the Court Orders, and also give notice of Respondents' intention to impose an illegal penalty upon Petitioners, simply because Petitioners sought redress within the Judicial System.

13. Petitioners are informed and believe that the Court should issue its Order to require all of the Respondents to appear and show cause, if they can, why all of the Respondents should not be severely sanctioned by the Court for both civil and criminal contempt, and that Petitioners be awarded attorney's fees for their prosecution for the relief sought herein.

WHEREFORE, Petitioners pray for relief against Respondents as follows:

- a. That this Court issue its Order and Rule to Show Cause requiring all Respondents to appear before this Honorable Court and to show cause, if any they can, why they should not be severely sanctioned by the Court for both their civil and their criminal contempt;
- b. Petitioners be awarded attorneys fees; and
- c. For such other and further relief as this Honorable Court may deem just and proper.



Richard M. Lovelace, Jr., Esquire
SC Bar # 3414
LAW OFFICES
RICHARD M. LOVELACE, JR., P.A.
Post Office Box 1704
Conway, S.C. 29528
Telephone: (843) 248-7321
Attorney for Petitioners

Conway, South Carolina
24 day of March, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

VERIFICATION

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says that he has read the foregoing Petition and the matters and things alleged therein are true of his own knowledge, except for those matters on information and belief, and as to those, he believes them to be true.

James Orzech
James Orzech

SWORN to before me this
24 day of March, 2010

Susan P. Melley (L.S.)
Notary Public for South Carolina
My Commission Expires: 12/19/11

HORRY COUNTY
10 MAR 24 AM 10:58
MELANIE HUGGINS-WARD
CLERK OF COURT

Exhibit “A”

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION # 2009-CP-26-10523

Elizabeth A. Crotty and James K.
Orzech,

Plaintiffs,

vs.

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

Defendant.

ORDER FOR
TEMPORARY INJUNCTION

2009 OCT 28 PM 4:49
HERRY COUNTY
CLERK OF COURT
JULIANE HUGGINS-WARD

This matter comes before me upon Plaintiffs' Verified Complaint alleging immediate and irreparable injury loss were damage will result to the applicant because Defendant has given Plaintiffs notice that it plans to immediately begin excavation of the driveway in front of Plaintiffs' house and convert that driveway into a park, denying Plaintiffs' use and access rights to that driveway which was shown and depicted upon the recorded Plat by which Plaintiffs acquired title from Defendant.

Further it appears South Carolina Common Law clearly recognizes those rights Plaintiffs' claim in and to the driveway described in the Plat by which Plaintiffs took title, and that the threatened action by Defendant appears to be in derogation of Plaintiffs' vested property rights under South Carolina Law pursuant to the following decisions:

1. *Newington Plantation Estates Association v. Newington Plantation Estates, et al.*, 318 S.C. 362, 458 S.E.2d 36
2. *Francis W. Davis v. Gene B. Epting*, 317 S.C. 315, 454 S.E.2d 325
3. *Mildred B. Giles v. Timothy L. Parker and Billy H. Craig*, 304 S.C. 69, 403 S.E.2d 130
4. *Carolina Land Company, Inc., et al. v. Dr. Maynard W. Bland and Myra D. Bland*, 265 S.C. 98, 217 S.E.2d 16

5. *Immanuel Baptist Church of North Augusta v. C. H. Barnes, et al.*, 274 S.C. 125, 262 S.E.2d 142

6. *Claude M. Epps, et al. v. William H. Freeman, et al.*, 261 S.C. 375, 200 S.E.2d 235

7. *Blue Ridge Realty Company, Inc., et al. v. Wendell McGregory Steacy Williamson and Enola Kathryn Williamson*, 247 S.C. 112, 145 S.E.2d 922

8. *Outlaw, et al. v. Moise*, 222 S.C. 24, 71 S.E.2d 509

9. *Billings, et al. v. McDaniel*, 183 S.C. 261, 60 S.E.2d 592

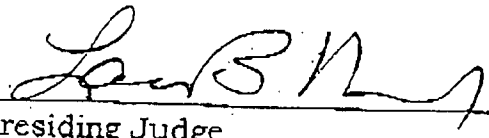
In light of the Verified Complaint, and the Exhibits attached thereto, and legal authority vested in me - See *Fuller-Ahrens Partnership v. S.C. Dep't of Highways and Public Transportation*, 311 S.C. 177, 182, 427 S.E.2d 920, 923 (Ct. App. 1993) ("The granting of preliminary injunctive relief is within the sound discretion of the trial court and will not be overturned absent an abuse of that discretion"); see also *Transcontinental Gas Pipeline Corp. v. Porter*, 252 S.E. 478, 481, 167 S.E.2d 313, 315 (1969) - Plaintiffs' Verified Complaint for preliminary relief is hereby granted and Defendant is enjoined on a temporary basis and until such time as this matter can be heard on November 3rd, 2009 at 9:30 AM from in anyway disturbing, uprooting, blocking or impairing Plaintiffs' access in, and over the driveway shown and depicted on the Plat by which Plaintiffs took title, without any limitation as to directional use, notwithstanding any physical postings to the contrary.

Based upon the Summons, Verified Complaint and Exhibits and Rule 65 of the South Carolina Rules of Civil Procedure, I direct that a bond be filed with the Court in the amount of One Hundred and 00/100 (\$100.00) Dollars, subject to further order of this Court.

Violation of this Order for Temporary Injunction shall result in severe sanctions, to include civil and/or criminal contempt being imposed upon Defendant, its officers and directors.

This Order Issuing Temporary Injunction shall remain in full force and effect until modified or rescinded by the Court. *NOT TO EXCEED 10 days*

IT IS SO ORDERED, ADJUDGED AND DECREED.



Presiding Judge
Fifteenth Judicial Circuit

Conway, South Carolina

28 day of Oct., 2009

Exhibit “B”

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION # 2009-CP-26-10523

Elizabeth A. Crotty and James K.
Orzech,

Plaintiffs,

vs.

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

Defendant.

ORDER

FILED
HORRY COUNTY
2009 NOV -4 AM 10:22
HILLANE HUGGINS-WARD
CLERK OF COURT

This matter came before me for hearing pursuant to a Ex Parte Temporary Injunction issued by the Honorable Larry B. Hyman, Jr. dated October 28, 2009 restraining the Defendant from either impairing the access of Plaintiffs or in anyway physically altering or destroying the traffic circle adjacent to Plaintiffs' residence.

Plaintiffs appeared represented by Richard M. Lovelace, Jr. and Defendant was represented by Roger P. Roy.

Based upon the presentation made to me by counsel for each party, and after deliberation by me and consent by the counsel for the parties, the Temporary Injunction shall remain in full force and effect until this matter can be fully heard on the merits.

Accordingly, the Temporary Injunction shall remain in full force and effect in accordance with its terms, pending the outcome a merits hearing and the Non-Jury Clerk is directed to place this matter on the Non-Jury Trial Docket.

IT IS SO ORDERED, ADJUDGED AND DECREED.

S/
Honorable Benjamin H. Culbertson
Presiding Judge

Conway, South Carolina
4th day of November, 2009

Exhibit “C”

Windjammer Village, Property Owner's Association
2500 Little River Drive, Little River, SC 29566

Board-of-Directors:

President: Barbara Tanner, 2211 Swamp Fox Circle, Little River, SC 29566

Members: William 'Bud' Fongeallaz, 2207 Franklin Circle, Little River, SC 29566

Charles 'Charlie' Nill, 2276 Vereen Circle, Little River, SC 29566

Frank Spehr, 2208 Dykman Circle, Little River, SC 29566

Office Secretary: Angela Marcotte, 2208 Swamp Fox Circle, Little River, SC 29566

Unlicensed Legal Advisor: Hugh Cotcamp, 2272 Vereen Circle, Little River, SC 29566

Partial Transcript of Board Meeting, March 16, 2010 at 7 pm (audio-recording available)

Time: 0:00. Board President Tanner: "I would like to call this meeting of the board-of-directors for March 16, 2010, to order, please ..."

Times 1:24 through 1:28 of a meeting that would last two hours and nine minutes.

Board Member Fongeallaz: "The legal situation -- We do not have a date for the trial for (Plaintiffs) James (Orzech) and Liz (Crotty), yet. We are still waiting for the courts to do their thing. So when that does come up, notification will be sent out through emails from the office to everyone. You are totally invited to attend that trial. You are invited to participate in being a person getting up there and saying something, answering the questions, being a witness in one way or another -- preferably the right way. I think so. Just keep that in mind. That hopefully will be coming up in the near future."

Board Member Nill. "We are working on damages too."

Tanner: "Yes."

Fongeallaz: "They only owe us a few thousand dollars -- yes."

Nill: "Are we going into the fining right now?"

Tanner: "If you'd like to."

Nill: "Okay. There are two fines that we've discussed coming up. (Plaintiff) James Orzech for illegally entering his property, not using Gamecock Circle -- (Plaintiff) Liz Crotty the same. I make a motion that we fine James Orzech \$100."

Fongeallaz: "How much? I didn't hear what you said."

Nill: "One hundred dollars."

Fongeallaz: "Just \$100?"

Nill: "This is the first fine."

Fongeallaz: "Was that the fifth time or something like that? This is not the first."

Nill: "Do you want to go higher?"

Tanner: "We can't. We have to send a letter."

Nill: "Okay. We will follow with a letter for each occurrence we'll be fining."

Tanner: "I believe we have to send a letter first. Correct? Angela (Office Secretary Angela Marcotte, who was in the audience)?"

Fongeallaz: "This is a repeat situation."

Nill: "On a repeat situation we don't have to?"

Fongeallaz: "That's correct. It's only on their first one."

Nill: "Is that right? Angela? Yes. Okay. Well, we'll start out with a hundred. And second, should we get the two of them together?"

Tanner: "No. They are separate people."

Nill: "Make two motions? Okay."

Tanner: "Yes. Repeat it again, Charlie."

Nill: "Fine James Orzech for not using Gamecock Circle to enter his property \$100."

Board Member Spehr: "Second."

Board President Tanner: "All in favor?"

Board Members Nill, Fongeallaz and Spehr: "Aye."

Tanner: "Any discussion?" (None heard.)

Nill: "The second one will be 'Fine Liz Crotty \$100 for not using Gamecock Circle to enter her property.'"

Spehr: "Second."

Board President Tanner: "All in favor?"

Board Members Nill, Fongeallaz and Spehr: "Aye."

Board President Tanner: "Okay. So moved."

Exhibit “D”

WINDJAMMER VILLAGE OF LITTLE RIVER, INC.

2200 LITTLE RIVER DRIVE
LITTLE RIVER SC 29566-9119
Voice: 843-249-2460 Fax: 843-280-4840
E-mail: wjvpoa@sc.rr.com

"Certified"

March 17, 2010

James Orzech
2148 Gamecock Circle
Little River, SC 29566

Re: Access to Property

Dear James,

The Board of Directors met Tuesday, March 16, 2010. A motion was made and carried to fine you \$100.00 for not accessing your property from Gamecock Circle as per the contract.

As per the Declaration of Restrictions & Easements this fine is due within (10) ten calendar days after the notice of imposition of the penalty is given. If the assessment is not paid within forty (40) days after the date such notice is given, the penalty shall bear interest from the date when due at the legal rate of interest for Judgments in the state of South Carolina.

If the fine is not received in the POA Office within 10 days from the above date, all privileges (use of the pool, fishing pier, clubhouse and boat/RV/trailer storage facility and attendance at meetings) will be suspended. The clubhouse entry cards will be deactivated after the April meeting.

Any questions/comments you may have must be in writing and directed to the Board of Directors or you may attend the April 20, 2010 meeting.

Sincerely,

Board of Directors

Board of Directors
Windjammer Village POA

BOD/am

cc: Regular Mail
File

WINDJAMMER VILLAGE OF LITTLE RIVER, INC.

**2200 LITTLE RIVER DRIVE
LITTLE RIVER SC 29566-9119
Voice: 843-249-2460 Fax: 843-280-4840
E-mail: wjvpoa@sc.rr.com**

"Certified"

March 18, 2010

Elizabeth Crotty
2148 Gamecock Circle
Little River, SC 29566

Re: Access to Property

Dear Elizabeth,

The Board of Directors met Tuesday, March 16, 2010. A motion was made and carried to fine you \$100.00 for not accessing your property from Gamecock Circle as per the contract.

As per the Declaration of Restrictions & Easements this fine is due within (10) ten calendar days after the notice of imposition of the penalty is given. If the assessment is not paid within forty (40) days after the date such notice is given, the penalty shall bear interest from the date when due at the legal rate of interest for Judgments in the state of South Carolina.

If the fine is not received in the POA Office within 10 days from the above date, all privileges (use of the pool, fishing pier, clubhouse and boat/RV/trailer storage facility and attendance at meetings) will be suspended. The clubhouse entry cards will be deactivated after the April meeting.

Any questions/comments you may have must be in writing and directed to the Board of Directors or you may attend the April 20, 2010 meeting.

Sincerely,

Board of Directors

Board of Directors
Windjammer Village POA

BOD/am

cc: Regular Mail
File

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION # 2009-CP-26-10523

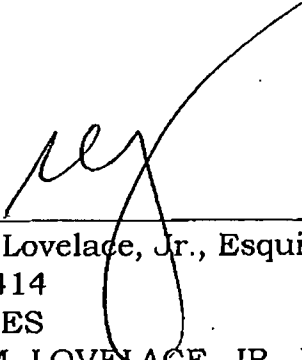
)
) PLAINTIFFS' NOTICE OF MOTION AND
) MOTION FOR RECONSIDERATION
) PURSUANT TO RULE 59(e)

VS.

))))))

FILED
SUNSHINE COUNTY
2011 AUG 12 AM 10:49
MELANIE HUGGINS-WARD
CLERK OF COURT

2. the provision in the Court's Order which requires a Memorandum to be filed with the Office of the Registrar of Deeds so the Order of the Court would be a matter of record in the real property records in Horry County and binding on the successors and assigns of the Plaintiffs.



Richard M. Lovelace, Jr., Esquire
SC Bar # 3414
LAW OFFICES
RICHARD M. LOVELACE, JR., PA
P. O. Box 1704
Conway, SC 29528
Attorney for Plaintiffs

Conway, South Carolina
12 day of August, 2011

Appellants' Exhibit 1

With Attachments A-F

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON
	)	PLEAS FIFTEENTH
COUNTY OF HORRY	)	JUDICIAL CIRCUIT
	)	C/A NO. 2009-CP-26-10523
Elizabeth A. Crotty and James K.	)	
Orzech,	)	RE: <u>AUGUST 30TH RULE TO</u>
	)	<u>SHOW CAUSE HEARING:</u>
Plaintiffs,	)	PLAINTIFFS' MEMORANDUM
	)	REQUESTING THAT THE
vs.	)	COURT RE-VISIT THE FINAL
	)	ORDER IN THE NAME OF
	)	JUSTICE
Windjammer Village of Little River,	)	
South Carolina, Property Owners'	)	
Association, a South Carolina	)	
Eleemosynary Corporation,	)	
	)	
Defendant.	)	

TO: THE HONORABLE STEVEN H. JOHN & ATTORNEY
KENNETH R. MOSS, COUNSEL FOR DEFENDANTS

The Court has scheduled a 'Rule to Show Cause Hearing' in the above case for August 30, 2012. The purpose of this Hearing is to determine whether or not Defendant will be awarded *even more* taxable costs pursuant to Rule 54(e). Plaintiffs submitted their 'Memorandum in Opposition to Defendant's Proposed Order' on August 6, 2012. The following Memorandum is Plaintiffs' additional arguments and pleadings, requesting that the Court re-visit the Final Order in the name of Justice. We shall represent ourselves at this Hearing *per se*.

Now that attorney Moss has caused this case to be reopened, we respectfully request that the Court also reevaluate some of its decisions from the June 2011 Trial and the February 2012 Hearing based on: **(1) New evidence** that Plaintiffs were not aware of until after the Trial of June 2011, that dramatically clarifies this otherwise murky sales transaction in a way that demands that the decisions, regarding '*access*' and '*parking*,' be reversed; **(2)** The confusion at the Trial brought about by the improper interpretation of

the words '*access from*' and '*entrance*' in the English language, as used in the Sales Contract, and (3) The crassly **ineffective representation** by our former attorney at Trial.

(1) New Evidence

In April 2002, while Plaintiff Orzech was still deployed overseas with American and NATO Forces in Bosnia, Plaintiff Crotty purchased the old Bathhouse Property from the Windjammer Village POA in open bidding. She remodeled what became known as the 'B00 House' into a magnificent new home, which stands today in stark contrast to the dilapidated community eyesore that she bought from the POA.

When Plaintiff Crotty signed the 2002 Sales Contract (Attachment A), the only *access from Gamecock Circle* to the old Bathhouse was *along the so-called 'Paved Driveway,'* which then safely accommodated two-way traffic for over thirty years, either from the Little River Drive or the Gamecock Circle direction. Up to that time anyone *parked* all over that property when they *accessed* the bathhouse or got their mail.

The current location of our garage and short private driveway, which we voluntarily built just in 2005 -- three years later -- was then thickly forested with a high slope, not providing any *access from Gamecock Circle* to the B00 Property, whatsoever. At the time of the sale, WJV POA made absolutely no demands on Ms. Crotty that:

- She must immediately, or at any time, build a *long Private Driveway* through the heavily forested section of the B00 Property; or that:
- Said *long Private Driveway*, if and when built, was intended to be the exclusive *access from Gamecock Circle* to her home, replacing and/or eliminating the original *access from Gamecock Circle* along the 'Paved Driveway' from the time of the sale.

There is no language -- none at all -- in the 2002 Sales Contract or in any other contemporaneous document to the contrary.

Plaintiffs' trouble with the WJV POA did not begin immediately, as Defendant alleged at Trial, but in July **2003** – more that a year after the Sales Contract was signed in May **2002** -- when Defendant WJV POA's Board of Directors and its Architectural Committee chairman *wrongfully* began insisting that Ms. Crotty must immediately build a *long Private Driveway* from Gamecock Circle (Attachment **B**) through the then heavily forested portion of the B00 Property to the old Bathhouse, which *somehow* was to be her *exclusive* and *only access from Gamecock Circle*, and the *only* place she could *park* her car. Plaintiff Crotty had no idea what they were talking about, but each time she sought some kind of clarification, she was treated only to antagonistic threats, intimidations and fines from Defendant WJV POA and its agents; all of which was well documented, but not presented to the Court at Trial by our former attorney.

The requirement to construct an expensive *long Private Driveway* was never included in the **2002** Sales Contract (Attachment **A**) between Plaintiff Crotty and Defendant WJV POA. Nonetheless the POA's officers *mistakenly* and *erroneously* kept on harassing us (Elizabeth Crotty and later James Orzech) over this issue for years, even insisting that we *park* only on that non-existent, mythical 'long Private Driveway' and not in our own front yard, like every other resident in Windjammer Village.

This misperception and its implications for our *access, parking* and *benign enjoyment of life*, has persisted in one form or another now for over nine years, creating a never-ending nightmare. Nonetheless, despite some nastiness from the Board and its agents over the years, the POA ultimately did allow us to *park* in our own front yard almost continuously from the initial purchase in **2002** through the Final Order in **2011**

In **2009**, Defendant's then-attorney Roger Roy advised the Board that we, indeed, had a right to *park* anywhere on our own property, per the Windjammer Village Rules and Regulations. After the then-Board President, Rosanne Pazoga, made that information public, the other four members of the Board immediately voted to remove her from the Board and to send out a punitive Mail-In Ballot referendum to illegally take out the 'Paved Driveway,' expressly to deny us that *access* to our property. It was then that we reluctantly initiated this lawsuit, receiving a TRO in **2009**, made permanent in **2011**.

In September **2009** in support of the POA's referendum to illegally remove the 'Paved Driveway' in front of our home, Defendant WJV POA published in its *Village Breeze* newsletter (Attachment C), mailed out to all of our neighbors, other residents and homeowners in Windjammer, the following *false* and *libelous* disinformation, regarding the circumstances of Ms. Crotty's purchase of the B00 Property in **2002**:

... The contract of purchase had stated the property must be accessed from Gamecock Circle. It was stated *in writing* and the bid was reduced by **\$3,000** due to the fact they were going to have to install **a long driveway** ...

At that time, we had no idea why Defendant WJV POA was making those outrageously *mistaken* and *unsubstantiated* claims in their newsletter. However, after the June **2011** Trial (Civil Action # 2009-CP-26-10523), when examining POA Attorney Moss' *Trial Exhibits Book*, which our former attorney irresponsibly had not even shown us before the Trial, we for the first time discovered dramatic **new evidence** that in **1998** – four years prior to the sale to Liz Crotty in **2002** – James Hackert, a prospective buyers for the old Bathhouse property, acknowledged in writing in **1998** that *he* had been told that *he* must build a '***long Private Driveway***' from Gamecock Circle.

Documentary proof of Hackert's **1998** agreement came from attorney Moss' **2011** *Trail Exhibits Book* in a Memo identified as **Defendant's Exhibit #12** (Attachment D), which stated that during the POA's previous attempt to sell the Bathhouse property in October **1998**,

"... Both bidders (Hackert and Richard Gherri) have indicated ... that they lowered their bids (for the B00 property) by approximately **\$3,000** due to the fact of building **a long driveway** that *access* to the property would now require."

And in a handwritten note initialed by James Hackert, "Reason for the low offer: **(1)** length of driveway \$3,500 and **(2)** 25% of land is gone."

Therefore, it now has be shown that Defendant WJV POA and its agents:

- a. ***Erroneously*** for the past nine years have tried to enforce an understanding made with someone else, James Hackert, in **1998** against us, Plaintiffs Crotty and Orzech, despite the fact that no such agreement ever had been made with either of us contemporaneous to the **2002** Sales Contract, or at any time afterwards.
- b. ***Maliciously*** published disinformation they knew to be false in their September 2009 *Village Breeze* newsletter, *purposely* and *wrongfully* attributing understandings made with James Hackert in **1998** to us, in a corrupt, dishonest attempt to rig their Mail-In-Ballot referendum to obtain the POA Members' approval to *illegally* and *punitively* tear out the 'Paved Driveway.'

It was all a big mistake followed by big lies!

Now in the name of truth and justice, we pray that the Court will rectify that mistake and those lies, reversing its decisions to the contrary in the Final Order that restricts Plaintiffs' *access to* and *parking on* the B00 Property.

(2) The English Language

The true wording of the Sales Contract in the English language has consequence. The meanings of the phrases '*entrance*' and '*access from*' are not synonymous or interchangeable, as they *carelessly* and *erroneously* were used in the Trial. Per the *Merriam-Webster Collegiate Dictionary* (10th edition) (Attachment E),

- '*Entrance*' is defined as the means or *place of entry*, while
- '*Access from*' is defined as an ability to enter, approach, communicate with, or pass to and from *a starting point of physical motion*.

The **2002** Sales Contract never used the word '*entrance*' (*place of entry*), but in fact states, ... It is further agreed that *access* to this property shall be *from Gamecock Circle (a starting point of physical motion)*. ...

There are three ways to look at the **2002** Sales Contract, depending on what was actually written *in English*, and what the true circumstances were *at the time of the sale*:

1. *If* the Sales Contract had stated, “**entrance** shall be *from* Gamecock Circle,” which it did not, *then* WJV POA rightfully could demand that the purchaser **enter** the property directly *from* Gamecock Circle only at a point at which the property physically abuts Gamecock Circle, and not from along the ‘Paved Driveway,’ making **parking** in the front yard non-permissible.
2. *If*, as in the case of the cancelled sale to James Hackert in **1998**:
 - (a) The Sales Contract had stated, “**access** shall be *from* Gamecock Circle,” *but*
 - (b) There also was a separate agreement between the parties before the sale that the buyer must build a ‘**long Private Driveway**’ to be the *exclusive access from Gamecock Circle; then*
 - (c) WJV POA would be correct in denying Hackert **access** along the ‘Paved Driveway’ and **parking** in his front yard, *rightfully* demanding that he must build and use only that ‘long Private Driveway.’
3. *If*, however, as in the case of the sale to Plaintiff Crotty in **2002**:
 - (a) The Sales Contract stated, **access** shall be *from Gamecock Circle, but*
 - (b) The only **access from Gamecock Circle** to the property *at the time of the sale* was along the ‘Paved Driveway,’ which then permitted two-way traffic, *and*
 - (c) There was no prior agreement between the parties, obligating Ms. Crotty to build a ‘**long Private Driveway**’ from Gamecock Circle that was to be her exclusive **access, then**
 - (d) WJV POA would have no right to deny Plaintiffs, their guests or their assigns, **access** to anywhere on their property along the ‘Paved Driveway’ and **parking** in their own front yard.

Per the above logic, our **access from Gamecock Circle along the ‘Paved Driveway’** to anywhere on our own property and **parking** in our own front yard never did

violate the Sales Contract with the POA, given the proper interpretation in the English language of the words '*access from*' and the initial conditions in **2002**. Therefore, decisions in the Final Order to the contrary needs to be corrected.

(3) Ineffective Representation

The Court's Final Order of June **2011** was *in error* on several key points, largely because of the **ineffective representation** we as clients received from our former attorney, Richard Lovelace, whom we nonetheless continue to hold in great esteem. Although he unquestionably did admirably for us with the Injunction, for which we paid him a fixed fee; and with the pre-Trial Contempt-of-Court Hearing, for which we paid him more; as well as with the post-Trial Motions for Reconsideration, for which we paid him more yet again; it seems that he *somehow* did not feel obligated to vigorously pursue our vital interests against Defendant's counterclaims. For example, he:

- Did not alert us that Defendant's counterclaims were more than just arguments against granting the Injunction *or* that we were going to a Trial over *access* and *parking* on June 22-23, 2011, not just another Hearing.
- Did not asked us for or received additional compensation from us to defend us against counterclaims, apparently never intending to do so.
- Refused to fully listen to our story, or to study the voluminous material we provided him before the Trial, enough to understand the complex history inherent in defending our interests in this dispute with the POA over *access* and *parking* – or to comprehend the intensity of our feelings.
- Did not take issues brought out in Defendant's counterclaims seriously, while not adequately preparing himself or us for the Trial, except for the Injunction part.
- Failed to call to testify at the Trial our key witness, Roseanne Pazoga, who had been deposed for an entire day at considerable expense, and who was standing by in Court.
- Failed to challenge Moss' choice of Exhibits, which painted a decidedly one-sided and blatantly false accounting of key events and issues, and for which there were many other documents in our possession arguing strongly to the contrary.

- Allowed Defendant's attorney and witnesses to spin **one myth after another** without challenge, while we as Plaintiffs were furiously writing notes, begging him to object, to which he would only respond that it was not relevant. For example:

Myth #1: The Sales Contract was in no way vague or contradictory.

Plaintiffs disagree. The Sales Contract is *still* being misinterpreted, because of the confusion over its meaning in the English language, when the words '*access from*' and '*entrance*' are *carelessly* and *mistakenly* used interchangeably, as they were at the Trial. This matter is discussed in detail above. Words should have consequence in interpreting contracts. As well educated citizens, we understood this distinction and argued this point continuously over the tenure of this dispute, to absolutely no effect with the POA Board of Directors. **Our former attorney never brought up this key point at the Trial.** Now we can only pray that a thoughtful Judge, whose obligation it is under the Law to properly interpret contracts in the English language, will comprehend this *reality* and *reverse* his initial findings in the Final Order that unjustly denied us, our heirs and assigns, *access from Gamecock Circle along the 'Paved Driveway'* and *parking* in our own front yard, in perpetuity.

Myth #2: This Dispute began very shortly after the purchase in 2002.

False: The Sales Contract was signed in May 2002, but the dispute did not arise until July 2003, fourteen months later, when out of *nowhere* the elderly Architectural Committee chairman, Paul Reinhardt, caused the POA's Office Secretary to write a letter (Attachment B) to Ms. Crotty, demanding that she put in her '**long Private Driveway**' immediately. Apparently Mr. Reinhardt had been around in 1998 during the attempted sale of the B00 Property to James Hackert, who in fact would have been required to put in such a 'long Private Driveway' immediately, *if* the sale to him had gone through, which it did not. This *mistaken* demand, discussed in detail above, *erroneously* initiated this dispute, but it was never enforced, and to this day Plaintiffs have not put in a 'long Private Driveway.' However, that accursed letter languished like a time bomb in Plaintiffs' file in the WJV Office, detonating to great effect in 2007.

Myth #3: This Dispute has continually escalated since 2002.

Not at all true: From May 2002 through July 2003 there was no dispute. Ms. Crotty *accessed* the B00 Property from along the 'Paved Driveway' and *parked* wherever she chose during the initial phase of construction. After Reinhardt's *mistaken* letter of July 2003, discussed in detail above, which Plaintiff Crotty rebutted in writing that very same day, the WJV POA Board immediately recanted and only asked that she and her contractors not park directly on the 'Paved Driveway.' **Our former attorney never mentioned that at the Trail.** During the next construction phase, which lasted into 2007, more that five full years into our ownership, there were no interruptions in our ability to benignly *access* our home from along the 'Paved Driveway' and *park* in their own front yard. Likewise, there was absolutely no thought of and no reason for making the 'Paved Driveway' one-way up to that point. Despite an occasional mix-up, by early 2007 the WJV POA Board of that day had accepted that by contract *we were guaranteed access to the B00 Property from Gamecock Circle by way of the 'Paved Driveway,'* which we used all the time. The current dispute began precisely on Saturday **June 16, 2007**; has escalated ever since; and is the subject of Civil Action No: 2010-CP-26-5929, Crotty and Orzech vs. Cotcamp et al., to be tried before a Jury as early as November 2012.

Myth #4: The current dispute is about access and parking.

Not true: The current dispute is about abuse of process, assault, battery, civil conspiracy and the intentional infliction of emotional distress and outrage. It arose in spring 2007 when Ms. Crotty became a candidate for election to the Windjammer Village Board of Directors. At a 'Meet the Candidates' event, she and another candidate spoke out against the perceived petty corruption of Board Members Norman Meaders and Charles Nill. That made them 'marked women.' In a five-person race for three seats as Directors, acting Board President Meaders devised 'dirty tricks' to disqualify the two not to his liking. For candidate Crotty, Meaders dredged up long-discredited, dormant documents about *access* and *parking* at the B00 House from the WJV files, including some of those that were trotted out again as so-called 'evidence' at the Trial, **without any objection**

from our former attorney. Meaders fashioned five of these misleading scraps of paper into one 'Concern' that was acted upon by a quorum consisting of Mr. Nill and two recently appointed Directors at the Board meeting on **June 16, 2007**, without any research or any discussion. The result was that we suddenly were fined **\$100** for ***parking*** in our own front yard and lost all privileges of POA membership, with the threat of escalating fines if we persisted, despite the fact that we were not in violation of any WJV Rule or Regulation, as required by the By-Laws. More significantly, that Board action made candidate Crotty not a 'Member in Good Standing,' and therefore, not eligible to be elected a Director. We bitterly complained to Directors Meaders, Nill and Hughes, insisting that the Sales Contract guaranteed us ***access*** to our property from Gamecock Circle along the 'Paved Driveway' and thereby ***parking*** in our own front yard, as we already had been doing for the past five years. After we apparently won that verbal argument, Meaders threatened to make the 'Paved Driveway' one-way, expressly to deny us ***access*** from Gamecock Circle to our front yard. We audio-recorded that meeting and fully documented every step along the way from then on. After the Board did not rescind the fine, we posted a protest letter on the community bulletin board (Attachment F). After the **2007** WJV Fourth of July Party, Ms. Crotty was explaining the posted letter to passers by when an irate and inebriated acting Board President Meaders came out of the clubhouse and punched her on the jaw. Once Ms. Crotty caused criminal Assault and Battery charges to be filed against Mr. Meaders, the 'current dispute' really ramped up into years of unlawful retaliation and defamation against us, culminating in the rigged Mail-In Ballot referendum of **2009** to illegally remove the 'Paved Driveway,' from which we sought the Injunction that initiated this case in the first place. There is more, much more. However, at the Trial, there was not a hint of this true, underlying story – just a lot of confusing blather from Moss about ***access*** and ***parking*** that went almost completely unchallenged by our taciturn former attorney.

Myth #5: The Board has an inherent right to make the 'Paved Driveway' one-way.

True, but that was not the issue: After having been charged with Assault & Battery, Norman Meaders, the acting President of the WJV POA Board of Directors, attended a

Bond Hearing with Magistrate Whitley. As part of Meaders' bond agreement, the Court ordered him not to take any action against his victim, Ms. Crotty, while he was awaiting Trial. Nonetheless, Meaders took the opportunity then to carry out the threat he had voiced prior to the **July 4th 2007** Assault to make the 'Paved Driveway' one-way, expressly to deny us *access from Gamecock Circle* to the shady parking spots in our front yard, as *unlawful retaliation*. The WJV POA Board never discussed this issue at any public meeting or passed any resolution designating it one-way. If they had, it would have been recorded in their Minutes, but it was not. There was absolutely no traffic-safety consideration, as Defendants retroactively would allege. We checked Horry County records in Conway, but found no evidence at all that the 'Paved Driveway' ever before had been designated 'one-way,' as the POA would falsely claim in their centrally controlled newsletter, just like in Orwell's *Animal Farm*. Norman Meaders simply caused one of his surrogates to purchase the signs and have them installed, as *revenge*. Afterwards, whenever we *parked* in our front yard, as we did most of the time until the Final Order in 2011, we simply *accessed* those spots from Little River Drive, considering that the POA's installation of one-way signs after-the-fact rendered that clause in the Sales Contract moot. It should be noted here that on the same day that the Solicitor dropped criminal charges against Meaders, **January 8, 2008**, the POA's Maintenance Committee, lead by Meaders' surrogate Nill, tore out the magnificent Azalea Garden in front of the B00 House, as further *retribution* against us. **Once again, our former attorney failed to convey any of these circumstances surrounding Defendant's intentional infliction of emotional harm and outrage against us at the Trial, except for a last minute, out-of-context allusion to the devastation of the Azalea Garden.**

Myth #6: As POA Members, Plaintiffs can be barred from crossing common turf.

Outrageous: Every month we pay \$70 POA fees for each of our three properties. That comes out to \$210 per month and \$2,520 per year, but *somehow* we cannot cross 3.1 feet or 5.7 feet of common property to reach our own front yard from the 'Paved Driveway,' which itself is common property. Add to that the fact that nearly everyone in Windjammer Village with about 400 residences must cross on average of 6.0 feet of

common property to get from their Circle to their property across what seems to them to be their driveway. The reason is that the roadway easements are about 24 feet wide, but the Circles roadways are actually only 12 feet wide. As we demonstrated at the Trial with our *Photo Album of Parking in Windjammer Village*, many residents simply build parking pads on WJV common property along the Circles next to their homes. It is simply **outrageous** that we, alone among all Windjammer residents, are barred from crossing common turf to reach our home. **How can this possibly be rationalized?**

Myth #7: 'Access' and 'Parking' at the B00 House are "insignificant items."

Nothing could be further from the truth: For Plaintiffs Elizabeth Crotty and James Orzech, these are vital issues in our day-to-day lives, as well as in our future, as we become more and more elderly, for the following reasons:

- We are now 63 and 66 years old and not getting any younger. The Veterans' Administration has deemed Ms. Crotty to be 100% disabled with PTSD due to a horrific assault on her when she was in the Navy that was rekindled by WJV POA's acting Board President Norman Meaders' Assault & Battery on her of July 4, 2007 (discussed above), making her fearful of parking far from her front door after dark. She also has 'spinal stenosis,' an orthopedic problem, which becomes worse and worse year-by-year, making it painful for her to recover after long periods of sitting, such as after driving her car. The State of South Carolina already has issued her a Handicapped placard for her car. In fact Ms. Crotty already moved out of her dream home, the B00 House, in February 2009 because of all of the hassles with the POA over ***parking*** near her front door. That is costing her about **\$1,400** per month by not being able to rent out her other residence at 2121 Brunswick Circle in WJV. We each have witnessed both of our parents degenerate in old age from robust, active seniors in their sixties to invalids with significant mobility problems just a few years later. Must we now always be required to lug our groceries that extra 140 feet, sometimes in the heat and humidity and at other times in a driving rain; or face Contempt-of-Court charges, fines and jail? **Will we ultimately be forced to abandon our home,** as we grow old and loose mobility, because we cannot park near our front door or even have someone pick us up there, due to some misconception over the proper interpretation and usage of the English language in a contract?

- Our friends, too, are elderly and getting less physically able all the time. Just this week we had a visit from a 73-year-old female veteran who had just moved back to this area. When she arrived, she naturally drove right onto the ‘Paved Driveway’ and was about to *park* in the forbidden spot near our front door. I (James) had to run outside and implore her not to *park* there under penalty of law. I insisted that if she *parked* there, our POA would file a Contempt-of-Court complaint against us that could result in serious legal expenses and likely a fine – *maybe* even jail time. She thought I was nuts and laughingly stuck her hands out of the window in the ‘Go Ahead, Put the Cuffs On’ position. After many minutes of arguing with her, she finally yielded and drove her car to the driveway that is 140-feet further away. In the August mid-day, blazing-hot sun with high humidity, this feeble grandma then walked with her cane that extra distance over hot asphalt to get to the front door of the B00 House. Is that really what the Court had in mind with the Final Order?
- Most importantly, we are American citizens who have 62 total years of service to our country. We both have fought tyranny all over the world. Now Elizabeth is a disabled veteran. The fact that she is unable to park in her own front yard, as all other WJV residents do, is simply *untenable*.

Conclusions

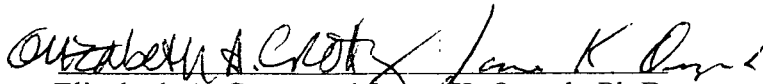
Respectfully, we believe that the Court erred in the Final Order on issues of ‘*access*’ and ‘*parking*’ at the B00 House for two reasons: (1) Improper interpretation and usage of key words in the English language, as they apply to the Sales Agreement; and (2) The ineffective representation by our former attorney, who failed to argue our side of the story at Trial, against myths and counterclaims put out by a very well prepared, but decidedly one-sided presentation by Defendant’s attorney Moss; and then refused to file a Motion for Reconsideration on this issue, because he had not defended it. Further, we found vital new evidence after the Trial that significantly clarifies and debunks the myths about the central issue in this case – the true intention of parties in signing the 2002 Contract of Sales.

Recommendations

With this fresh perspective that was not available at Trial, different conclusions can and should be reached. We, therefore ask that the Court reevaluate its decisions, concerning 'access' and 'parking' at the B00 House, and modify its Final Order to conform to these new facts. If that is not possible under the Law, we request a new Trial over these matters in the interest of Justice.

Respectfully submitted,

Per Se Plaintiffs


Elizabeth A. Crotty and James K. Orzech, Ph.D.

2148 Gamecock Circle
Little River, SC 29566

Tel: (843) 281-2299

Little River, South Carolina
August 23, 2012

Attachment A

Plaintiffs' Memo #2 to Judge John
Re. August 30, 2012 Hearing

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

CONTRACT OF SALE

THIS AGREEMENT is made this 13th day of MAY, 2002 between Windjammer Village of Little River Homeowners Association, Inc., hereinafter referred to as "Seller" and Elizabeth A. Crotty, hereinafter referred to as "Purchaser".

Purchaser agrees to purchase and Seller agrees to sell, that certain tract of land in Horry County, South Carolina, more particularly described on Exhibit "A" attached hereto.

Subject to all covenants of record (provided they do not make the title uninsurable) and to all governmental statutes, ordinances, rules and regulations.

The purchase price is Thirty Five Thousand One and No/100ths (\$35,001.00) Dollars to be paid as follows: \$3,501.00 has been paid to Seller, the receipt of which is hereby acknowledged; to be held in trust by the Seller until closing, and the balance of \$31,500.00 is due upon closing in certified funds.

Taxes, assessments, HOA dues and all other applicable pro rata items (as and when collected) shall be adjusted as of the date of delivery of the deed.

This sale includes no personal property.

This sale is conditioned upon: (1) clear title.

Seller agrees to convey insurable title and deliver a proper statutory warranty deed free of encumbrances except as herein stated, with all stamps affixed thereto. The closing shall take place at the office of Purchasers' attorney within Sixty (60) days from the date of execution of this agreement, or earlier if mutually agreeable.

Closing costs shall be paid by Purchaser with the exception of deed preparation and

deed documentary stamps which shall be paid by Seller.

Purchaser shall be responsible for all permits, impact fees, tap-in fees and deposits for utilities to said tract.

Purchaser does hereby acknowledge that the property described in Exhibit "A", attached hereto, is subject to the Declaration of Covenants and Restrictions for Windjammer Village of Little River Subdivision. Any proposed construction, alteration or modification to the structure located on the property shall be submitted to the Windjammer Village of Little River Homeowners Association, Inc. as stated in the Restrictions and By-Laws for Windjammer Village of Little River. The premises may not be used as a bathhouse and shall be converted to a single family dwelling and shall conform with the R-7 Zoning regulations of Horry County, South Carolina. The Purchaser shall locate all underground utility lines prior to any construction. It is further agreed that access to this property shall be from Gamecock Circle. ←
This paragraph shall survive the closing.

In case the property herein referred to is destroyed wholly or partially by fire or other casualty, Purchaser shall have the option for ten days thereafter of proceeding hereunder, with an agreed adjustment in the purchase price, or of terminating this agreement and being repaid all amounts paid hereunder.

Upon default by the Purchaser, the Seller may retain all sums paid pursuant to this contract, and rescind this Contract. Upon default by the Seller, Purchaser may enforce this Contract by an action at law or in equity. The defaulting party shall pay all the actual costs incurred by the non-defaulting party, including but not limited to the costs of title examination and attorney's fees.

This agreement constitutes the entire contract and can only be changed by written agreement between the parties.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the respective parties.

WITNESS the parties hereto by their hands and seals the day and year first above written.

In the Presence of:

Windjammer Village of Little River HOA, Inc.

Margaret Shale
Witness
Myler E. Super
Witness

By: Andrew H. Anderson
Its President

By: Cathryn R. Remington
Its Vice-President

Ucker Chilton
Witness
Shirley A. Masson
Witness

Elizabeth A. Crotty
Elizabeth A. Crotty, Purchaser



"CERTIFIED"

Crotty and Orzech vs. WJV et al.

July 14, 2003

Attachment B

Plaintiffs' Memo #2 to Judge John
Re. August 30, 2012 Hearing

Ms. Elizabeth Crotty
2121 Brunswick Circle
Little River, S. C. 29566

RE: Bathhouse #1

The Board of Directors met Saturday, July 12, 2003. Your request for an extension was discussed and the following motion was made, seconded and carried:

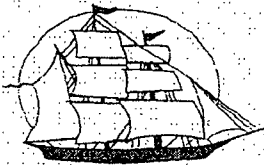
1. Your private driveway to B00 must be completed immediately. There can be no entrance or exit to/from Little River Drive. Your vehicles, as well as those of your contractors, must be parked there. Parking on Little River Drive and by the mailboxes is not permitted.
2. A three (3) month extension from the date of receipt of this letter is granted for completion of the exterior with a ten dollar (\$10.00) per day fine for each day beyond the three (3) months.
3. A six (6) month extension was granted for completion of the interior of your home.
4. No new/used concrete, stones, etc. are permitted on the property as per R/R/R Attachment 1, page 1, #4.
5. The storage shed at the rear of your property is to be removed when the construction is completed.

Sincerely,

Angela Marcotte, Board Secretary
Windjammer Village Board of Directors

cc: Board of Directors
Paul Reinhardt

Enclosure



The Windjammer Village Breeze

windjammerpoa.com
opinions@windjammerpoa.com
wjvpoa@sc.rr.com
843-249-2460
Fax: 843-280-4840
Emergency: 843-742-7749

September 2009

Crotty and Orzech vs. WJV et al.

Attachment C

Plaintiffs' Memo #2 to Judge John
Re. August 30, 2012 Hearing

our first

THANK YOU

Don't bug her when she
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neighborhood of those p



The Village People!

Condolences...

to the families of **Marjorie Dathyn**, Calabash Circle, and **Reid Baker**, Adams Circle, on their recent passing.

A memorial celebration will be held Oct 2 for long-time resident **Bettie Aiken** by her family from 3pm to 5pm at the clubhouse. Light refreshments will be served. All who knew **Bettie** are welcome.

.....
If you have an item you'd like to see here - birthday, anniversary, etc., please drop it at the office, call or email Pat Pelton at patpelton@verizon.net

Board

It was decided at our September 15th meeting of the BOD to make a motion to remove Rosanne Pazoga from the board and suspend her until the vote of the membership is counted. There have been ongoing differences between Rosanne and the rest of the members of the board, Village volunteers and employees. We therefore, decided for the good of the Village to remove Rosanne. We will be preparing a ballot asking the members to support us in this decision to remove Roseanne. Article 5-4 of the by-laws states: Any Director may be removed at any time with or without cause by a majority vote of the members of the Association. Action to remove a director may be initiated by a majority of the Board of Directors or upon submission of a petition by 25% of the qualified voting Members. A majority of those voting is required for removal.

Also, there has been an ongoing argument with the owners of 300, Elizabeth Crotty and James Orzech, as to the way they access their property. They continue to park in front of their house using the mailbox driveway for access to their property. Every other home in Windjammer Village must use the circle roads to access property. This has resulted in ongoing legal bills. The contract of purchase had stated the property must be accessed from Gamecock Circle. It was stated in writing and the bid was reduced by \$3000 due to the fact they were going to have to install a long driveway. The current Board of Directors feels it is too important to make the decision on its own, and we will be sending it out to the membership for a vote. Some thoughts that we are entertaining are:

- 1 Enforce the current contract.
2. Move the mail boxes down to become parallel with the road like all other mailboxes in the community with ample room to park off the road. Remove mailbox circle road and use property as another garden/park. This would be a nice entrance to our Village. This will keep the lot intact, eliminate anyone from driving on POA property and could be sold in the future, if necessary. Members have voiced their concerns regarding the parking on this property.

Fines:

- 2 - \$300 fines for throwing a homemade bomb; 1 - \$100 fine for underage driving; 1 - \$100 fine for still allowing a cat to roam free; 3 letters for overgrown lots; and 1 letter for leaving a trailer on the property

..... Beautification

The contract for the front entrance maintenance was signed.

ADOPT A HIGHWAY PICKUP - SC 179 to North Carolina Border; Meet at POA Office Saturday, September 26th 9:00am. Wear long pants and bring gloves. Vests and bags will be provided. Your help would be greatly appreciated. A good project for teens who need to do community service. More info: Call John Phalen 249-4862

Members of the Board
October 24, 1998
RE: Sale of Bathhouse #1

Crotty and Orzech vs. WJV et al.

Attachment D

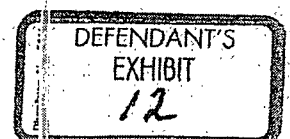
Plaintiffs' Memo #2 to Judge John
Re. August 30, 2012 Hearing

As you can see neither offer is within the range that we anticipated. Both bidders have indicated to me that they lowered their bids by approximately \$3000 due to the fact of building the long driveway that access to the property would now require. This would be true of all my original figures.

I have not received a definitive answer on the tax situation. The last I was told was that we do not fall in the 15% range but would have enough leeway in our income figures to reduce the tax liability. I tried to check this out today but was unable to do so.

I do not believe we can consider offer # 2, offer #1 wants his deposit returned no later than Nov. 30 this would give us time to have the accountant give us a review of the impact of this sale.

Barbara Culver
Treasurer



	OFFER #1	OFFER#2
AMOUNT	\$35,000	\$32,500
DEPOSIT	Bank Ck \$3,500.	Bank ck. \$3,250.
DESIGN	Blueprint attached	unsure .3 or 2 bedroom
COMPLETION	As stated by Village	9 mos/1 yr. From closing
PAYMENT	Balance of purchase price within 60 days of Buyer notification that He was the successful bidder	Unstated-assume at closing
CONTINGINCIES	Approval of Bank Loan-bidder Has submitted plot and plans to bank. Inspection of fuel tank. Removal if Fails Disclose location of electric meter.	None
OFFER FORM	Typewritten, witnessed	Handwritten
USAGE	To inhabit	To sell

Reason for the low offer
1 length of driveway \$3,500.00
2 25% of land is gone

Jim

Attachment E

Plaintiffs' Memo #2 to Judge John
Re. August 30, 2012 Hearing

ac•cess \ˈak-ˈses also ik-ˈses\ **noun** [ME, fr. MF & L; MF *acces* arrival, fr. L *accessus* approach, fr. *accedere* to approach — more at ACCEDE] (14c)

- 1 **a** : ONSET 2
- b** : a fit of intense feeling : OUTBURST
- 2 **a** : permission, liberty, or ability to enter, approach, communicate with, or pass to and from
- b** : freedom or ability to obtain or make use of
- c** : a way or means of access
- d** : the act or an instance of accessing
- 3 : an increase by addition <a sudden *access* of wealth>

from \ˈfrēm, ˈfräm also fēm\ **preposition** [ME, fr. OE *from*, *fram*; akin to OHG *fram*, adv., forth, away, OE *faran* to go — more at FARE] (bef. 12c)

- 1 — used as a function word to indicate a starting point of a physical movement or a starting point in measuring or reckoning or in a statement of limits <came here *from* the city> <a week *from* today> <cost *from* \$5 to \$10>
- 2 — used as a function word to indicate physical separation or an act or condition of removal, abstention, exclusion, release, subtraction, or differentiation <protection *from* the sun> <relief *from* anxiety>
- 3 — used as a function word to indicate the source, cause, agent, or basis <we conclude *from* this> <a call *from* my lawyer> <inherited a love of music *from* his father> <worked hard *from* necessity>

en•trance \ˈen-trɛn(t)s\ **noun** (15c)

- 1 : power or permission to enter : ADMISSION
- 2 : the act of entering
- 3 : the means or place of entry
- 4 : the point at which a voice or instrument part begins in ensemble music
- 5 : the first appearance of an actor in a scene

Attachment F

Plaintiffs' Memo #2 to Judge John
Re. August 30, 2012 Hearing

Elizabeth A. Crotty & James K. Orzech
2148 Gamecock Circle
Little River, SC 29566

June 28, 2007

In response to your fine of \$100 for our egregious offence of parking in the shade on our own property, we plead not guilty. We refuse the fine, which is not based upon legal fact. You have pulled out a four-year-old WJV letter, but failed to read the four-year-old response. The 2003 letter was written objecting to the driveway not being immediately cemented when the construction was not completed. Subsequently, WJV allowed us parking from Little River Drive and from Gamecock Circle until the construction was completed. It is odd that you would make this an issue in view of the fact that you cannot legally uphold WJV by laws in the case of Dunavant, 2190 Libery Circle, yet you try to attack our property in an attempt to knock a rival candidate out of the current election.

- At the time of the purchase by Elizabeth Crotty, the sales contract only specified, "access to the property shall be from Gamecock Circle." This vague clause is now being wildly extrapolated somehow to mean that we forever cannot park wherever we choose on our own property.**
- Roberta Lamson Motter, who was present at the closing, recollects that the intention of that phrase in the purchase agreement was only to limit the whereabouts of the driveway and hence to define the street address of a previously common property as being on Gamecock Circle.**
- In fact we do obey the letter of this agreement and we do enter our property exclusively from Gamecock Circle, as do many other residents and commercial vehicles, such as Federal Express, UPS and contractors. The sign at the entrance to Gamecock Circle directs people onto the "Paved Driveway" from that direction.**
- The enclosed map, drawn by surveyor James Wilkins, 2240 Dykman Circle, which Norm Meaders even included in his June 7th complaint, demonstrates exactly where Little River Drive ends and Gamecock Circle begins. These facts are a matter of legally recorded surveys since the beginning of WJV in the 1970's and clearly validate our argument**

regarding our right to park in the shade on our own property by legally entering from Gamecock Circle.

- There is also no recorded one-way access to the 'Paved Driveway' on any known map or document of any vintage, nor has it ever been a one-way drive since WJV was formed in the 1970's. Surveyor James Wilkins substantiated these facts too.
- The "Paved Driveway" functions very well with only minimal slow-moving two-way traffic. There are in fact only about 12-15 vehicles per day that use the circle to collect mail, causing no congestion whatsoever. Postal employee Kat Noth confirmed that our parking off the circle has never interfered in any way with her deliveries.
- In 2005 when James Orzech obtained 50% interest in said property, he went through a formal real estate closing under South Carolina law. His attorney, James Bain of North Myrtle Beach, presented no deed restrictions limiting parking to him. In fact neither the current title to the property or the previous one reflect any such restriction. Similarly no future buyer would find any such recorded restriction on parking.
- We too are stakeholders in WJV common property and have our mailbox on the "Paved Driveway." Everyone in WJV goes over some WJV common property or easement to park their cars on their property. This is no different than our situation.

Conclusions:

- Many people in WJV fail to park all of their vehicles in their garages or even on their driveways. No one else in the village is restricted in any way from parking non-commercial vehicles anywhere in their yards. This interpretation is highly prejudicial only against us and the motives are suspicious.
- It is highly unethical for incumbent board members up for re-election (Nill and Paulussen) to take petty legal actions against an opposing candidate (Crotty) during an election. Both should have recused themselves. Further, they arbitrarily removed any opportunity for appeal prior to the election, and then to set paying the fine at only 10 days, as opposed to the customary thirty, implying Crotty's disqualification if these terms are not met. This,

along with the doggie caper aimed at another rival candidate Judy Panarello, smacks of political dirty tricks, which may in themselves be criminally corrupt practices, not to mention the conspiracy aspect for the other active board members (Meaders and Hughes). We already have written to the state Attorney General on these matters.

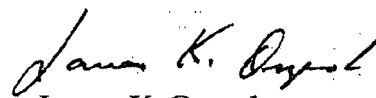
- If WJV intended to limit our use of the property in any way, which it did not, it should have recorded a deed restriction prior to the original closing. Any attempt to encumber our property now must be done legally through the county, and if approved, we must be given compensation mutually agreed upon or awarded by a court.
- Any attempt now to change the "Paved Driveway" to one-way or to build a fence would be prejudicial and clearly *ex post facto*, and even your repeated threats to do so are highly inflammatory.
- Clearly we are NOT violating any WJV rules and regulations or any sales agreement by parking anywhere on our own property.
- Whether or not the vague wording of the initial sales agreement prohibits our parking in the shade, which it clearly does not, there is absolutely no logical reason why this benign usage of our own property adjacent to the "Paved Driveway" should be criminalized! This entire episode is nothing but petty non-sense with transparently political implications.
- The board has a lot of other issues on its plate that are far more important than micro-managing inane trivialities, such as residents benignly parking in the shade. Why oh why oh why is this even consuming your time?

Recommendations:

- We pray that you will reverse your ill-considered position in writing and rescind this fine, as early as today's special board meeting, or failing that give us a temporary reprieve from paying the fine and from compliance until the board can act again at the July meeting.

Sincerely,


Elizabeth A. Crotty
2148 Gamecock Circle, owners


James K. Orzech

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas of the Fifteenth Judicial Circuit
Steven H. John, Resident Judge

Case No. 2009-CP-26-10523

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

v.

Windjammer Village of Little River, Property Owners' Association, Respondent.

NOTICE OF INTENT TO APPEAL

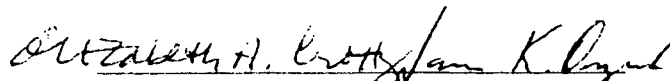
Pro Se Plaintiffs, Elizabeth A. Crotty and James K. Orzech, appeal the Order of the Honorable Steven H. John, dated September 18, 2012:

ORDER UPON PLAINTIFFS' AUGUST 23, 2012, MEMORANDUM REQUESTING
THAT THE COURT RE-VISIT THE FINAL ORDER IN THE NAME OF JUSTICE.
(Court accepted as a Motion Pursuant to Rule 60(b), SCRPC)

Appellants received written notice of entry of this Order on September 20, 2012.

October 18, 2012

Respectfully submitted,


Elizabeth A. Crotty and James K. Orzech
Pro Se Plaintiffs

2148 Gamecock Circle
Little River, SC 29566
(843) 281-2299

Other Counsel of Record:
Kenneth R. Moss, Esq.
Wright, Worley, Pope, Ekster & Moss, PLLC
1180 Highway 17 North, Suite 2
Little River, SC 29566
(843) 281-9901
Attorney for Respondents

HORRY COUNTY
12 OCT 29 PM 1:53
MELANIE HUGGINS-WARD
CLERK OF COURT

CERTIFICATE OF SERVICE

I certify that I have this 18th day of October 2012 served a **Notice of Intent to Appeal** by mail as follows:

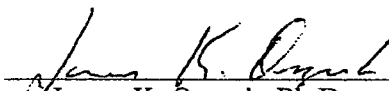
The Order of the Honorable Steven H. John, dated September 18, 2012, entitled:

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THAT THE COURT RE-VISIT THE FINAL ORDER IN THE NAME OF JUSTICE,

Which the Court accepted as a Motion Pursuant to Rule 60(b), SCRCP.

by mail, as follows:

Kenneth R. Moss, Esquire
Wright, Worley, Pope, Ekster & Moss, PLLC
1180 Highway 17 North, Suite 2
P.O. Box 250
Little River, SC 29566
Attorney for Defendants


James K. Orzech, Ph.D.

CERTIFICATE OF SERVICE

I certify that I have this 26th day of October 2012 served a **Notice of Intent to Appeal** by mail as follows:

APPEAL FROM HORRY COUNTY
Court of Common Pleas of the Fifteenth Judicial Circuit

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

v.

Windjammer Village of Little River, Property Owners' Association, Respondent.

The Order of the Honorable Steven H. John, dated September 18, 2012, entitled:
ORDER UPON PLAINTIFFS' AUGUST 23, 2012, MEMORANDUM REQUESTING
THAT THE COURT RE-VISIT THE FINAL ORDER IN THE NAME OF JUSTICE.

Which the Court accepted as a Motion Pursuant to Rule 60(b), SCRPC.

by mail, as follows:

Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Horry County Clerk of Court
Court of Common Pleas
Fifteenth Judicial Circuit
P.O. Box 677
Conway, SC 29528


James K. Orzech, Ph.D.

Copy to: Kenneth R. Moss, Esquire, Attorney for Defendants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas of the Fifteenth Judicial Circuit
Steven H. John, Resident Judge

Case No. 2009-CP-26-10523

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

v.

Windjammer Village of Little River, Property Owners' Association, Respondent.

NOTICE OF INTENT TO APPEAL

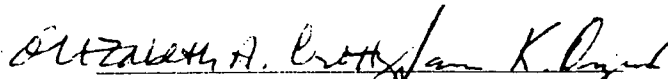
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October 18, 2012

Respectfully submitted,


Elizabeth A. Crotty and James K. Orzech
Pro Se Plaintiffs

2148 Gamecock Circle
Little River, SC 29566
(843) 281-2299

RECEIVED

OCT 30 2012

SC Court of Appeals

Other Counsel of Record:

Kenneth R. Moss, Esq.
Wright, Worley, Pope, Ekster & Moss, PLLC
1180 Highway 17 North, Suite 2
Little River, SC 29566
(843) 281-9901
Attorney for Respondents

Civil Action No: 2009-CP-26-10523 - Rule 60(b) Order
 of Sept. 18, 2012. Horry County
 ELIZABETH A CROTTY
 2121 BRUNSWICK CIRCLE
 LITTLE RIVER SC 29566
 DATE 10-26-2012 68-7497/2560

South Carolina Court of Appeals \$ 100.00
 PAY TO THE ORDER OF
 One Hundred and 00/100 ——— DOLLARS

NAVY
 FEDERAL
 Credit Union

ELIGIBLE FOR CONVERSION

NOT VALID FOR LESS THAN \$100

FOR Appeal - Filing Fee Elizabeth A. Crotty MP

⑆256074974⑆1001⑆8020173319⑆003

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X <u>H. Wood</u> ☐ Agent ☐ Addressee	
1. Article Addressed to: <u>Clerk of Court</u> <u>SC Court of Appeals</u> <u>Box 11629</u> <u>Columbia SC 29211</u>		B. Received by (Printed Name) <u>H. Wood</u>	C. Date of Delivery <u>10-30-12</u>
		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
		3. Service Type ☐ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
2. Article Number (Transfer from service label) <u>7012 1640 0002 5134 3430</u>		4. Restricted Delivery? (Extra Fee) ☐ Yes	

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS NONJURY
2 COUNTY OF HORRY) (09-CP-26-10523)
3)

4 ELIZABETH A. CROTTY and)
5 JAMES K. ORZECH)

6 VERSUS) TRANSCRIPT OF RECORD
7)

8 WINDJAMMER VILLAGE, et al) August 30, 2012
9) Conway, S. C.
10)
11)

12 B E F O R E:

13 HONORABLE STEVEN H. JOHN, Judge.
14

15 A P P E A R A N C E S:

16 ELIZABETH A. CROTTY, Pro se
17 JAMES K. ORZECH, Pro se
18

19 KENNETH R. MOSS, ESQ.
20 ATTORNEY FOR DEFENDANTS
21

22 DIXIE COX EUBANK
23 CIRCUIT COURT REPORTER
24 FIFTEENTH JUDICIAL CIRCUIT
25

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I N D E X

WITNESSES

DIRECT

CROSS

RD

RC

MOTIONS

3

E X H I B I T S

NO.

DESCRIPTION

ID.

EV.

P-1

E-mail communication (3 pages)

45

D-1

E-mail communication

28

D-2

E-mail communication

28

D-3

E-mail communication

28

D-4

E-mail communication

28

1 (THE FOLLOWING TAKES PLACE ON AUGUST 30, 2012.)

2 THE COURT: All right. This is (2009-CP-26-10523). It
3 is entitled Elizabeth A. Crotty and James K. Orzech,
4 Plaintiff, versus Windjammer Village of Little River, South
5 Carolina Property Owners Association, a South Carolina
6 eleemosynary corporation.

7 In this matter previously the Court issued a Final Order
8 in this matter after a lengthy hearing on -- it was signed
9 August 3rd, 2011, filed with the Clerk of Court August 5th,
10 2011.

11 Shortly thereafter counsel on -- I believe on both
12 sides, filed a Motion for Reconsideration. The Court had
13 immediately scheduled the hearing after being notified of the
14 motion. There was some delay in the Court being notified of
15 the motion, but once the Court was notified I set a hearing.
16 Unfortunately the counsel for the Plaintiffs, Elizabeth A.
17 Crotty and James A. Orzech, was temporarily suspended from the
18 practice of Law by the South Carolina Supreme Court, requiring
19 the Court to delay a hearing. After that -- after that
20 suspension was lifted by the Supreme Court the Court scheduled
21 the motions, had the hearing on those matters, and that was on
22 February 13th, 2012. The Court held that hearing on the
23 Motion for Reconsideration pursuant to Rule 59(E). The Court
24 issued it's Order dated February 22nd, 2012, filed with the
25 Clerk of Court February 27, 2012.

1 Also on that same date the Court issued an Order dated
2 February 22nd, 2012, and again filed with the Clerk of Court
3 February 27, 2012, regarding denying Defendants' request for
4 attorneys fees, but allowing the Defendants to recover it's
5 costs in this matter.

6 Sometime thereafter the counsel for the Defendant,
7 Windjammer Village, requested action of this Court to hold a
8 hearing as to why the Plaintiffs should not be held in
9 contempt of Court for failure to abide by the terms of the
10 Order denying Defendants' request for attorneys fees, but
11 allowing Defendants to recover costs.

12 In -- that was dated, let's see, April 30th, 2012.
13 Again, there was some delay, but the Court set a hearing for
14 today, today being August 30th, 2012, to hear that particular
15 matter.

16 After that was commenced the Plaintiffs caused to be
17 sent to the Court a document, and it is dated August 23rd,
18 2012, dated August 23rd, 2012, entitled "Plaintiffs'
19 Memorandum Requesting that the Court Revisit the Final Order
20 in the Name of Justice". It states that a copy went to the
21 Court and opposing counsel. I cannot find where it was filed
22 with the Clerk of Court. The Clerk of Court has no
23 recordation of this.

24 Mr. Moss, did you receive a copy of it?

25 **MR. MOSS:** Yes sir. I actually received two

1 Memorandums, Your Honor, neither of which I believe to be
2 filed, but I received two, and the first I received was -- I
3 think it was August the 6th, and the second one was the one
4 you just referred to, but I have received two different
5 Memorandums and they are not exactly ---

6 **THE COURT:** Well, then you got one that the Court did
7 not get. All right, so I got the one dated August 23rd, and
8 that is the one that I have received and reviewed.

9 Now, obviously those matters should have been filed with
10 the Clerk of Court. Even though the parties have failed to do
11 so I will still address them. The -- I'm going to take up the
12 matter regarding the "Plaintiffs' Memorandum Requesting that
13 the Court Revisit the Final Order in the Name of Justice". It
14 is, again, dated August 23rd, 2012. It appears to have, from
15 the arguments, three grounds, one labeled "New Evidence", that
16 the Plaintiffs state that they were not aware of until after
17 the -- their trial in June of 2001, that led to the Order of
18 the Court dated August 3rd, 2011, and filed with the Clerk of
19 Court August 5th, 2011. The second ground being "Confusion at
20 Trial", that they state brought about by the improper
21 interpretation of the words "access from and entrance", and
22 three, the ineffective representation of their counsel at the
23 time.

24 As to those three matters I need to address several
25 things. The first one appears to be - and the Court will take

1 it as such - as a motion under Rule 60(B)(2), which allows for
2 the Court to review a previous Order based upon new evidence.

3 Now, there's also, in Rule 60(B)(2), a requirement that
4 the matter be heard within one year of the original order.
5 Going to the exact language of Rule 60(B) it lists that, "On
6 motion and upon such terms as are just the Court may relieve a
7 party or it's legal representative from a final judgment order
8 or proceeding for the following reasons...", and then it has
9 listed several reasons, number two being newly discovered
10 evidence by due diligence which, by due diligence, could not
11 have been discovered in time to move for a new trial under
12 Rule 59(B), which obviously the Court has already heard that
13 motion under Rule 59(B), as I previously indicated.

14 Now, regarding Rule 60, if you move under Rule 60(B),
15 under "New Evidence", there are certain grounds that must be
16 observed. Regarding "New Evidence", "The moving party must
17 establish that the newly discovered evidence will probably
18 change the result if a new trial is granted, has been
19 discovered since trial, could not have been discovered before
20 the trial, is material to the issue, and five, is not merely
21 cumulative or impeaching."

22 All right, the only -- or the -- first, there's a
23 problem with this motion. First -- and it's not really
24 labeled a motion but I'm taking it as such. The Court issued
25 it's Order on August 3rd, 2011. It was filed with the Clerk

1 of Court August 5th, 2011. This request of the Plaintiffs --
2 and again, it's only labeled "Plaintiffs' Memorandum
3 Requesting that the Court Revisit the Final Order in the Name
4 of Justice", so I'm not sure that it's in a proper form, but
5 just setting that aside, it is dated - and certainly the Court
6 could not have received it, and did not receive it before
7 August 23rd, 2012. That is more than one year after the
8 signing and filing of the Order, therefore, the Motion under
9 Newly Discovered Evidence is not proper, and cannot be heard
10 by the Court.

11 Even if that was not such the case I have reviewed the
12 written filing, and find all the attachments thereto, all the
13 arguments set forth therein, and find them violative of the
14 newly discovered evidence Rule, as I just stated. It is clear
15 from their arguments that the matters could have been
16 discovered by due diligence, either by themselves or the
17 counsel, prior to that hearing in June of 2011, therefore it
18 is not proper on that ground.

19 The other matter set forth, number two, the "Confusion
20 at Trial Brought About by an Improper Interpretation of the
21 Words Access from or Entrance" are matters that could have
22 been raised at the Rule 59 hearing. The -- they were not
23 raised. Further, they were matters that could have been
24 appealed from -- from the Order to the Appellate Courts, such
25 not being the case the Court will not address those as them

1 not being proper at this time.

2 Number Three, the ineffective representation is not a
3 matter for this Court. It is for another action, or another
4 forum. There are other avenues that the matter, if it is an
5 issue, can be raised, but it is not for this Court at this
6 time, and therefore I will not address that particular issue,
7 therefore the Court respectfully declines, under the grounds I
8 just set forth, to address the issues set forth in
9 "Plaintiffs' Memorandum Requesting that the Court Revisit the
10 Final Order in the Name of Justice."

11 I will be handing this document to the Clerk of Court
12 for filing with the Clerk of Court since apparently it has
13 never been filed with the Clerk of Court.

14 Mr. Moss, I want you to do an order to that effect,
15 forward it to me within ten days of today's date.

16 MR. ORZECHE: May we speak, Judge?

17 THE COURT: I'll be glad for you to, yes.

18 MR. ORZECHE: Okay. Regarding the, you know, first of
19 all, the due diligence we ---

20 THE COURT: I'm sorry -- and I appreciate it, sir. Are
21 you under some physical disability?

22 MR. ORZECHE: No sir.

23 THE COURT: Then you must stand.

24 MR. ORZECHE: Okay. Fine. Excuse me.

25 THE COURT: That's all right.

1 **MR. ORZECH:** All right, well, first of all, with
2 getting you the paperwork where I've gone through the Clerk of
3 Courts, I called your office and spoke with your people
4 several times, and called you and asked, and they said send it
5 directly to the Judge, so that's what we did.

6 **THE COURT:** Sir ---

7 **MR. ORZECH:** Okay.

8 **THE COURT:** I'm -- I understand that you communicated
9 with our office. We told you that we cannot give you advice,
10 and that was our instructions to you.

11 **MR. ORZECH:** Okay.

12 **THE COURT:** You cannot -- and the Court cannot give
13 instructions to anyone as to what to do. When you assume
14 representation of yourself you are deemed to know the rules,
15 therefore, that is not an excuse.

16 **MR. ORZECH:** Okay. Regarding the due diligence, we --
17 when we were represented by Mr. Lovelace he very effectively
18 represented us for the things he represented us for, but he
19 did not do anything to counter this claim about parking, which
20 was absolutely vital to us. We -- we took the -- he never
21 showed us the -- Mr. Moss's evidence book before the trial,
22 and the only reason we got it is, I took it off the table
23 after, and didn't look at it for several months, and then I
24 found out, and put that together, that -- because they had
25 been claiming that we had a requirement to build a long

1 driveway. That was argued in the court, and it turns out that
2 was actually, in fact, a requirement that was for somebody
3 named James Hackert four years before ours, so they -- you
4 know, if your ruling here goes then they will have gotten away
5 with imposing on us a contract with somebody else that was
6 never signed, four years prior to when we got involved with
7 it. That would be, in my view, injustice.

8 **THE COURT:** And I appreciate -- I appreciate that, sir,
9 but all that documentation was in existence. It's not that
10 that documentation came up out of the air after the hearing of
11 June 11. As you indicated, it was in existence. Okay. It
12 could have been discovered by proper discovery procedures
13 prior to the June, 2011, hearing, by a proper request for
14 production of documents, by a proper search for documents.
15 That's what we talk about in due diligence. The document
16 existed. It was in the records. The fact that your attorney
17 did not use it, or your attorney did not discover it, or you
18 did not discover it, that is not the issue. The issue is,
19 could it have been done using due diligence, using proper
20 procedure, using proper practice. Yes, it could have been
21 because it existed. It clearly existed because you did, as
22 you state, you got it from the opposing counsel at, or right
23 after the time of trial. It was in existence long before the
24 trial. The fact that it wasn't discovered is not the point;
25 it could have been done. Unfortunately it was not done, but

1 that does not excuse the due diligence requirement. That's
2 what I'm saying.

3 **MR. ORZECH:** Okay, and regarding the language, as I
4 pointed out on the -- in the paper that we wrote, the -- we
5 have been arguing with the POA ad nauseam for nine years now
6 over the contract, and the words -- wording in the contract in
7 the English language. We looked it up in the dictionary - we
8 both have advanced degrees - during the trial here. And Mr.
9 Lovelace didn't even notify us that we were in a trial. We
10 thought we were coming here just for a hearing about the
11 injunction. That's how ineffectively we were represented, so
12 we never looked through the evidence book or anything, but he
13 didn't have that argument with them.

14 We were furiously writing him notes about that, but you
15 know, the contract says access from, but if you read my logic
16 there, access from means, you know, from the initial starting
17 point, where entrance means actually the point of entry, and
18 the two words cannot be used interchangeably, so it was
19 strictly -- it was just simply an error, you know, caused by
20 the confusion that Mr. Moss sung by using those -- those two
21 words interchangeably, and our attorney didn't -- even though
22 we were writing him notes to the effect, didn't challenge, so
23 if this -- if this stands then we will be, not only following
24 a contract that was made for somebody else four years earlier,
25 but also we will be following one that goes contrary to the

1 English language in the actual contract, and that is, you
2 know, we -- you know, we, granted, are not attorneys, but that
3 -- we are citizens, but that does not seem fair on the face of
4 it to, you know, to have a contract in which it is -- you
5 know, is being enforced with the improper usage of the English
6 language as we show there. You know, it -- you know, that's -
7 - and our attorney, Mr. Lovelace, did a wonderful job with
8 what he did a wonderful job on, but he did not charge us for,
9 or even mention that we were coming here to a trial on -- in
10 June of 2011, so we had to recover after that, you know, and
11 do his job, and we are also doing a civil suit, so we've been
12 doing a lot of stuff in the due diligence list, so we didn't
13 have that.

14 You know, they, in November of 2009, passed a Referendum
15 to remove the paved driveway, which we filed for an
16 injunction, and you granted the injunction because they -- it
17 was in violation of the Law, and the argument that they used
18 in their ballot that they sent out, and also in their
19 newsletter that they sent out to everybody, that they wouldn't
20 let us rebut, was that Ms. Crotty was given Three Thousand
21 Dollars to build the long driveway. That is not true, and it
22 was a lie; that was fraud, because they knew that Three
23 Thousand Dollars was offered to James Hackert in 1998, and the
24 requirement to build a long driveway was made of James Hackert
25 in 1998, and it was not made of her. They put that in their

1 official publications, their ballot and in their newsletter,
2 to get that injunction, and you, yourself, ruled the
3 injunction was illegal, so they not only misused the English
4 language, they fraudulently claimed that a contract to
5 somebody else was, you know, was made on us. We didn't -- we
6 have no idea when that was going on, reading that in the
7 newsletter, how they ever came up with Three Thousand Dollars
8 to build the long private driveway. The only -- we had no
9 idea they -- we asked them where do you get that. We -- they
10 wouldn't give it to us, and we, you know, we finally found it
11 months after the trial when -- you know, when I finally
12 started looking through Mr. Moss's evidence book which I took
13 off the desk and, you know, getting ready for the civil case
14 and saw this, oh, my God, somebody named James Hackert and
15 also Robert Gherri, were required, when they were going to buy
16 it, in 1998, to do that.

17 Now, they have a bunch of old boys here at Windjammer.
18 There's a couple of them sitting here who were around in 1998,
19 and remember that. And when -- you know, when it came time --
20 when Ms. Crotty bought it an entire year went by after she
21 bought it before one of their eighty-year-old Architectural
22 Committee Chairman who was around in 1998 - Ms. Crotty did not
23 even live in Windjammer Village until late 1999, and didn't
24 know anything about it, but the "good ole boys" there knew
25 about that, but they had it mixed up in their minds; they

1 thought it was -- applied to her too. They didn't go through
2 the nicety that that was intended for someone else four years
3 earlier, or five years earlier at the time; they went
4 through -- you know, they kind of recalled something about a
5 long driveway, and immediately start imposing that on her. I
6 was overseas defending my Country in Bosnia at the time,
7 representing my Country in Bosnia, and they -- you know, they
8 pulled that off and they've been -- we've asked many times.
9 Every time she asked about it they were very abusive to her;
10 they've been abusive to us for the entire nine years, and the
11 only time we found out about the long driveway, where that
12 came from, was after -- you know, months after the trial
13 when -- when we went through this huge -- humongous book,
14 getting read for the civil case, so I understand the rules,
15 and you've pointed out the rules, Rule 60, and I've got a copy
16 of it right here. You know, the Rules -- you know, the Rules
17 guarantee that an unjust contract will be enforced on us for
18 the rest of our lives. I don't -- I don't know. Is that the
19 way it works here in South Carolina? I don't think it should,
20 if it does, but, you know, this was an obvious error, an
21 obvious fraud, and a misinterpretation of the English
22 language, and trying to impose a contract on us -- on someone
23 else four years earlier because the "good ole boys" remembered
24 that, and they were abusive to Ms. Crotty when she tried to
25 get clarification on that in 2003.

1 We can produce documents -- we don't have them here, but
2 we can produce documents, when she asked about long driveway,
3 why do I have to build a long driveway, and the abusive -- the
4 abusiveness she had, so maybe we didn't have due diligence in
5 finding it out, according to this Rule, but we've been trying
6 to find that out in 2003 when they first started doing that,
7 and we were trying to find that out in 2009 when they
8 published in their newsletter, and put it in their ballot in
9 their "Kangaroo court" election, so we had -- you know, we've
10 been "ruker gookered" the whole time by the "good ole boys",
11 and we just found that out, and I -- you know, I -- between us
12 we have sixty-two years of service to our Country, and we want
13 this to be done with justice, and find a way in the Rules to
14 do that, Your Honor, please.

15 **THE COURT:** All right, I -- and I appreciate that. All
16 right. The -- let's just go over one thing real quick that
17 you said. The Court did issue a Temporary Injunction, and you
18 said it was because of violation of the Rules. Under the
19 Rules for Temporary Injunction one of the main guidances for
20 temporary injunction is to preserve, pending a final hearing,
21 the status quo, means that you don't have any changes until
22 you have a final hearing. That is one of the main goals of a
23 temporary injunction. That is why a Temporary Injunction was
24 issued in this matter, to keep the matter as it was, without
25 any changes, pending a final hearing, not for a violation of

1 the Rules. There is no ruling by the Court, in a temporary
2 injunction, on merits of the case. As I said, the main goal
3 is to preserve the status quo. That's what happened in the
4 Temporary Injunction.

5 Now, regarding your arguments here, assuming them to be
6 true, assuming them to be correct, you've got several
7 problems. One, they should have been raised in the Rule 59(E)
8 Motion. Now, you are saying you didn't discover them till
9 after. Well, the Rule 59(E) motion wasn't filed till after
10 the Order was issued. As I indicated, there was an
11 extraordinarily long delay between the filing and when we had
12 the actual hearing because of Mr. Lovelace's temporary
13 suspension. There was more than plenty of time to amend the
14 Rule 59(E) Motion, or at the time of the Rule 59(E) Motion in
15 February of this year to bring up all these matters. You
16 certainly had all this information in February of this year;
17 no question about that from what you've said, so, you could
18 have brought it up at that time; you didn't. Okay. Now, more
19 an a year after the original Order you say I discovered this
20 information after that hearing. Again, more than a year has
21 transpired regarding this, quote, newly discovered evidence,
22 so you've got the problem of, you are violating Rule 60(B) for
23 newly discovered evidence, and again, I've reviewed
24 everything. And your arguments are exactly what you have put
25 in your document that I'm going to have the Clerk of Court

1 file, the one that's dated August 23rd, 2012. They are the
2 same arguments. I'm just saying, the documentation that you
3 are talking about, all that information was available, and
4 could have been presented in the June, 2011 hearing. Why it
5 wasn't, that's not the issue; it could have been done; it was
6 not, therefore, it's not newly discovered evidence. All
7 right. So, that's what I'm telling you.

8 So I would appreciate it -- also, the other -- the last
9 thing is, you could have appealed; you could have filed an
10 appeal to the Appellate Courts regarding my Order of August
11 3rd, 2011, filed with the Clerk of Court on August 5, 2011.
12 Y'all did not do that, therefore, what is in that Order is
13 now, since it has been more than a year, the law of the case,
14 since there is no appeal; it is the law of the case,
15 therefore, your arguments are not properly legally founded; I
16 cannot hear them, even assuming, even if I assume all the
17 things you tell me to be true, I cannot hear them for the
18 reasons I have just set forth. They are not proper now before
19 this Court. All right.

20 MR. ORZECH: Yes sir.

21 THE COURT: I appreciate what you are telling me, but
22 they are not now proper before this Court.

23 MR. ORZECH: Thank you. Sir, I have some comments from
24 Ms. Crotty, if you don't mind.

25 THE COURT: Yes sir.

1 **MR. ORZECH:** We -- when we filed our Motion for
2 Reconsideration we found out -- we found out we could do that
3 from another attorney, just by talking with him and had to go
4 to Lovelace to get him to do it, because he was our attorney.
5 We asked him to file a motion for reconsideration about this
6 too, but he wouldn't do it, and he was our attorney, and we
7 are -- you know, we are just citizens. We are not, you
8 know, -- you know, we are not -- you know -- you know, our
9 attorney did not do that.

10 **THE COURT:** And I appreciate -- I appreciate what you
11 are telling me.

12 **MR. ORZECH:** So, you know, we -- now that Mr. Moss has
13 reopened the case, I think that this is an appropriate point
14 to say that he's ---

15 **THE COURT:** No, it's not reopening the case. He's
16 asking the Court to order compliance with what I previously
17 ordered; it's not reopening the case. But be that as it may,
18 any complaints you have against your former counsel in this
19 matter, today is not the proper for them -- forum for those.
20 There are other avenues you can pursue, if you so choose to do
21 so, either administratively, or in the -- regarding a filing
22 of an action, but they are not now proper before me at this
23 time. They are not grounds to go behind the Court's Order of
24 August 3rd -- dated August 3rd, file August 5, 2011. They are
25 not grounds to go behind that Order. You may have a cause of

1 action; you may have an administrative complaint against your
2 former counsel, but that's not reason for this Court to change
3 my previous Order. It's a totally different issue and forum
4 for that.

5 **MR. ORZECH:** Okay. One last point, Your Honor. When
6 we did file for the Motion for Reconsideration, and then a
7 tree fell on our house a year ago yesterday. Okay. We got --
8 we took upon ourselves to put service vehicles, tree removal
9 vehicles in the paved driveway, and we thought we were in
10 violation of the Court Order and we did it for emergency
11 purposes. Mr. Lovelace advised us that, no, that Court Order,
12 when you file a Motion for Reconsideration, is not in effect
13 until after the Motion for Reconsideration, so I must ask, why
14 is the August, 2011, date the date we are working here against
15 and not the February, 2012, date in which we are within a
16 year, because at least from what Mr. Lovelace told us, that
17 Order was stayed until after the Motion for Reconsideration
18 was filed, and the date from which the thing was final was
19 actually in February of 2012, according to what Mr. Lovelace
20 had told us, Your Honor.

21 **THE COURT:** I appreciate what you are saying. The
22 Court respectfully declines to make comments on advice you
23 received from your attorney, either it's propriety or
24 correctness. I refuse to comment upon that.

25 **MR. ORZECH:** Okay. One last thing, Your Honor, is

1 there any other -- any other grounds in which we could do this
2 because we are -- you know, this is a tragedy for us, not --
3 you know, we are growing old. We are -- you know, we have
4 to -- we have to -- every time I haul a load of groceries to
5 the front door it's like scoring a forty-seven yard touchdown.
6 You know, I'm sixty-six; I'm getting older. I'm in good
7 shape. Ms. Crotty already can't do that. You know, this is
8 like a -- almost a death sentence; we can't live in that
9 house, how are we going to do it, you know, that -- and it's
10 all because of an error, and fraud, and misinterpretation of
11 the English language, and on and on and on, now it's not
12 correctable. How is that -- how can that possibly be, and ---

13 **THE COURT:** Sir, I appreciate -- you are asking me to
14 give you legal advice. I cannot do that. I can't give
15 Windjammer legal advice. That is not my job. I am
16 prohibited, by my Rules, from giving legal advice to any party
17 that can appear before me; I can't tell you what to do. If --
18 I can't even tell you that you might have another avenue.
19 That's telling you what to do; I cannot do that. I am
20 prohibited from doing that. You either must, if you decide to
21 represent yourself, do the proper research, examine the rules,
22 have a proper understanding of the Rules, or get competent
23 legal advice from an attorney. I cannot tell you what to do.
24 I cannot indicate to you whether or not you have an avenue or
25 not. I cannot do that. I am sorry, but I am prohibited from

1 doing so. I'm sorry.

2 **MR. ORZECH:** Ms. Crotty, do you have anything?

3 **(MR. ORZECH AND MS. CROTTY CONSULT WITH ONE ANOTHER OFF**
4 **THE RECORD.)**

5 **MR. ORZECH:** We requested documents from them before
6 and we never got that document, so -- years before, so ---

7 **THE COURT:** Well, again ---

8 **MR. ORZECH:** ---You know, that's a smoking gun. That's
9 what they, you know, said -- I guess, so they have imposed
10 somebody else's contract on us; they've misinterpreted the
11 English language, and we had a lawyer. We didn't cover that,
12 and we -- and we are -- just have to have our lives ruined
13 because of that ---

14 **THE COURT:** I'm not saying that, and I'm not telling
15 you that. What you have presented to me I am accepting, for
16 won't of a better word, even though it may not be in a proper
17 form, a Rule 60(B) Motion. You labeled it on three grounds.
18 Okay. You put forth three grounds in your written
19 documentation that you have filed -- well, not even filed.
20 You sent it to me. I'll have the Clerk of Court file it.
21 Those three grounds again were, new evidence you weren't aware
22 of, confusion at trial brought about by improper
23 interpretation of the words "access from and entrance", and
24 the ineffective representation of our former attorney. I have
25 addressed those three issues. If there are any other issues

1 they are not before me. Okay. If there are any other issues
2 that are not in these three, that you have put in this
3 document, they are not before me; I cannot hear them. I am
4 not telling you whether or not you have an ability to bring
5 them to the Court's attention. That's for you to discover, or
6 get advice, but I'm telling you, I have ruled on the three
7 matters that you have brought before me, and given you the
8 reasons why I respectfully decline to grant your relief on
9 those three matters. Again, if there's other issues you have
10 not brought them to me in the proper form, and I cannot
11 address them.

12 All right, sir. The best I can tell you.

13 Again, Mr. Moss, regarding that document dated August
14 23rd of 2012, and the issues raised therein, you've heard the
15 Court's ruling more than once on all the issues, I want you to
16 do a proposed order to that effect within ten days of today's
17 date.

18 **MR. MOSS:** Certainly, Your Honor.

19 **THE COURT:** Thank you very much.

20 **MR. MOSS:** The -- the only question I would have about
21 that is, in the beginning of the hearing you recited the whole
22 lengthy procedural history. Will you require that in the
23 proposed order?

24 **THE COURT:** Yes sir. I want the whole procedural
25 history set forth in the order. I think it's part of the

1 issues that need to be set forth. Yes sir.

2 MR. MOSS: Thank you.

3 THE COURT: All right. I'm sorry. You need to state
4 your name for the record. I know you to be Mr. Orzech, but
5 the Court Reporter needs for you to state your full name,
6 please sir.

7 MR. ORZECH: My name is Dr. James K. Orzech.

8 THE COURT: All right, and you spell your last name,
9 O.r. ---

10 MR. ORZECH: O.r.z.e.c.h..

11 THE COURT: ---Z.e.c.h.?

12 MR. ORZECH: Yes sir.

13 THE COURT: All right. Very good.

14 MR. ORZECH: And also, Your Honor, I've got the
15 document you didn't get that I can present to you right now,
16 but this is, you know, our -- we spent a lot of time going
17 through Mr. Moss's request for more money, and, you know, this
18 is a very damning thing, so I shall bring this up to you right
19 now if you want.

20 THE COURT: Well, I'll be glad to look at it and see if
21 the Court can consider it. I don't know if I can, but I'll be
22 glad to receive it from you.

23 All right, this document is labeled - which the Court
24 has never seen before - "August 30th Hearing, Plaintiff's
25 Memorandum in Opposition to Defendant's Proposed Order

1 awarding Defendant Even More Taxable Costs Pursuant to Rule
2 54(E), S.C.R.C.P." It is dated August 6, 2012.

3 Is that the document that you referred to, Mr. Moss?

4 **MR. MOSS:** Yes, Your Honor. I received that.

5 **THE COURT:** All right. You received that from Ms.
6 Crotty and Mr. Orzech; is that right?

7 **MR. MOSS:** I received it, I think, from Mr. Orzech, but
8 I understood it to be on behalf of both of them.

9 **THE COURT:** Right. But anyway, that's the point I was
10 making, you got it from the Plaintiff's; correct?

11 **MR. MOSS:** That's correct.

12 **THE COURT:** All right, sir, so you did. The Court has
13 never seen it before.

14 Have you had a chance, Mr. Moss, to review it and look
15 through it?

16 **MR. MOSS:** I have, Your Honor, and it's ---

17 **THE COURT:** Well, my next question is then, what we are
18 going to go into now is your request that the Plaintiffs be
19 held in contempt of Court for failure to abide by the Court's
20 previous Order whereby I denied your request for attorney's
21 fees, but allowed a recovery of costs, so that's what we are
22 going to go into.

23 I'm assuming in your arguments then you will be able to
24 address whatever points the Plaintiffs have made in their
25 August 6, document.

1 **MR. MOSS:** Yes, Your Honor.

2 **THE COURT:** All right. Very good. All right, let's
3 proceed with that then.

4 So, with that, Mr. Orzech, even though -- and Ms. Crotty
5 -- even though the Court has never received this I'm going to
6 allow it, and Mr. Moss will address it, and then y'all can
7 address it. All right. Thank you very much.

8 Go ahead, sir.

9 **MR. MOSS:** First, Your Honor, and briefly, I do not
10 want to take the time to refute any -- at length, any of the
11 allegations, but I do think I -- to avoid any tacit admission
12 being made, the Windjammer Village Property Owners Association
13 and myself would take great issue with the notion and
14 representation there was any fraud upon this Court, or fraud
15 upon the Plaintiffs, and so there is certainly a defensible
16 material we could offer but won't do at this time ---

17 **THE COURT:** Well, I appreciate the arguments about
18 fraud. Again, those matters have never been raised properly
19 to the Court, all right. They are not in proper form, or set
20 forth properly in anything before this Court at this time, so
21 I'm not addressing them ---

22 **MR. MOSS:** Thank you.

23 **THE COURT:** ---Because they are not before me.

24 **MR. MOSS:** With respect to our motion, when -- when you
25 have an Order awarding the party costs it's a judgment, and in

1 this case the Order was served upon Attorney Lovelace as the
2 attorneys for the Plaintiffs before he gave any indication
3 that he had withdrawn - and by the way, there's no order
4 relieving him that I'm aware of - but it was served upon him
5 in due course.

6 And then I received communication from Attorney Lovelace
7 that I should correspond directly with the Plaintiffs, and I
8 have tried to do that by e-mail. And there's a couple of ways
9 we can pursue this issue of non-payment. One, obviously, is
10 what we did, we could seek an Order and Rule to Show Cause,
11 which is one way that I thought would be least burdensome to
12 my clients, and also least burdensome to the Plaintiffs. The
13 other alternative would have been to seek supplemental
14 proceedings, where we would ask the Court to give us
15 permission to go out and obtain all their financial
16 information and all their -- bring them into court and have
17 them testify about what they own, very invasive procedure, and
18 given the relatively low amount of the judgment, I was trying
19 to use the least invasive and least cost approach, and so I
20 filed a motion seeking an Order and Rule to Show Cause.

21 Your Administrative Law Clerk at the time advised me
22 that the Court was not going to sign the draft Order and Rule
23 to Show that I presented with my motion, but that we would
24 have a hearing today to see if the Court would sign that
25 order.

1 Now, an Order and Rule to Show Cause is probably not the
2 most appropriate vehicle if we were just trying to collect a
3 money judgment. But in this case I do believe there is
4 communications and conduct that evidence some contempt of this
5 Court's Order. And I would appreciate the opportunity to hand
6 Your Honor four e-mails, copies of four e-mails,
7 communications that I've had with Mr. Orzech, primarily ---

8 **THE COURT:** All right, sir.

9 **MR. MOSS:** ---And I think they will give you some
10 indication of that. And one of the things that is raised is
11 exactly this issue about me trying to file a motion seeking
12 even more costs. It's not a factual representation to the
13 Court of what has been sought, it's not -- clearly not in my
14 motion, and it's not even in what the written e-mail tells Mr.
15 Orzech what we are doing here today. So ---

16 **THE COURT:** Have those marked by the Court Reporter
17 first, please, if you will.

18 **MR. MOSS:** I will. There are four. Would you like
19 them marked individually or as one?

20 **THE COURT:** I would probably -- best for ease of use to
21 mark them separately.

22 **MR. MOSS:** Okay. And my trial exhibits went one
23 through sixty, so would it be appropriate to start at sixty-
24 one?

25 **THE COURT:** Well, this is a new proceeding, regarding a

1 request for enforcement of the Court's previous Order, so I
2 don't think it's necessary to continue with the old numbers.

3 **MR. MOSS:** Okay. Thank you.

4 (FOUR E-MAILS MARKED DEFENDANTS' EXHIBITS 1 THROUGH 4.)

5 **MR. MOSS:** Your Honor, I have handed, for the record, a
6 copy to the Plaintiffs.

7 Your Honor, I handed Plaintiff's number -- or
8 Defendant's Numbers 1, 2, 3 and 4, a copy of which I have
9 handed to the Plaintiffs.

10 They are copies of e-mail communications that I have had
11 with the Plaintiffs, primarily Mr. Orzech. Although I have
12 also included Ms. Crotty in the communications I don't recall
13 I ever received a reply from her.

14 **THE COURT:** All right. Thank you.

15 All right, Mr. Orzech and Ms. Crotty, y'all have copies
16 of, and know about these particular e-mails?

17 **MR. ORZEC:** Yes sir.

18 **THE COURT:** All right. Very good. Therefore, the
19 Court is going to allow them to use that the -- for argument
20 purposes in this motion.

21 If you will give me a minute to let me review them,
22 please.

23 All right. Go ahead, Mr. Moss.

24 **MR. MOSS:** Thank you, Your Honor.

25 Your Honor, it's obvious that the Plaintiffs are aware

1 of the Order - the Order has been served upon them - they
2 received the Order, and what these -- what they've asked for,
3 of both me, and also the Treasurer of the Association are, the
4 details, the specifics about the information from which you
5 made your Order. We don't have it. As I -- as alluded to
6 them in the e-mails - I believe it's Defendant's Number 3 - I
7 don't know how the Court came to the decision it came to with
8 respect to cost. I only know what we asked for, and I have
9 prov -- I provided that information about what we asked for,
10 and Your Honor did not award everything that we asked for, and
11 as you didn't explain that which you awarded and that which
12 you did not award, we can't answer the question to the
13 Plaintiffs. We only know that you have an Order which we
14 believe should be complied with. And the notion that we
15 should have to send an invoice for those to be paid is, in my
16 opinion, some evidence of contempt for this Court.

17 In response to that you've got a Memorandum that says
18 that I had committed fraud upon the Court, my clients have,
19 and that the Court and I don't understand the English
20 language. That, I think, is evidence of contemptuous attitude
21 toward this Court.

22 Now we've had a -- you know, a lengthy litigation
23 period. We had a day and a half trial. You've made an Order.
24 I respect it. We ask that the Plaintiffs respect it. We
25 certainly could send over a motion and ask for a supplemental

1 proceedings order, which would allow me to drag the Plaintiffs
2 in and put them under oath and examine them about all their
3 assets. We know they own three houses between them in
4 Windjammer. We don't know what else they have, so we don't
5 think financial ability is a reason that they haven't paid
6 this Order. We believe they haven't paid this Order because
7 they have contempt for this Court, and so my motion was simply
8 to seek an order and rule to show cause to have them come in
9 and explain to the Court why it is they haven't paid these
10 fees, and what it is that they have a problem with, in lieu of
11 becoming very invasive about their private personal
12 information, so I chose this remedy. I hope the Court
13 understands my motives, and I hope the Court agrees with me
14 that it's a less invasive and less costly avenue to pursue a
15 Nineteen Hundred Dollar judgment as opposed to supplemental
16 proceedings.

17 I don't believe that the Plaintiffs have any intention
18 of paying this unless compelled to do so by the Court, and I
19 think the e-mails, you know, pretty much evidence all that
20 needs to be expressed. I'll be happy to answer any questions
21 you have.

22 **THE COURT:** All right. I have no further -- or have
23 any questions at this point in time.

24 All right, Ms. Crotty or Mr. Orzech, the Defendants have
25 asked the Court to enforce it's prior Order whereby I ordered

1 y'all to pay cost in this matter. Through that they are
2 asking the Court to hold you in contempt of Court for failure
3 to abide by the terms of the Order. I would be glad, and
4 would welcome any comments that you have regarding their
5 arguments as to whether or not the Court should hold you in
6 contempt of Court for failure to abide by the terms of the
7 prior Order.

8 Ms. Crotty, is there anything you would like to say to
9 me, Ma'am?

10 MR. ORZECH: I'll take the lead, Your Honor ---

11 THE COURT: All right. That's very good. Then you can
12 sit down, Ms. Crotty.

13 MR. ORZECH: Okay. I appreciate the comments from Ms.
14 Crotty since we are both pro se. Okay. And we worked on --
15 have you had a chance to look at the letter we wrote to you,
16 because that was very well researched. We sent it to your
17 office as your ---

18 THE COURT: Are you talking about the August 6th
19 letter?

20 MR. ORZECH: August 6, letter, yes. I don't have a
21 copy in front of me, Judge. You have my only copy ---

22 THE COURT: Well then I'll give it -- I'll give it back
23 to you if you need it to make your arguments. I'll be glad
24 for you to ---

25 MR. ORZECH: Would you please take a moment to look at

1 it.

2 **THE COURT:** Okay. And then I'll give it back to you
3 and you can -- I'll still need it back because it's going to
4 have to be filed with the Clerk of Court as part of the
5 proceedings.

6 All right. If you will just hold on a second. You can
7 have a seat. Thanks.

8 All right. Madame Bailiff, you want to hand this
9 document back to Mr. Orzech, please.

10 All right, Mr. Orzech, be glad to hear any arguments
11 that you have, sir.

12 **MR. ORZEC:** Yes sir, Your Honor. You've just read
13 what we have here, and I -- you know, first of all, we've
14 known about the Order, and we have been asking Windjammer
15 Village, through every means we have, and you know, to provide
16 us with the underlying receipts for the Nineteen Hundred
17 Dollars, because no way we would look at any of the things he,
18 Mr. Moss, filed in Court that add up to Nineteen Hundred and
19 Twenty-Two Dollars and some Cents, so we -- and that number
20 was inflated from the original figure that appeared in his
21 original request, you know, by what I said was, you know, the
22 original -- the original cost he provided to the Court that
23 were decided on -- in February of this year, were Eleven
24 Hundred and Fifty-Two Dollars and Twenty-Three Cents. Okay.
25 You gave him the Order to write and he -- or somehow it got

1 written in, Nineteen Hundred Dollars and Thirty-Three Dollars
2 and Twenty-Four Cents, an inflation of Seven Hundred Eighty-
3 One Dollars and Sixty-Eight ---

4 **THE COURT:** Let me interrupt you for a ---

5 **MR. ORZEC:** ---No explanation.

6 **THE COURT:** All right. Let me interrupt for one thing.
7 The Defendant, Windjammer Village, at the hearing, and in the
8 filings that they had filed with the Court, and sent to your
9 attorney at that point in time, had asked for costs that far
10 exceeded the amount that I actually awarded, okay, and the
11 evidence they presented to the Court at the time of the
12 hearing, what they were asking for far exceeded the amount
13 that I actually ordered, so let's be correct about what
14 actually occurred in their request. The requests that they
15 made - and I think you have a copy of a proposed, or even the
16 proposed Order that they forwarded to us, to the Court - far
17 exceeds the amount that I actually ordered, so let's be
18 factually correct when you make your arguments.

19 All right, proceed on.

20 **MR. ORZEC:** Okay. Well, I respectfully -- from the
21 documentation I have in here I'll have to stand by my point.
22 They asked for Eleven Fifty-Two Twenty-Three, and got Nineteen
23 Thirty-Three Twenty-Four, and they didn't ask for vastly more
24 than that, and we don't know where those -- we can't get
25 numbers to add up to that. We've asked a very reasonable

1 thing, okay, provide us with the underlying receipts for what
2 we are paying for, okay, if nothing else we can write it off
3 on our income tax, maybe, or whatever, if we have a receipt
4 for it, but it -- you know, who would pay a bill with some
5 random number that isn't documented. I don't know.

6 Okay. So then -- now Mr. Moss comes forward again
7 with -- to talk about paying it. First of all, our attorney,
8 Mr. Lovelace, told us to not -- you know, not to pay it to
9 rather be put on our -- as a lien on our property. That was
10 his legal advice. But we are -- you know, we would try to pay
11 it. We are not in as good a financial condition as can be.
12 We are retirees, on fixed incomes, and we have tremendous
13 expenses. It's just the hiring of Mr. Lovelace for other --
14 previous things as, you know, we can barely make ends meet at
15 our house, the blue house is, I would think, almost worthless
16 on the resale market with the restrictions on it now, so --
17 and the other house is mortgaged up to the hilt to - it's
18 under water - to finance the blue house, and I thought I could
19 sell that for more, so we are -- we are on very dicey economic
20 conditions. Nineteen Hundred Twenty-Two Dollars, or whatever,
21 is very hard for us to pay. We are (unintelligible).

22 Further, Mr. Moss then sends this new one, and asking
23 for Three Thousand One Hundred Sixty-Eight Dollars and Twenty-
24 Three Cents. That's an increase of Two Thousand and Sixteen
25 Dollars and One Cent, or a two hundred seventy-five percent

1 inflation from the original one. Okay. Once again, no -- he
2 had a list, but there were no underlying documents.

3 Then I went to the Treasurer of the Association and
4 asked her, you know, the -- I guess Windjammer Village front
5 office, or to get a lawyer would not do it, so I asked the
6 Treasurer - and of course, Ms. Crotty and I are members of the
7 Association. We are entitled to get these records, whether
8 it's part of the court proceeding or not, even if they
9 weren't, we are entitled to get these records.

10 We wrote a letter to Melissa Basehoar who is a CPA - and
11 I think I included that in that package you've got - and she
12 said that the Association doesn't give those, those things.

13 Mr. Moss, in his appeal now, said the Association has a
14 sworn Affidavit from the office secretary stating that. Well,
15 we don't have a copy of that. And that is in direct
16 contradiction of what the Treasurer says, so the office
17 secretary is also the Association's secretary, and the
18 Association's Treasurer have contradictory information to us.
19 One says that those records exist, and has an Affidavit, a
20 secret Affidavit apparently, that we can't get either through
21 Windjammer or from their attorney, and I don't know if he's
22 presented that to the Court - I doubt it - you know, so these
23 are very, very murky, murky costs.

24 So then we found the two documents that Mr. Moss
25 presented. There are several items totaling Six Hundred

1 Ninety-Eight Dollars and Sixty-Six Cents which he claimed in
2 both items, and we asked the question, we wonder if he's
3 double-charging us for those. There are eleven items totaling
4 Four Hundred Fifty-Three Dollars and Fifty-Seven Cents that
5 Moss claimed only on the August, 2011 document, and there are
6 sixteen items totaling Two Thousand One Hundred Fourteen
7 Dollars and Fifty Cents which he claimed only in the 2012
8 document. I call that flagrant discrepancies.

9 Now, are we -- we are being asked to just, you know,
10 without receipts, with things that are full of holes, which
11 possibly are fraudulent because the two officers of the
12 Association disagree entirely on the existence of these
13 records, which we are not allowed to get - or is the Court
14 going to ask us about that?

15 Then finally, we showed that also at that hearing Mr.
16 Moss asked for his legal fees, and altogether, with the legal
17 fees and those -- that Fifteen Hundred Dollars which was a
18 small part of it - he asked for Forty Thousand Dollars and
19 Ninety-Nine Cents and you denied him legal fees.

20 At the annual meeting that just happened in July the
21 Treasurer, who is a CPA, Melissa Basehoar, came up with a list
22 of what was paid, and in that fiscal year, after Mr. Moss was
23 paid, you know, the initial part and he wanted the -- he was
24 paid Nineteen Thousand Two Hundred Seventeen Dollars, and then
25 he would have asked -- he asked for another Twenty Thousand

1 Eight Hundred Eighty-Two, plus that Nineteen Thousand to come
2 to us, almost Forty Thousand Dollars. We found out in the
3 Annual Report which we have here as an attachment, that for
4 that year, rather than paying Mr. Moss, they had Twenty-Five
5 Thousand Dollars allotted for legal fees, and they returned
6 virtually all of it to the Treasury. They only paid One
7 Thousand Two Hundred Thirty-Six Dollars in legal fees that
8 year. They returned Twenty-Three Thousand Seven Hundred
9 Sixty-Four Dollars in their reserves, and they did not pay Mr.
10 Moss the remainder of what he claimed he was owed. So I asked
11 the question, were Mr. Moss's figures fictitious. Okay, you
12 can read whatever you want into fictitious, but why didn't
13 Windjammer Village pay him that if the Court did not make us
14 pay him that, and that was a valid thing? Why, those were
15 fictitious. How do we know they are fictitious? They tried
16 that exact same maneuver on us once before. I was -- they
17 brought me to a trial, a criminal trial, and I won the
18 defense. It was a superfluous thing, but we went to the Court
19 and I was acquitted. And then Windjammer Village, even after
20 I was acquitted, tried to get their legal fees from me, and I
21 refused, and they finally agreed in their -- in their Board
22 Meeting not to charge me legal fees, and Mr. Meaders, who is
23 here, argued against that, and he was so angry he resigned
24 from the Board after that, but then they were overheard and we
25 recorded it, that, oh, we don't have to pay that, we'll pay --

1 Moss charged us much less than that; that was an inflated
2 figure. So Mr. Moss, twice now, is playing with two sets of
3 books, you know, the set of books he's trying to get the Court
4 to pay, or the -- the losing side, like us, to pay, and the
5 real set of books which he actually charges Windjammer Village
6 if he can't get that. That is what I would consider fraud.

7 So, we -- yes. Yes. And also the same -- they did the
8 same thing with Mr. Crotty's assault, you know, with trying to
9 get legal fees. The woman was assaulted and they tried to get
10 legal fees out of her and we -- you know, and those were --
11 those were amped up, and what the Association paid was less,
12 so there's a trend here of -- of flagrantly -- just flagrant
13 discrepancies, and utterly fatuous charges against us, and we
14 have a very reasonable request, to see these -- these so-
15 called receipts from this, and I respectfully request that
16 once they actually produce receipts that we have another
17 hearing with you, and you review these, because they won't
18 give us the receipts, and we have a very strong case that they
19 are -- you know, they are playing loose and fast with the
20 truth here, and trying to get the money out of us under the
21 guise of a Court Order from you, and that's -- that's very
22 disrespectful to you, Your Honor, I think.

23 Further we -- you know, this Forty Thousand Dollars
24 suddenly showed up as legal fees in the civil suit we have,
25 and there's a motion that's to be heard by the Court on

1 September 18th. It's going to have to be - and before Judge
2 Hyman - it's going to have to be changed because I have
3 surgery on that day, so I'm sending a motion in and -- to
4 change that. Mr. Nistad is in favor of -- you know, will not
5 oppose that. But in any case, they have a motion to be
6 awarded Forty Thousand Dollars in legal fees that suddenly
7 showed up in there. Well, Forty Thousand Dollars is very
8 similar to Forty Thousand and Ninety-Nine Dollars, and Mr.
9 Nistad is being paid by the insurance company, not by
10 Windjammer Village. So we think that Mr. Moss is trying to
11 slip through the back door with this to get his Forty Thousand
12 Dollars out of us, that you denied him, under legal grounds
13 through the civil case, and you know, so there's -- I wrote in
14 here, strange things are happening here, and we hope will be
15 sorted out at the upcoming hearing. In any event, how can we
16 be asked to pay for any cost for which there is questionable
17 accounting, and no verifiable receipts. So there -- that is
18 our -- that is our case, Your Honor. If -- you know, if
19 there's -- I guess the other -- the one last thing is, we
20 recently had mediation in the civil case, okay. The mediation
21 not only failed, but the negotiations are going on, and one of
22 the ---

23 **THE COURT:** All right. All right. Well, you need to
24 stop. You need to stop.

25 **MR. ORZEC:** Okay. Yes sir.

1 **THE COURT:** Regarding mediation, I'm sure the mediator,
2 at the time, told you that, except for the results of the
3 mediation, anything that is said, anything that takes place
4 during mediation cannot be, and shall not be used in any court
5 proceeding. The reason for that is to encourage the parties
6 to freely express themselves, without repercussion, and to be
7 able to advance the possibility of resolving issues,
8 therefore, matters, except for a result in mediation, cannot
9 be used as grounds for any further proceedings or arguments in
10 court, therefore, do not do so.

11 Thank you very much.

12 **MR. ORZECH:** I won't say it, but ---

13 **THE COURT:** I appreciate it, because you are not
14 allowed to.

15 **MR. ORZECH:** Okay.

16 **THE COURT:** Thank you, sir.

17 **MR. ORZECH:** They published the mediation results in
18 their -- in their Report ---

19 **THE COURT:** Well, be that as it may, that's not
20 important. I'm just telling you what's before me now. All
21 right. Now, again, except for results, except for results.
22 That, obviously, can be made public.

23 **MR. MOSS:** May I, Your Honor?

24 **THE COURT:** Yes sir.

25 **MR. MOSS:** The mediation is not in this case. There's

1 another civil case.

2 THE COURT: I don't want to talk about the mediation in
3 another case. Okay.

4 MR. MOSS: I wasn't going to bring up the mediation. I
5 wasn't even there.

6 THE COURT: Good. Great.

7 MR. MOSS: I'm not an attorney. ---

8 THE COURT: Well, let's not talk about it then. Let's
9 talk about whatever else he said.

10 MR. MOSS: While I'm not involved in the other case my
11 understanding of the Forty Thousand Dollars he asserted are
12 costs in both cases.

13 THE COURT: Mr. Moss ---

14 MR. MOSS: That's pleadings. Don't tell me about the
15 other case, please. All right. Don't tell me about the other
16 case. That's not why we are here. Talk about your motion,
17 your request of the Defen -- I'm sorry, Plaintiffs, Elizabeth
18 A. Crotty and James K. Orzech be held in contempt of court for
19 failure to abide by the Court's previous Order of February of
20 2012.

21 MR. MOSS: With respect to any argument that would
22 pertain to attorney fees it's irrelevant. We asked for them,
23 the Court denied them; it's not before you. We haven't asked
24 for an order and rule to show cause because they haven't paid
25 attorneys fees because you didn't order attorneys fees to be

1 paid, and so any questions they may have about my billing on
2 attorneys fees, in my opinion, are irrelevant.

3 Now, I certainly can respond to those allegations that I
4 have ---

5 **THE COURT:** I don't need for you to do so.

6 **MR. MOSS:** With respect to the cost issue, which the
7 Court did order, when we filed a motion, post-trial motion
8 seeking cost and fees, in August of 2011, there were many
9 receipts attached to an Affidavit of Angela Marcotte, who
10 works in the office at Windjammer, and so they've been
11 provided.

12 Now, again, I don't know what of the cost Your Honor
13 awarded and what of the costs Your Honor did not award, and so
14 I can't answer that question, but there are more than enough
15 receipts that are attached, in the record, which the
16 Plaintiffs would have, to satisfy a Nineteen Hundred Dollar
17 award.

18 In addition, I wasn't the original attorney for the HOA
19 in this case, and therefore I don't have all the costs
20 associated with the case that Attorney Roy would have had.
21 When we sought fees and costs in the initial motion we
22 included checks that were paid to Mr. Roy, and we also
23 included the information that I had accrued. Some of these
24 costs were paid directly by the Association. Some of these
25 costs were paid by me as an advancement, and the Association

1 reimbursed me for that.

2 I would submit to you that regardless of the answer that
3 these Plaintiffs get they will not be satisfied; they will
4 challenge and question, but here's the -- the reality is, this
5 is not a Rule 59 motion to revisit your Order, and if there
6 were I wouldn't be timely. They haven't paid what you ordered
7 after all the information that was presented to you and you
8 allowed whatever you allowed, and I think these e-mails and
9 these arguments, and this Memorandum evidence that they
10 challenge this Order; they challenge the authority of this
11 Court to review the evidence and make a decision, and they
12 just don't want to pay it.

13 Now, I don't believe financial hardship is the reason
14 they haven't made arrangements to pay Nineteen Hundred
15 Dollars. The fact is, all these questions that Mr. Orzech has
16 expressed about my billing practices, my e-mails, he hasn't
17 asked me. You've seen the e-mail correspondence, and I've
18 sent him what we asked for. He's not replied and said, can
19 you tell me about this, would you provide me anything about
20 this. That has not happened. Instead, he wanted this day in
21 court so he could in, I guess, and try to smear me, or just
22 delay the inevitable, but the fact is, there is contempt for
23 this Court's Order because they are not complying. In regards
24 to the information given to them, it's not going to make any
25 difference, and respectfully we would ask -- honestly, from

1 your Clerk's e-mail my understanding was the purpose of
2 today's hearing was to decide whether or not you were going to
3 sign the Order and Rule to Show Cause. I think this Court has
4 made a decision that you will use this hearing to determine
5 whether or not they should be held in contempt, which is not
6 exactly what I was expecting when I came in here, but it's the
7 same issue; they haven't paid it; they don't want to pay it,
8 and they are not going to pay it unless this Court intervenes.

9 **THE COURT:** Thank you very much.

10 I -- Mr. Crotty -- I appreciate it. We've had
11 arguments, re-arguments. If you've got a point just very
12 briefly, please.

13 **MR. ORZECH:** We have other e-mails here where we did
14 ask Mr. Moss for the receipts, and we can make those part of
15 the record too.

16 **THE COURT:** I'll be glad for you to do so. Have them
17 marked with the Court Reporter.

18 **MR. ORZECH:** Okay. Fine.

19 And also, the other argument we had was reading Rule 54,
20 is it, the costs are awarded to the prevailing party. We
21 prevailed on the injunction, which was the initial thing. We
22 prevailed on the contempt of court, we prevailed on many, many
23 more things that are enumerated in my write-up here, which I
24 will give back to you, so Mr. Lovelace, when he was our
25 attorney, said -- you know, told us that they can't collect

1 costs because both sides partially prevailed. Some how this
2 was read in the decision that their side prevailed, but, you
3 know, let them try to tear out the paved driveway or, you
4 know, and they have a contempt of court too. You know, we had
5 to pay our attorney an extra, you know, several Thousand
6 Dollars to bring them to court for contempt of court because
7 of things they did during this Temporary Restraining Order
8 which violated that, so that was part of this case, so there
9 are very -- there are several things that we prevailed, and we
10 have more things that we prevailed than they did, and I'll --
11 let me -- may I approach the bench and give you back our
12 paper?

13 **THE COURT:** Hand that to the Bailiff, but if you want
14 to give those e-mails to the Court Reporter I'll be glad for
15 you to do so. Do you have those e-mails you want marked?

16 Hand the Bailiff the document you wanted to give back to
17 me, please.

18 **MR. ORZEC:** Take those back, and then this one is
19 added, okay.

20 **THE COURT:** All right.

21 **MR. MOSS:** Your Honor, I would ask for copies of those
22 as well.

23 **THE COURT:** Okay. Don't mark on the things that you
24 want the ---

25 **MR. ORZEC:** That's our e-mail requesting an invoice,

1 and I didn't look at the date or anything. That was when I
2 asked for it ---

3 THE COURT: Okay. It seems to be more than one page --
4 please stop, Mr. Crotty, so I can -- Mr. Orzech, please.

5 MR. ORZECH: Yes.

6 THE COURT: It appears to be more than one page. Do
7 you want both pages to be part of the exhibit?

8 MR. ORZECH: May I look at it?

9 THE COURT: Yes sir. Hand it back to Mr. Orzech.

10 MR. ORZECH: Your Honor ---

11 THE COURT: Stop. Stop, please. Look at the document.
12 Do you want both pages to be made part of the exhibit?

13 MR. ORZECH: Yes.

14 THE COURT: All right. Great.

15 Madame Bailiff, hand that document to Mr. Moss so he can
16 look at it, please.

17 MR. MOSS: Thank you, Your Honor, these -- I've seen
18 these. They appear to be the same ones we marked just a few
19 minutes ago.

20 THE COURT: All right. Very good. All right. Thank
21 you.

22 And those are Plaintiff's Exhibit Number 1.

23 (E-MAILS MARKED PLAINTIFFS' EXHIBIT NUMBER 1.)

24 THE COURT: All right, regarding the issue of the
25 requests for a Rule to Show Cause, Ms. Crotty and Mr. Orzech,

1 the Court issued an Order denying Defendant's request for
2 attorney fees, but allowing Defendants to recover it's costs
3 on February 22nd, 2012, filed with the Clerk of Court on
4 February 27, 2012, a copy of which was delivered to you. It
5 is an Order of the Court; it is a directive of the Court based
6 upon the Court's examination of the Rules of Civil Procedure,
7 the underlying case that I heard in June of 2011, and the
8 Motion filed for costs, and as I have indicated to you before,
9 there was some delay. We had that hearing in June, I issued
10 the Order in August. On September 7, 2011, I wrote Mr. Moss
11 and Mr. Lovelace a letter telling them that, for some reason I
12 was examining the file and found that Mr. Moss had filed, on
13 August 5, 2011, a Motion for Attorneys fees and Costs, and Mr.
14 Lovelace had filed a Motion for Reconsideration on August
15 12th, 2011. The only reason I found either of them is
16 because, for some other reason I was examining the file.
17 That's how I got notice of it. Because of that I set a
18 hearing. I told them that we were going to have a hearing on
19 November 1, 2011. That was when, or in that interim then that
20 Mr. Lovelace got temporarily suspended and I had to delay the
21 hearing until February of 2012. That's when I held a hearing
22 on both of those, and that's the result of the two Orders that
23 I issued.

24 You had time after the February Order, that I just
25 talked about, to file a Rule 59 motion for reconsideration;

1 none was filed. You had an opportunity to file an appeal to
2 the Appellate Courts regarding my Order; none was filed. This
3 is the final order of the Court. I expect compliance with
4 that Order. I will not tolerate non-compliance with the
5 Order. I will not, at this point in time, hold you, Ms.
6 Crotty, and you, Mr. Orzech, in contempt of Court. I'm going
7 to reserve that. I am going to give you ninety days from
8 today to comply with that Order, that is, to pay the costs.
9 Should you fail to do so I am allowing Defendant's counsel to
10 file a sworn affidavit with this Court indicating non-
11 compliance with my directives today.

12 And Mr. Moss, you are going to do an order that reflects
13 this, what I'm saying right now.

14 If you do not comply with the Court's Order, what I'm
15 telling you right now, you will be subject to the contempt
16 powers of the Court, that is, one year in the Department of
17 Corrections, three hundred hours of community service, a fine
18 which can be purged upon you complying with the Court's order.
19 I am not telling you what the order will be, or what I will
20 do; I'm telling you, it is available to the Court. If you
21 want to find out, don't comply with my order.

22 I am giving you a direct order, you will comply with my
23 Order. It is not the order of the Defendant; it is not the
24 result of any matters that they have cooked up. I have
25 examined, and been control of these proceedings and the issued

1 Orders, reviewed the documents; I issued an Order. You will
2 comply with that Order, or you will be subject to the contempt
3 powers of this Court. I don't want there to be any
4 misunderstanding.

5 Despite the disagreement you may have with the
6 Defendants, that's not what we are here about. I told you to
7 do something; you will do it, or you will suffer the
8 consequences. I don't want there to be any misunderstanding,
9 or anything to be unclear. I am giving you ninety days from
10 today's date to comply with the Order. Should you fail to do
11 so you will then be subject to the contempt powers of the
12 Court.

13 Thank you very much.

14 Mr. Moss, do an order that reflects that. Thank you
15 very much.

16 **MR. MOSS:** Thank you, Your Honor. The only ---

17 **THE COURT:** These proceedings are at end.

18 **MR. MOSS:** The only question I have about the order,
19 Your Honor, is, will you be reserving jurisdiction, or is
20 there any ---

21 **THE COURT:** No. I am going to be reserving
22 jurisdiction. It is my Order; I will take care of that.

23 Thank you very much.

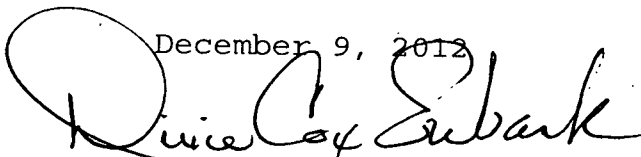
24 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
25

C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the **MOTION HEARING** of the captioned case, relative to appeal, in the **30th day of August, 2012.**

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

December 9, 2012



DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

Defendant's Exhibits Nos. 1, 2, 3 and 4
to August 30, 2012 Transcript of Record

1. 2012 06 22 Email Kenneth Moss to James Orzech and
Elizabeth Crotty (2pp)
2. 2012 06 26 Email James Orzech to Kenneth Moss and
Elizabeth Crotty (1pp)
3. 2012 06 27 Email Kenneth Moss to James Orzech and
Elizabeth Crotty (1pp)
4. 2012 06 27 Email Kenneth Moss to James Orzech and
Elizabeth Crotty (3pp)

Kenneth Moss

From: Kenneth Moss
Sent: Friday, June 22, 2012 4:03 PM
To: 'James Orzech'; lizcrotty
Cc: Richard Lovelace [RLovelace@rlovelacelaw.com] (RLovelace@rlovelacelaw.com); holcombebch@aol.com; Gunnar Nistad [gunnar.nistad@mgclaw.com] (gunnar.nistad@mgclaw.com)
Subject: FW: Crotty v. Windjammer 2009-CP-26-10523, Notice of Hearing scheduled for August 30, 2012 at 9:00am

James and Liz,

I understand that you are no longer represented by Attorney Lovelace. Accordingly I have forwarded to you the email that I received from Judge John's Law Clerk this morning. Please do let me know if you, or either of you, are represented by an attorney in the above referenced case I order that I may direct my communications appropriately.

Per the below, Judge John has scheduled a hearing upon the Order and Rule to Show Cause that I have sought on behalf of Windjammer Village because you have not yet paid the costs to the village that you were ordered to pay in Judge John's Order Denying Defendants' Request for Attorney's Fees But Allowing Defendants to Recover Its Costs which is dated February 22, 2012. You might recall that pursuant to the Order, you were supposed to pay to the association the sum of \$1,922.34 in costs. The Order was served upon your attorney on April 23, 2012, prior to any communication being relayed that he no longer represents you.

In order to avoid the hearing on the 30th, and possibly the imposition of additional attorney's fees and costs that Judge John might order you to pay, I would encourage you to comply with the order and pay the \$1,922.34 as ordered by Judge John right away. You may deliver the check or funds either to the association office or to my office if you would like to avoid the hearing.

Also, in order to prevent me from having to prepared and have served upon you a notice of the hearing, I do need for you to acknowledge your receipt of this email. Obviously it will costs the association, and consequently the two of you, additional fees if we have to employ a process server to serve you with notice of the hearing.

**** Please note that my email address has changed ****

Kenneth R. Moss
Wright, Worley, Pope, Ekster & Moss, PLLC
PO Box 250
Little River SC 29566
Tel: 843/ 281-9901
Fax: 843/ 281-9903
wwpemlaw.com

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Please consider the environment before printing this email.

From: John, Steven H. Law Clerk (Abbey Gail Cain) [mailto:SJohnLC@sccourts.org]

Sent: Thursday, June 21, 2012 11:46 AM

To: Richard Lovelace [RLovelace@rlovelacelaw.com] (RLovelace@rlovelacelaw.com); Kenneth Moss; Kenneth Moss; rroy@cookandroy.com

Subject: Crotty v. Windjammer 2009-CP-26-10523

Counselors,

The Court has scheduled a Rule to Show Cause hearing in the above matter for **August 30, 2012 at 9:00am** in courtroom 3B of the Horry County Judicial Complex.

Thank you,
Abbey

Abbey G. Cain
Law Clerk to the Honorable
STEVEN H. JOHN
Resident Circuit Judge
Fifteenth Judicial Circuit
843.915.6697

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Kenneth Moss

From: James Orzech [james.orzech@earthlink.net]
Sent: Tuesday, June 26, 2012 11:12 AM
To: Kenneth Moss; lizcrotty
Cc: holcombech@aol.com; Gunnar Nistad [gunnar.nistad@mgclaw.com]
(gunnar.nistad@mgclaw.com)
Subject: Re: FW: Crotty v. Windjammer 2009-CP-26-10523, Notice of Hearing scheduled for August 30, 2012 at 9:00am

Mr. Moss,

Thank you for finally communicating with us directly and not through Mr. Lovelace. We were wondering whether or not WJV would ever ask to be paid. We would appreciate it if the WJV POA would send us an invoice that included copies of the underlying receipts for each cost claimed?

There is no need to serve us and we look forward to the August 30th Hearing with Judge John. Can you please forward to us all communication you had with the Judge that you would have sent to any other opposing attorney. So far we only have some emails. For better or for worse, we are now Per Se, so we deserve to be treated with the same deference that you would pay to any opposing counsel, as does Gunnar Nistad.

Meanwhile, although I am not at liberty to discuss the Mediation, suffice it to say that the most recent information we have from Mr. Lawson is that Defendants intend to make another offer, which now is overdue. We await closure, hopefully to include a proposal that at least makes progress towards a settlement, short of going to Trial in November. That being said, your side has offered up forgiveness of the \$1,900+ Judgment as a Bargaining Chip, so we believe that any further discussion of this matter with you now would be counterproductive, possibly confounding the ongoing efforts of the Mediator.

Ms. Crotty will return tomorrow, so we then shall discuss the issues that you have brought to our attention and review our notes from our meetings with Mr. Lovelace. Also we likely will seek additional professional legal guidance before going forward,

Regards, James Orzech
phone: (843) 281-2299

Kenneth Moss

From: Kenneth Moss
Sent: Wednesday, June 27, 2012 12:12 PM
To: 'James Orzech'; lizcrotty
Cc: holcombech@aol.com; Gunnar Nistad [gunnar.nistad@mgclaw.com] (gunnar.nistad@mgclaw.com); Richard Lovelace [RLovelace@rlovelacelaw.com] (RLovelace@rlovelacelaw.com)
Subject: RE: FW: Crotty v. Windjammer 2009-CP-26-10523, Notice of Hearing scheduled for August 30, 2012 at 9:00am

James,

Thank you for your email. I really cannot agree that WJV will send you an invoice with an itemization of the costs that WJV sought in the motion for fees and costs. The reason is certainly not that WJV and I are not willing, but that we do not fully understand how Judge John came to the decision that he did. I will send you by separate email the breakdown of costs for which we sought reimbursement. In as much as Judge John did not grant to the WJV all that was asked and he did not offer an explanation of that which he granted that that which he did not grant, WJV and I cannot provide to you the requested detail. Again, I will send to you the breakdown of that which we asked for.

Concerning an invoice, I do not believe it to be necessary or appropriate for the WJV to provide you with an invoice. Judge John's Order that was served upon Attorney Lovelace, who by the way has not been relieved as an attorney in the case, is very clear and unambiguous. Payment should have been made months ago. Frankly I feel that Ms. Crotty and you would be ill advised to come into Court on the 30th with any assertion that you have not complied with the Order and paid the costs because you have not been provided with an invoice. My guess is that assertion would not sit well with Judge John.

As far as direct communications with Ms. Crotty and you, I will certainly provide you with copies of all communications that I have concerning our case. In as much as no motion or Consent Order has been filed to relieve Attorney Lovelace as your attorney, I will continue to copy him with my communications. While Attorney Nistad is not an attorney in our case, I will copy him upon my communications because you have asked me to do so. I do agree with you, however, that it is appropriate to include Attorney Nistad in our communications.

You are aware of course that I am not involved in your separate litigation with the WJV and several of its residents and I was not present in the mediation conference hosted by Attorney Lawson. If you are not, you should also be aware and mindful that I have not received any communication or direction that Judge John's Order awarding costs to the WJV has been forgiven nor any direction to refrain from proceedings to bring about compliance with Judge John's Order.

Again, I encourage you to comply with Judge John's Order and remit the costs awarded to the WJV immediately in order to avoid your incurring additional fees and costs.

**** Please note that my email address has changed ****

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Kenneth Moss

From: Kenneth Moss
Sent: Wednesday, June 27, 2012 12:16 PM
To: James Orzech (james.orzech@earthlink.net); lizcrotty (lizcrotty@earthlink.net)
Cc: holcombech@aol.com; Gunnar Nistad [gunnar.nistad@mgclaw.com] (gunnar.nistad@mgclaw.com); Richard Lovelace [RLovelace@rlovelacelaw.com] (RLovelace@rlovelacelaw.com)
Subject: FW: Crotty vs. WJV
Attachments: Order awarding taxable costs per Rule 54(e) SCRPC 02-17-12.doc

James,

As eluded to in my email of a few minutes ago, the below and the attached evidence the costs for which the WJV sought to be reimbursed.

**** Please note that my email address has changed ****

Kenneth R. Moss
Wright, Worley, Pope, Ekster & Moss, PLLC PO Box 250 Little River SC 29566
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Fax: 843/ 281-9903
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-----Original Message-----

From: Kenneth Moss
Sent: Wednesday, February 22, 2012 12:07 PM
To: 'John, Steven H. Law Clerk (Abbey Gail Cain)'; Richard Lovelace
Cc: Richard Lovelace [RLovelace@rlovelacelaw.com] (RLovelace@rlovelacelaw.com)
Subject: RE: Crotty vs. WJV

Good morning Abbey.

I have worked on but not completed my proof read of the attached draft of the order denying Order Denying Defendants' Request for Attorney's Fees But Allowing Defendants to Recover Its Costs. I did so because I had concerns about the draft prepared by Attorney Lovelace. I was not certain where he found the basis for the amount of costs that he included in his draft order and recognize that he would not have had all of the information that was available to me.

Attached is a draft that includes an itemization of those costs for which the Defendant asserts are properly allowable under Rule 54 and pursuant to Judge John's instructions. Please let me know if I can be of any further assistance. Thank you.

** Please note that my email address has changed **

Kenneth R. Moss
Wright, Worley, Pope, Ekster & Moss, PLLC PO Box 250 Little River SC 29566
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Fax: 843/ 281-9903
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-----Original Message-----

From: John, Steven H. Law Clerk (Abbey Gail Cain) [mailto:SJohnLC@sccourts.org]
Sent: Wednesday, February 22, 2012 11:31 AM
To: Richard Lovelace
Cc: Kenneth Moss
Subject: RE: Crotty vs. WJV

Mr. Lovelace,

Will you please send the attached Order Denying Defendants' Request for Attorney's Fees But Allowing Defendants to Recover Its Costs to me in Word format.

Thank you,

-----Original Message-----

From: Richard Lovelace [mailto:RLovelace@rlovelacelaw.com]

Sent: Friday, February 17, 2012 10:01 AM

To: John, Steven H. Law Clerk (Abbey Gail Cain)

Cc: Ken Moss

Subject: Crotty vs. WJV

Judge John:

Pursuant to your directive, I have drafted two Orders:

1. Order Denying Defendant's Petition for Attorney's Fees, but allowing its Petition for costs.
2. Order Modifying the previous Order of the Court pursuant to my Rule 59(e) Motion for Reconsideration.

A copy of this transmittal is being simultaneously sent to counsel for Defendant.

If, after receiving this, you have further directions to me with regard to text modification, please let me know, and I will see that the changes are promptly made and circulated.

Richard M. Lovelace, Jr., Esquire

Richard M. Lovelace, Jr., PA

P. O. Box 1704

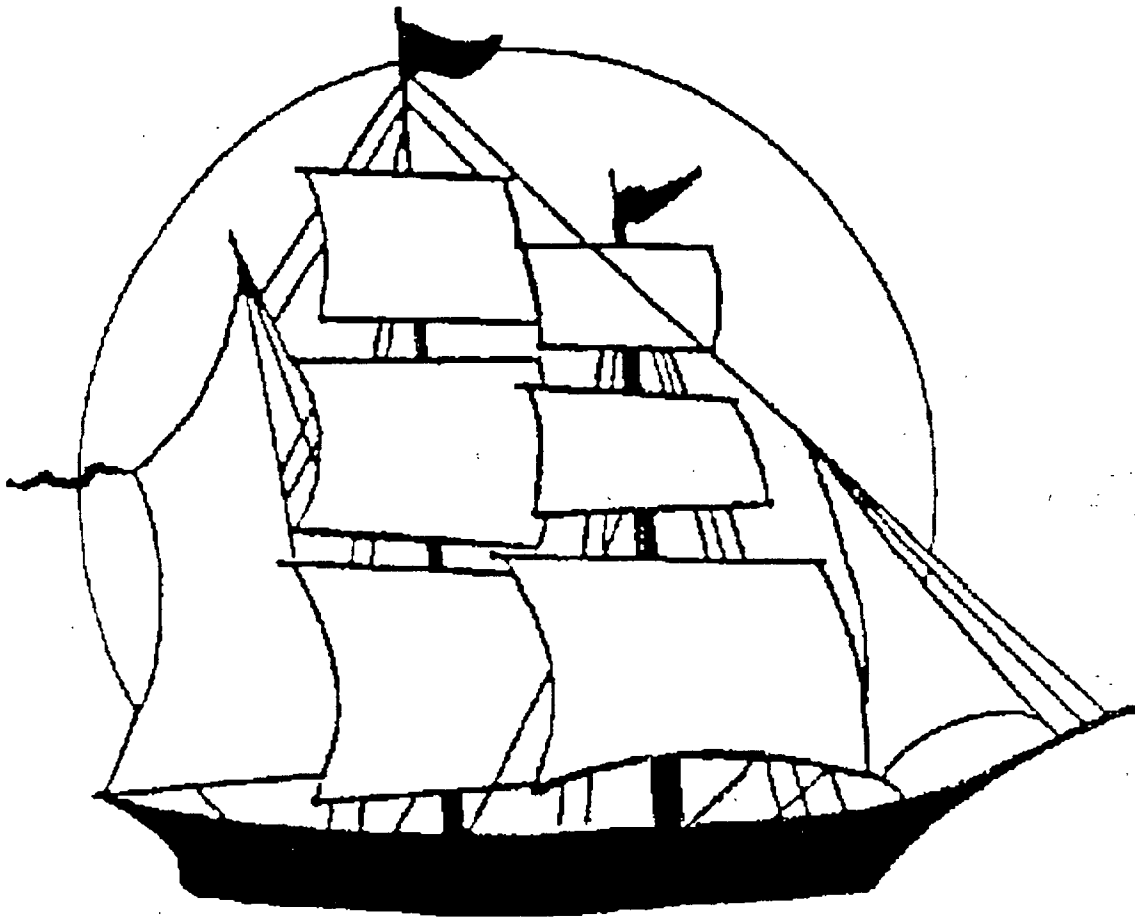
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RESTRICTIONS/RULES/REGULATIONS
WINDJAMMER VILLAGE OF LITTLE RIVER, SC
PROPERTY OWNERS ASSOCIATION



ADOPTED BY BOARD OF DIRECTORS
JANUARY 31, 1998

REVISED: JUNE 19, 2004
AUGUST 21, 2004
JUNE 17, 2006
JULY 14, 2007
OCTOBER 15, 2007
APRIL 17, 2008
NOVEMBER 18, 2008
MARCH 17, 2009
JULY, 2009

FOREWORD: The purpose of this document is to convey established criteria for the uniform and orderly operation of Windjammer Village. The basic elements of these criteria are defined in order of precedence as follows:

RESTRICTION - A legal binding obligation to which all property owners, individually and collectively, are subject. They are recorded on the files of Horry County, S.C. and may not be changed by the Association except as provided in the Declaration of Restrictions and Easements.

Recorded dates are:

1/30/97 Revised Declaration of Restrictions and Easements.

BY-LAWS - The rules and stipulations adopted by the membership to govern the affairs of the Association.

RULE - A general statement of the Board of Directors adopted for the purpose of directing the conduct and governance of Windjammer Village

REGULATION - Board approved requirement binding on all members and guests to support and provide for the observance of established rulings.

POLICY - A statement adopted by the Board of Directors to govern the Board in meeting its obligation under the By-laws.

PROCEDURE - A Board approved statement or practice intended to achieve the intent of established policies.

CODES AND EXPLANATIONS: Each ruling denotes a derivation or source, in coded form, and a corresponding date which reflects the latest record of, and/or approval of that ruling. Rulings pertaining to restrictions and By-laws are written in condensed and/or paraphrased form. For complete and exact wording, refer to the Revised Declaration of Restrictions & Easements (attachment #1) or the By-laws handbook which is available in the POA office. Coded sources are:

DRC - Declaration of Restrictions and Easements - 1/30/97

BYL - By-laws.

BOD - Board of Directors.

MBR - Majority Membership.

The foregoing rulings are intended to incorporate, revise and update any rulings previously adopted. They may not, and are in no way intended to, alter, change or delete any of the previously recorded restrictive covenants. The Association reserves the right to revise rules and regulations from time to time by adding, deleting and changing various provisions thereto.

Under the By-laws, the Board of Directors shall have the power to provide for the adoption and publishing of rules and regulations governing the use of common properties. Enforcement of restrictions, rules and regulations of the Association is a power and duty of the Board of Directors.

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I MEMBERSHIP RIGHTS & OBLIGATIONS

1. The new owner of any lot shall become a member in good standing of the Property Owners Association by paying an initiation fee equal to three (3) months dues in advance. Current Members of the Association shall be exempted from this fee when purchasing additional lots. Monthly dues shall commence at the time of membership and shall be paid in advance, annually, quarterly or monthly in order to remain a member in good standing. Only members in good standing will be afforded the rights specified in Article III, Paragraph 2 of the Bylaws. The owner of a lot(s) shall join the Property-Owners Association and pay dues in advance, either annually, quarterly or monthly. Dues and assessments must be received in the office of the POA or its agent by the 10th of the month for which they are due to avoid a late charge. A late charge will be assessed on each lot for every month overdue. Failure to pay these charges shall result in a lien placed upon the lot(s) and suspension of all POA privileges and rights, including voting rights. Monies received will be applied to the longest outstanding balance first.
SOURCE: DRC 1/30/97; BYL 7/8/89; MBR 10/95; BOD 8/18/07; MBR 7/14/07

2. Members shall be entitled to a total of two (2) votes for each lot owned providing their payment of dues is current. Dues are considered current if they are paid for the full month prior. (Members who rent their property retain this entitlement).
SOURCE: BYL 7/8/89; MBR 10/95

3. Members shall comply with the rules and regulations. Any infractions of rules and regulations by a tenant or a guest shall be the responsibility of the member.
SOURCE: BYL 7/8/89

4. Members shall present a signed lease agreement for a rental property and fill out amenities document notifying the office whether they or their tenants receive the cards for amenities along with any restrictions placed on tenants.
SOURCE: MBR 7/11/09

5. Members shall comply with "Security Regulations & Procedures" (see attachment #2).
SOURCE: BOD 5/11/91

6. Individual owners of property located within the Village may post notices on the bulletin board at the clubhouse for the sale/rental of said property provided the sale of said property is being handled by the individual owner. All other real estate notices may be posted by the Realtor on the Real Estate bulletin board outside the POA office.
SOURCE: BOD 5/11/91; BOD 4/17/04

7. Members should direct suggestions, complaints and requests for action to the Board in written form, dated and signed by the member.
SOURCE: BOD 5/11/91

II ROADWAYS

1. The speed limit on the main road known as Little River Drive is **20 MPH** unless otherwise indicated.
SOURCE: BOD 5/11/91

2. The speed limit on circle roads is **15 MPH**.
SOURCE: BOD 5/11/91

3. Stop signs and one-way signs shall be observed.
SOURCE: BOD 5/11/91

4. No vehicle shall park on, or have access to or from Little River Drive, (exceptions include specific deeded RV sites having a "drive-through" from Little River Drive to the circle road).
SOURCE: BOD 5/11/91

5. No garbage or debris shall be placed on Little River Drive.
SOURCE: BOD 5/11/91

6. Skateboards, skates and roller blades and scooters are prohibited on roadways, tennis courts, pool decks, picnic area and Clubhouse breezeway, but may be used in the Clubhouse parking lot areas and the basketball court.
SOURCE: BOD 7/13/96; BOD 4/17/04

7. ATVs are prohibited on the Roadways and Common Property. Any off road motorcycles, including dirt bikes, are not allowed to be operated on Village property.
SOURCE: BOD 7/12/03; BOD 6/17/06

8. Personal Watercraft and their trailers, ATVs or their trailers shall not be kept, stored or parked on any lot, road or common property except the storage compound or in a garage for more than one night per month. Upon violation be notified and subject to fines.
SOURCE: BOD 7/12/03

9. All golf carts are to be marked with the appropriate lot number.
SOURCE: BOD 3/17/09

III REAL PROPERTIES

1. Village - General

a. All lots shall be used for residential purposes only and no business or occupation shall be conducted on or from any lot in the Village.

SOURCE: DRC 1/30/97

b. The Association reserves unto itself, an easement over, upon, across and under all roads and each lot for the maintenance, erection, installation and use of public conveniences and utilities while maintaining reasonable standards of health, safety and appearance.

SOURCE: DRC 1/30/97

c. No tree(s) in excess of 4" in diameter may be removed without written approval by the BOD. If permitted, removal must be accomplished within 4 months.

SOURCE: BOD 3/9/96; DRC 1/30/97; BOD 4/17/04; BOD 2/19/05

d. No fences, walks, walls, ornamental or plant landscaping, or structure shall be located on any lot without approval by the Board.

SOURCE: DRC 1/30/97

e. Discharge of fireworks is prohibited in the Village. No discharge of any firearm or projectile shall be permitted on Village property. This will include, but not be limited to, paint ball guns, BB or pellet guns, dart guns, slingshots, any type of fireworks, or any other object which has the potential to injure, threaten, or endanger life, property, or the personal safety and well-being of the property owners, residents, and guests of the Village. This policy will be *strictly enforced* against all property owners, residents, and their guests. Any hunting or target practice is strictly forbidden. These restrictions do not preclude or alter County enforcement of any act of endangerment committed on private property.

SOURCE: MBR 7/9/94; BOD 4/17/04; BOD 4/17/08

f. Members shall comply with the "Pet Regulations" (see attachment #3).

SOURCE: BOD 5/11/91

g. Open fires are prohibited.

SOURCE: BOD 5/11/91; BOD 5/19/09

h. No modular or pre-constructed homes will be permitted within the boundaries of Windjammer Village without the prior written approval of the POA and then only if they meet standards established by the State of South Carolina and after strictly complying with standards for aesthetics, market value, and architectural quality then existing within Windjammer Village of Little River, S. C. No trees, fences, gates or posts may be removed from Common Property to facilitate installation of such homes.

SOURCE: DRC 1/30/97; BOD 10/11/97

2. Private Lots and Homes

a. No building, fence, sidewalk, wall, drive or other structure shall be erected, placed or altered until the proposed building plans, specifications, exterior color or finish, plot plans, and construction schedule shall have been approved in writing by the Board. (Architectural Procedures & Requirements and Regulations for Builders may be obtained from the Architectural Committee or the POA office).

SOURCE: DRC 1/30/97

b. No mobile homes or house trailers will be permitted in the Village.

SOURCE: DRC 1/30/97

c. It shall be the responsibility of each lot owner to prevent development of any unclean, unsightly or unkempt condition.

SOURCE: DRC 1/30/97

d. In the event that the owner of any lot permits underbrush, weeds etc. to grow to a height of two (2) feet (except where approved) and on request, fails to have premises cut within sixty (60) days, the Board may arrange for removal of excess growth and/or trash at the expense of the owner not to exceed a cost of \$500 annually. This provision shall not be construed as an obligation on the part of the Association to provide garbage or trash removal service.

SOURCE: DRC 1/30/97

e. No noxious or offensive activity shall be carried on, nor shall anything be done tending to cause embarrassment discomfort, annoyance or nuisance to neighbors.

SOURCE: DRC 1/30/97

f. No commercial signs, including "For Rent", "For Sale" shall be erected except with written permission from the Board, and only if said sign is deemed reasonable and necessary to avert serious hardship to the property owner. Individual owners and/or their real estate agent may post notices on the real estate board near the Village entrance.

SOURCE: DRC 1/30/97

g. No lot shall be sub-divided or its boundary lines changed except with written consent of the Board. However, the Association reserves the right to re-plat any two or more lots in order to create a modified building lot. Any lot which has been "combined" and has received "reduced dues status" cannot be subsequently "divided" without Board of Directors approval and full payment of that portion of all dues which would have been due, plus 6% interest, from the date it was originally "combined". In all cases preliminary approval by the POA is required before going to Horry County. Proof that the property has been "legally" combined or divided by Horry County must then be submitted before any approval for construction or dues reduction will be considered. Lots may not be combined which contain more than one residence on the created lot.

SOURCE: DRC 1/30/97; MBR 7/95; BOD 10/11/97

2. Private Lots and Homes (cont'd)

h. No house trailers or mobile homes, towed campers or any other type of habitable motor vehicles of any kind, whether self-propelled or towed, trailers, large trucks, school buses, tractors, tractor trailers, construction equipment, machinery or a commercial vehicle with the manufacturers designation of over one ton capacity, vehicles displaying commercial signs or evidence of commercial activities including, but not limited to, ladders, pipe, tools, hose, business machinery or equipment of any type, boats, or boat trailers, shall be kept, stored, or parked on any lot, road, or common property (except in the storage compound area or in a garage) for more than one night per month. Also excepted are vehicles for construction and tradesmen who are working in and/or making deliveries within the Village at that time. Acknowledging the lack of electrical and water service at the compound, this time may be extended to one week (if extensive maintenance or modification is required) upon receiving permission and permit from the Board of Directors or Security Committee Chairperson.

Upon the violation of this section, the Board will duly notify any violator of the violation, and same must be corrected and removed from the premises within 24 hours. Subsequent similar occurrences will be an immediate violation, and will not be tolerated.

The failure to comply with this section and/or the notice to comply may subject the violator to penalties as stated in the Declaration of Restrictions and Easements filed December 16, 1977 or in subsequent legal rules.

SOURCE: MBR 7/8/95; BOD 8/12/95

i. Any dwelling or structure which has been destroyed in whole or in part, shall be rebuilt, or all debris removed with reasonable promptness. Fallen trees shall be removed within three (3) months, debris, within six (6) months.

SOURCE: MBR 7/9/94

j. Garbage shall be placed in plastic bags and set out in front of lot within circle on designated mornings prior to 9:00 A.M. Brush for pick-up shall be cut and baled into lengths no longer than five (5) feet. Garbage may also be disposed of in the dumpster at the compound.

SOURCE: MBR 7/9/94

k. Laundry items shall not be left hanging outside for prolonged periods (i.e., overnight). Permanent clotheslines and posts are prohibited, however, retractable and removable clotheslines are permitted.

SOURCE: MBR 7/9/94

l. A realtor, who brings clients into the Village, must accompany them at all times. This includes all clients admitted to the Village for an open house. Clients are not allowed to roam the Village at will. Real Estate agents must use their assigned entry code to gain access to the Village. This code is confidential and must not be given to clients. Real Estate agents are liable for their actions and the actions of their clients while in the Village. No signage of any type is allowed within the Village or on its common properties. This includes the parcel along Rt. 179. Balloons are considered signage.

SOURCE: BOD 4/18/94; BOD 6/19/04; BOD 10/15/07

2. Private Lots and Homes (cont'd)

m. No exterior antennas shall be permitted on any lot nor shall any "satellite dishes" be permitted on any lot without the express written approval of the Board of Directors. All applicants must first request permission from the Architectural Committee. In considering any request for approval to install a "satellite dish" the following rules will apply.

1. No dish larger than 18" in diameter will be approved.
2. No trees shall be removed to clear the line of sight required for the dish to operate properly.
3. The dish must be attached to the roof or side of the house without dangling wires.

Where possible, the dish should be mounted lower than the roof line of the house and be as unobtrusive as possible.

The Architectural Committee is responsible for advising property owners on the acceptability of proposed dish installations and in formulating recommendations to the Board for action. The Board of Directors is responsible for interpreting and enforcing the rules.

SOURCE: DRC 1/30/97; BOD 10/11/97

n. Kayaks and unmotored watercraft or surfboards small enough to be easily carried by one person and transported on a car roof rack can be neatly stored on the side or rear of the house if placed in an inconspicuous place or covered as to not distract from the neighborhood.

SOURCE: BOD 5/19/09

IV COMMON FACILITIES

1. Village - General

a. Members, their spouses and children who reside with them shall have the right to use facilities and services offered by the POA. Members may also bring guests to use facilities subject to limitations as may be imposed by the Board.

SOURCE: BYL 7/8/89

b. Members who are in arrears with dues/assessments or are in violation of Restrictions/Rules/Regulations, will upon written notification, be denied use of common facilities.

SOURCE: BOD 5/11/91

c. No private parties will be allowed on common facilities. (exception: see "Clubhouse, item b.")

SOURCE: BOD 5/11/91

2. CLUBHOUSE

a. Members may reserve the Clubhouse, in whole or in part, for private activities. Scheduling is contingent upon availability and subject to Social Committee Procedures and Board of Directors approval. A donation and deposit are required. Deposit will be refunded after the affair, providing the Clubhouse is left in satisfactory order. Any damages in excess of the deposit will be the responsibility of the host POA member. This reservation excludes the use of the facility by any other POA members during the period of time of the reservation.

SOURCE: BOD 4/11/92; BOD 9/20/97

b. No outside organization is allowed to reserve use of the Clubhouse, even if a POA member is part of that organization.

SOURCE: BOD 5/11/91

c. Use of Clubhouse by individuals or programmed activities shall in no way offer any program which is of a commercial nature for monetary gain or recognition.

SOURCE: BOD 5/13/95

d. Members may invite guests to POA activities and events in the Clubhouse with a limitation of two (2) adults and their minor children per household unless room is available for more.

SOURCE: BOD 5/11/91; BOD 5/19/09

e. No minor (under age 18) permitted in the clubhouse except all-ages Game Room unless accompanied by an adult (over age 18).

SOURCE: BOD 2/28/93; BOD 7/13/02; BOD 4/17/04; BOD 5/19/09

f. Persons in wet bathing suits are not allowed in the Clubhouse or Game Room.

SOURCE: BOD 5/11/91; BOD 7/13/02; BOD 5/19/09

g. The Clubhouse will be open from 6:00AM to 10:00PM. At any other time, programmed membership activities will have legal access to clubhouse. Those using the clubhouse, other than these hours, shall be responsible for locking the clubhouse.

SOURCE: BOD 2/28/93; BOD 6/19/04; BOD 5/19/09

h. No smoking in enclosed areas of Clubhouse.

SOURCE: BOD 10/9/93

i. No smoking or alcoholic beverages in the game room.

SOURCE: BOD 7/12/08

j. No equipment may be removed from the premises without specific permission of the Social Chairman. No equipment borrowed may be removed from the Village.

SOURCE: BOD 11/12/94

3. SWIMMING POOL AND PICNIC AREA

- a. Members, tenants and guests shall comply with "Pool Regulations" (see attachment #4).
SOURCE: BOD 5/11/91; BOD 5/19/09
- b. Members who wish to use the picnic area for a large group of guests must follow these guidelines. No outside organization is allowed to use the Picnic Area even if a POA member is part of that organization.
- (1) Picnics involving more than ten (10) people must obtain permission from the Social Committee and have Board of Directors approval.
 - (2) There must be fifteen (15) days notice.
 - (3) No more than twenty-five people in the group
 - (4) Four (4) hour maximum time period
 - (5) No alcohol or music (deleted: SOURCE: BOD 1/15/05)
 - (6) There is a \$25.00 deposit to be returned within five (5) working days if the area and equipment are properly cleaned.

SOURCE: BOD 1/10/98

4. PIER, DOCK, AND COMPOUND AREA

- a. Members shall identify crab traps with their name and address (State Law). No other person(s) shall tamper with these traps.

SOURCE: BOD 5/11/91

- b. Crab traps and bait buckets are not allowed on the waterway side of the pier head (fishing area). Tethered traps shall be kept baited and checked daily. Unbaited and/or unidentified traps will be removed from the pier and placed at the gazebo.

SOURCE: BOD 5/11/91; BOD 5/19/09

- c. No fishing or crabbing allowed on floating dock.

SOURCE: BOD 5/11/91

- d. Members and tenants shall comply with "Policy and Regulations for the Storage Compound" (see attachment #5).

SOURCE: BOD 5/11/91; BOD 5/19/09

- e. Disposal of brush and bagged leaves shall be placed in the appropriate area at the compound. Limbs 3" in diameter or larger shall not be placed in this area; property owners are responsible for taking limbs 3" in diameter or larger to the Horry County Recycling Centers. Regular garbage and recycled items shall be placed in the appropriate containers.

SOURCE: BOD 6/9/01

- f. The tie-up of a boat unattended is limited to one hour maximum

SOURCE: BOD 4/11/92

- g. No swimming, diving, jumping from the pier or docks.

SOURCE: BOD 8/21/04

DECLARATION OF RESTRICTIONS & EASEMENTS
REVISION January 30, 1997

1. The recitals set forth hereinabove are incorporated herein and made a part and parcel of this Revised Declaration of Restrictions and Easements.
2. All lots shall be used for residential purposes exclusively and no business or occupation of any type or kind shall be conducted on or from any Lot within Property.
3. No building, fence, sidewalk, wall, drive or other structure shall be erected, placed, or altered on any Lot until the proposed building plans, specifications, exterior color or finish, plot plans (showing the proposed location of such building or structure, drives, parking areas and drainage facilities), and construction schedule shall have been approved in writing by the Association. Refusal of approval of plans, location, or specifications may be based upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Association shall seem sufficient. No alterations may be made in such plans after approval is given except by and with the written consent of the Association. No alteration in the exterior appearance of any building or structure shall be made without like approval by the Association. One copy of all plans, specifications, and related data shall be furnished to the Association for its records.

In order to preserve the natural beauty of the Lots within the Property, the Association reserves unto itself, its successors and assigns, the absolute right to control and decide the precise site and location of any structure on any Lot within the Property.

4. No fences, walks, walls, statues or structures of any type or kind shall be located on any Lot within the Property unless the same shall have been approved in writing by the Association. Sidewalks are defined as walkways adjacent or parallel to the roadway.
5. It shall be the responsibility of each property owner to prevent the development of any unclean, unsightly or unkempt condition on their Lot(s) which shall tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.
6. No noxious or offensive activity shall be conducted upon any Lot, or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood. Companion pets such as birds, domesticated cat, fish, dogs and other small mammals are permitted with the Property. No owner may keep nondomesticated cats, non-human primates, horses, or other farm livestock or zoo type animals on the Property. Pets must be on a leash or carried when on common property. It shall be the owner's obligation to dispose of waste material from pets. The Association shall have sole discretion to deem a pet a nuisance. In the event the pet has been deemed a nuisance, the Association shall give written notice to the pet owner and take necessary legal action to remove the pet from the property. A pet not on a leash shall be deemed a nuisance. Failure to clean the waste material from a pet shall be deemed a nuisance.

DECLARATION OF RESTRICTIONS & EASEMENTS
REVISION January 30, 1997

7. In the event that the owner of any Lot permits any underbrush, weeds, etc. to grow upon any Lot to a height of two (2) feet, except as part of a landscaping plan approved by the Association, and on request fails to have the Lot cut within sixty (60) days, the Association or its agents may enter upon said Lot to remove the same at the expense of the owner; provided, however, that such expense shall not exceed \$500.00 annually. The Association or its agents may also enter upon said Lot to remove any trash which has collected on said Lot without such entrance and removal being deemed a trespass, all at the expense of the owner of said Lot; provided, however, that such expense shall not exceed \$500.00 annually. This provision shall not be construed as an obligation on the part of the Association to provide Lot maintenance services or garbage or trash removal services.

8. No commercial signs, including "for rent", "for sale" and other similar signs shall be erected or maintained on any Lot except with the written permission of the Association, it being understood that the Association will not grant permission for said signs unless their erection is reasonable and necessary to avert a serious hardship to the Lot owner. Property identification and like signs exceeding a combined total of more than two (2) square feet may not be erected without the written permission of the Association.

9. No exterior antennas shall be permitted on any lot nor shall any "satellite dishes" be permitted on any lot without the express written approval of the Board of Directors. All applicants must first request permission from the Architectural Committee. In considering any request for approval to install a "satellite dish" the following rules will apply:

1. No dish larger than 18" in diameter will be approved.
2. No trees shall be removed to clear the line of sight required for the dish to operate properly.
3. The dish must be attached to the roof or side of the house without dangling wires. Where possible, the dish should be mounted lower than the roof line of the house and be as unobtrusive as possible.

The Architectural Committee is responsible for advising property owners on the acceptability of proposed dish installations and in formulating recommendations to the Board for action. The Board of Directors is responsible for interpreting and enforcing the rules.

SOURCE: BOD 1/13/96; BOD 10/11/97

10. The Association reserves unto itself, its successors and assigns, a perpetual inalienable and releasable easement over, upon, across, and under all roads and each Lot for the maintenance or use of said road and for the erection, maintenance, installation, and use of utility poles, wires, cables, conduits, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, cable television, community television systems, or other public conveniences or utilities and the Association may further cut drainways for surface water wherever such action may appear to the Association to be necessary in order to maintain reasonable standards of health, safety, and appearances. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, make any gradings of the soil, or to take any other similar action reasonable or necessary to provide economical and safe utilities installation and to maintain reasonable standards of health, safety, and appearance.

DECLARATION OF RESTRICTIONS & EASEMENTS
REVISION January 30, 1997

11. No trees over four (4) inches in diameter may be removed without the written approval of the Association.

12. No Lot shall be subdivided, or its boundary lines changed, except with the written consent of the Association.

13. The use of each Lot within Property and related recreational facilities shall be subject to rules and regulations as may be adopted and implemented by the Association from time to time which shall be applied on a uniform basis to all Lots located within Property.

14. All owners of Lots within the Property shall be members of the Windjammer Village of Little River, South Carolina Property Owners Association, and shall pay dues, fees, charges, penalties and assessments, assessed or imposed by the Association including, but not limited to, charges for road maintenance and security services. The failure to pay these charges shall result in a lien upon the Lot and suspension of all POA facility privileges and other membership rights and privileges.

15. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon any Lot subject to assessment; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any subsequent assessment.

16. All covenants, restrictions and affirmative obligations set forth in this Revised Declaration of Restrictions and Easements shall run with the land and shall be binding on all parties and persons claiming under them for a period of ten (10) years from date of recording, after which time said covenants shall be automatically extended for successive five (5) year periods unless an instrument signed by a Majority of the then owners affected by said covenants has been recorded agreeing to change said covenants in whole or in part.

Nothing herein shall be deemed to abridge or rescind any previously adopted By-laws or rules and regulations of Windjammer Village Property Owners Association unless there is a conflict with this document. If there is a conflict the provisions of this document shall prevail.

17. In the event of a violation or breach of any of these restrictions by any property owner, or agent of such owner, the owners of Lots in Windjammer Village, or any of them jointly or severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Association shall have the right, whenever there is maintained on any Lot within the subdivision or there shall have been built on any Lot in the subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, if after thirty (30) days written notice of such violation it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction or conditions contained in this Revised Declaration of Restrictions and Easements, however long continued, shall not be deemed a waiver of the right to do so hereafter, as to the same breach or as

DECLARATION OF RESTRICTIONS & EASEMENTS
REVISION January 30, 1997

to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restrictions in this Revised Declaration of Restrictions and Easements shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

18. All rules, regulations, and procedures as may be adopted by the Association are adopted as restrictions of this Revised Declaration of Restrictions and Easements as fully as if they were set out verbatim herein, and a copy of said latest rules, regulations, etc. may be picked up at the Association office at which shall be kept a current list of Association membership dues status.

19. No mobile homes or house trailers will be permitted in the subdivision. No modular homes will be permitted in the subdivision without the prior written approval of the Association.

20. No motorized vehicles may be operated on any roads on the Property by anyone not old enough to obtain a drivers license. All vehicles must be in good working order and not used after dark without working lights.

21. Failure to Comply. Failure of a Lot owner to comply with this Revised Declaration of Restrictions and Easements or Rules and Regulations shall provide the Association with the right to bring legal action in law or in equity, including but not limited to an action for injunctive relief, damages, or a combination thereof. All costs and expenses incurred by the Association in terminating or resolving a violation of this Revised Declaration of Restrictions and Easements, inclusive of attorneys' fees (whether or not litigation is instituted) shall be the responsibility of the Property owner determined by the Association to be in violation.

22. In addition to all other remedies set forth herein to enforce compliance with the provisions hereof, the Association shall also have the following rights and powers:

A. Notice of Infraction. In the event of a violation or infraction hereof, Association shall notify the Lot owner(s) of the infraction or infractions by mail with return receipt requested or by hand delivery. Included with such notice will be a copy of the specific restriction, covenant, rule, regulation or by-law that has allegedly been violated and the time date and location of the next regular or special Board of Directors meeting. At such meeting, the owners shall have the opportunity to present reason, either in person or by letter, why the penalties hereinafter set forth should not be imposed.

DECLARATION OF RESTRICTIONS & EASEMENTS
REVISION January 30, 1997

B. Penalties. In the event a majority of the Board of Directors determines that there was in fact an infraction or continues to be an infraction hereof, the Board of Directors may impose special penalties against the violating Lot owner as follows:

1. First non-compliance or violation of a particular restriction, covenant, rule, regulation or by-law: A fine not to exceed (\$100) One Hundred Dollars;
2. Second non-compliance or violation of a particular restriction, covenant, rule, regulation or by-law: A fine not to exceed (\$200) Two Hundred Dollars;
3. Third non-compliance or violation of a particular restriction, covenant, rule, regulation or by-law: A fine not to exceed (\$300) Three Hundred Dollars;

In order for there to be imposed a penalty for a second or third violation of the same restriction, covenant, rule, regulation or by-law, the provisions for notice and an opportunity to be heard as set forth in subparagraph 22. A above must be complied before each additional penalty is imposed.

Notice of all decisions to impose penalties in accordance with this paragraph 21 shall be given to the violating Lot owner within five (5) days of the Board of Directors meeting. The penalty imposed shall be due within (10) Ten calendar days after the notice of imposition of the penalty is given. If the assessment is not paid within forty (40) days after the date such notice is given, the penalty shall bear interest from the date when due at the legal rate of interest for Judgments in the state of South Carolina.

The amount of the penalties set forth above may be adjusted up or down upon a majority vote of the Lot owners affected by this Revised Declaration of Restrictions and Easements.

SECURITY REGULATIONS AND PROCEDURES
(Approved by Board 2/21/04)

1. **Bar Coded Window Sticker** entry into Windjammer

a. The primary method for residents to enter the village is by use of the Bar Coded Window Sticker. Residents must use the "resident" lane of the left side of the island.

b. Bar Coded Stickers shall be issued to each verified lot owner, renter, and members of their immediate family living in Windjammer Village (limit 4 per family). Each Bar Coded Sticker shall be assigned to a specifically identified vehicle, and are not transferable. State and License Number changes must be reported to the POA Office. All stickers expire and will be invalidated upon termination of membership in the Association.

c. POA members who rent out their property, may retain use of their Sticker for the purpose of checking on their property and renters. Stickers issued to Renters will expire and will be invalidated upon termination of the rental agreement.

2. **Telephone System** entry into Windjammer Village

a. The primary method of entry into the village by Visitors is by use of the Telephone System. Visitors must use the "visitors" lane on the right side of the island. For this purpose, the term "visitor" includes relatives, friends, guests, contractors and vendors.

b. Residents are listed alphabetically (by last name) in the Electronic Window. Visitors will scroll to the last name and enter the 3 digit code. The resident must answer the telephone and press 9 to open the gate.

c. This system may also be used by residents returning to the village in a vehicle of another person, taxi, etc.

3. **Proximity Card** entry into Windjammer Village

a. Proximity Cards are the primary method of entry into the village for residents in a vehicle of another person, motorcycle, taxi, and they may be used for frequent visitors, health care professionals, etc. (limit two per household). Proximity Cards may not be issued as a substitute for Bar Coded Window Stickers.

b. The Proximity Card is a Coded Card and identified to the lot owner or renter. A Proximity Card Reader is located in the visitor's lane, which scans the Card and opens the gate.

c. Bar Coded Window Stickers and Proximity Cards that are lost, stolen, or mutilated will be invalidated and a new one may be issued for a \$7.00 fee. Proximity Cards expire and will be invalidated upon termination of a rental agreement or membership in the Association.

SOURCE: BOD 11/18/08

SECURITY REGULATIONS AND PROCEDURES
(Approved by Board 2/21/04)

4. Key Pad entry into Windjammer Village

a. Key Pad equipment is located in the visitor's lane and requires the entry of a Key Pad Code to enter the village.

b. Key Pad Codes will be issued to Utility Companies (electric, water, sewer, telephone, Cable TV, garbage), Mail Trucks, UPS, Fed Ex, Coast Guard, DNR, health care professionals, etc., contractors doing business with the village and other Government and local agencies.

c. When a work project has been approved by the Architectural Committee or other application is approved by the Board, the resident may request that a Key Pad Code be issued to their contractor. The code will be valid only during the hours, days and time period that is approved, and will be invalidated at the end of the work project..

5. Responsibility for entry into Windjammer Village

a. Bar Coded Window Stickers, Proximity Cards and Key Pad Entry Codes must be requested by the lot owner/resident at the POA office during normal office hours.

b. The resident is responsible for getting their visitors into the village, using one of the available methods. The resident is further responsible for the actions of their visitors, including any damage done to security gates and related equipment, whether caused by the resident or their visitor.

c. Lot owners and residents are responsible for the use or misuse of Bar Coded Window Stickers, Proximity Cards and Key Pad Codes which were issued at their request and must notify the POA office of any change which requires these codes to be invalidated.

6. Parking in Windjammer Village

a. Vehicles of residents and their guests must be parked on their lot or in designated parking spaces. No vehicle may be parked on Windjammer Village Common Property for more than 24 hours, except in the Compound Area.

b. Vehicles, boats, trailers, etc. parked inside the locked Compound Storage Area must be parked in their space assigned by the Compound Coordinator. The space outside the locked Storage Area is available for "temporary" parking only.

7. Boat Ramp and Docks

The boat ramp and docks are for the use of Windjammer Village Members only. Residents must obtain a Boat Pass from the POA office prior to any visitor bringing a boat into the village. The Boat Pass must be displayed in sight in the visitor's vehicle.

PET REGULATIONS
(Approved by Board 05/11/91 and 8/9/97)

1. Pets (including cats) are not allowed to run at large in the village. Dogs must be restrained by a leash when being walked on the common properties, except... they may be unleashed for play and exercise in the area of the dump and the waterway at the shellbank provided they are supervised and are not allowed to become a nuisance. No dogs, leashed or unleashed are allowed on the fishing pier.

2. Feces shall be disposed of in a responsible manner.

3. If a dog is tethered outdoors, the owner must show consideration for peace and comfort of other residents. Prolonged, excessive barking is not permitted. Also, the dog's area must be cleaned up frequently enough to prevent offensive odors from bothering neighbors.

4. Should a resident deem a pet to be a nuisance, he/she should discuss the matter with the owner. If mutual satisfaction is not obtained by that action, either party may petition the Board of Directors

POOL REGULATIONS
(Approved by Board 5/11/91)
(Approved by Board 8/16/03)

1. Pool hours - 9:00 AM to 10:00 PM seven days a week.
2. "Swim at your own risk" policy.
3. Proper swim suits (bathing suits) required. BOD 10/9/99
4. Shower before entering pool.
5. Children under age 12 must be accompanied by an adult (18+).
6. No diaper dependent person is allowed in the main pool. If a diaper dependent person goes into the pool and causes the pool to have to be cleaned, that person will be subject to a fine and costs to clean the pool.
7. No children over 7 allowed in kiddie pool unless accompanied by an adult.
8. Consideration for the enjoyment & safety of others is required.
9. No running, pushing, shouting or other boisterous behavior.
10. No bikes, skates, skateboards, or ball playing.
11. No diving in pool.
12. No floats in pool when it is crowded.
13. Food allowed in picnic area only. All types of beverages and drinks are allowed on the cement decking poolside, at the poolside tables and chairs. No drinks allowed in the pool. (BOD 06/16/07)
14. Ear phones required for all sound equipment.
15. Glass bottles and/or glass containers of any kind are prohibited in the pool itself and the concrete portion of our decking surrounding the pool, lower and upper level decks. Glass is allowed in the grass/woodchip picnic area and clubhouse. Consumption of food or beverages in glass containers/bottles is prohibited in the breezeway and bathrooms. Transporting those unopened items to the clubhouse or picnic area is allowed. (BOD 10/15/07)
16. No pets.
17. Use trash cans and ash trays.

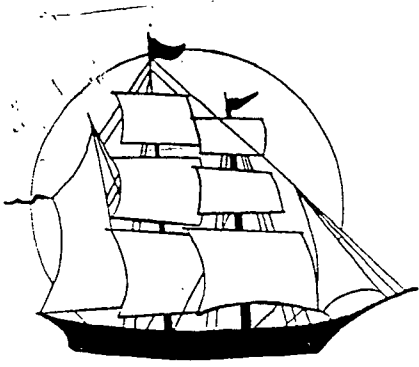
SAFETY AND CLEANLINESS ARE EVERYONE'S RESPONSIBILITY..!

POLICY & REGULATIONS FOR STORAGE COMPOUND
(Approved by Board 1/10/98)
(Item 3 Revised by Board of Directors 11/18/08)

It shall be the policy of the Board to maintain a storage compound for the convenience of the membership, subject to the regulations of the Security Committee and the Agreement for Space Assignment as approved by the Board.

Use of the compound area for storing vehicles is not mandatory. This in no way obviates the requirement of Section III, Item 2. h. of the Restrictions/Rules/Regulations, but recognizes that private storage facilities are available in the local area.

1. The Security Committee shall be responsible for the regulation of the Storage Compound and shall provide the Board with an annual report prior to July 1 concerning its operation. The Maintenance Committee shall maintain the facility in accordance with established procedures.
2. Spaces within the compound area will be assigned on a first-come, first served basis. Assignments will be for one (1) year, after which time the assignment must be renewed by executing a new Agreement for Space Assignment. Assignments are not transferable. Spaces will not be assigned for future use.
3. No more than one (1) space will be assigned to any POA property owner regardless of the number of lots owned. In the case of rental property, the space may be retained by the owner or passed over to the renter provided there are open spaces and no one on waiting list. Additional spaces will not be assigned in the fenced in area.
4. Only items **owned** by the property owner (or assigned renter) may be stored in the fenced compound or assigned tie-down spaces.
5. The storage compound coordinators have the authority to assign spaces as required for the most effective utilization of space considering the physical dimensions and maneuverability of stored items.
6. Vehicles or other stored equipment may be temporarily relocated to the owner's property for effecting repairs and maintenance. This recognizes the lack of electricity and water in the compound area.
7. Action will be taken to remove from the compound area vehicles that meet the classification of "derelict" vehicles according to the laws of the State of South Carolina.
8. The property owner to whom a space is assigned is responsible for maintaining that space free of growth and vegetation. Failure to do so could result in the space assignment being revoked.
9. The Storage compound coordinators have authority to interpret the rules as approved by the Board and to recommend action including fines.



Windjammer Village of Little River, S.C.

By-Laws

Property Owners Association, Inc.

Amended July 11, 1992
Amended July 8, 1995
Amended July 10, 1999
Amended July 8, 2000
Amended July 14, 2001
Amended July 13, 2002
Amended July 12, 2003
Amended July 10, 2004
Amended July 14, 2007
Amended July 12, 2008
Amended July 11, 2009

BYLAWS
OF
WINDJAMMER VILLAGE OF LITTLE RIVER SOUTH CAROLINA
PROPERTY OWNERS ASSOCIATION

ARTICLE I

DEFINITIONS

1. "Association" shall mean and refer to the Windjammer Village of Little River, South Carolina, Property Owners Association, also known as POA, a nonprofit corporation organized and existing under the laws of the State of South Carolina.
2. "Windjammer Village of Little River" shall mean and refer to the subdivision of that name in Horry County, South Carolina.
3. "Common Properties" shall mean and refer to the parks, recreational areas, playgrounds, swimming pool, activities building, boat ramp, streets, roadways, trails, and all other properties owned or used by the Association for the common use and enjoyment of the lot owners of Windjammer Village of Little River excluding utility equipment and T.V. cable systems not owned by the Association.
4. "Lot" shall mean any parcel of land platted and recorded for residential use within the subdivision.
5. "Members" shall mean any owner(s) of a lot within the subdivision, either by way of sales contract or by deed.
6. "Declaration of Restrictions and Easements" shall mean those documents so titled and recorded in the office of the Clerk of Court for Horry County, South Carolina, on May 8, 1973, December 16, 1977, January 29, 1997, and any supplement(s) properly executed and recorded in the same office.

ARTICLE II

LOCATION

The principal office of the Association shall be at such place as may be designated by the Board of Directors.

ARTICLE III

MEMBERSHIP

1. Member(s) shall be those persons owning a lot within the subdivision. This membership is not assignable and belongs only to the person(s) owning the lot. If a lot is sold, the new owner(s) become(s) the member(s) and the former member(s) forfeit(s) membership.
2. All member(s), their spouses, and children who reside with them shall have the right to use the facilities owned or operated, and avail themselves of the services offered by the Association, upon payment of dues/assessments and fines imposed by the Association. Member(s) may delegate the right of use and enjoyment of common properties and facilities to tenant(s) or contract purchaser(s) who reside(s) on the property, providing that said tenant(s) abide by the By-Laws and Covenants as approved by the POA. Any infraction by the tenant(s) shall be the responsibility of the member(s)/owner(s).
3. Members may be entitled to bring guests to use the facilities subject, however, to such limitations as may from time to time be imposed by the Board of Directors or such committee as the Board of Directors may appoint to govern such matters. Members shall be responsible for the conduct of their guests and shall be held responsible for reimbursement to the POA for any damages to common property and facilities caused by their guests.
4. The Board of Directors may suspend all POA Facility Privileges from any member(s) of the Association during any period of time when there exists a violation of such member(s) of:
 - a. Any of the restrictions, as filed by Windjammer Village of Little River, governing the use of the property, including but not limited to, the failure to pay any dues/assessments and/or fines as may be imposed by this Association or:
 - b. Any Rules/Regulations adopted by the Board of Directors.
5. Membership dues shall be paid on the (1st) first day of the month for which they are due. A late charge of \$10.00 per account shall be assessed on each account by the (10th) tenth of each month. This charge shall be applied monthly until all dues are current. This charge could be increased or decreased by the current Board of Directors if deemed necessary.
6. Members/Owners must comply with the Rules and Regulations. Any infraction of the Rules and Regulations by a tenant(s), or a guest(s) shall be the responsibility of the Member(s)/Owner(s).

ARTICLE IV

VOTING RIGHTS

1. Member(s) shall be entitled to a total of (2) two votes for each lot owned, providing payments of POA dues/assessments and fines are current*. However, dwellings situated on more than one lot, and combined lots assessed as one lot, shall be considered as only one lot for voting purposes.

*'Current' has been defined as all dues/assessments which are paid through the month preceding the month in which the election is held. Fines are due within ten (10) days of the date of notice.

ARTICLE V

BOARD OF DIRECTORS

1. The affairs of the Association shall be controlled and managed by the Board of Directors.
 - a. The Board of Directors shall consist of five (5) members, all of whom shall be members in good standing of the Association.
 - b. The term of office for Directors elected at each Annual Meeting to fill the positions of Directors whose terms of office expire, shall be for two (2) years, commencing at the adjournment of the annual Meeting.
2. A majority of Directors shall constitute a quorum for the transaction of business. All resolutions adopted and all business transacted by the Board of Directors shall require the affirmative vote of a majority of the Directors present at the meeting.
3. Any vacancy occurring in the Board of Directors shall be filled by appointment of the affirmative vote of a majority of the remaining Directors, provided a majority of the remaining Directors had stood for election by the membership. If a Board vacancy occurs, which, if filled by appointment by the Board, would create a majority of Board-appointed directors, the Board shall call a special Membership Meeting to elect a new Director within sixty (60) days of receipt of notification of the vacancy. This election shall not affect the status of Directors duly appointed by the Board. Any Director appointed or elected to fill a vacancy shall serve until said term is completed.
4. Any Director may be removed at any time with or without cause by a majority vote of the members of the Association. Action to remove a director may be initiated by a majority of the Board of Directors voting in a duly called and conducted meeting of the Directors or upon submission of a petition by 25% of the qualified, voting Members. A majority of those voting is required for removal.
5. No Director shall receive compensation for their service. However, any Director may be reimbursed for his/her actual expenses incurred in the performance of his/her duties, except no travel expenses will be allowed to attend any meetings.

ARTICLE VI

ELECTION OF DIRECTORS

1. The Nominating Committee shall place in nomination the names of selected nominees for the Board of Directors at the regular April Board of Directors Meeting. Nominations may also be made from the floor at the April meeting and other qualified members may petition the Secretary, no later than May 25, to have their name added to the list of candidates. At such election the members may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of Article IV hereof. The persons receiving the largest number of votes shall be elected. There shall be no cumulative voting.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

1. Enforcement of the Rules and Regulations of the Association is a power and duty of the Board of Directors
2. The Board of Directors shall have power:
 - a. To call special meetings of the members whenever it deems necessary and it shall call a meeting at any time upon written request of one-fourth (1/4) of the voting membership as provided in Article XI, Section 2.
 - b. To appoint and remove at pleasure all agents and employees of the Association, prescribe their duties, fix their compensation and require of them security of fidelity bond as it may deem expedient. Any position(s) with compensation, to be filled, will be posted. Nothing contained in these By-laws shall be construed to prohibit the employment of any member or officer who is not a Director of the Association, in any capacity whatsoever.
 - c. To provide for the adoption, publishing and enforcement of Rules and Regulations governing use of the common properties.
 - d. To administer the Budget with the limitation that spending, for whatever purpose, cannot exceed budgeted spending per fiscal year. Any spending above budget or from Reserves must be approved by a majority of the members by written ballot. Notwithstanding the above sentence, if a natural or manmade disaster should occur, if there is a major failure of HVAC or maintenance equipment, or an unexpected legal expense, the Board of Directors is authorized to spend up to \$25,000 from Reserves without approval by the members.
3. It shall be the duty of the Board of Directors:
 - a. To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the Annual Meeting or at any Special Meeting when such is requested in writing by one-fourth (1/4) of the voting membership, as provided in Article XI, Section 2.
 - b. To supervise all officers, agents and employees of this Association and to see that their duties are properly performed.
 - c. As more fully provided in the Declaration of Restrictions applicable to Windjammer Village of Little River, Inc.:
 - (1) To fix the amount of dues against each lot, and to allow combined lots to be assessed as a single lot. Any change of dues resulting in an increase of more than 10% rounded to the nearest dollar per annum will require prior approval of a majority of the POA members.
 - (2) To prepare a roster of properties and the dues/assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any member.
 - (3) To send an annual written notice of dues to every owner with the notice for the Annual Meeting.

- (4) A lien shall be placed on any property in which dues are delinquent after (3) three months (90 days). After another (30) thirty days (a total of 120 days) foreclosure proceedings shall be initiated. All costs and fees of litigation shall be the responsibility of the property owner (including attorney fees, court costs and any other costs incurred by Windjammer Village POA) to process these legal proceedings.
- (5) All costs of any action taken by the Board of Directors to force compliance with the Rules and Regulations will be the sole responsibility of the offending Member(s)/Owner(s). These costs shall include, but are not limited to all attorney fees, court costs, and any other costs of litigation.
- (6) To develop, publish and administer Rules and Regulations covering building guidelines and restrictions, including, but not limited to, dwelling size, location of structure on lot, exterior finish and lot maintenance.
- d. To issue, or cause an appropriate officer to issue, upon demand by any person a certificate setting forth whether any dues/assessments have been paid. Such certificate shall be conclusive evidence of any dues/assessments therein stated to have been paid.
- e. To enter into such contracts as the Board of Directors may deem advisable for utility and maintenance services.
- f. To procure and maintain adequate liability and hazard insurance on common property.
- g. To cause the common property to be maintained.
- h. To prepare and submit to the membership, prior to each Annual Meeting, a proposed budget of expenses and projected income for the coming fiscal year.
- i. Not permit any person or persons to deed, grant, bargain, sell, release, lease, rent, grant an easement, or in any way dispose of any commonly owned POA Real property unless and until a majority of the POA membership voting by a written ballot to that effect so approve said disposition. No proxy votes to be permitted.
- 4. All powers not expressly granted, conferred or implied are reserved to the membership.
- 5. Purchasing Policy for WJV

The following policy is to be used by Village employees, Committee members and Board members when spending POA monies. Any monies spent must have been in the Committee's Budget.

- a. \$500-\$1500 – Must be approved by 1 Board member.
- b. Any item over \$1500 must have 2 written quotes, a general description of the item to be bought and Board approval.
- c. All contracts must be approved by the Board of Directors and must be signed by the President and one other officer of the corporation.

SOURCE: BOD 10/16/04

If possible, any item over \$1500 should have a written specification list attached to the request. (SPEC SHEET). This should be provided to the vendor quoting.

SOURCE: BOD 7/13/02; BOD 3/20/04

6. Sales Policy for WJV

At no time can POA property be sold without the Board of Director's approval. Property valued above \$100 must be advertised to all POA members should they wish to buy it from the POA. Property valued over \$1000 must be put up for bid to all POA members. If unsold to POA members, any item can be offered for sale to the general public.
SOURCE: BOD 7/13/02; BOD 3/20/01

ARTICLE VIII

DIRECTORS' MEETINGS

1. A regular meeting of the Board of Directors shall be held at the Association Clubhouse during the third week of the months January through June and August through November. The July meeting will be held immediately before the Annual meeting. At the first meeting of the new Board, the Board will decide the day and time in the third week of the month at which the monthly meeting will be held and so advise the Association members.
2. Special meetings of the Board of Directors shall be held when called by any two officers of the Association, by any two Directors, or by the General Advisory Committee (Article X, Section 7) after not less than three (3) days notice to each Director. Notice shall be posted on the Bulletin Board that any member, in good standing, may attend as an observer.
 - a. All Special and Executive Board Meetings shall be properly documented and minutes read at the next scheduled monthly meeting.
3. The transaction of any business at any meeting of the Board of Directors, however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held after regular call and notice of a quorum is present and, if either before or after the meeting, each of the Directors not present signs a written waiver of notice, or a consent to the holding of such meeting or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records and made a part of the minutes of the meeting.
4. The majority of the Board of Directors shall constitute a quorum thereof.

ARTICLE IX

OFFICERS

1. The officers shall be a President, a First Vice President, a Second Vice President, a Secretary, a Treasurer and such other officers as the Board may approve from time to time. The President and Vice Presidents shall be members of the Board of Directors.
2. The officers shall be chosen by a majority vote of the Directors. The election shall take place at the first meeting of the Board of Directors following each Annual Meeting of the members.
3. All officers shall hold office for one year unless:
 - a. He/she shall sooner resign or:
 - b. He/she shall be removed or otherwise be disqualified to serve. A vacancy occurring among the officers shall be filled at a regular or called meeting of the Board of Directors by a majority vote of those present.
 - c. Appointment of a member of the Board of Directors may be made by the President to fill any special need arising before the Board. This appointment shall be for a term no longer than one year.
4. The President shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board of Directors are carried out and sign all notes, leases, mortgages, deeds and all other written instruments.
5. The First Vice President shall perform all the duties of the President in his/her absence. The Second Vice President shall perform all the duties of the President and First Vice President in their absence. The Second Vice President shall act as Personnel Director.
6. The Secretary shall be ex officio of the Board of Directors, unless he/she shall be in fact a member of the Board of Directors, then his/her position shall not be ex officio. He/she shall record the notes and keep the minutes of all proceedings in a book to be kept for the purpose. He/she shall keep records of the Association. He/she shall maintain a record of all members of the Association together with their addresses as registered by such members.
7. The Treasurer or Office Administrator shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors, provided however, that a resolution of the Board of Directors shall not be necessary for disbursements made in the ordinary course of business conducted within the limits of the budget adopted by the membership. The Treasurer shall keep proper books of account. All checks must be signed by two officers of the Association, at least one of whom shall be either the President or the Treasurer.
8. The office of Secretary/Treasurer may be held by the same person. No one person shall simultaneously hold more than one of any of the other offices except in case of special appointments.

ARTICLE X

COMMITTEES

1. The standing committees of the Association shall be:

- The Architectural Committee
- The Beautification Committee
- The Budget & Finance Committee
- The Election Committee
- The Fire & Disaster Committee
- The General Advisory Committee
- The Hospitality Committee
- The Insurance Committee
- The Long Range Planning Committee
- The Maintenance Committee
- The Nominating Committee
- The Publicity Committee
- The Recreation Committee
- The Security Committee
- The Social Committee

Each Committee shall consist of a chairperson and two or more members. The chairperson shall be appointed by the Board of Directors following each Annual Meeting to serve until July 31 next, and the general membership will be so advised. The Board of Directors may appoint such other committees as it deems necessary.

2. The Architectural Committee shall advise the Board of Directors as to all structures to be constructed on the property to assure that the style, size, etc., is in keeping with the overall plan of the development. The Board will approve or disapprove plans and specifications as provided in the Declaration of Restrictions after giving consideration to the opinion of the committee.
3. The Beautification Committee shall be responsible for maintaining the aesthetic balance of the Village so far as maintaining the natural beauty of the common areas.
4. The Budget and Finance Committee shall prepare an annual expense budget and projected revenue report and advise the Board of Directors as to the status of the POA finances. The POA Treasurer shall be the Chairperson.
5. The Election Committee shall oversee the preparation and distribution of all ballots for whatever purpose, shall receive, validate and tally all votes and shall report the results of said voting. Elections shall be by written ballot and balloting shall be by mail.
6. The Fire and Disaster Committee shall be responsible to maintain and manage all fire equipment in the Village and the inspection of common properties against hazardous conditions. Prepare and maintain a Disaster Program commensurate to Windjammer Village such as evacuation in the event of a disaster, natural or otherwise, and keep the Board of Directors advised of same.
7. The General Advisory Committee shall consist of two members from each of three sections within the subdivision. It is to report to the other committees and to the Board on any area. It shall hold meetings from time to time as its members shall determine.

8. The Hospitality Committee shall inform the Board of Directors on matters pertaining to the welcoming of new residents in the Village and shall distribute to new residents pertinent information about the Village.
9. The Insurance Committee shall review all existing insurance, including Fidelity Insurance, and propose to the Board of Directors any modifications which are deemed necessary in order to adequately protect the interests of the POA.
10. The Long Range Planning Committee shall consist of at least three (3) or more members serving staggered terms; one for three (3) years; one for two (2) years; and one (1) year for the remaining members appointed by the Board of Directors. The Committee shall formulate and constantly update a five year, or longer, operating plan. The plan will include projections for future needs and requirements to facilities and other common properties, procedures, personnel and financial requirements.
11. The Maintenance Committee shall advise the Board of Directors on all matters pertaining to the maintenance, repair or improvement of the Common Properties and Facilities of the Association, and shall perform such other functions as the Board, in its discretion, determines.
12. The Nominating Committee shall compile a list of qualified nominees for the Board of Directors and shall place those names in nomination at the April regular meeting of the Board of Directors. Nominations may be made from the floor or by petition providing nominees are qualified and have consented to run.
13. The Publicity Committee shall inform the members of all activities and functions of the Association and shall, after consulting with the Board of Directors, make such public releases and announcements as are in the best interest of the Association.
14. The Recreation Committee shall advise the Board of Directors on all matters pertaining to the recreational program and activities of the Association and shall perform such other functions as the Board, in its discretion, determines.
15. The Security Committee shall review existing security standards and measures in effect at Windjammer Village of Little River, Inc. and propose to the Board of Directors any modifications which are deemed necessary.
16. The Social Committee shall advise the Board of Directors on all matters pertaining to the social programs and activities of the Village and maintain a calendar of events and uses of the Clubhouse facilities.
17. No Director shall serve on any standing committee.

ARTICLE XI

MEETING OF MEMBERS

1. The regular Annual Meeting of the members shall be held on the second Saturday of the month of July in each year, at the hour of 10:00 A.M.
2. Special meetings of the members for any purpose may be called at any time by three or more members of the Board of Directors, or upon written request of one-fourth (1/4) of the voting membership.

3. Notice of any meeting shall be sent to the members through the mail, postage thereon fully prepaid to his/her address appearing on the books of the corporation. Each member shall register his/her address with the Secretary and notices of meetings shall be mailed to the member at such address. Notice of the Annual Meeting shall be mailed at least 30 days in advance of the meeting and notice on any Special Meeting shall be mailed at least 10 days in advance of the meeting. Ballots shall be enclosed with the notice of meeting where applicable.
4. For all actions governed by these By-Laws, ballot voting shall be required. Said ballot voting will be accomplished by mail. Receipt of completed ballots consisting of 20% of the members shall constitute a quorum. An affirmative vote of a majority of the ballots received in which a quorum is present shall constitute an act of the members. Results of the voting will be effective immediately and will be announced by newsletter or at the next regular or special meeting of the members.

ARTICLE XII

BOOKS AND PAPERS

The books, records, and papers of the Association shall, during posted office hours, be subject to reasonable access by any member in good standing in the Association.

ARTICLE XIII

CORPORATE SEAL

The Association shall have a seal in circular form, having in its circumference the words:
Windjammer Village of Little River, South Carolina, Property Owners' Association, Inc.

ARTICLE XIV

AMENDMENTS

These By-Laws may be amended by written ballot mailed to the members via first class mail. Receipt of completed ballots consisting of 20% of the membership shall constitute a quorum. Approval by 2/3 of those voting in which a quorum is present is required to amend these By-Laws. Results of the voting will be announced to the members by newsletter or at the next regular or special meeting of the members. In the case of a conflict between the Declaration of Restrictions, Easements, Covenants and Conditions and these By-Laws, the Declaration will control.

ARTICLE XV

FISCAL YEAR

The fiscal year of the Association shall be July 1 through June 30.

ARTICLE XVI

CONDUCT OF MEETING

All meetings of the POA members and all regular meetings of the Board of Directors shall be conducted according to the current edition of Roberts Rules of Order revised.

Exhibit F – Photo Album

The Plat and the Photos used in this Exhibit F appeared in the Photo Album that Judge John reviewed as evidence at the Trial of June 22-23, 2011, or were presented to him as posters by attorney Lovelace at that Trial and then were entered as evidence, or were available to him at the Motions for Reconsideration Hearing on February 13, 2012.

As we stated in our RETURN TO MOTION TO DISMISS of November 11, 2012,

“... We have acknowledged that whether or not we can access parking on our own property, as do all other POA Members in Windjammer Village, a community of over 300 homes, it is of no consequence to anyone else but us. ... Moreover, our plight is emblematic of a cosmic, unresolved legal issue in South Carolina, relating to the vast overreach of POA/HOA Boards in the lives of citizens, beyond the limits of their Covenants and outside the normal reach of the Law, without any reasonable or attainable Checks and Balances. Since the POA/HOA Boards act as the Executive, Legislative and Judicial branches of their quasi-governmental structures, they often become petty, despotic and corrupt, albeit at a micro-local level. Any member challenging their authority soon becomes the target of a vendetta, as we have in Windjammer Village. Most subjects complain bitterly and then simply swallow the injustices, praying that the Board simply will not notice them anymore. Few have the courage, as we do, to stand up to tyranny and to pay the price of carrying on the fight through the Courts. ...”

More than any words we could write, these photos tell that story.

Respectfully,

Elizabeth A. Crotty and James K. Orzech

Citizens and *Pro Se* Appellants

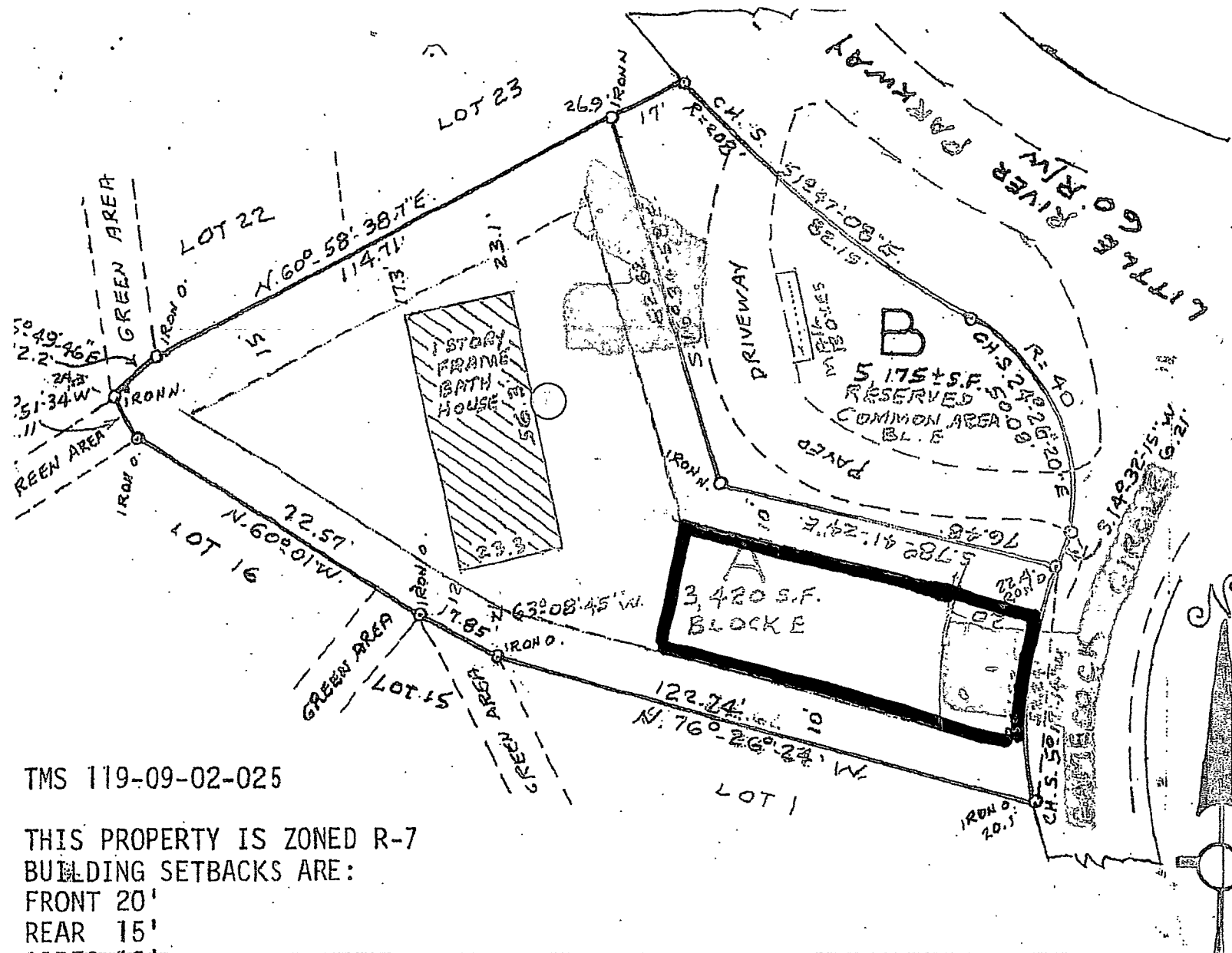


Photo #1: Plat that accompanied the Sales Contract shows the layout of Lots A and B. The front door of the old bathhouse can be *accessed* either *from* Little River Drive (top) or *from* Gamecock Circle (right), along the so-called 'Paved Driveway' *access road*. For decades when the old community bathhouse was in daily use, trailer-park residents would *park* off the then two-way 'Paved Driveway' near the front door. That portion of Lot A that abuts Gamecock Circle was then densely forested with a steep slope nearest to that Circle. The only *access* to the old bathhouse *from* Gamecock Circle, as specified in the 2002 Sales Contract, was along that 'Paved Driveway.' The only conclusion that a potential buyer could make in 2002 was that *access* the property *from* Gamecock Circle would be along the 'Paved Driveway.' The WJV POA *wrongfully* began to claim that Appellants were contractually obligated to clear previously undeveloped forest land to construct a costly, long 'Private Driveway' parallel to the existing 'Paved Driveway,' to the old bathhouse from Gamecock Circle, which was to be our sole *access* to the property and the only place where we could *park*. The POA even came up with a **Myth** that we had been reimbursed \$3,000 from the purchase price to do so, which is simply not true.

Exhibit F – Photo Album



Photo #2: The B00 House showing from left-to-right: (1) the Garage with its small living space, (2) the connecting Arches and (3) the main Home, where once stood the old bathhouse. The 'Paved Driveway' *access road* stretches from Little River Dive behind the photographer to Gamecock Circle around and to the left. The 'forbidden' parking spots are to the right on either side of the bench, which straddles the property line between the POA's Lot B and Appellants' Lot A. As Members in Good Standing of the Property Owners' Association; Appellants do hold a stake in all common property. Although *The B00 House* has a Gamecock Circle street address, the home site obviously sits on the 'Paved Driveway' *access road*, which serves this residence more directly than does Gamecock Circle. The Sales Contract guarantees that we, Appellants, can *access* our property *from* Gamecock Circle, including along the 'Paved Driveway,' which, itself, was built more than thirty years prior expressly to service the old bathhouse.

Exhibit F – Photo Album



Photo #3: Parking 2002-2007: In the background left-to-right are the new Garage building, the Arches, and the renovated Bathhouse, which we, Plaintiffs/Appellants Crotty and Orzech, transformed at great personal expense and much hard work into our magnificent new home -- *The B00 House*. Note our two automobiles benignly parked off the 'Paved Driveway' in the shade on our own property. Our right to *access* those spots and to *park* there is the **central issue** of this never-ending, bitter controversy, now before the SC Court of Appeals. In its Counter-Claims prior to the June 2011 Trial, Defendant/Respondent POA alleged, "that as a direct result of Plaintiffs' breach, the Defendant has suffered damages as a result of Plaintiffs' actions." The question is **how** does our parking there inflict damage on anyone in WJV in any logical way? Clearly the Trial Court erred by agreeing that it does. This simply does not pass any reality check.

Exhibit F – Photo Album



Photo #4: Parking 2002-2007 again: Another view of Appellants' cars parked benignly in the shade in our own yard, as we did for five full years prior to the start of the current hostilities in June 2007. Unimaginably, this is the source of Respondent Windjammer Village POA's vendetta against us, Appellants Crotty and Orzech, for so many unpleasant years, and continuing on to this date.

Exhibit F – Photo Album



Photo #5: Before. A view of *The B00 House*, Appellants' dream retirement home, from Gamecock Circle, soon after the completion of the garage circa 2006. Please note that we then could *access* the *parking spots* near the front door of our home *from* Gamecock Circle along the 'Paved Driveway' *access road*, which then had accommodated two-way traffic for over thirty (30) years or park in our new short private driveway or park in the Garage -- whichever way we saw fit. On the right is the Mailbox Circle (Lot B) with a small corner of the lush foliage from its Azalea Garden visible.

Exhibit F – Photo Album



Photo #6: After. Once the *accessing/parking* controversy between Appellants and Respondent began in June 2007, WJV POA first posted ‘one-way’ signs in August 2007 to make it impossible for us to reach those *parking spots* without violating signage. The POA then ripped out the lush Azalea Garden on **January 8, 2008**, the same day that the Solicitor decided to drop criminal charges against the POA Board President for assaulting Ms. Crotty, thus terminating his bond agreement not to harass her. Then in 2009, after attorney Roger Roy advised the POA’s Board of Directors that we, Appellants Crotty and Orzech, still had the right to *park* in our own yard, the Board sacked that attorney and its new Board President, while immediately devising a Mail-In-Ballot Referendum scheme to remove the ‘Paved Driveway’ *access road*, outright, and to turn it into a so-called ‘garden/park,’ igniting all of the current legal actions to date, including this Appeal.

Exhibit F – Photo Album



Photo #7: Before. The magnificent ‘Azalea Garden’ in full bloom with *The B00 Garage and House* in the background. This photo was taken from Little River Drive in **April 2007** – the last time these plants would bloom before being mowed down in January 2008. This thicket of 15-year-old 10-foot-high flowering plants, right at the focal point of Windjammer Village, provided a buffer between the heavy traffic on Little River Drive and *The B00 House* – an important selling point to Ms. Crotty in 2002. Please notice that the grounds there were rather well tended, and not overgrown, as Respondent’s Board Members later would rationalize disingenuously. Attorney Lovelace showed these before and after photos to the Judge at the June 2011 Trial, as mounted posters, to no effect.

Exhibit F – Photo Album



Photo #8: After Shot at the Same Photo Angle as Photo #7. The barren remains of the formerly magnificent Azalea Garden in front of *The B00 House* after its **January 8, 2008** devastation by Respondent POA's Board Member Charles Nill, Jr. -- the same day that Assistant Solicitor Joseph Sandefur suddenly decided to drop criminal Assault & Battery charges against Board President Norman Meaders after speaking with attorney Moss, without first warning the assault victim, Ms. Crotty, which action also lifted Meaders' bond agreement with Magistrate Whitley not to harass her while he was awaiting trial.

Exhibit F – Photo Album



Photo #9: A Service Vehicle on the 'Paved Driveway.' A Propane Truck from *R.D. White & Sons* routinely services *The B00 House* from along the 'Paved Driveway.' Our attorney Lovelace showed this photo to the Judge at the June 2011 Trial to no effect, other than attorney Moss' specious suggestion that *somehow* we could move our propane tank *somewhere* else on our property, which is simply impossible. Nonetheless, the Final Order banned all such vehicles from utilizing the 'Paved Driveway' to service *The B00 House*, but Judge John reversed his decision on emergency and service vehicles at the subsequent Motions for Reconsideration Hearing. Afterwards, we topped off with propane, just in case.

Exhibit F – Photo Album



Photo #10: Meanwhile, elsewhere in Windjammer Village. Many residents put in 'parking pads' along their Circles on what is actually the POA's common property, which generally extends to six feet on either side of the 12-foot paved part of the 24-foot roadway, with no ramifications at all. Further, almost everyone just entering his or her own driveway *anywhere* in WJV first must cross about six feet of common property, often not entirely parking on his or her own turf. Apparently this widespread, brazen violation of common property does no harm to Respondent Windjammer Village POA, but our crossing of 2.1 to 3.7 feet of common property to reach our parking spots fully on our own land *somehow* does.

Exhibit F – Photo Album

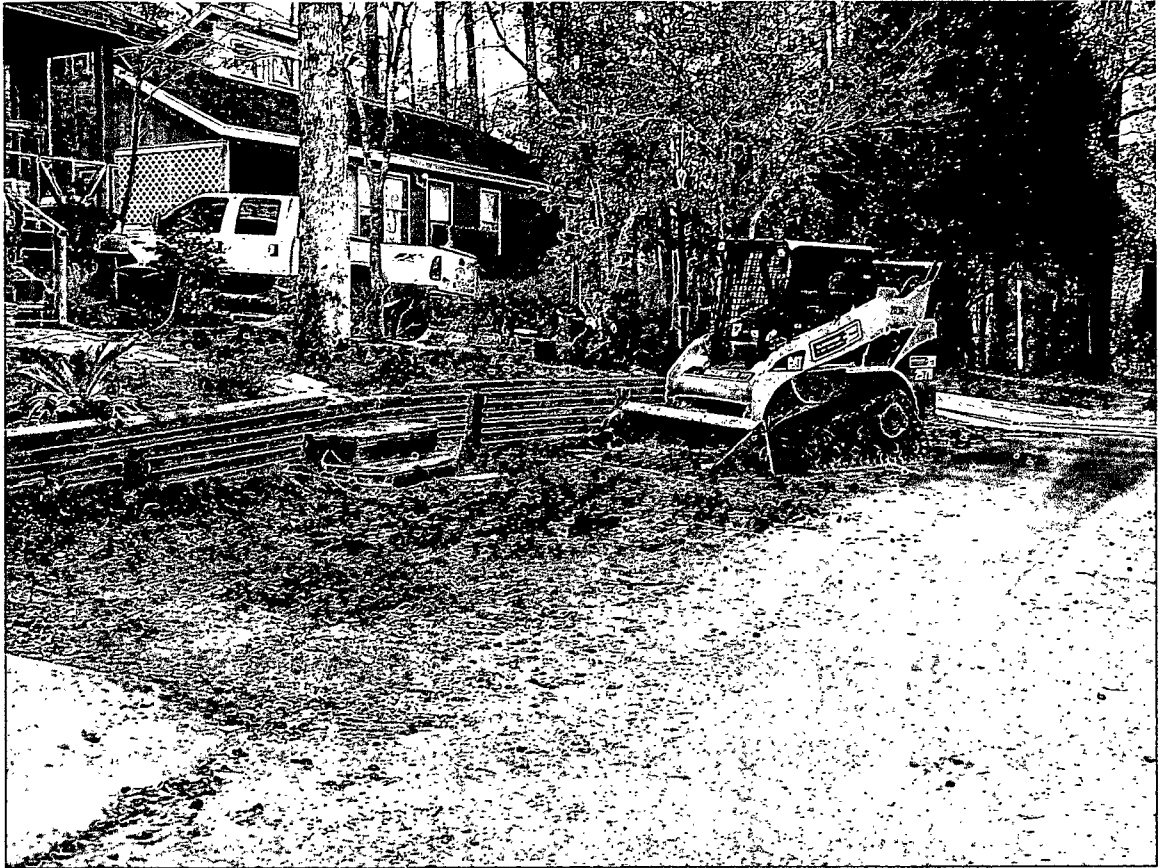


Photo #11: Yet another Private ‘Parking Pad.’ Another Windjammer residents is putting in his or her own parking pad on common property within six feet of the paved part of the roadway, without any approval or notice from Respondent POA’s Board of Directors, who at the same time were devising one scheme after another to deny us, Elizabeth Crotty and James Orzech, any parking near to the front door of our home – *The B00 House*. The Windjammer Village Restrictions-Rules-Regulations Attachment #2 (Covenants), page 2 para. 6. ‘Parking in Windjammer Village’ states,

“a. Vehicles of residents and their guests must be parked on their lot or in designated parking spaces. No vehicle may be parked on Windjammer Village Common Property for more than 24 hours, except the Compound Area.”

Exhibit F – Photo Album



Photo #12: Hypocrisy and Corruption. Many Windjammer residents park on the POA's common property six feet from either side of the paved roadway in open violation of Windjammer Village Restrictions-Rules-Regulations Attachment #2 (Covenants). Notice the white station wagon parked so close to the road here that it nearly sticks out over the paved surface. This photo is of the home of Board Member Charles Nill, Jr., at 2276 Vereen Circle – Appellants chief antagonist. It was Mr. Nill who had the one-way signs installed, personally mowed down the Azalea Garden, and pushed through the Mail-In Ballot referendum to remove the 'Paved Driveway' *access road* in front of *The B00 House*, while concocting the fabrication about Ms. Crotty being paid \$3,000 to put in a long, private driveway. The POA's only problem with parking in one's own front yard and/or on common property seems to be with Appellants Crotty and Orzech.

Exhibit F – Photo Album

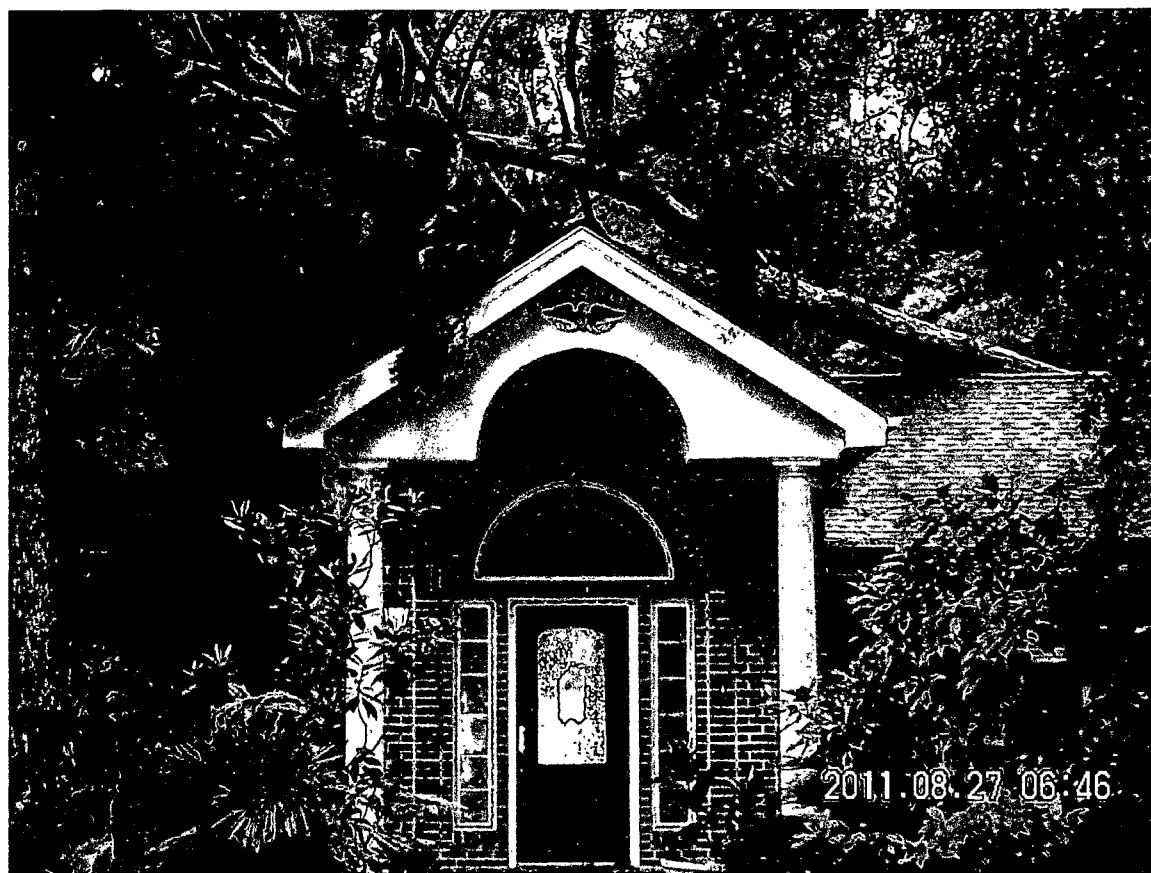


Photo #13: The Ancient Loblolly Pine that Landed on The B00 House. Hurricane Irene caused the Final Order, signed just twenty-four days prior, to fail suddenly and spectacularly at 11:15pm on Friday, August 26, 2011, just as Appellant Orzech was entering the front door of *The B00 House* after observing the storm. This dramatic photo was in Court at the Motions for Reconsideration Hearing on February 13, 2012.

Exhibit F – Photo Album



Photo #14: Ignoring the Final Order to Save our Home. The Crane from *M&M Expert Tree Service* could only *access The B00 House* to save it *from* the 'Paved Driveway,' visible near the center of the photo. This photo, in Court at the Motions for Reconsideration Hearing, highlights the near-total detachment from reality of the Final Order. Try to *imagine* just how emergency and service vehicles could have reached *The B00 House*, if Respondent POA had succeeded in removing the 'Paved Driveway' after their Mail-In Ballot referendum passed, without being restrained by the Injunction. The Trial Judge reversed his ban on emergency and service vehicles utilizing the 'Paved Driveway' to *access The B00 House* at the Motions for Reconsideration Hearing, but still held that the owners of the home (Appellants) and their guests *somehow* could never do so without in some way causing unspecified great harm to the POA.

Exhibit F – Photo Album



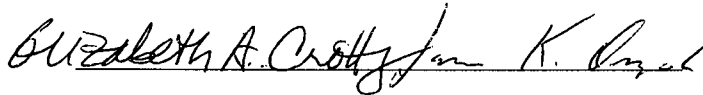
Photo #15: The Windjammer Village Court of Appeals. Appellant Orzech (right) appeals his case for parking in his own front yard at *The B00 House* before WJV POA Board Members Nill, Meaders and Hughes in late June 2007. After winning his argument that he and Ms. Crotty could *access* our property *from* Gamecock Circle along the ‘Paved Driveway,’ this panel decided to resolve the issue by making the ‘Paved Driveway’ one-way from the Little River Drive direction, which they did a few weeks later. Although this photo was not shown to the Judge, all three Board Members were present for both days at the June 2011 Trial, with Mr. Nill bearing false witness against us, his neighbors, for over two hours, without any meaningful challenge from our ineffective attorney, as we looked on in horror. (Photo by Appellant Crotty.)

CERTIFICATE OF COUNSEL

We certify that this record on appeal contains all matter proposed to be included by any of the parties and not any other material.

Respectfully submitted,

Pro Se Appellants

Handwritten signatures of Elizabeth A. Crotty and James K. Orzech in cursive script.

Elizabeth A. Crotty and James K. Orzech, Ph.D.

The B00 House

2148 Gamecock Circle

Little River, SC 29566

Tel: (843) 281-2299

Little River, South Carolina

December 23, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas of the Fifteenth Judicial Circuit

Steven H. John, Presiding Judge

Case No. 2009-CP-26-10523

Appellate Case No. 2012-213287

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

v.

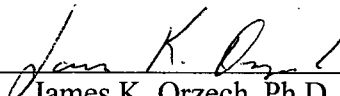
Windjammer Village of Little River, Property Owners' Association, a South Carolina
Eleemosynary Corporation, Respondent.

PROOF OF SERVICE

I certify that I have served one copy of Appellant's RECORD ON APPEAL and Proof of Service of same in the above-captioned Appeal to Respondent's Counsel of Record by United States Mail, with sufficient first-class postage affixed, addressed as follows:

Kenneth R. Moss, Esq.
Wright, Worley, Pope, Ekster & Moss, PLLC
628A Sea Mountain Highway
North Myrtle Beach, SC 29582

Respectfully submitted,


James K. Orzech, Ph.D.
Pro Se Appellant

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RECEIVED

JAN 13 2014

SC Court of Appeals

December 23, 2013