

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal No. 2013000714

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph P. Stroman, Special Referee

CASE NUMBER 2009-CP-26-3596
Consolidated with
CASE NUMBER 2010-CP-26-11320

Ronald Jarmuth

Appellant,

v.

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

Respondents.

CORRECTED RECORD ON APPEAL

VOLUME 6

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1 for cable television services by HTC?

2 A: I cannot explain that, but I'm assuming that
3 you're talking about two multi-family
4 communities and I believe all the other ones
5 are single-family communities, so perhaps that
6 decision was at the direction of the HOA, but
7 I do not know.

8 Q: Can you explain why The Glens, which is
9 described by the Planning Commission as a
10 multi-family area which was described by
11 Horton in its plat approval and zoning
12 materials as multi-family, what they are
13 billed for cable television?

14 A: Again, I do not know.

15 Q: If I was to tell you that the Defendant here
16 has represented that The Villas and The
17 Cambridge are members of this mass HOA, can
18 you explain why they're not being billed if
19 you're billing all their component parts?

20 A: It sounds like you're making the assumption
21 that they are not billed. They are parties to
22 separate contracts with HTC.

23 Q: When was the contract with The Villas formed?

24 A: I'm sorry, I do not know that date.

25 Q: If The Meadows was sold -- please reconcile

1 your statement that The Villas probably won't
2 be billed if this contract was the fact that
3 The Meadows area was itself also billed the
4 same time or after The Villas were built and
5 sold, The Meadows are single-family homes.

6 A: I'm sorry, I -- I'm not sure how to address
7 this line of questioning. I, I don't know.

8 THE COURT: IF YOU DON'T KNOW, YOU
9 DON'T KNOW.

10 A: No, I don't know.

11 THE COURT: SHE APPARENTLY DOESN'T
12 KNOW.

13 Q: That's fine. Now, looking at the contract
14 there which starts roll-out provision, is
15 there anything which leads you to believe that
16 if these people are part of that, that they
17 should not be -- that is an obligation of this
18 contracting party, International Club Master
19 HOA, to include them as part of the rolled out
20 units within this contract?

21 A: Perhaps that is the case, but from HTC's
22 perspective, having separate contracts with
23 those entities, satisfies that from, from
24 HTC's business perspective.

25 Q: So the fact -- if it turns out that the

1 provision requiring all of the members of the
2 HOA to be under that contract, is, in fact,
3 the way that contract can be read and the fact
4 you've allowed a breach of that contract?

5 MS. GOLDING: YOUR HONOR, HE'S ASKING
6 THE WITNESS FOR A LEGAL
7 CONCLUSION.

8 MR. JARMUTH: FINE.

9 THE COURT: IF YOU DON'T KNOW, YOU
10 DON'T KNOW.

11 A: I'm sorry.

12 THE COURT: THAT'S ALL RIGHT.

13 A: I do not know.

14 THE COURT: YOU CAN'T ---

15 Q: Now, looking at that contract, where does it
16 say that HTC will raise its annual rates or
17 have the permission, the authority under the
18 contract, the option to raise the rates?

19 A: One time per year, in April.

20 Q: Can you explain why this party to the contract
21 raises its rates January 1st of every year?

22 A: I cannot explain that. That's probably an HOA
23 accounting issue that has nothing to do with
24 HTC. We have raised our rates one time per
25 year in April.

1 Q: Do you collect any -- is it correct that you
2 only collect the money which you announce in
3 your rate increase letter to the customer?

4 A: Please repeat that.

5 Q: Is it correct that you do not actually bill
6 this customer for the increased rates until
7 the first billing period after April 1st?

8 A: That is correct.

9 Q: So is it a proper conclusion that you have not
10 been receiving these increased monies which
11 has been collected from January 1st to the
12 first billing period in April?

13 A: I do not know anything about the amount that
14 the HOA is collecting. I can testify that HTC
15 bills and collects a rate increase beginning
16 in April.

17 Q: Now, looking at your business practices, if a
18 customer overpays, what happens to their
19 account when it gets through the financial
20 system?

21 A: If a customer overpays, ---

22 Q: Overpays their bill.

23 A: --- then typically, a credit would be run on
24 the bill, and the next bill would be reduced
25 by the credit amount.

1 Q: What conclusion can we lead if I was to tell
2 you that when I examined the HTC portions of
3 the general ledgers that it shows no such
4 credit, no such reduction, what does it tell
5 you about what the overpayment occurred
6 between January and the first billing period
7 in April?

8 A: It, it tells me nothing. Again, your HOA is
9 probably accounting for our rate increase in
10 an annualized amount.

11 Q: That's an assumption of yours, isn't it?

12 A: It is.

13 Q: Do you have any basis for that assumption?

14 A: Other than that's how most HOAs handle their
15 accounting, that is the only basis.

16 Q: Has HTC ever told the customer to do that?

17 A: HTC usually announces its rate increases
18 within a time period where it's practical for
19 an HOA management company to account for them.

20 Q: Do you have repeating contracts with any
21 utility companies which have monthly bills
22 within Horry County, for example, electric and
23 water?

24 A: Are you asking if I personally do?

25 Q: Yes.

1 A: Yes, I do.

2 Q: Have you ever experienced a situation where
3 your bill has been increased in a prior period
4 before the Public Utility Commission has given
5 a utility permission to raise the rate, so
6 it's a annualized amount collected?

7 A: If I've experienced that, I'm not aware of it.

8 Q: Is HTC a public utility?

9 A: HTC is a cooperative owned by its members.

10 Q: Does it operate its cable television services
11 under a franchise agreement?

12 A: Yes, we have a franchise ---

13 Q: Who's the franchising authority?

14 A: The franchising authority is Horry County.

15 Q: What does Horry County say regarding the
16 charging for services? Does it make any
17 provision for annualizing?

18 A: Horry County does not regulate rates for cable
19 television. HTC and other cable operators in
20 this area have been granted a status called
21 Effective Competition as of 2002, and that
22 status exists when multiple cable television
23 companies operate within the same area and
24 sufficient competition for internal rate
25 regulation instead of external franchising

1 authority rate regulation exists.

2 Q: Has HTC made -- assuming that that's what's
3 happening here, has HTC made any provision for
4 the refund of excess money paid as annualizing
5 to customers who sell their house and leave
6 prior to the rate increase in April?

7 A: That would not be an HTC provision. That
8 sounds like an HOA business item.

9 Q: Now, looking at the bulk services contract, is
10 it not a fact that the contract says that the
11 other party can charge whatever they want up
12 to but not exceeding the rate you charge to
13 the general public outside of the bulk
14 contract?

15 A: That provision does exist in the contract.

16 Q: Would I be correct in taking it to mean that
17 actually the HTC has no role at all in what
18 happens between this customer and the
19 homeowners?

20 A: HTC does not recommend any changes on the pass
21 through of our rate; however, some entities do
22 have a pass through charge as an
23 administrative fee. We do not get involved in
24 that.

25 Q: Again, isn't it a fact that this entity can

1 charge whatever it wants up to the public
2 rate?

3 A: That provision is in the contract for this
4 contract and many others.

5 Q: Now, I don't think you've answered my other
6 question, which I'll repeat, which is, does
7 HTC have any role at all regarding the
8 relationship between your reseller and the
9 homeowner who receives cable services which
10 originate from HTC?

11 A: I don't believe HTC views an HOA as a
12 reseller.

13 Q: Doesn't your cable contract say that they are
14 the reseller of bulk services?

15 A: May I reference the contract?

16 Q: Go ahead.

17 A: Do you know where that provision exists?

18 Q: Take your time and find it, ma'am.

19 MS. GOLDING: MR. JARMUTH, IF IT'S IN
20 THE, IF IT'S IN THE
21 CONTRACT, TELL HER WHERE
22 IT IS.

23 A: I have located it.

24 Q: Thank you.

25 A: There's a statement in our contract that says,

1 "Owner shall not charge tenants an incremental
2 fee for the service which exceeds normal
3 administrative overhead."

4 **Q: But isn't there, in fact, a provision where**
5 **you turn your customer as the reseller of the**
6 **services?**

7 THE COURT: WHAT EXHIBIT NUMBER IS
8 THAT?

9 MR.JARMUTH: IT'S MY NUMBER 302.

10 THE COURT: 302.

11 MS. THOMPSON: IT'S DEFENDANT'S EXHIBIT
12 NUMBER 10.

13 THE COURT: TEN. THANK YOU.

14 A: There is an additional statement in the same
15 section that says, "HOA or owner cannot charge
16 more than the current residential rate." In
17 the same paragraph exists the statement that,
18 "Owner shall not charge the tenants an
19 incremental fee for the service which exceeds
20 normal administrative overhead." It's on the
21 top of page two.

22 **Q: Who is the customer in this contract?**

23 A: The HOA.

24 **Q: Are individual homeowners a HTC customer for**
25 **cable TV services if they obtain it through**

1 **this contract?**

2 A: If an HTC customer -- an HTC customer exists
3 if they have any other service with HTC or if
4 they have additional cable services outside of
5 this contract.

6 **Q: Let me ask the question again. Is a homeowner**
7 **who obtains the basic cable services which you**
8 **provide through the HOA and nothing more, are**
9 **they a customer of HTC?**

10 A: Only through the HOA contract.

11 **Q: Answer my question.**

12 A: They are ---

13 **Q: Who is the customer?**

14 A: The customer of the cable contract is the HOA.

15 **Q: And has the HOA, under this contract, actually**
16 **been issued a member number?**

17 A: Yes, they have.

18 **Q: And isn't it a fact that HTC has not issued**
19 **additional member numbers to the individual**
20 **homeowners who only get the basic cable**
21 **services described here?**

22 A: It would only be appropriate to issue
23 additional membership numbers if they were a
24 customer directly for other membership
25 qualifying services.

1 Q: And isn't it a fact that HTC only issues
2 invitations to the annual meeting to people
3 who have member numbers?

4 A: Yes, our members are invited to our annual
5 meeting.

6 Q: And at the annual meeting, isn't it a fact
7 that whoever gets invited to it also gets
8 various fringe benefits at the annual meeting,
9 ---

10 A: If you're speaking of --

11 Q: --- food, entertainment?

12 A: There is no food; however, there is
13 entertainment, and there are also door prizes,
14 very exciting door prizes.

15 Q: So being that as it may, the customer, the
16 basic customers of the HOA have no opportunity
17 to participate in that?

18 A: If they are not a member through having other
19 services, then they do not have the
20 opportunity to participate.

21 Q: Isn't it a fact that your organization is a
22 cooperative?

23 A: Yes, it is.

24 Q: And who owns the cooperative?

25 A: Its members.

1 Q: Am I correct in concluding that the homeowners
2 are not members and have no ownership interest
3 in HTC because of this arrangement?

4 A: The HOA is, is HTC's member for this contract.
5 Most of International Clubs, other residents
6 are also members in their own right.

7 Q: Now, are you familiar with any lawsuits
8 initiated by HTC regarding any of these bulk
9 services contracts?

10 A: Outside of this lawsuit, I am not familiar
11 with any.

12 Q: Has HTC ever sued or been sued by any HOAs
13 regarding these bulk service contracts?

14 A: Not to my knowledge.

15 Q: If this HOA defaulted on buying the cable
16 services, who is at fault, what would be the
17 named Defendant in the lawsuit to force them
18 to continue paying for services?

19 A: That would be HTC; however, HTC generally
20 works with its customers to make sure they can
21 get through whatever hurdles exist.

22 Q: No, if the HOA failed to pay for services,
23 somehow breached that contract, what would be
24 the party, looking at that, we would presume
25 would be named as a Defendant in trying to

1 enforce that contract? Please refer to the
2 contract.

3 A: The person, the party named in the contract.

4 Q: And who is that?

5 A: International Club Master HOA.

6 Q: Can you see anything in that document that
7 says the International Club Homeowners
8 Association, Inc. is a party of that contract?

9 A: I do not see that.

10 Q: Now, turning to the back, who signed that
11 contract?

12 A: I believe I know. Doug Brown, I think.

13 Q: And what capacity did he sign?

14 A: He signed on behalf of the International Club
15 Master HOA.

16 Q: Does it have anything there he signed on
17 behalf of the International Club Homeowners
18 Association, Inc.?

19 A: The contract says, "Owner: The International
20 Club Master HOA, by Doug Brown," then he
21 printed his name, and he said that he is the
22 HOA president.

23 Q: Now, looking at the top of page one there, am
24 I correct in saying there's a clause there
25 which says that the International Master HOA

1 say it is either the owner of all the property
2 subject to that or the designated agent of the
3 property owners?

4 A: It does say that.

5 Q: Have you ever had any conversations with Doug
6 Brown?

7 A: If you're asking about conversations with Doug
8 Brown relative to this contract, ---

9 Q: Anything?

10 A: --- I have not.

11 Q: Anything?

12 A: I believe I've had one or two conversations
13 with Doug Brown over a period of many years.

14 Q: And at the time, who was his employer?

15 A: I believe it was D.R. Horton.

16 Q: And could you describe these conversations you
17 had with Doug Brown?

18 A: I -- I'm sorry, I cannot. If they were
19 conversations with Doug or relative to
20 addressing a sale situation with a sales rep.,
21 I don't have any specific recollection of
22 them.

23 Q: Now, earlier, you said that the purpose of HTC
24 in being the cable services for people in
25 Horry County, it's a Horry Telephone

1 **Cooperative, did I hear you right in saying**
2 **it's to provide economical low cost services?**

3 A: What I said was that it's HTC's mission to
4 provide services to its rural community. Over
5 the years it's grown and obviously Horry
6 County is no longer as rural as it once was,
7 but that is HTC's mission, that is the reason
8 we got into the cable television business.
9 There were many under-served residents of
10 Horry County.

11 **Q: Now, isn't it a fact that that contract**
12 **deprives any other competitor from accessing**
13 **the distribution system within the PUD?**

14 MS. GOLDING: OBJECT TO THE FORM OF THE
15 QUESTION. HE'S SEEKING -
16 --

17 MR.JARMUTH: SHE'S WELCOME ---

18 MS. GOLDING: --- A LEGAL CONCLUSION.

19 THE COURT: WAIT JUST A MINUTE.

20 MS. GOLDING: HE'S SEEKING A LEGAL ---

21 MR.JARMUTH: I SAID ---

22 THE COURT: WAIT JUST A MINUTE, LET
23 HER ---

24 MS. GOLDING: HE IS SEEKING A LEGAL
25 CONCLUSION FROM THE

1 WITNESS AND THAT WOULD BE
2 IMPROPER.

3 THE COURT: AND YOUR OBJECTION ---

4 MR. JARMUTH: THIS IS THEIR LANGUAGE.

5 THE COURT: WAIT JUST A MINUTE, SIR.

6 I COULDN'T HEAR YOUR
7 OBJECTION.

8 MS. GOLDING: HE'S SEEKING A LEGAL
9 CONCLUSION FROM THE

10 WITNESS AND THAT WOULD BE
11 IMPROPER.

12 THE COURT: OKAY. ALL RIGHT. WELL
13 ---

14 Q: Is not there language in that particular
15 contract which says that nobody except HTC may
16 use the infrastructure within the community
17 for distribution of cable TV?

18 A: I don't ---

19 Q: Look at the contract.

20 A: Can you point out that language, please?

21 Q: Yes, ma'am, paragraph four, Section --
22 Ownership, and the rest of the related
23 paragraph.

24 A: I believe the section that is appropriate to
25 share here is paragraph four, Ownership, Roman

1 Numeral II, "If the distribution system is
2 installed by the Company, ownership of this
3 distribution system shall be and remain in
4 Company and shall be used exclusively for
5 Company operations unless such system is
6 transferred by Company as provided herein,"
7 which is very typical of cable companies.
8 They do not share infrastructure.

9 **Q: So is there -- would you describe it as**
10 **practical or impractical for a competitor to**
11 **actually enter the PUD and sell cable**
12 **services?**

13 A: A competitor would have to make a business
14 decision on whether or not that was a good
15 idea.

16 **Q: Are you saying they would not have access to**
17 **the existing infrastructure?**

18 A: No, they would not, nor would HTC have access
19 to any competitor's infrastructure in a
20 similar situation.

21 **Q: Now, when you provide this infrastructure, are**
22 **you familiar with the phrase, "Premises**
23 **equipment"?**

24 A: Yes, I am.

25 **Q: Could you explain that?**

1 A: That would be an in-house amplifier or a cable
2 box or a remote control.

3 Q: Now, with a HOA subscriber obtains this basic
4 service, do they receive a set top box or an
5 amplifier, one of these extra pieces of
6 equipment?

7 A: They do not.

8 Q: Do you have any explanation why this PUD can
9 sell TV services to homeowners in the amount
10 of six units for residents for twenty dollars,
11 including for each room, in fact, a set top
12 box related to a microwave translator, and
13 yet, this is approximately fifteen dollars or
14 more less than HTC or -- less than the basic
15 services of HTC without any set top equipment?

16 A: I don't have an explanation for that, other
17 than that doesn't sound reasonable. HTC's
18 rate for services to the International Club
19 HOA is approximately between twenty -- twenty-
20 five and twenty-seven dollars, so if it was
21 fifteen dollars less than that, that would be
22 a ten dollar rate. That doesn't sound
23 reasonable.

24 Q: Now, how much does HTC charge for a set top
25 box?

1 A: Wow. I'm not sure, but I think it's somewhere
2 in the fourteen to fifteen dollar range.

3 Q: Do you have a set top box on your TV in your
4 home?

5 A: I have two, yes.

6 Q: So approximately how much are you paying to
7 receive set top, have a set top box in your
8 home?

9 A: It depends on the functionality, and it's
10 between twelve ninety-five and fourteen
11 ninety-five.

12 Q: Can a customer receive high-depth television
13 through HTC without some of these devices?

14 MS. GOLDING: YOUR HONOR, THIS HAS
15 ABSOLUTELY NOTHING TO DO
16 WITH THIS ---

17 THE COURT: I AGREE, I MEAN, I DON'T
18 KNOW WHERE YOU'RE GOING
19 WITH THIS.

20 MR. JARMUTH: I'M GOING WITH THE FACT,
21 YOUR HONOR, THAT IT IS A
22 -- BASED UPON -- THERE'S
23 NO ECONOMICAL BENEFIT TO
24 A HOMEOWNER TO BE FORCED
25 TO BUY HTC SERVICES WHICH

1 REQUIRE A SET TOP BOX TO
2 OBTAIN HIGH-DEPTH TV
3 WHERE THEY CAN GET SIX
4 ROOMS FOR TWENTY DOLLARS
5 FROM DISH TV AND, IN
6 FACT, THE ULTIMATE PRICE
7 OBTAINED THROUGH HTC
8 WOULD BE TWENTY-SEVEN
9 DOLLARS PLUS AT LEAST
10 TWELVE DOLLARS A ROOM
11 TIMES SIX, WHICH IS SIXTY
12 DOLLARS, WHICH WOULD BE
13 ALMOST EIGHTY OR NINETY
14 DOLLARS, THE SAME SERVICE
15 OFFERED BY DISH TV. AND
16 THAT, I BELIEVE, YOUR
17 HONOR, IS ONE OF THE
18 BASIC REQUIREMENTS OF A
19 COVENANT TO SURVIVE AND
20 CHALLENGE, THAT THERE
21 MUST ACTUALLY BE AN
22 ECONOMICAL BENEFIT TO THE
23 PERSON WHO IS THE OBLIGOR
24 TO PERFORM.
25 THE COURT: SHE APPARENTLY DOESN'T

1 HAVE THAT KNOWLEDGE.
2 MS. AMBUHL: I CAN ANSWER ONE OF THE
3 QUESTIONS.
4 THE COURT: WELL, ANSWER WHAT YOU
5 CAN.
6 MS. AMBUHL: OKAY.
7 THE COURT: BUT IF SHE DOESN'T KNOW,
8 SHE DOESN'T KNOW. GO
9 AHEAD, TELL HIM WHATEVER
10 YOU KNOW, ANSWER HIM
11 TRUTHFULLY.
12 A: High-depth services are available if you have
13 a high-depth rating television. Now, there
14 are additional services even if you have a
15 high-depth rating television that can only be
16 accessed with a box.
17 THE COURT: DOES THAT ANSWER WHAT YOU
18 WANTED TO KNOW?
19 MR.JARMUTH: YES, SIR.
20 THE COURT: OKAY.
21 MR.JARMUTH: I'M DONE WITH THIS
22 WITNESS, YOUR HONOR.
23 THE COURT: ALL RIGHT. THANK YOU.
24 MS. THOMPSON: NO FURTHER QUESTIONS,
25 YOUR HONOR. THANK YOU.

1 THE COURT: ALL RIGHT. YOU MIGHT
2 COME DOWN. DO YOU WANT
3 TO EXCUSE HER?
4 MS. GOLDING: PLEASE, IF YOU DON'T
5 MIND.
6 THE COURT: OKAY. MR.JARMUTH, DO YOU
7 HAVE ANY OBJECTIONS TO
8 EXCUSING THIS WITNESS?
9 MR.JARMUTH: NO, YOUR HONOR.
10 THE COURT: OKAY. YOU'RE EXCUSED.
11 THANK YOU VERY MUCH FOR
12 COMING AND TESTIFYING.
13 MS. AMBUHL: THANK YOU.
14 MR.JARMUTH: YOUR HONOR, SINCE THIS
15 WITNESS WAS TAKEN OUT OF
16 SEQUENCE, I'D LIKE TO BE
17 ABLE TO PRESENT MY CABLE
18 TV MATERIAL IN ARGUMENT
19 TOMORROW MORNING.
20 THE COURT: LET ME ASK YOU -- LET'S
21 GO OFF THE RECORD JUST A
22 MINUTE.
23 ****OFF THE RECORD****
24 (ON THE RECORD.)
25 MAUREEN SULLIVAN, AFTER HAVING BEEN CALLED TO THE

1 STAND AND DULY SWORN, TESTIFIED AS FOLLOWS:

2 COURT REPORTER: WILL YOU STATE YOUR NAME

3 AND SPELL YOUR LAST?

4 MS. SULLIVAN: MAUREEN SULLIVAN, S-U-L-

5 L-I-V-A-N.

6 DIRECT EXAMINATION

7 BY MS. THOMPSON:

8 **Q: Good afternoon, Ms. Sullivan.**

9 A: Good afternoon.

10 **Q: Are you a homeowner in International Club?**

11 A: Yes, I am. I live in The Glens.

12 **Q: What's your address?**

13 A: 505 Madrid Drive, Murrells Inlet, South

14 Carolina.

15 **Q: And have you ever been on the Board of**

16 **Directors of the Homeowners Association?**

17 A: Yes, I have.

18 **Q: And that's the International Club Homeowners**

19 **Association?**

20 A: Yes, as well as The Glens Homeowners

21 Association.

22 **Q: And when were you a Board member of the**

23 **International Club Homeowners Association?**

24 A: From November of 2008 through September of

25 2010.

1 Q: Were you a Board member at the time that this
2 lawsuit was filed?

3 A: Yes, I was.

4 Q: When was this lawsuit filed, approximately?

5 A: April of 2009..

6 Q: And after the lawsuit was filed, did
7 homeowners have questions about the lawsuit?

8 A: Yes, absolutely.

9 Q: Would you say there were a lot of questions?

10 A: There were a lot of questions. It was the
11 second lawsuit filed within thirty days.

12 There had been a previous one by The Villas.

13 People were very upset, they were very
14 concerned, they had lots of questions about
15 what this was going to do to our Homeowners
16 Association.

17 Q: What did the Board want to do in response to
18 those questions?

19 A: We wanted to allay the homeowners' fears and
20 concerns in as informative and unbiased manner
21 as possible.

22 Q: So what did the Board decide to do?

23 A: Once the law -- we had received the lawsuit,
24 that it had been filed by Mr. Jarmuth, we were
25 assigned an attorney, Ms. Golding, by the

1 insurance company. We had -- in a very short
2 period of time after the lawsuit was filed, we
3 met as a Board in Ms. Golding's office to
4 review the fifty or sixty pages in excess that
5 the lawsuit consisted of. We were a bit
6 confused as to what some of the allegations
7 were. We asked Ms. Golding if she would
8 please identify them to us and if it would be
9 appropriate to send that out to the
10 homeowners. It would not be our
11 interpretation of what the allegations were,
12 it would be Ms. Golding's explanation of what
13 those allegations in Mr. Jarmuth's lawsuit
14 would be.

15 **Q: Was that because you wanted somebody who had**
16 **experience and expertise to deal with these**
17 **legal issues that didn't make a whole lot of**
18 **sense to the homeowners?**

19 A: Absolutely. We did not want to make any
20 assumptions. None of us were lawyers. We
21 felt that Ms. Golding was the proper person to
22 give us the information and the direction as
23 to what these allegations concerned.

24 **Q: And approximately when did you meet with ---**

25 A: It would've been the middle of May of 2009.

1 It was within a very short period of time that
2 she was assigned to be our attorney by the
3 insurance company. We made it a point to get
4 in to see her as quickly as possible. I had
5 traveled to New York, scheduled, and we wanted
6 to get this, you know, some information as
7 quickly as possible.

8 **Q: Was Ms. Toth present?**

9 A: Yes, she was.

10 **Q: She was present at that meeting. Did you**
11 **receive a memorandum from Ms. Golding**
12 **regarding the issues in the lawsuit?**

13 A: We discussed with Ms. Golding at that initial
14 meeting what we wanted to have explained to
15 us, and Ms. Golding assured us that she would
16 put together a memo and highlight the topics
17 in the lawsuit and she would get that to us at
18 her earlier convenience, which she did, and
19 that was approximately the third week in May,
20 the end of May.

21 **Q: And was Ms. Toth in town during that time**
22 **period?**

23 A: No, she was not. She was scheduled to be out
24 of town. I'm not sure if it was up North or
25 down South. It was, I believe, a family

1 occasion with one of her grandchildren, and
2 she was going to be out of town for, I believe
3 it was at least a week.

4 **Q: And so the Board members that were in town,**
5 **were they the people that decided to send out**
6 **the memorandum?**

7 A: Yes. I was -- Bill Freiboth, I'm sorry, Bill
8 Jacques was the vice-president, and Courtney
9 was a Board member, Mike Templeton, I believe,
10 was on a type of leave of absence, and myself,
11 and when Ms. Golding submitted the memorandum
12 to us, we made the decision to send it out to
13 the homeowners. We did not want to wait until
14 Rosemary came back. It would've delayed it at
15 least a week to ten days, and because we had
16 all been present to discuss this with Ms.
17 Golding, we did not see any conflict.

18 **Q: And you also mentioned that you live in The**
19 **Glens?**

20 A: That's correct, and I was the President of the
21 Homeowners Association up until last month.

22 **Q: And as a homeowner in The Glens, do you have**
23 **access to any of the amenities at the**
24 **International Club?**

25 A: Absolutely. We are considered to be the same

1 rights and obligations, financial obligations,
2 as single-family homeowners.

3 **Q: Have you paid assessments to the Homeowners**
4 **Association for the use of the amenity center?**

5 A: Absolutely. We, we pay two sets of
6 assessments in The Glens. We have one to The
7 Glens Homeowners Association, which takes care
8 of the irrigation and maintenance and reserve
9 funding for those items within The Glens. We
10 also pay the Master Association for the right
11 to use the amenity center, the pool,
12 landscaping, all the other Master Association
13 expenses.

14 **Q: I'm giving you what's been marked as**
15 **Defendant's Exhibit Number 14. Can you**
16 **identify that for the record?**

17 A: Yes. This is marketing material that was
18 provided to us by D.R. Horton when we came to
19 visit on The Glens, my husband and I, in
20 spring of 2005, and it identified that we
21 would have the right to use the pool and the
22 amenity center, and it identified us as
23 single-family attached townhomes with fee
24 simple ownership.

25 **Q: And you have had the opportunity to read --**

1 **Have you had the opportunity to read the**
2 **Master Deed for The Glens or the covenants for**
3 **The Glens?**

4 A: Yes, absolutely.

5 **Q: And does the covenants for The Glens name it**
6 **as a horizontal property regime or is it ---**

7 A: No. In fact, on the very first page of The
8 Glens' covenants, it specifically states that
9 the declarant, which was D.R. Horton, did not
10 wish for The Glens townhomes to be considered
11 a condominium association nor a horizontal
12 property regime association.

13 **Q: Have you ever attended the socials at the**
14 **amenity center?**

15 A: Yes, I have, on numerous occasions.

16 **Q: And have you ever seen Mr. Jarmuth at the**
17 **socials at the amenity center?**

18 A: Yes, I have. I have seen him at the First
19 Friday socials back in 2009, at ice cream
20 socials with, I'm assuming, family members,
21 children, at the pool.

22 **Q: What about in 2010 or 2011?**

23 A: I believe it was the summer of 2011 that Mr.
24 Jarmuth was at the pool with some young
25 children, I assume, family members. They were

1 very well behaved little girls.

2 **Q: Did you also have the opportunity to meet with**
3 **Mr. Butryn?**

4 A: Yes, I did. Mr. Butryn had contacted me and
5 wanted some information and I encouraged him
6 to make whatever request he wanted. We had
7 decided, as a Board, that when homeowners, if
8 they told us things, it was a conversation,
9 but we had a format through our website,
10 Contact The Board, that if they used that
11 feature, then that became an incident that we
12 could track and it would be easy for us to
13 make sure that things were getting done. He
14 was encouraged to use the Contact Board form.
15 There was an occasion in December of 2009,
16 that Mr. Butryn wanted some information.
17 There was a mix-up as to what day he was
18 supposed to go down to K.A. Diehl to get it or
19 was it available. I subsequently did have a
20 cup of coffee with Mr. Butryn at Dunkin
21 Donuts, and he raised issues about The Villas
22 lawsuit and about Mr. Jarmuth's lawsuit, and I
23 told Mr. Butryn very specifically that he did
24 not have a seat at the table, so to speak,
25 when it came to resolving these lawsuits, he

1 was not on the HOA Board, he was not named in
2 Mr. Jarmuth's -- he wasn't a co-Plaintiff in
3 it, and he was not named and he had no
4 standing in The Villas lawsuit. I did
5 encourage him if he felt that he could bring
6 something forward, he could get some action,
7 he should do whatever he felt was -- that he
8 felt comfortable with. He called me. He did
9 put an application in to be on the ARB. I
10 encouraged him at all times, as any other
11 homeowner, "If you feel that you would like to
12 volunteer in our community, by all means,
13 contact the Board, fill out a committee
14 volunteer form, no guarantee that you would be
15 appointed, but by all means, keep
16 volunteering, keep raising your hand if you
17 wanted to be part of the community."

18 **Q: Okay. Thank you, Ms. Sullivan. I have no**
19 **further questions.**

20 MS. GOLDING: I WANT TO INTRODUCE
21 EXHIBIT 14, DEFENDANT'S
22 EXHIBIT 14 INTO EVIDENCE.

23 THE COURT: OKAY.

24 DEFENDANT'S EXHIBIT NUMBER 14
25 ADMITTED INTO EVIDENCE.

1 CROSS EXAMINATION

2 BY MR.JARMUTH:

3 Q: Ms. Sullivan, I'd like to compliment you to
4 start with on the gracious behavior Mr. Butryn
5 stated, but looking on to other pertinent
6 issues, you said the seller, D.R. Horton, made
7 representations to you about your eligibility
8 to use the amenity center. When did you buy
9 the house from Horton?

10 A: We bought -- we closed in September of 2005.
11 We come down in April to tour many different
12 communities in the Grand Strand and we chose
13 this one.

14 Q: When you bought the house in The Glens, did
15 you have any conversations from any Board
16 members of the IHOA regarding your eligibility
17 to use the amenities?

18 A: No. My understanding was that it was not an
19 HOA Board at that time, Horton still owned it.
20 The Master Association, their sales
21 representatives assured us that we would be
22 able to use the, the amenity center and the
23 pool, and it was all part of their marketing
24 materials.

25 Q: To ask the question again, did you actually

1 hear such a representation of assurance from
2 someone who you could identify at the time as
3 a Board member of the HOA?

4 A: No, I had no reason to know who the Board
5 members would be if, in fact, there was a
6 Board.

7 Q: During that first -- what was that first year,
8 ma'am?

9 A: We bought in September of 2005.

10 Q: During 2005, did you receive any material from
11 the IHOA regarding anything going on with the
12 HOA?

13 A: Yes, as a matter-of-fact, we received
14 newsletter that came from, I believe it was
15 K.A. Diehl, and they -- it was to all the
16 members of the International Club Homeowners
17 Association, and it had budgets for the next
18 year. The Glens revenue was included in that
19 as contributing towards the cost and the
20 budget for the pool and the amenity center.
21 We received regular updates as the
22 construction of the International Club Master
23 Association was continuing, how many units
24 were going to be in -- there were going to be
25 forty-seven units in The Glens, when Cambridge

1 was built, how many units would be there, how
2 many units were going to be in The Villas and
3 The Meadows, and one of the newsletters very
4 specifically stated that there would be two
5 sub-associations, multi-family sub-
6 associations that were not going to be using
7 the amenity centers, nor would they be paying
8 for them.

9 **Q: Now, at the time you bought the house, was the**
10 **amenity center pool actually yet open?**

11 A: Yes, it was.

12 **Q: When you read all these pieces of**
13 **correspondence from the IHOA, is it not a fact**
14 **that more often than not, they named the**
15 **members of the Board?**

16 A: No. It -- the newsletters that we received
17 were from K.A. Diehl.

18 **Q: Friday Facts?**

19 A: No, no, we're talking about in 2005. Friday
20 Facts was established, and I am proud to say
21 that I was the one who named that, and I wrote
22 fifty-seven consecutive editions of that, and
23 Bill Freiboth has done an outstanding job
24 continuing that, but prior to our
25 establishment of Friday Facts, which was in

1 August of 2009, we received quarterly
2 newsletters from K.A. Diehl. They were
3 published by K.A. Diehl, they were mailed by
4 K.A. Diehl, and they were sent to every member
5 of the International Club Association.

6 **Q: Now, prior to moving to The Glens, where did**
7 **you live?**

8 A: Long Island, New York.

9 **Q: What was the nature of your premises, was it**
10 **single-family home?**

11 A: It was a single-family detached home.

12 **Q: Had you ever lived in an HOA?**

13 A: No, we did not.

14 **Q: Did you ever hear from any source that Board**
15 **of Directors meetings were being held in 2005**
16 **and '06?**

17 A: In 2006, my husband attended. I was not -- I
18 was traveling for business. My husband, I
19 believe, attended the 2006 Board of Directors
20 meeting. I believe it was down in Litchfield.

21 **Q: And was anything he reported thought about**
22 **that there weren't officers of the HOA?**

23 A: No. We were more concerned with the HOA for
24 The Glens townhomes, townhome Association, so
25 no, it was not something that we questioned.

1 Q: What do you know about corporations, in
2 general? Do they have officers?

3 A: Yes.

4 Q: Have you ever been a member of any non-profit
5 organization?

6 A: No.

7 Q: Do they have Boards and directors?

8 A: I would assume that they do. I don't know for
9 sure that they do.

10 Q: Have you ever been a member of a PTA?

11 A: No.

12 Q: Ma'am?

13 A: No. No.

14 Q: Is there anything which would have led you to
15 believe that this non-profit corporation for
16 which you are paying assessments with payment
17 coupons didn't have Board members?

18 A: I had no concerns about that, because any
19 issues that we had that needed to be addressed
20 were being addressed through K.A. Diehl. We
21 knew that this was a developer run Board.
22 When we first moved here, we knew that it had
23 not been turned over to the homeowners, yet.
24 We knew it would be and we knew that, at the
25 time, that it would be turned over, that there

1 would be elections and there would be officers
2 and so forth.

3 **Q: How did you know it was a developer run Board?**

4 A: Because I believe that the name of the
5 president at the time was -- I, I believe it
6 was Brown, Doug Brown.

7 **Q: And isn't the president normally of a non-**
8 **profit organization a Board member?**

9 A: Yes.

10 **Q: So you knew of at least one Board member you**
11 **could've asked at the time regarding the HOA's**
12 **position when you -- or soon after you bought**
13 **your house?**

14 A: I had no reason to ask him, Mr. Jarmuth,
15 because I was paying -- as soon as I took
16 possession and title of my unit, I was sent
17 coupons for The Glens Townhome Association
18 fees, which we paid, and then another coupon
19 book for International Club. I was paying in
20 good faith. I was -- had no restrictions on
21 access to the pool or the amenity center.
22 When a card security system was installed at
23 the amenity center, we were sent a notice to
24 come down, it came to my husband and I, and
25 get our key card, so we had no reason to

1 believe, when our checks were cashed and we
2 were given access to the facilities, that we
3 were not entitled to use them.

4 **Q: Do you recall the name of the entity to which**
5 **you wrote the check, any of these checks, in**
6 **2005, '6, '7, '8 or '9?**

7 A: For all except one year, and you were the one
8 who pointed it out, that the coupons -- I
9 believe it was the, the years beginning
10 January 2007, maybe 2008, you were the one who
11 brought it to K.A. Diehl's attention that it
12 said International Club POA, instead of
13 International Club HOA; however, prior to
14 that, I do not remember if it said POA or HOA.

15 **Q: When you joined the Board of Directors, did**
16 **you have occasion to review the minutes of**
17 **prior Board meetings?**

18 A: Excuse me, for which association, because I
19 served on both?

20 **Q: The Defendant IHOA?**

21 A: Yes, I reviewed -- I was given copies of
22 minutes. I reviewed the covenants. I studied
23 very diligently to educate myself and bring
24 myself up to speed on what was going on in the
25 Association.

1 Q: Did you happen to notice the name of the
2 organization which the Board records, minutes
3 of Board meetings supposedly they were for,
4 did it say International Property Owners
5 Association on it?

6 A: No, I believe it said Homeowners Association.

7 MR.JARMUTH: THE COURT IS INVITED TO
8 READ THE MINUTES OF THE
9 BOARD RECORD MEETINGS,
10 AND I PROFFER THAT THEY
11 ALL SAY UNTIL AROUND 2010
12 AND '11, INTERNATIONAL
13 CLUB PROPERTY OWNERS
14 ASSOCIATION.

15 Q: Now, moving on here, is it your conclusion
16 that the developer ran the Board and the
17 developer also is the one who made the
18 representation that you could use the amenity
19 center?

20 A: Is it my conclusion that the developer said I
21 could use the facilities; is that what you're
22 asking me?

23 Q: Yes.

24 A: Yes, that is my conclusion.

25 Q: And is it the conclusion that no other entity

1 other than the developer, since it was a
2 developer controlled Board, actually was
3 telling you you could use it?

4 A: I did not believe that there was anyone else
5 to tell me that I could not use it.

6 Q: Now, did the developer, Horton's
7 representation to you contribute to your
8 decision to buy that unit?

9 A: Absolutely. Absolutely. We looked at many
10 communities throughout the Grand Strand and
11 what impressed us was the, the grounds and the
12 beautiful resort-like amenities that the
13 International Club had to offer, and we made
14 sure that we and The Glens, if we bought in
15 The Glens, that we would be able to use it.
16 We were not interested in going somewhere
17 where we, where we would not have access to
18 those types of amenities.

19 Q: Was the person who made these representations
20 to you in the nature of a salesman?

21 A: Yes.

22 Q: Now, when you go and buy a car, what
23 credibility do you give to what the salesmen
24 say about miles per gallon or ---

25 MS. GOLDING: YOUR HONOR, THIS IS GOING

1 WAY AFIELD.
2 THE COURT: YES, JUST STICK TO THE
3 POINT WITH HER, IF YOU
4 WOULD, PLEASE. IT'S
5 AFTER FIVE. I WANT TO
6 GIVE YOU EVERY
7 OPPORTUNITY TO ASK
8 ANYTHING YOU WANT, BUT DO
9 TRY TO CONFINE IT TO THE
10 PROBLEMS AT-HAND.
11 **Q: Is there anything which you heard which led**
12 **you to believe that this might be something**
13 **other than a self-serving sales pitch?**
14 A: No, absolutely not. There was -- it was
15 proven. When we closed on our unit, we paid --
16 and we were given a coupon book to pay for the
17 International Club Master Association fees.
18 We were paying those all along.
19 **Q: Now, changing the subject, was it your**
20 **statement that the purpose and intent of the**
21 **Board, when it distributed material about me,**
22 **was to give the homeowners information**
23 **regarding the lawsuit?**
24 A: Yes.
25 **Q: Can you explain why the Board never gave or**

1 made available to the homeowners the actual
2 Complaint, the Answer, the Amended Complaint
3 or the Amended Answer?

4 A: We put that up on the website, and at that
5 time, we had -- and I'm not clear, completely
6 clear on who was running the website as far
7 as, you know, Association voice or whatever,
8 but K.A. Diehl had constructed a new website.
9 They had done it for all their properties, and
10 I know this because they had done it for The
11 Glens, and I know that we posted on the
12 website the original Complaint and it was in
13 excess, as I said, of fifty or sixty pages, so
14 that was up there. Every time there was an
15 amendment, every time there was an answer,
16 every time there was, I think, a motion to, to
17 compel, we posted everything on the website,
18 so that homeowner -- and we kept driving
19 traffic to the website. We were looking to
20 cut down on postage costs where we could, and
21 so everything that we had, yes, we got was
22 posted on the website for the homeowners to
23 see.

24 Q: Do you have any explanation why, when I asked
25 another homeowner who had signed up for the

1 web page to log in and go to the list of
2 cases, why the only thing that showed on that
3 website was this letter from your Board, and
4 my Complaint wasn't there, your Answer wasn't
5 there, the Amended Complaint wasn't there, the
6 Amended Answer wasn't there ---

7 A: Excuse me, can I ask you what date this was
8 that the person signed into the website,
9 because I can't answer that, otherwise? I, I
10 can't give you the dates that we posted this
11 information. I have no idea what date the
12 person you're talking about tried to access
13 the website, so I cannot answer that.

14 Q: Is it posted there today?

15 A: Yes, everything is posted.

16 Q: The Complaint and the Answer?

17 A: As far as I know. It is listed under "Legal
18 documents" on the International Club
19 Homeowners Association website.

20 MR.JARMUTH: YOUR HONOR, I RESERVE THE
21 RIGHT TOMORROW TO BRING
22 IN SOME SCREEN SHOTS
23 WHICH WERE TAKEN OF THE
24 WEBSITE WHICH DO NOT SHOW
25 ANYTHING BUT THE K.A.

1 DIEHL LETTER.

2 Q: Now, let's look at the other. There's a
3 mention of The Villas lawsuit, did you
4 actually post The Villas Complaint and your
5 Answer?

6 A: Yes.

7 Q: Is there any reason why you handled The Villas
8 Complaint differently than my Complaint?

9 A: No, we did not handle it differently.

10 Q: Did you post the Complaint and the Answer of
11 the Astorino lawsuit?

12 A: I believe that all the lawsuits affecting the
13 Homeowners Association is posted on the
14 website.

15 Q: And you know this how?

16 A: Because I check the website on a regular
17 basis, and we also put in Friday Facts, and it
18 has been stated at Board meetings, when there
19 are updates, that homeowners could go to the
20 website and review them for themselves. They
21 did not have to listen to Board
22 interpretations of what these things meant.
23 They could go for themselves, read it
24 themselves, make their own determinations.

25 Q: If you were to go -- how familiar are you with

1 **databases?**

2 A: Not very. I, I -- I'm not an expert on that.

3 I can't, I can't really answer that.

4 **Q: Have you ever played with Microsoft Access?**

5 A: Yes.

6 **Q: And will you agree that what's actually behind**
7 **the access window is a database?**

8 A: Yes.

9 **Q: And have you ever formulated queries into the**
10 **database and ask for certain questions for a**
11 **boss?**

12 A: Yes.

13 **Q: And is it a fact or not a fact, tell me, that**
14 **the list of homeowners in the HOA and the**
15 **email addresses is, in fact, in the database**
16 **located on one of the K.A. Diehl computers?**

17 A: I cannot answer that. When you asked me about
18 Microsoft Access, I have used that in my
19 professional job, but specific to, to my job,
20 I cannot answer that as far as the K.A. Diehl
21 website or how Microsoft Access is used in the
22 capacity for email addresses or a community
23 directory. I cannot answer that.

24 **Q: Have you ever in your capacity as a Board**
25 **member had occasion to ask K.A. Diehl for a**

1 **list of members?**

2 A: No, it was on the website. We have a
3 community directory on the website, so it was
4 right there. If I needed to know where, you
5 know, someone on Seville Drive, you know,
6 there was someone on Seville Drive, I knew
7 their name, but I didn't know their number, I
8 wanted to send them a Christmas card, I could
9 go to the community directory on the website
10 and I could put in either the street and get
11 all the list of the people on the street or I
12 could put it in by name and get their address,
13 so it was all there. I had no reason to ask
14 K.A. Diehl to provide me with a list, I had
15 access to a list as a homeowner.

16 **Q: From your familiarity with use of Access, was**
17 **that, in fact, a query into that database for**
18 **the names?**

19 A: I have no idea. The version of Access I use
20 for my job is from 2003. I am not a computer
21 expert. I do not, you know, propose to be, so
22 I cannot tell you how, when I put in a request
23 for information, what that is triggering
24 within Access. I cannot answer that.

25 **Q: Now, you said you've been looking at these**

1 documents, which they were behind the website
2 regarding the different litigation. When you
3 look at them, is there any tool to do a query
4 or to ask a question regarding words in that
5 document which is on the website?

6 A: I don't, I don't really know. I know that
7 they're on our website, on the website. It is
8 a search bar, so I would assume that if you
9 typed in a word, perhaps that would bring up
10 all the information. I do not know anything
11 beyond that.

12 Q: Well, when you bring up these documents, all
13 you see is the document?

14 A: You see the title and then you can click on
15 it. You're given the opportunity to either
16 view it online, download it or print it. So
17 depending on what you click, if you click to
18 view it online, it would come up. I believe
19 it's an Adobe format, and you can scroll down,
20 you can make it larger, you can make it
21 smaller, but I don't know that there is a
22 search mechanism within Adobe. I'm not aware
23 of that.

24 Q: When you download -- have you ever downloaded
25 any of these files?

1 A: No, I view them online.

2 Q: How about these documents, have you ever
3 downloaded them?

4 A: No, I view them online.

5 Q: Now, who made the decision to distribute the
6 materials about me in that letter?

7 A: Well, I'd like to see that if you have that,
8 please, or I'd just like to familiarize myself
9 with that.

10 Q: Are you familiar with this document?

11 MR.JARMUTH: THIS DOCUMENT I'M SHOWING
12 FOR THE RECORD IS A COPY
13 OF THE MAILING FROM THE
14 IHOA WHICH HAD A COVER
15 LETTER FROM BECKIE ABEL,
16 THE LETTER FROM THE
17 COUNSEL FOR THE
18 DEFENDANT, A LIST OF
19 LAWSUITS AND ATTACHED
20 WEST LAW EXCEPTS.

21 A: Yes, I am familiar with this.

22 Q: Is that the document which you authorized
23 someone to distribute?

24 A: Yes.

25 Q: Who did you want to have -- who did you decide

1 **would mail it out?**

2 A: We directed K.A. Diehl to do the mailing or to
3 arrange for the mailing.

4 **Q: Was it your intention that this mailing would**
5 **provide homeowners information about me?**

6 A: Mr. Jarmuth, I know that -- please don't take
7 this the wrong way, but, you know, over three
8 years ago you were not that well known outside
9 of Pebble Creek, and the International Club
10 had well over six hundred and fifty homes, so
11 we were getting inquiries, I, just on Madrid
12 Drive, "Who is Ronald Jarmuth, why did he file
13 a lawsuit, why is he acting as his own
14 attorney?" We sent that out, so that
15 homeowners could make their own decision about
16 whether or not they wanted to pursue reading
17 about this, about you, but really, outside of
18 Pebble Creek you were not that well known
19 throughout the community.

20 **Q: Well, is there any intent that this mailing**
21 **would provide information about anyone other**
22 **than me?**

23 A: I'm not sure what your question is?

24 **Q: Was there any litigation filed by anybody else**
25 **which was included in the package?**

1 A: No. I believe you were the only one who filed
2 the -- it was about -- you were the one who
3 filed the, the lawsuit. There was no one else
4 who filed it with you.

5 **Q: Were the attachments relating to anyone other**
6 **than myself?**

7 A: I'm sure there were -- it was -- if you had an
8 action against someone, then their name
9 would've been on it.

10 **Q: Was I the common person throughout every one**
11 **of the documents?**

12 A: Yes.

13 **Q: Was there any other homeowner in the PUD that**
14 **this would be provided information of that,**
15 **this mailing?**

16 A: I don't believe so. The only other homeowners
17 would be the five Board members that were
18 listed in the McNair letter.

19 **Q: Now, who made the decision what the contents,**
20 **what the piece of paper would be, what would**
21 **be included in this letter?**

22 A: Henri Golding had discussed with the Board at
23 our initial meeting with her -- again, we had
24 asked for her to provide an analysis and her
25 opinion of the strength of your allegations,

1 and it was decided that she would provide a
2 letter to us and we would distribute it to the
3 homeowners. That was a decision we made as a
4 Board, and it was not in a meeting, it was in
5 Ms. Golding's office.

6 **Q: Now, who made the decision about what would be**
7 **sent out as far as the email that was sent**
8 **out?**

9 A: Originally, we had just wanted to send it out
10 by email. There was a problem attaching all
11 of those pages. We made the decision that
12 this should go out by regular U.S. Postal
13 Mail, because it was that important. The
14 Homeowners Association had a complaint filed
15 against it. The members make up that
16 Association, so therefore, we felt that every
17 member within the Association had the right to
18 know what allegations were being made, simple
19 as that, nothing more, nothing less.

20 **Q: Did a K.A. Diehl employee decide what the**
21 **contents of the email, the publication would**
22 **be?**

23 A: No. That was not K.A. Diehl's call.

24 **Q: Did the Board tell K.A. Diehl what to have as**
25 **an attachment?**

1 A: Under -- with the advice of Ms. Golding as our
2 attorney, the decision was made that we would
3 send out this explanatory letter as well as a
4 listing of different lawsuits that you were
5 involved with that showed that you were pro
6 se, you know, that you were used to
7 representing yourself for the purpose for the
8 homeowners to make their own decision about
9 whether or not they wanted to read anything
10 more about it.

11 **Q: Did Ms. Golding tell you that you must send**
12 **that particular email out with a particular**
13 **attachment to attach to it?**

14 A: We, we wanted to try to send it out by email.
15 We did not have everyone's email address,
16 number one; number two, there was a problem
17 attaching all the documents at that time. So
18 the decision was made that we would send it
19 out by U.S. Postal Mail.

20 **Q: Whose decision?**

21 A: The Board's decision, and that would've been
22 -- Rosemary Toth was not in the state. It
23 would've been Bill Jacques, myself and Ed
24 Courtney.

25 MR. JARMUTH: THE COURT IS INVITED TO

1 READ THE DEPOSITION
2 TESTIMONY OF ROSEMARY TOTH
3 REGARDING WHAT HAPPENED AT
4 THE MEETING. AS I RECALL,
5 SHE SAID SHE ATTENDED THAT
6 MEETING, PARTICIPATED IN
7 THAT DECISION.

8 **Q: Now, going on to this, ---**

9 A: Uh-huh (affirmative response).

10 **Q: --- was there any reason why you had to attach**
11 **everything that you received from Ms. Golding**
12 **to the mail?**

13 A: We acted under the advice of Ms. Golding who
14 was our attorney. She felt that this was good
15 information to be disseminated to the
16 homeowners and that's -- we followed that
17 advice.

18 **Q: Wasn't that ultimately your decision about**
19 **spending money?**

20 A: Spending money in what regard?

21 **Q: To send this stuff out.**

22 A: Yes, we felt that it was important enough,
23 there was a lawsuit filed against the
24 Association. The Association, again, is made
25 up of over six hundred and fifty members. We

1 felt it was important that every homeowner had
2 the ability to see the allegations and what
3 was being alleged against the Association, of
4 which they were a part, of which they
5 comprised the Association.

6 **Q: Who gave that package to Carolina Mail House**
7 **to make copies of them to send?**

8 A: K.A. Diehl was directed to arrange for the
9 mailing.

10 **Q: And who gave Carolina Mail House the list of**
11 **names and addresses of homeowners to send it**
12 **to?**

13 A: I would assume that was K.A. Diehl.

14 **Q: And who told K.A. Diehl to release the**
15 **information to Carolina Mail House?**

16 A: We were advised by our attorney, Ms. Golding,
17 to -- that this should be sent out to all the
18 homeowners; therefore, the chain of command
19 would've come from Ms. Golding through the
20 Board, the Board copied, to K.A. Diehl, that
21 this -- the letter has been approved, this is
22 to be sent over to the Mail House to be
23 processed for mailing.

24 **Q: Does the Board work for McNair or does McNair**
25 **work at this time for you? You said the chain**

1 of command.

2 A: As far as giving the directions, Ms. Golding
3 is the expert as to what we should have done.
4 We followed her advice.

5 Q: Who, by name, told K.A. Diehl to mail that
6 material?

7 A: I believe that was Bill Freiboth, I'm sorry,
8 Bill Jacques, as the vice-president. I'm
9 sorry, that was Bill Jacques as the vice-
10 president.

11 Q: And he was an officer of the Defendant IHOA?

12 A: That is correct. He was -- and he held the
13 title of vice-president.

14 Q: Who told K.A. Diehl to email the material out?

15 A: I believe that was Bill Jacques, and it gave
16 that directive to K.A. Diehl.

17 Q: And it was -- was it Bill Jacques who
18 physically gave K.A. Diehl the package to have
19 mailed out?

20 A: No. I believe that we had received that
21 through email, so I believe it was an email
22 attachment. It was -- he did not go down and
23 physically hand it to K.A. Diehl.

24 Q: About how much money did the Board spend for
25 the mailing and reproduction?

1 A: Well, there's six hundred and fifty
2 homeowners, if it cost maybe a dollar fifty,
3 two dollars in postage, so I believe it was,
4 it was a few thousand dollars, at top, you
5 know, at the most. I couldn't say for sure.
6 I don't have those invoices in front of me.

7 **Q: At what point does the Board and is the Board**
8 **supposed to include in its minutes decisions**
9 **regarding spending thousands of dollars?**

10 A: This was not decided at a Board meeting. This
11 was decided in a meeting of the Board in the
12 attorney's office.

13 **Q: Are you saying that was a decision outside of**
14 **a regular Board meeting, a decision of the**
15 **Board made outside of a regular Board meeting?**

16 A: I really can't answer that, I really can't.

17 **Q: Was it a decision of the Board?**

18 A: Yes, it was.

19 **Q: And was it outside a regular meeting of the**
20 **Board?**

21 A: I believe it was in a protected meeting with
22 our attorney.

23 **Q: Did you ever sign a consent to have this**
24 **decision made outside of the regular meeting**
25 **of the Board?**

1 A: I don't know that we did an action without a
2 meeting. I don't know.

3 **Q: Say again, ma'am.**

4 A: Is that the -- are you asking me did we do an
5 action without a meeting?

6 **Q: Did you actually sign an action without**
7 **meeting document for that?**

8 A: I could not tell you, right off the top of my
9 head.

10 **Q: What's your understanding regarding the**
11 **requirement to file actions without outside**
12 **meeting documents in the next minutes of the**
13 **Board meeting or as a minute of the Board?**

14 A: I don't know that this would qualify. This
15 was during a privileged conversation with our
16 attorney, it was at the guidance of our
17 attorney, so I don't know that that would've
18 applied. That -- beyond that, I can't answer
19 that, Mr. Jarmuth.

20 **Q: What, if anything, did you or any of the**
21 **members of the Board do to vet the information**
22 **that was within that material?**

23 A: We relied on the expertise of our attorney.
24 We did not feel it necessary to reinvestigate
25 our attorney. There would be no purpose to

1 having an attorney.

2 **Q: Would I be correct in saying that no member of**
3 **the Board or at least you did nothing at all**
4 **to verify any of that material?**

5 A: I had no reason to believe that Henri Golding
6 was lying to us or was misrepresenting this
7 information in any, any way at all.

8 **Q: Please answer the question.**

9 A: I did answer the question.

10 **Q: Did you or did you not do anything to verify**
11 **any of that material? It's a yes or no**
12 **question.**

13 A: Beyond relying on the attorney, no, I did not.

14 **Q: Had you ever met me personally prior to that?**

15 A: Prior to May of 2009?

16 **Q: Yes.**

17 A: Yes, at a Board meeting, a quarterly Board
18 meeting, I believe, in March of 2009.

19 **Q: Did you have any knowledge that I was a foster**
20 **parent?**

21 A: Excuse me?

22 **Q: Did you have any knowledge that I was a foster**
23 **parent?**

24 A: That you were a ---

25 **Q: Foster parent?**

1 A: I don't understand.

2 **Q: Didn't you make a statement earlier that I**
3 **came to the pool with foster children?**

4 A: Oh, you were a foster parent? I saw you with
5 three little or two little very adorable, well
6 behaved little girls in the pool, and you were
7 talking about their starting school and making
8 friends at the bus stop, and I do not believe
9 that that was -- that was after May of 2009.

10 **Q: Did you personally read the material in the**
11 **West Law sheets contained in that mailing?**

12 A: No, I did not. No, I did not.

13 **Q: Is it your statement, then, that you had no**
14 **knowledge of what was being sent out?**

15 A: I had no desire to read the intimate details
16 of those actions. It was sufficient to me
17 that they were coming from a legal form, which
18 I believe West Law to be, that they publish
19 legal opinions or, or the verdicts of cases.
20 I had -- my concern was running the community,
21 running the business of the Board, and if
22 these were published through West Law and our
23 attorney felt they were valid cases, I had no
24 reason nor did I have the time to spend
25 reading them to verify whether or not they

1 were correct.

2 **Q: Did I hear you say that it was your belief**
3 **that they contain intimate material about me?**

4 A: No, I said intimate details of each and every
5 case. I don't know what each case was about.

6 **Q: Don't you consider that a little reckless?**

7 A: No, I don't consider it reckless.

8 **Q: Was there any reason to believe that this**
9 **material would not affect my reputation in the**
10 **community?**

11 A: I -- you know, I know that there was one case
12 where I believe there was an action with AT&T
13 or Verizon. I really did not feel the need to
14 find out why you were involved in an action
15 with a phone company or a cable company. I
16 did not feel that that would be detrimental to
17 you. I did not feel it would enrich my life
18 to know that and I did not feel it would
19 enable me to serve the members of our
20 community any better by knowing what your
21 issue with a phone company was.

22 **Q: What portion of the governing -- in your view,**
23 **does the president of the Board of Directors**
24 **have any greater authority than any particular**
25 **member of the Board of Directors?**

1 A: No.

2 Q: How many, how many members of the Board were
3 there in 2009?

4 A: There were five.

5 Q: And would that lead me to believe that twenty
6 percent of the decision-making authority was
7 yours?

8 A: Yes.

9 Q: Did you agree to send this out?

10 A: Yes, because, again, Mr. Jarmuth, nothing
11 personal, but you were not that well known
12 outside of your immediate community, and
13 people were asking, homeowners were asking,
14 "Who is this person, what do we know about
15 him, why is he doing this, has he done this
16 before?"

17 Q: Turning to another matter, were you a Board
18 member in 2010?

19 A: I was through September of 2010.

20 Q: So were you a Board member at the time the
21 Central Electric decision was made in a
22 special meeting?

23 A: Yes.

24 Q: At the time, were you -- are you aware -- do
25 you recall particularly the announcement for

1 the special membership meeting?

2 A: In what context?

3 Q: Do you recall the details of the announcement?

4 A: I know that we sent it out as per the
5 documents. I know that we announced that we
6 would -- it was in regard to the easement and
7 the agreement with Central Electric
8 Cooperative.

9 Q: Now, as a member of the Board, was the intent
10 of the Board to make a decision on its own
11 regarding entering into this contract?

12 A: It was not -- we checked with Ms. Golding if
13 it was -- if, if that decision-making fell
14 under our authority, and it, it did. We
15 specifically asked the question of Ms.
16 Golding, did we need to put this to a vote of
17 the homeowners? She said, "No." We,
18 therefore, felt that we did due diligence and
19 we, as a Board, made that decision.

20 Q: Did I hear you say your decision of the Board
21 was not to hold a vote?

22 A: No, that's not what I said. What I said was,
23 is that we checked -- not only did we read the
24 covenants, but we asked Ms. Golding to read
25 the covenants to find out were we required to

1 put this issue to a vote of the homeowners.
2 The answer was, no, we did not, it was the --
3 it fell underneath the authority of the Board;
4 therefore, it was the Board that made the
5 decision.

6 **Q: Is there a Board meeting minutes which shows**
7 **the decision of the Board to enter that**
8 **Capital -- that Central Electric contract?**

9 A: The special meeting was video-taped, and so I
10 would assume that on that video-tape it shows
11 the proper motions are made and they were
12 seconded properly in front of the, the
13 membership.

14 **Q: And that motion was made for the Board to**
15 **approve the contract?**

16 A: Correct.

17 **Q: And at that meeting, the Board never called**
18 **for a vote?**

19 A: We did -- we were not required to call for a
20 vote.

21 **Q: Were you present at that meeting?**

22 A: Yes, I was.

23 **Q: Did you hear any members ask for a vote?**

24 A: Yes, and they were out of order in asking for
25 that. This was not, this was not an issue

1 that was to be put up to a vote of the
2 membership. It was a Board decision. We had
3 the authority, as per the covenants, to make
4 this decision. We did it with the legal
5 approval and advice of our attorney, as well
6 as our CPA.

7 **Q: What is the difference between what can happen**
8 **at a annual meeting of the members and a**
9 **regular meeting of the Board of Directors?**

10 A: Well, I can tell you, and I'm quite proud to
11 say, that when I came on the Board of the
12 Master Association, I brought along something
13 that I had enacted as President of The Glens
14 Homeowners Association, and that was, while it
15 is technically a quarterly Board meeting, that
16 we open it up at the end when we've concluded
17 our business and have a homeowner comment
18 portion and we do it Round Robin. So you
19 could have four issues, but you would ask your
20 one question, we would go on to the next
21 homeowner. Once everybody had asked their
22 first round of questions and had those
23 answered, then we could come back, you know,
24 if you had multiple questions, not only that,
25 but we asked for, if not only to tell us what

1 your concern was, but did you have a solution.

2 Tell us, well, give us your ideas on how to

3 solve whatever your issue was.

4 **Q: How many of the -- were you present at a Board**
5 **of Directors meeting where Rosemary Toth said**
6 **to the homeowners present that they -- at a**
7 **meeting of the Board, they had no right to**
8 **speak?**

9 A: When I was on the Board -- all I can tell you,
10 Mr. Jarmuth, when I was on the Board,
11 homeowners were allowed to speak. We asked
12 homeowners to sign in. They were to list
13 their issues and their solutions, and we
14 explained it would be a Round Robin, everyone
15 could go around once, once all the questions
16 were answered, we'd go around a second time.
17 Every meeting that I went to as a Board
18 member, that was how it was done.

19 **Q: At an annual meeting of the members, just**
20 **meeting of the members, not the Board, ---**

21 A: Correct.

22 **Q: --- you have them at least once a year,**
23 **correct?**

24 A: Correct.

25 **Q: Will you agree that homeowners or members of**

1 the Association have the right to ask any
2 question?

3 A: Absolutely.

4 Q: Now, was this other meeting, I believe it was
5 March or April of 2010, wasn't that called in
6 the announcement and the minutes the special
7 meeting of the members?

8 A: It had to be called as a special meeting.

9 Q: And isn't it a fact that at a special meeting,
10 the same rights of members are present at that
11 annual meeting to raise any issue ---

12 A: Well, no, because a special meeting required
13 that you had to list what the topic for the
14 meeting was. There was just one topic at this
15 meeting and it was to approve and to finalize
16 the Central Electric Power easement agreement.
17 That was the only topic, and a special
18 meeting, I understand it, that you have to
19 identify in the notice what the topic to be
20 discussed is. You cannot go off the topic
21 and, and open it up to discuss anything else.

22 Q: If that's the case, how can you say that the
23 member who asked for a vote was out of order?

24 A: The topic was for the Board to approve the,
25 the sale of the, the sale of the easement,

1 I'll word it that way. That's what the topic
2 of that meeting was. It was not to invite
3 members to call for a vote.

4 **Q: Now, how much money did the Board receive from**
5 **Central Electric as part of the settlement in**
6 **cash?**

7 A: In cash, we received Eighty-three thousand
8 dollars, which was significantly more than
9 what the original offer was. Three thousand
10 of that was accounted, was to be allocated for
11 the expenses involved with holding the special
12 meeting, including the postage, the copying.
13 I believe we had a Parliamentarian, we had a
14 videographer, so three thousand dollars was
15 allocated for expenses. Eighty thousand
16 dollars was received in cash.

17 **Q: Didn't the Board receive additional money to**
18 **cover landscaping expenses for restoration in**
19 **case what Central Electric did was**
20 **insufficient?**

21 A: We did not receive cash for that. We received
22 a landscaping and sprinkler, irrigation
23 package worth approximately twenty thousand
24 dollars. Subsequently, Bill Freiboth, the
25 current President of the Board, has been able

1 to, I believe, successfully deal with CEP to
2 get additional sprinkler systems, additional
3 plantings, in addition to our original
4 package.

5 **Q: Did any homeowner own a property right in the**
6 **area for which Central Electric was doing its**
7 **thing?**

8 A: No, I don't believe so.

9 **Q: Do homeowners have an equitable right,**
10 **property right, in any property owned by the**
11 **HOA?**

12 A: I couldn't answer that. I'm not a lawyer. I
13 don't know that.

14 **Q: Have you read the deeds for the amenity**
15 **center?**

16 A: Yes.

17 **Q: Whose named as the entity receiving that land?**

18 A: I believe it's the HOA, and I would like to
19 point -- to go back to your asking how much
20 cash we received. I would like to point out
21 that of the eighty thousand dollars in cash
22 that we got, we gave back to six hundred and
23 fifty homeowners a seventy-five dollar check.
24 We felt it was important to share those
25 proceeds and put that money directly in the

1 pocket of the homeowners. We kept additional
2 funds set aside for future expenses and for
3 community beautification projects, but we put
4 -- it was over fifty thousand dollars back
5 into our homeowners' pockets.

6 **Q: And what was the justification of distributing**
7 **to each homeowner seventy-five dollars?**

8 A: We felt that was a fair amount. We felt that
9 -- we looked at different ways to accomplish
10 this. We could've just given a credit to
11 every homeowner's account, but you're not
12 really feeling that, you know, it's one thing
13 to get a check for seventy-five dollars and go
14 to the mall and buy your kids' a new pair of
15 sneakers or go out to dinner. A credit on the
16 account, we didn't know would have the same
17 impact.

18 **Q: And what had each homeowner given up to**
19 **justify them getting seventy-five dollars?**

20 A: We felt that the final offer that we received
21 from Central Electric was the most beneficial
22 to the homeowners. We felt the most amount of
23 good could be done by accepting that offer.

24 **Q: I'm going to restate my question exactly.**
25 **What had each homeowner, homeowner,**

1 individually, given up to justify him getting
2 seventy-five dollars in cash to use for his
3 own purposes?

4 A: I can't -- I don't believe they gave up
5 anything, because it was, it was -- there was
6 nothing to give up. That land was just part
7 of the front entrance. You couldn't build on
8 it. We couldn't develop it. We couldn't --
9 it wasn't worth much, in and of itself, so I
10 don't believe they gave up anything.

11 Q: Now, you said there was additional cash left
12 after the seventy-five dollars to the
13 homeowners had been distributed. Did I hear
14 you correctly, that you said it was to be used
15 for beautification?

16 A: I believe there was a portion of the money,
17 the remaining money, that was going to be set
18 aside for a future beautification projects in
19 the community.

20 Q: Was there anything else that was supposed to
21 be set aside for the use of?

22 A: Off the top of my head, I don't remember.

23 Q: Would it be accurate to say the Board decision
24 was that that money was to be used for
25 beautification?

1 A: Not all of it, no, a portion of it.

2 Q: What was the other purpose that money was to
3 be used for?

4 A: Future expenses. I, I really could not say,
5 off the top of my head. If you're asking me
6 if I remember, I don't remember.

7 Q: Can you explain any reason why money was to be
8 set aside for beautification or to be used for
9 unrelated purposes?

10 A: If we had unrelated expenses.

11 Q: But that money, that particular money, do you
12 have any logical answer why money set aside
13 for beautification, restoration, and received
14 from Central Electric essentially for that
15 purpose and explain to the homeowners at that
16 meeting it was received for that purpose, why
17 it would be used for unrelated purposes?

18 A: In between the time that we received the
19 money, in September of 2010 when I went off
20 the Board, we did not spend that money. If
21 there was a reason in between September of
22 2010 and today, why that money was spent, I
23 cannot speak to that, because I'm not a member
24 of the Board. So I cannot speak to that.

25 Q: Was it your intention as a member of the Board

1 when this contract was made that ten thousand
2 dollars of this money should be used to pay
3 off a judgment of the HOA ---

4 A: Oh, no. No. Now that you say that, no. I
5 believe we were going to set aside ten
6 thousand dollars because that was the
7 deductible amount in case we had another
8 lawsuit, and this way, we would have the out-
9 of-pocket ten thousand dollars deductible. So
10 it was not about a judgment, it was if there
11 was going to be a future lawsuit we would at
12 least have the deductible money, because the
13 deductible had gone up from twenty-five
14 hundred dollars to ten thousand dollars.

15 **Q: Did that minutes of that meeting ever get put**
16 **for a approval at a subsequent meeting?**

17 A: Yes, I believe that we did approve the, the
18 minutes of the special meeting.

19 **Q: When you say, "We," did you mean that you were**
20 **one of the people who approved those minutes?**

21 A: Yes. It would've probably been at -- if
22 you're asking me off the top of my head, it
23 would've been at the next regularly scheduled
24 quarterly Board meeting.

25 **Q: Can you explain why the minutes of that**

1 meeting never mentioned having the ten
2 thousand dollars set aside for deductible?

3 A: I believe that we had prepared for the special
4 meeting a breakdown at how we were going to
5 spend that money, so I do believe that that
6 would've been attached to the video-tape of
7 the special meeting.

8 Q: Were you in office when the ten thousand
9 dollars was used to pay off the judgment which
10 The Villas won?

11 A: No. My understanding is that The Villas
12 lawsuit was settled last winter and I was not
13 on the Board then.

14 Q: As a homeowner, were you ever told that the
15 ten thousand dollars was used for that
16 purpose?

17 A: Yes, that was probably mentioned at a meeting,
18 and I tried to attend all the quarterly Board
19 meetings.

20 Q: Did you ever see this in a Friday Facts
21 letter?

22 A: Probably, I read them all.

23 Q: So if I somehow -- if someone is not getting
24 Friday Facts, how would they have known that
25 the ten thousand dollars had been paid?

1 A: I don't know why anyone would not want to
2 receive Friday Facts. All you have to do is
3 sign up at the website and then you
4 automatically get it.

5 **Q: To your knowledge, who makes modifications to**
6 **the IHOA website to add new items?**

7 A: That would be the assistant community manager.
8 That was the -- Julie Case did that, and I
9 would assume that Vanessa is doing that now
10 from K.A. Diehl.

11 **Q: So based upon your knowledge, it would be**
12 **Julie Case who added all this material to the**
13 **HOA's website?**

14 A: Correct.

15 **Q: And was it your statement that you were, I**
16 **forget the phrase you said, pushing people to**
17 **the website to see this material?**

18 A: No, not to see just that material. We were
19 always driving traffic to the website because
20 the ultimate goal would be to not have to send
21 things out by U.S. Postal Mail, unless it was
22 required. The annual homeowners meeting, I
23 believe, needs to be sent out by U.S. Mail,
24 but we were always trying to drive traffic and
25 homeowners to the website. They could find

1 out the ARB guidelines, they could post a
2 "Contact the Board." They could look up a
3 neighbor's address or phone number, they
4 didn't have to call a Board member for that.
5 So yes, we always encouraged people to sign up
6 for the International Club website.

7 **Q: So would it be a accurate statement to say**
8 **when you drove people to the website, you also**
9 **increase the probability that additional**
10 **people would see the material you posted on**
11 **the website?**

12 A: No, because they would, they would only see
13 the information on the website if they clicked
14 on the tab that said, "Legal and insurance
15 updates." So the -- it was not right in their
16 face. They, they had a choice of what they
17 wanted to choose. I believe that there were
18 financials posted, there was a welcome packet,
19 there were past issues of newsletters, all
20 different types of information, but every
21 homeowner had the option and the decision to
22 see whatever they wanted to see.

23 **Q: Have you ever had any training in statistics?**

24 A: No.

25 **Q: Have you personally ever requested that cable**

1 **service be provided you?**

2 A: No. I was delighted to find out in the
3 marketing material that it was already
4 included.

5 **Q: Have you personally ever asked for the Waste**
6 **Management service to be provided?**

7 A: No. I was delighted to find out that they
8 were included when we made the decision to
9 move here.

10 **Q: At what point did you learn that some of your**
11 **assessment money was being paid for Highway 17**
12 **Association?**

13 A: I know that it was part of -- I know that my
14 property is encumbered by that with the, the
15 title, and probably it would, would've been in
16 2007, 2000 -- 2006, '7, '8, somewhere in
17 there.

18 **Q: Have you ever actually seen any announcement**
19 **in the budget, any of the budgets, that so**
20 **much money was to be used for Highway 17 dues?**

21 A: I know that as a Board member when we did the
22 preparation of upcoming budgets, all expenses
23 were discussed and brought to our attention.

24 **Q: But in the material you sent out to members**
25 **regarding these budgets, was this a**

1 specifically, explicitly identified expense of
2 use of assessment money?

3 A: There were documentary notes sent out,
4 prepared by K.A. Diehl, sent out every year
5 with the budget, and that would explain
6 different items, was there an increase, was
7 there a decrease, and what this was for. So
8 the only thing I can say is that you would
9 have to check the documentary notes that were
10 sent out with every budget.

11 Q: Before these were sent out, did the Board get
12 to approve what was going to be sent out in
13 the package?

14 A: Yes.

15 Q: Did you ever bother to read these documentary
16 notes?

17 A: Yes.

18 Q: Did you ever see the Highway 17 assessment
19 mentioned in the notes?

20 A: I can't tell you that, sitting here today in
21 2012, that I can remember what was in the
22 documentary notes for 2007, 2008, 2009. I
23 couldn't tell you that.

24 MR. JARMUTH: THE COURT IS INVITED TO
25 READ THOSE NOTES WHICH ARE

1 IN EVIDENCE, WHICH I WOULD
2 PROFFER. GOOD LUCK FINDING
3 REFERENCE TO HIGHWAY 17, I
4 COULDN'T FIND IT.

5 A: Well, I was just happy that I was never given
6 a bill and asked to pay an additional fee for
7 Highway 17, so if it came out of the whole
8 budget, I, as a homeowner, had no problem. It
9 was not impacting an additional fee to me, it
10 was included in the monthly assessment.

11 **Q: Were you part of the -- when did you leave the**
12 **Board of Directors, again, ma'am?**

13 A: For which Board?

14 **Q: The International ---**

15 A: The Master Association?

16 **Q: IHOA.**

17 A: It was September of 2010.

18 **Q: As a officer of The Glens Association, have**
19 **you had any contact with Horry County**
20 **officials regarding them taking over Madrid**
21 **Drive?**

22 A: There were communications with Horry County
23 regarding the, the status of Madrid Drive. I
24 did not make those. Bill Freiboth took that
25 on.

1 Q: As a member of the Board of that Association,
2 did any member of your Board ever make any
3 contact with Horry County regarding them
4 taking over Madrid Drive?

5 A: No. I was not on the original Board. I came
6 on The Glens Board in 2007, became president
7 in 2008. The Association was turned over from
8 the declarant, D.R. Horton, to The Glens
9 Homeowners Board in 2007, end of 2007.

10 Q: Is it your statement, then, you're not
11 familiar with the request made to the Horry
12 County infrastructure people to take over
13 Madrid Drive which they turned down when they
14 said that it was a private then?

15 A: Are you talking about the recent discussions?

16 Q: Yes.

17 A: This past year, I came across documents that
18 indicated that Madrid Drive had been deeded to
19 the Master Association. Madrid Drive is --
20 encompasses all of The Glens Townhome
21 Association. All the townhomes are on Madrid
22 Drive. We believed, in The Glens, that when
23 Horton turned over the community that they
24 deeded the road, Madrid Drive, to The Glens.
25 We were paying, as Glens homeowners, to a

1 reserve fund to repair and maintain the road.
2 We had every reason to believe that the road
3 was ours. When I came across this
4 information, it indicated that the road had,
5 instead, been deeded to the Master
6 Association, which made no sense at all.
7 Document -- documents were researched, phone
8 calls. I did not make the personal phone call
9 to Andy Marcunis, I believe that Bill Freiboth
10 did, to get to the bottom and try to determine
11 what the intent was for Madrid Drive.

12 **Q: And what did you learn?**

13 A: That there was no reason to believe that
14 Madrid Drive should have been deeded to the
15 Master Association. The Master Association
16 does not hold title to any other road within
17 the International Club. It made no sense that
18 The Glens homeowners were paying into a
19 reserve every year for asphalt repairs without
20 owning the road.

21 **Q: Now, relating to the conversation with the**
22 **Horry County official, what did he say**
23 **regarding why Horry County would not take over**
24 **Madrid Drive?**

25 A: My understanding was that Horry County said

1 that the road, first of all, was not wide
2 enough, it was only thirty-five -- it's only
3 thirty-five -- there's a thirty-five foot
4 right-of-way, so it is -- it does not qualify
5 for the County dedication, road dedication
6 program. Additionally, Horry County provides
7 adequate access to the residents through
8 International Club Boulevard and Pickering, so
9 there -- Pickering Drive, so there was no
10 reason for them to take on another road.

11 Researching past minutes of The Glens and D.R.
12 Horton representatives, it was that the road
13 belonged to, to The Glens. It was a private
14 road for The Glens homeowners.

15 **Q: Now, who owns the land between -- could you**
16 **describe who owns the parking spaces along the**
17 **periphery of Madrid Drive?**

18 A: The homeowners own the parking spots. We own
19 our land from the curb parking spots all the
20 way to the, the nature preserve, so we own
21 those.

22 **Q: Who owns the land beyond the curb of the**
23 **parking spaces out from the grass area towards**
24 **Pickering Drive?**

25 A: You're talking about the, the grassed area?

1 Q: Are there two common areas owned by The Glens?

2 A: Yes, there are. Yes, there are.

3 Q: Where are they?

4 A: There is -- standing in The Glens to the, to
5 the left, it would be opposite Seville Drive,
6 there's a big grassy area behind the
7 buildings, and then the berms.

8 MR. JARMUTH: I'D LIKE TO OFFER INTO
9 EVIDENCE NUMBER 466, PLAT
10 197, AT 171, THE GLENS,
11 SHOWS THAT THE GLENS OWNS
12 TWO COMMON AREAS AS
13 DESCRIBED BY MS. SULLIVAN.

14 Q: Now, who maintains the area between the common
15 area there and the curb?

16 A: In other words, the road?

17 Q: No, the grassy areas between the curb of the
18 road and your common area.

19 A: The Glens do, and there is one strip that runs
20 parallel to International Club Drive that the
21 Master Association cuts.

22 Q: Is it your statement that The Glens maintains
23 those grassy areas for both common areas on
24 Pickering and on International Club Drive?

25 A: No, we don't go -- I don't believe we go

1 around the corner to Pickering.

2 Q: Who maintains the area between The Glens and
3 International Club Drive?

4 A: On International Club Drive?

5 Q: Isn't it a fact that The Glens is bordered by
6 both Pickering and International Club Drive?

7 A: Correct.

8 Q: Who maintains the land between the curb and
9 your common area on Pickering?

10 A: International Club.

11 Q: And who maintains the area between your common
12 area and International Club Drive?

13 A: The Master Association. There is a berm that
14 separates the large common area of The Glens.
15 There is a small strip of grass that is
16 maintained by the Master Association.

17 Q: What used to be found on these common areas?
18 Is there grass there?

19 A: There's grass, there are berms.

20 Q: What's your source of water to irrigate that?

21 A: We have our own irrigation system.

22 Q: Is there any reason why you haven't attempted
23 to get water from that -- for that from the
24 golf course?

25 A: No, whatever irrigation system is in place,

1 we, in The Glens, are quite happy with, we're
2 more than happy to pay for whatever the cost
3 is. We maintain it, we pay for it, we don't
4 have an issue with that.

5 MR. JARMUTH: I'M DONE WITH THIS
6 WITNESS, YOUR HONOR.

7 THE COURT: THANK YOU VERY MUCH.

8 MS. THOMPSON: NO FURTHER QUESTIONS,
9 YOUR HONOR. THANK YOU
10 VERY MUCH.

11 THE COURT: ALL RIGHT. WE'RE GOING
12 TO ADJOURN FOR TODAY.

13 SEE YOU IN THE MORNING AT
14 NINE O'CLOCK. YOU CAN
15 LEAVE EVERYTHING HERE IF
16 YOU'D LIKE.

17 MS. GOLDING: YOUR HONOR, CAN MS.
18 SULLIVAN BE EXCUSED?

19 SHE'S UNDER SUBPOENA.

20 THE COURT: CERTAINLY.

21 MS. GOLDING: THANK YOU VERY MUCH.

22 ****OFF THE RECORD****

23 FRIDAY, AUGUST 10, 2012

24 (ON THE RECORD.)

25 THE COURT: GOOD MORNING.

1 MS. GOLDING: GOOD MORNING.
2 MR. JARMUTH: GOOD MORNING, YOUR HONOR.
3 THE COURT: EVERYBODY ELSE HERE?
4 MS. GOLDING: YES, SIR, WE'RE READY TO
5 PROCEED.
6 THE COURT: YOU GOT YOUR WITNESSES
7 AND EVERYTHING?
8 MS. GOLDING: YES, SIR.
9 THE COURT: YOU GOT YOUR WITNESS?
10 MR. JARMUTH: YOUR HONOR, AFTER LOOKING
11 AT MATERIAL AND OTHER
12 THINGS I TALKED ABOUT HOW
13 MUCH TIME I WOULD NEED, I
14 HAD NOT NOTICED I HAD
15 OTHER SUBJECTS ON THE
16 TABLE. I BELIEVE I'M
17 GOING TO NEED OR
18 COLLECTIVELY WILL NEED AN
19 EXTRA HALF-DAY BEYOND
20 WHAT WE CAN ACCOMPLISH
21 TODAY.
22 THE COURT: WE AGREED YESTERDAY YOU'D
23 FINISH AT TWELVE O'CLOCK.
24 I'VE SCHEDULED STUFF
25 SATURDAY. I REFUSE TO

1 WORK ON SUNDAY. I'VE GOT
2 STUFF MONDAY. I'M GOING
3 TO GIVE YOU 'TIL TWELVE
4 O'CLOCK. I'VE BEEN VERY
5 -- I'VE BENT OVER
6 BACKWARDS TO TRY TO HELP
7 YOU AS A PRO SE. YOU'VE
8 HAD TWO FULL DAYS.
9 EVERYTHING HAS GOT A
10 BEGINNING AND A MIDDLE
11 AND AN END, AND I WANT TO
12 GIVE YOU EVERY
13 OPPORTUNITY TO PRODUCE
14 STUFF, SO MS. GOLDING, I
15 WOULD ASK YOU NOT TO MAKE
16 ANY LENGTHY OBJECTIONS SO
17 WE CAN PROCEED, BUT AT
18 TWELVE O'CLOCK -- SHE HAS
19 A RIGHT TO PRESENT HER
20 CASE, ALSO, AND I HAVE TO
21 HEAR IT, AND I CAN STAY A
22 LITTLE LATE, BUT LIKE I
23 TOLD YOU, I HAD A LITTLE
24 SURGERY, SO I DON'T WANT
25 TO DO TOO MUCH, OKAY? SO

1 YOU GO AHEAD AND START,
2 IF YOU WOULD, PLEASE,
3 SIR.
4 MR. JARMUTH: YOUR HONOR, RELATING TO
5 WHAT DENISE AMBUHL
6 PRESENTED YESTERDAY, I
7 HAVE SOME IMPEACHMENT
8 MATERIAL. IT'S SECTION
9 II OF THE BYLAWS OF HTC
10 THAT PROVIDES THAT THE --
11 THAT CAPITAL CONTRIBUTION
12 GIVEN THAT IS TO BE
13 COMPUTED ON THE BASIS OF
14 ALL REVENUE. IT
15 PARTICULARLY SAYS THAT
16 THE HTC IS REQUIRED TO
17 LOOK AT WHAT YOU PAY ---
18 THE COURT: HAS THIS BEEN MARKED?
19 MR. JARMUTH: I NEED A NUMBER FROM THE
20 COURT REPORTER. IT'S NOT
21 IN MY LIST OF EVIDENCE
22 BECAUSE I DIDN'T
23 ANTICIPATE ---
24 THE COURT: WHAT NUMBER IS IT,
25 PLEASE, MA'AM?

1 COURT REPORTER: IT WILL BE 753.
2 THE COURT: OKAY. THANK YOU. EXCUSE
3 ME FOR INTERRUPTING.
4 PLAINTIFF'S EXHIBIT NUMBER 753
5 MARKED FOR IDENTIFICATION.
6 MR. JARMUTH: YES, YOUR HONOR. ANYWAY,
7 YOUR HONOR, IT SAYS -- IT
8 HAS NO REFERENCE IN THE
9 BYLAWS LINE OF BUSINESS OR
10 PROFIT. IT SAYS THAT IF
11 YOU PAY, FOR EXAMPLE, ONE
12 PERCENT OF THE TOTAL
13 REVENUE OF HTC, YOU GET ONE
14 PERCENT OF THE TOTAL
15 PROFITS OR EXCESS, EXCESS
16 CAPITAL CONTRIBUTION, AND
17 IT DOES NOT PROVIDE FOR
18 DIVISION OF THE BUSINESS AT
19 ALL, THE LINE OF BUSINESS.
20 THAT IS NOWHERE IN THE
21 BYLAWS AND PARTICULARLY
22 ADDRESSED IN HERE, AND THAT
23 LEADS TO MY BIG ISSUE ABOUT
24 -- IN MY COMPLAINT, I WAS
25 QUESTIONING WHY THE HOA

1 HAVING CONTRIBUTED A MAJOR
2 SECTION, A MAJOR AMOUNT OF
3 MONEY OVER THE YEARS TO HTC
4 WAS GETTING NOTHING BACK.
5 AND ONE OF OUR CONCERNS WAS
6 ALSO, WHICH I MENTIONED IN
7 THE, IN THE CROSS
8 EXAMINATION, WAS THAT THE
9 HOA ALSO HAD TELEPHONE
10 SERVICES WHICH AS IS
11 ANNOUNCED IS A PROFITABLE
12 LINE OF BUSINESS, YET WHEN
13 I LOOK AT THE LEDGER, WHICH
14 IS PREPARED BY K.A. DIEHL,
15 THE DEFENDANT, THEY DON'T
16 SEEM TO BE DEPOSITING THAT
17 MONEY IN THE ACCOUNTS OF
18 THE IHOA.
19 NOW, DENISE AMBUHL AND
20 MAUREEN SULLIVAN BOTH
21 TESTIFIED REGARDING THE
22 AMOUNTS CHARGED THE
23 SEPARATE AREAS OF THE
24 NEIGHBORHOOD, AND I'D LIKE
25 TO READ ---

1 THE COURT: DON'T READ ME ANYTHING. IF
2 YOU WANT TO ---
3 MR. JARMUTH: I'D LIKE TO STATE -- WELL,
4 I CAN'T DO THAT.
5 THE COURT: YOU CAN INTRODUCE ---
6 MR. JARMUTH: I'LL USE THAT AT CROSS,
7 YOUR HONOR, OF ROSEMARY
8 TOTH AT THAT POINT.
9 THE COURT: I'M TRYING TO HELP YOU.
10 MR. JARMUTH: YES, YOUR HONOR. I DON'T
11 WANT TO HAVE AN OBJECTION.
12 NOW, GOING TO THE TESTIMONY
13 OF MAUREEN SULLIVAN
14 YESTERDAY ---
15 MS. GOLDING: JUST LET THE RECORD
16 REFLECT, I OBJECT TO THE
17 EXHIBIT 753 AS BEING
18 EXCERPTS OF THE BYLAWS.
19 THERE'S NO FOUNDATION AND
20 THIS WITNESS IS NOT
21 COMPETENT TO TESTIFY, AND
22 IT'S HEARSAY.
23 THE COURT: SUBJECT TO THE OBJECTION,
24 I'M GOING TO TAKE IT.
25 MS. GOLDING: THANK YOU.

1 MR. JARMUTH: NOW, YESTERDAY, THE
2 DEFENDANT INTRODUCED A
3 LETTER FROM O'NEIL MILLER,
4 THE PRESIDENT OF -- CEO AND
5 CHIEF FINANCIAL OFFICER OF
6 HTC, AND AS AN ATTACHMENT
7 TO HIS LETTER, HE SENT ME
8 THE BYLAWS OF HTC, AND
9 THAT'S WHO I GOT THEM FROM,
10 PLUS THIS IS A PUBLIC
11 DOCUMENT FILED WITH THE
12 RECORD OF DEEDS, AND I'D
13 ASK THE COURT TO TAKE
14 JUDICIAL NOTICE OF THIS
15 PUBLIC DOCUMENT.
16 NOW, MOVING AGAIN TO
17 MAUREEN SULLIVAN, SHE
18 REFERRED TO AND ADMITTED
19 THAT TEN THOUSAND DOLLARS
20 OF THE MONEY THEY GOT FROM
21 THE CENTRAL ELECTRIC. I'D
22 LIKE TO FILE WITH THE COURT
23 ANOTHER NEW DOCUMENT, AN
24 IMPEACHMENT. IT'S SIGNED
25 BY ROSEMARY TOTH, THE

1 DEFENDANT, AND IT'S DATED
2 APRIL 6TH, 2010. IT'S
3 TITLED, "NOTICE OF SPECIAL
4 MEETING" OF THE MEMBERS,
5 AND ---
6 PLAINTIFF'S EXHIBIT NUMBER 754
7 MARKED FOR IDENTIFICATION.
8 MR. JARMUTH: IF THE COURT TAKES NOTICE
9 OF PAGE TWO, THE AREA
10 NUMBERED NUMBER TWO, IT'S
11 TITLED, "EASEMENT
12 COMPENSATION, EIGHTY-THREE
13 THOUSAND DOLLARS TO BE
14 DISPERSED AS FOLLOWS," AND
15 IF YOU LOOK DOWN TO THE
16 BOTTOM, "BREAKDOWN FOR
17 REMAINING FUNDS, EIGHTY
18 THOUSAND," SECOND FROM THE
19 BOTTOM, TEN THOUSAND
20 DOLLARS TO BE USED FOR
21 CONTINGENT EXPENSES." I
22 ASK THE COURT TO CONCLUDE
23 THIS CONTINGENT BE RELATING
24 TO THE RESTORATION OF THE
25 CONSTRUCTION OF THE

1 EASEMENT. NOW, THAT TIES
2 IN, ALSO, WITH THE NOTES OF
3 THE MEETING WHICH IS IN
4 EVIDENCE. IT'S ONE OF MY
5 EXHIBITS. IT'S DATED APRIL
6 19TH, 2010. IT'S THE BOARD
7 OF DIRECTORS OFFICIAL NOTES
8 OF THE MEETING OF THE ---
9 MS. GOLDING: WE HAVE THESE EXHIBITS.
10 THESE ARE ALL IN OUR
11 EXHIBITS, ALSO, YOUR HONOR.
12 MR. JARMUTH: YES, YOUR HONOR. AND IN
13 THEIR NOTES THAT WAS BEING
14 SIGNED BY THE DEFENDANT,
15 ROSEMARY TOTH AS PRESIDENT,
16 IT SAYS ON PAGE TWO,
17 PARAGRAPH IX, SECTION 2,
18 "EASEMENT COMPENSATION,
19 EIGHTY-THREE THOUSAND TO BE
20 DISPENSED AS FOLLOWS," AND
21 IT REPEATS ON THE NEXT
22 PAGE, "TEN THOUSAND DOLLARS
23 FUNDS TO BE DEPOSITED IN
24 MONEY MARKET ACCOUNT FOR
25 CONTINGENCIES," AND I'D

1 ARGUE THAT THAT IS AN
2 EASEMENT RESTORATION, AND
3 THAT RELATES TO A STATUTE,
4 AND THEIR BYLAWS WOULD
5 PROHIBIT, PROHIBIT HANDING
6 OUT THE MONEY TO MEMBERS,
7 AND IT SAID THAT ANY BOARD
8 MEMBER WHICH CONSENTS OR
9 DOES NOT DO ANYTHING TO
10 PREVENT SUCH AN ILLEGAL ---
11 MS. GOLDING: THIS WAS ARGUED ON
12 YESTERDAY IN DETAIL.
13 MR. JARMUTH: --- DISPERSAL FOR THIS
14 RELATING FACTOR IS
15 RESPONSIBLE FOR THAT.
16 THE COURT: YOU MAY WANT TO MOVE INTO
17 SOME OF YOUR THINGS YOU
18 WANT TO GET IN TODAY RATHER
19 THAN REHASHING THAT, BUT
20 THAT'S LEFT UP TO YOU.
21 MR. JARMUTH: NOW, YESTERDAY, MS. TOTH
22 BROUGHT INTO EVIDENCE --
23 THE DEFENDANT BROUGHT INTO
24 EVIDENCE A FILING FILED BY
25 MR. BUTRYN REGARDING THE

1 GOLF COURSE LITIGATION, AND
2 WE ALSO TALKED ABOUT THE
3 MONIES USED IN SETTLEMENT
4 OF THE VILLAS LAWSUIT WHICH
5 THAT TEN THOUSAND DOLLARS
6 RELATES TO. I HAVE A COPY
7 OF THE SETTLEMENT DOCUMENT
8 IN CASE 2009-CP-26-3411,
9 THE VILLAS AT INTERNATIONAL
10 CLUB HOA V. THE DEFENDANT,
11 IHOA. I'D LIKE TO SUBMIT
12 THAT, HAVE IT MARKED INTO
13 EVIDENCE. IT'S ALSO AN
14 OFFICIAL DOCUMENT IT WAS
15 PUT BEFORE THIS COURT AND
16 IT RELATES AS FOLLOWS IN
17 THAT DOCUMENT THAT ---
18 MS. GOLDING: WHAT NUMBER WILL THAT BE?
19 COURT REPORTER: 755.
20 MS. GOLDING: 755. WAS 754 ---
21 COURT REPORTER: THAT WAS THE LETTER, I
22 THINK.
23 MS. GOLDING: OKAY. THANK YOU.
24 MR. JARMUTH: IF YOU LOOK INSIDE THAT
25 SETTLEMENT, WHICH IS PART

1 OF THE ORDER OF THE COURT,
2 IT SAYS FROM THE INSURANCE
3 COMPANY AS A SETTLEMENT
4 EXPENSE, TEN THOUSAND
5 DOLLARS, FROM THE IHOA TEN
6 THOUSAND DOLLARS, AND AN
7 ADDITIONAL, AT NINE HUNDRED
8 DOLLARS A MONTH, FORTY-
9 THREE THOUSAND DOLLARS, FOR
10 A TOTAL OF SIXTY-THREE
11 THOUSAND DOLLARS, TWO --
12 SIXTY-THREE THOUSAND, TWO
13 HUNDRED DOLLARS. AND THIS
14 GOES BACK TO MY DISCUSSION
15 OF THE STATUTE THAT SAYS
16 THAT MEMBERS CANNOT BE
17 REQUIRED TO PAY THE DEBTS
18 OF THE ORGANIZATION AND
19 THAT THIS LAWSUIT AND THE
20 TEN THOUSAND DOLLARS WAS
21 KNOWN TO THE ASSOCIATION
22 PRIOR TO THIS CENTRAL
23 ELECTRIC THING AND WAS NOT
24 CONTINGENT OR A POTENTIAL
25 IN THE FUTURE. THEY KNEW

1 THEY OWED THIS TEN THOUSAND
2 DOLLARS, YOUR HONOR.
3 ALSO RELATING TO THE
4 TESTIMONY OF MAUREEN
5 SULLIVAN, ALREADY IN
6 EVIDENCE, MY 525, AND ALSO
7 ONE OF THE EXHIBITS OF THE
8 DEFENDANTS IS AN AFFIDAVIT
9 OF JULIE CASE FILED WITH
10 THE COURT ON MAY 22ND, 2012
11 IN THIS CASE, AND IT SAYS
12 IN THE LAST PARAGRAPH THAT,
13 "I DID NOT GET ANY GUIDANCE
14 FROM MS. GOLDING TELLING ME
15 HOW TO DO THE MAILING."
16 AND THAT RELATES TO MAUREEN
17 SULLIVAN WHO SEEMS TO IMPLY
18 THAT THE COUNSEL FOR THE
19 DEFENDANT WAS GIVING THE
20 GUIDANCE ALL THE WAY DOWN
21 THE CHAIN ON HOW TO HANDLE
22 THE MAILING. WE HAVE IN
23 EVIDENCE AT 525.
24 NOW, ALSO RELATING TO THE
25 TESTIMONY OF MAUREEN

1 SULLIVAN, MY EXHIBIT 526,
2 WHAT WAS A SCREEN SHOT
3 TAKEN BY ME PERSONALLY ON
4 MAY 28TH, 2009, WHICH IS --
5 MAY I PASS UP THIS FOR THE
6 COURT TO INSPECT? I'LL
7 GIVE A COPY TO THE
8 DEFENDANT. I SERVED THIS
9 ON THE DEFENDANT'S COUNSEL
10 IN THE, PROBABLY BEFORE THE
11 SUMMER OF 2009, SO I MADE
12 SURE THAT THERE WAS A
13 CONTEMPORANEOUS RECORD OF
14 THE WEBSITE AND SO THERE'D
15 BE NO QUESTION AT TRIAL
16 WHEN THIS SCREEN SHOT WAS
17 TAKEN, AND IN TESTIMONY,
18 MAUREEN SULLIVAN REITERATED
19 WITH ABSOLUTE CERTAINTY
20 THAT SHE WAS FAMILIAR WITH
21 THE WEBSITE AND THAT THE
22 COMPLAINT AND THE ANSWER
23 AND THE AMENDED COMPLAINT
24 AND THE AMENDED ANSWER WAS
25 ON THE WEBSITE. AS WE CAN

1 SEE FROM THIS, IT ISN'T.
2 THE ONLY THING THAT'S ON
3 THE WEBSITE WHERE PEOPLE
4 ARE PUSHED OR WHATEVER THE
5 WORD WAS SHE USED, THE
6 WEBSITE WAS THE SAME
7 MATERIAL WHICH IS IN THE
8 PHYSICAL MAILING.

9 NOW, YOUR HONOR, DENISE
10 AMBUHL WAS TAKEN OUT OF
11 SEQUENCE, NO ISSUE WITH
12 THAT. I WANTED TO GET INTO
13 THE MATERIAL SHE WAS
14 ADDRESSING WHICH IS THE
15 CABLE CONTRACT, YOUR HONOR.

16 THE COURT: IS THAT WHAT YOU'RE DOING
17 NOW, THE CABLE CONTRACT?

18 MR.JARMUTH: YES. YES, YOUR HONOR.

19 THE COURT: ALL RIGHT, PROCEED.

20 MR.JARMUTH: YOUR HONOR, AS A
21 PREPARATORY MATTER, I GOING
22 TO ASK THAT I BE QUALIFIED
23 AS A EXPERT WITNESS FOR THE
24 PURPOSES OF KNOWING ABOUT
25 CABLE TV INFRASTRUCTURE.

1 I'LL EXPLAIN WHY.
2 MS. GOLDING: I'M SORRY, I MISSED THAT,
3 YOUR HONOR.
4 THE COURT: READ THAT BACK ---
5 MR. JARMUTH: I'D LIKE TO BE QUALIFIED AS
6 AN EXPERT WITNESS FOR THE
7 LIMITED PURPOSE OF BEING
8 ABLE TO SAY DEFINITELY
9 THAT I KNOW ABOUT PREIMISES
10 EQUIPMENT AND CABLE TV
11 INFRASTRUCTURE, AND I'LL
12 EXPLAIN I'M QUALIFIED.
13 MS. GOLDING: HE'S NEVER LISTED HIMSELF
14 AS A WITNESS, AS AN EXPERT
15 IN THAT AREA, HAS NEVER
16 LISTED ANY EXPERT WITNESS.
17 THIS IS A COMPLETE SURPRISE
18 THAT HE WOULD BRING THIS UP
19 AT THIS TIME, YOUR HONOR.
20 MR. JARMUTH: I WANTED TO IMPEACH
21 SOMETHING THAT DENISE
22 AMBUHL SAID. BASICALLY, I
23 WANT TO BE ABLE TO HAVE THE
24 COURT BE ABLE TO RELY ON MY
25 STATEMENT, THAT I KNOW THE

1 DIFFERENCE BETWEEN ---
2 THE COURT: WELL, IF WE HAD A JURY
3 PRESENT, THEN THAT WOULD
4 MAKE A WHOLE LOT OF
5 DIFFERENCE, BUT I'M GOING
6 TO LET YOU TESTIFY, BUT I'M
7 NOT GOING TO SAY YOU'RE AN
8 EXPERT, BUT I'LL HEAR WHAT
9 YOU GOT TO SAY, HOW IS
10 THAT?
11 MR. JARMUTH: THANK YOU, YOUR HONOR.
12 THE COURT: OKAY, GO AHEAD.
13 RONALD JARMUTH, AFTER HAVING BEEN DULY SWORN,
14 TESTIFIED AS FOLLOWS:
15 COURT REPORTER: WILL YOU STATE YOUR NAME
16 AND SPELL YOUR LAST?
17 MR.JARMUTH: RONALD JARMUTH, J-A-R-M-U-T-H.
18 (MR.JARMUTH CONTINUES TESTIFYING.)
19 Mr. Jarmuth: February 8th, 1999, Sunbelt
20 bought Pebble Creek from Plantation A.D. The
21 deed is in the documents I filed. At that
22 time, there were dirt roads. Sunbelt placed or
23 arranged for the installation of the
24 infrastructure in Pebble Creek to include GSWSA
25 putting in water and sewer service, Horry

1 County -- Horry Electric putting in the power,
2 at least as far as the distribution boxes next
3 to the lots to be sold, and Sunbelt putting in
4 the cable TV, 6-G, coaxial signal distribution
5 infrastructure lines right to the house, and
6 then from the house, as Sunbelt built the
7 houses, Sunbelt pre-wired the houses with AT
8 cable TV premises wiring and outlets with
9 coaxial wiring to the houses. I know that,
10 because I physically looked at that, and I'm
11 familiar with that, because I used to hold an
12 FCC first-class radio/TV license which
13 authorized me to design, construct, operate and
14 maintain almost anything from TV station
15 equipment to hand-radio stuff, and I did, in
16 fact, do that, do that for an FM TV -- FM radio
17 station my college. I designed and then built
18 and saw everything from the studio all the way
19 to including the FM transmitters, including the
20 distribution lines. And in the Pentagon, I did
21 -- I designed in the pentagon renovation the,
22 the infrastructure to be used for all
23 international services plus the cable TV
24 service distributing signals from our in-house
25 TV studio all through the building, plus

1 worldwide, and I got a accommodation for being
2 able to figure out how this -- how to multicast
3 worldwide from the Chief of Staff of the
4 Secretary of the Army sitting in the TV studio
5 there.

6 Now, I want to reiterate
7 Sunbelt owned the infrastructure in Pebble
8 Creek and Sunbelt owned the premises wiring.
9 On September 27th, 2001, Sunbelt sold what
10 is now 249 Pickering Drive, my house, to
11 Cheryl Essex. Essex did not have a TV, any
12 cable TV service from -- from the IHOA,
13 Defendant. Essex did not have any cable TV
14 service indirectly from HTC. Essex owned
15 the premises equipment and wiring at 249
16 Pickering Drive because it was part of the
17 deed from Sunbelt. Essex and other owners
18 obtained TV service over the air antennas
19 connected to the premises infrastructure via
20 a connection box outside, that being a thing
21 with six jacks, each one leading to one of
22 the six distribution boxes on your wall to
23 plug your TV in, and there was a splitter,
24 and the TV antenna on the roof went in there
25 and later on, as I'll explain, HTC

1 disconnected anyone's TV and plugged their
2 splitter in, and that's how they get cable
3 TV.

4 If a cable -- if a Pebble
5 Creek homeowner had satellite TV, the cables
6 from the satellite antenna went to a powered
7 multi-way amplifier which went in from the
8 satellite dish and six ways out to the in-
9 house distribution, and the owner owned
10 everything there relating to TV service to
11 his house, and the FCC and federal statutes
12 provide and still provide that any homeowner
13 or even a renter can put up a TV antenna
14 with a satellite dish in any area they
15 control, which is -- which might be rental
16 or owned, and furthermore provides that no
17 one, including a rental or the owner of the
18 rental premises or a homeowners association
19 may through covenants provisions interfere
20 in any way, and many court cases which have
21 voided covenant provisions which interfered
22 with the ability of a homeowner to get this
23 cable --- this TV service from over the
24 antenna off of the satellite.

25 Now, use of the

1 infrastructure is, in fact, exclusive. For
2 technical reasons, you can only have one or
3 the other sources of signal plugged into
4 your six-way box. If you have one provider
5 source plugged, another provider source
6 plugged in, you will get leakage from one
7 into the other and it'll mess up all your
8 neighbor's TV signals. So as -- in fact,
9 you get exclusivity because if one guy is
10 providing, you're preventing someone else
11 from doing it, and the contract between HTC
12 and whoever this contracting party is, it's
13 not the IHOA, says they're not to permit
14 anything which interferes with their signal.

15 There's nothing in the
16 deed from Plantation A.D. to Sunbelt or from
17 Sunbelt to Cheryl Tucker which either
18 granted the seller the transferable or
19 interest in or what agency to represent
20 Cheryl Essex Tucker to acquire cable TV
21 services, and if there was such an agency,
22 it would be a personal services contract
23 which would terminate when Cheryl Essex
24 Tucker sold the house to me.

25 Now, the statute of

1 frauds says that a contract for services
2 with a term more than two years must be in
3 writing, must have precise statements of
4 what the terms, what you're buying and how
5 much you're going to pay for it and all the
6 details. The covenants, if the covenants
7 are used as a basis for the IHOA forcing
8 homeowners to acquire cable TV services,
9 that it fails the statute of frauds because
10 it doesn't say how much they're going to pay
11 or if they're going to acquire. If you look
12 to the HTC contact, however, which is
13 between whoever that HOA, Master HOA is and
14 HTC, in Exhibit 'A', it satisfies the
15 statute of frauds. It says how long it is
16 and how much we pay. That level of detail
17 is nowhere to be found in the covenants,
18 and no one can argue that by buying my
19 house, I somehow consent to that because it
20 is for more than two years and such a
21 consent must be a written contract.

22 Now, the IHOA was
23 chartered March 1st, 2005. The IHOA never
24 installed any PUD cable TV, community
25 infrastructure or premises equipment. Never

1 built any houses, and never owned any of
2 this stuff. Sunbelt never deeded the
3 infrastructure in Pebble Creek to the IHOA
4 and had nothing to do with HTC. Cheryl
5 Essex never deeded anything, premises wiring
6 of my house to the IHOA, either. Horton
7 never entered the scene until August --
8 April 29th, 2003. In October 30th, 2003,
9 it's employee, Doug Brown, without any
10 approval from the IHOA, without any of these
11 signed off on actions outside of the
12 meeting, which to Mr.Freiboth's credit, he's
13 been doing and not on behalf of the IHOA,
14 signed some sort of an agreement with HTC.
15 He signed it in his capacity as president of
16 this other organization, not in his capacity
17 as president of the IHOA. There is no
18 contract between the IHOA and the company
19 that Doug Brown signed for giving a forcible
20 agency from the IHOA to the master HOA to
21 sign on its behalf.

22 Now, it's unclear to me
23 who installed the premises equipment and the
24 infrastructure on the Horton side, but it
25 doesn't matter, because conceivably, the

1 IHOA, if they were the one that was signing,
2 could've made that agreement and controlled
3 the infrastructure without Pebble Creek.

4 Now, Doug Brown and the
5 IHOA never asked Pebble Creek homeowners for
6 permission to hook HTC cable TV services up
7 to Pebble Creek by a six-way box thing to
8 the houses. Upon my information and belief,
9 HTC took over the Pebble Creek distribution
10 infrastructure which actually was installed
11 by Sunbelt, which neither the IHOA or Horton
12 or HTC owned, and used it to distribute the
13 cable TV services to the Pebble Creek homes.

14 There was nothing I found
15 in looking at the books of the IHOA which
16 showed any authorization to HTC to actually
17 enter in the premises they didn't own in
18 Pebble Creek and make these alterations.
19 When I did look into the IHOA books, I found
20 that K.A. Diehl was using IHOA funds to pay
21 the cable TV bills for the Grand Vistas, a
22 condo complex outside the PUD and not a
23 member of the IHOA. I brought that to the
24 attention of the IHOA Board, particularly to
25 Rosemary Toth, run by Defendant Toth. I was

1 then shut out from the access to the IHOA
2 records, and I then sued, from among other
3 things, access to records. It appears from
4 my examination of general ledgers that I
5 obtained from K.A. Diehl in discovery, three
6 and a half years later after discovery
7 demand was made, that my inquiry and
8 objections and research resulted in fixing
9 this problem of paying the money for the
10 Grand Vistas, so that problem no longer
11 exists, but I will point out to The Court
12 that that arose from my inquiry and it was
13 -- there was nothing done by the Board
14 before that to even do due diligence to find
15 out that their money was to be used -- being
16 used to pay someone else's cable TV bills.
17 There's no interest, no financial controls,
18 and apparently at that time, I wouldn't say
19 about the current Board, no interest in
20 doing their duty to make sure the contractor
21 was properly handling their funds.

22 Now, looking at the
23 letter, February 27th, 2009 letter from
24 O'Neil Miller, which they introduced into
25 evidence, I don't think it says anything of

1 value regarding the relationship, but it
2 says one particular thing, that I was not an
3 HTC cable TV customer, that their customer
4 was whoever signed the contract and not me.
5 He made that very clear.

6 Now, one of the documents
7 that I have on my list, evidence list, is
8 the dish TV offer. I'd like to pass it up.
9 It's already one of my exhibits there, pass
10 it up for The Court to examine and note --
11 if the Defendant would like an extra copy,
12 it's already in the book -- note that dish
13 TV offers for nineteen ninety-nine the
14 services that is offered by substantially
15 more money by the HTC, actually by the IHOA,
16 of the six houses with DVR services and
17 high-depth.

18 Looking at the
19 telecommunication services contract, which
20 was also offered in evidence by the
21 Defendant, which is in my list of exhibits,
22 I note there's no severance clause to it. I
23 also note that on top of it, it's signed by
24 the International Club Master HOA, which
25 upon inquiry with the Secretary of State's

1 office, does not exist as even a alias or as
2 an incorporated entity directly doing
3 business, not as a corporation, nor was a
4 document by that name in any form, form with
5 the record of deeds relating to any document
6 on file there.

7 Now, the services
8 contract says that the owner purports to be
9 the sole owner of the premises or its
10 representative, and I challenge that
11 statement, because he says that the premises
12 is described as the International Club
13 Master HOA. There is no premises which
14 anyone has been able to point to in any plat
15 which is called premises, International Club
16 Master HOA premises, and that's the phrase
17 used, and it says these premises are located
18 in the area described there.

19 Now, looking at page two
20 of that contract on the top, it says --
21 where it says, "Rollout Business", I read
22 that to read, and I ask The Court to make
23 its own decision, that this says that the
24 contracting party who is receiving this
25 service of HTC will buy this much bulk and

1 they will in turn resell the services.
2 Well, this is, to me, a franchise agreement,
3 has all the earmarks of a franchise where
4 the franchiser -- franchisee buys stuff from
5 the franchiser and resells it, as much as he
6 can, and they, such a franchise agreement,
7 they say in this area -- well, this says in
8 this area, in this area you can resell, and
9 they say you're limited to resell up to so
10 much stuff, this says you can resell up to
11 so much stuff. There's nothing there which
12 says that there's any actual requirement of
13 any homeowner to buy, nor does it say that
14 they're in a position to actually force to
15 sell any homeowners -- force a homeowner to
16 accept it.

17 Now, that contract also
18 says that the franchisee owns those premises
19 equipment, and this apparently is a
20 dependent representation made by Doug Brown,
21 because it's important to protect the
22 franchiser against someone interfering with
23 his signal, and it says that part of this
24 contract, says no one else will use the
25 infrastructure, the infrastructure which

1 neither side owned at the time of -- owns
2 even today in Pebble Creek.

3 I'd like to introduce
4 into evidence a new document which is not in
5 my list. Give the defense counsel get a
6 copy. I'd like to have this marked into
7 evidence.

8 PLAINTIFF'S EXHIBIT NUMBER 756
9 MARKED FOR IDENTIFICATION.

10 Mr. Jarmuth: It is a document for which
11 Denise Ambuhl talked about when she -- in
12 testimony, which I asked about. It is the 2008
13 annual membership meeting announcement with a
14 letter from O'Neil Miller, and he talks about
15 how they were making great profit, and The
16 Court is -- I won't waste The Court's time
17 reading it, it can read it on its own, but it
18 talks about how the overall revenues of the HT
19 -- will celebrate they paid back millions of
20 dollars of capital credits and he never made in
21 -- anywheres in this announcement any reference
22 that they were losing money on any particular
23 line of business.

24 MS. GOLDING: JUST LET THE RECORD
25 REFLECT I OBJECT TO THE

1 EXHIBIT.

2 THE COURT: OKAY. THANK YOU.

3 Mr. Jarmuth: Denise Ambuhl also talked
4 about the membership certificate, membership
5 number given. I'd like to offer another
6 document which I -- this one, I received from
7 Defendant K.A. Diehl prior to the lawsuit while
8 I was inspecting the documents. Can I have
9 that marked as evidence?

10 PLAINTIFF'S EXHIBIT NUMBER 757

11 MARKED FOR IDENTIFICATION.

12 Mr. Jarmuth: It's dated May 1st, 2007
13 and marked, "Received by K.A. Diehl May 2nd,
14 2007." It is the IHOA's membership certificate
15 with -- for the International Club HOA with HTC
16 with member number 0254899, and it relates to
17 their, among other things, telephone services
18 for which the capital contributions I have not
19 found in the records on behalf of the HOA
20 maintained by Defendant K.A. Diehl.

21 Now, I want to point out
22 that not only doesn't The Villas and The
23 Cambridge receive services, cable TV services,
24 through the IHOA under that contract, the golf
25 course which is clearly within the PUD and

1 subject to the covenants also is not charged
2 for cable TV services through the IHOA. I know
3 this because they provided me the general
4 ledgers for many years and I looked closely at
5 this neighborhood, how much money they're
6 paying, and even in the budgets where they show
7 cable TV revenues neighborhood by neighborhood,
8 there is no revenue for the golf course in
9 these budgets nor in the general ledgers. So I
10 believe the law of South Carolina is that there
11 must be uniformity of application and covenants
12 cannot be selectively enforced if the covenants
13 source of enforcing the cable TV thing imposed
14 on some homeowners must be imposed on all, and
15 the failure to impose on all, I believe, is a
16 sound base for the court to void that provision
17 if it exists.

18 Now, the enforcement of
19 this contract by Defendant HOA requires
20 homeowners to pay a sum of money for something
21 which is not directly -- that does not directly
22 -- that they directly do touch and run with the
23 land, phrase, "touch and run with the land."
24 There's a little difference from the covenant
25 that says that homeowners must pay -- buy the

1 groceries from cable TV service, and there's
2 case law for this. In Clear Lake City Water
3 authority, the Texas Supreme Court held that
4 deed restrictions required that a tract of land
5 receive its water from the given utility was
6 not enforceable since it's owned only
7 collaterally affected the use of the land since
8 the deed restrictions did not touch and concern
9 land that created a privity -- they created no
10 privity of a state and therefore was not
11 enforceable against assignees, and cable TV
12 services are no different really, actually even
13 less -- they touch the run of land less than
14 water services. In a like manner, a purchase
15 agreement to require third parties to provide
16 road, water and sewage connections to an
17 adjoining tract within four years of sale is a
18 personal services contract and not a covenant
19 running of the land under Texas law even though
20 it was in the covenant, Dryden v. Calk 771 F.
21 Supplement, 181 SD Texas 1991. And again, in
22 Midsouth as I cited, the court in North
23 Carolina said that homeowners could not be
24 assessed amenities, assessment fees for the
25 amenity center. I believe that's equally

1 applicable to the cable TV services. And the
2 court in Midsouth concluded the recreational
3 amenities are not appurtenant to the land and
4 therefore the covenant to pay amenity fee dues
5 is not touchable concerning the land. I've
6 already used the Raintree once, I believe the
7 Raintree decision also applies. And I want to
8 also tie this to the case I recited earlier
9 which held that covenants which required
10 homeowners to pay money do not touch and
11 concern the land, and that was the Neponsit
12 Property Owners Association v. Emigrant. The
13 Court, of course, is familiar with the
14 restatement (third) of servitudes about
15 touching concern, the touch concern doctrine, I
16 won't waste The Court's time reading it, but I
17 believe it fails at least one of the provisions
18 of the restatement (third) of servitudes
19 regarding what touches and concerns, satisfy
20 touch and concern regime. Now, there are also
21 cases that say utility agreements are not real
22 covenants, and the courts have held that
23 provisions of covenants which are actually
24 personal covenants are not enforceable against
25 subsequent purchases. The court in Wal-mart

1 Stores, Inc. v. Ingalls TV (phonetically
2 spelled) said, "a restrictive covenant is
3 defined as a private agreement usually to a
4 deed or a lease that restricts the use of
5 occurrence of real property, especially
6 expressed by lot sizes, building lines,
7 architectural styles and the use to which a
8 property may be put." And they said, "we do
9 not believe the agreement, that a utility
10 agreement -- that a utility agreement satisfies
11 the conditions required for real rather
12 personal covenants regarding the presence of
13 the covenant on the land that Wal-mart bought.
14 And again, in Raintree, it said, the court said
15 in South Carolina, "the covenants must be so
16 closely connected with the real property that
17 touches and concerns the land."

18 Now, other courts,
19 particularly Vassey v. Birch, 301 North
20 Carolina, 6874, 269 Southeast 2nd, 137, 141,
21 found that successors in title to land are not
22 bound as promises upon, the promise of the
23 covenant unless the transaction of which the
24 promise is a part, includes a transfer of
25 interest either in the land benefited by all

1 and the land burden by the performance of the
2 promises, and this did not include that, and
3 there must a adjustment and a mutual
4 relationship arising out of the existence of an
5 easement or some promise made, and there was no
6 money exchanged, no value regarding cable TV
7 services going back to the covenants which did
8 not actually relate to the transfer of any
9 land, no land was transferred when the
10 covenants were filed.

11 Now, looking at the IRS,
12 the IRS has given guidance, and I believe it's
13 one of my exhibits under laws of IRS, which
14 says that fees of this sort are not within the
15 exempt income of a HOA which files for any sort
16 of a tax exemption status under any of the
17 types available to them, that money received
18 from the sales of goods and services is not the
19 money -- which is probably the assessments for
20 the operation of the HOA and provision of
21 common, running the common facility, that is,
22 the amenity center. And it's held, among other
23 things, that if you mowed a homeowner's land,
24 fixed a roof, provide yard services, that was
25 ineligible as a tax exempt area of income for a

1 IHOA.

2 Now, looking at section 2.1
3 of the covenants, Plaintiff's 547, to
4 summarize, it says that the, the -- it says
5 that the developer and the Association has the
6 right to offer the cable TV services, it
7 doesn't say he must; as a matter-of-fact,
8 explicitly, it says he may choose not to, so
9 there is nothing which would be within the
10 statute of frauds regarding a certainty that
11 service will be provided, and there's nothing
12 there within 2.1, which is what everybody
13 points to, as the point in the covenants that
14 talk about cable TV which says anything about
15 homeowners accepting it. It says he may offer
16 it, but it also says he may run private clubs.
17 It doesn't say we have to join the private
18 clubs.

19 Similarly, section 2.4,
20 utilities and easements and related facilities
21 says, "The developer may retain ownership of
22 the telephone, antenna and cable TV system
23 facilities which might be used to serve the
24 subdivision," but that's just because he's an
25 equitable interest. It says he doesn't have to

1 turn that over to the IHOA, either, and I
2 believe it says they can turn it over to the
3 government on GSWSA, which by the way, he did
4 for the sewers.

5 Now, I'd like to go back to
6 cite Arcadian Shores HOA v. Cromer which I
7 talked to on Wednesday which said, "No
8 restriction be enlarged or extended by
9 construction or implication beyond the clear
10 meaning of its terms even to accomplish what it
11 may be thought the parties would have designed
12 had a situation which later developed been
13 foreseen by them at the time when the
14 restriction was written." And when the
15 covenants were filed there were cable TV
16 services. It clearly could be foreseen that
17 the homeowners might want to obtain cable TV
18 services and a vendor could be found who might
19 want to offer it. So it was -- the covenants
20 having been written by an attorney, clearly
21 they had someone who had experience with this
22 stuff and everybody knew about cable TV
23 services, their franchises, people in the
24 cities has them, yet it was not -- they said no
25 provision was made in the covenants.

1 Now, in 1999, commercial
2 cable, cable television providers and satellite
3 television providers existed. The franchise
4 agreements all say, they all use the language,
5 "cable television services shall be provided."
6 There are no franchise agreements which say,
7 "and the citizens must accept it." The
8 provider phrase is also what's used in this
9 cable TV contract. I want to point out that my
10 81, 82 is a Dish TV offer. It's already in the
11 set of evidence at those numbers. The current
12 HTC ICMA bulk rate is around thirty dollars
13 today from the budget.

14 Additional case law points
15 I made are in *Angular v. Stanhope* 19 -- 1979,
16 74 Illinois, Appeals third, 7 99. I believe
17 I've got eight more, but I'm not going to read
18 them because The Court has sufficient case law
19 of that, and -- oh, the last point I'd like to
20 make before I close, Your Honor, is that Denise
21 Ambuhl agreed yesterday that they are addressed
22 to be the bulk source of the contract for the
23 IHOA. They are not -- we aren't their
24 customer. They don't have any relationship to
25 us. O'Neil Miller said the same as well. That

1 makes the IHOA the provider and the source of
2 cable TV services. If we look to the
3 definitions of a cable TV provider and an
4 entity which is required of a franchise, in
5 Horry County ordinances and in the federal
6 statutes and regulations, we find that the IHOA
7 and what they're doing is operating
8 unfranchised cable TV service and therefore the
9 exclusivity clause does apply to them, and also
10 they're, as a matter of law, prohibited from
11 being in the line of business which requires a
12 franchise. HTC and Warner Cable TV are not in
13 that position because they have a specific
14 order from the FCC exempting them from it, and
15 by the way, exempting them from regulations,
16 but Time Warner and the other one and HTC, and
17 if I recall, Denise Ambuhl testified they do
18 have franchises from Horry County. I want to
19 correct myself there, Your Honor. I'm done
20 with that now, Your Honor.

21 MS. GOLDING: NO QUESTIONS.

22 THE COURT: ALL RIGHT. MOVE ON TO YOUR NEXT TOPIC,
23 SIR.

24 MR. JARMUTH: I'M NOT SURE WHAT THE COURT DECIDED TO
25 DO, YOUR HONOR, IN

1 MARKING THESE THINGS IN
2 EVIDENCE, PICTURES.
3 THE COURT: WHAT I WAS TRYING TO DO IS, ON THE
4 OTHER MAPS, I LET YOU
5 TAKE THOSE BACK. NOW, I
6 DON'T KNOW WHAT YOU'RE
7 GOING TO DO TODAY, SO
8 I'LL HAVE TO SEE WHAT
9 YOU'RE GOING TO DO AND
10 THEN I'LL DECIDE.
11 MR.JARMUTH: I DON'T THINK WE NEED TO MARK THIS ONE
12 IN EVIDENCE, BECAUSE THE
13 PICTURES IN THE BOOK ARE
14 SUFFICIENTLY CLEAR TO SEE
15 WHAT I'M INTENDING, BUT
16 WHEN I PROCEED TO DISCUSS
17 THIS, I WILL GIVE THE
18 EXHIBIT NUMBERS OF THE --
19 OH, YEAH, THIS IS -- I'D
20 LIKE THE COURT TO TAKE
21 NOTE OF MY EXHIBIT 53,
22 WHICH IS A PICTURE OF THE
23 HOMEOWNERS, ROBERT AND
24 CAROLYN S-O-B-C-Z-Y-K.
25 CAROLYN IS THE DAUGHTER

1 OF PETE PIZZI WHO
2 TESTIFIED ABOUT THESE
3 PREMISES AT 1212
4 HARROGATE, MURRELLS
5 INLET. HE TESTIFIED IT'S
6 THE SAME HOUSE BASICALLY
7 AS I HAVE.
8 THE COURT: WELL, IF THEY'RE ALREADY IN, I PRESUME
9 THAT THE, THE DEFENSE
10 WILL NOT MIND YOU MAKING
11 REFERENCE TO A BLOWN UP
12 VERSION OF IT.
13 MS. GOLDING: NO OBJECTION.
14 THE COURT: ALL RIGHT, GO AHEAD. AND TO ANSWER
15 YOUR QUESTION, WHEN YOU
16 LEAVE, YOU MAY TAKE THOSE
17 WITH YOU, BECAUSE THE
18 COURT REPORTER WON'T WANT
19 THOSE, OKAY?
20 MR. JARMUTH: AT 54, AT MY 54 IS A PICTURE OF THE
21 SIDE YARD OF THIS HOUSE
22 AND THIS PICTURE WAS
23 TAKEN FROM THE STREET. I
24 DID NOT SET FOOT ON HIS
25 GRASS, AND IT CAN BE

1 PLAINLY -- THERE'S A PLAY
2 SET ON THE RIGHT SIDE OF
3 HIS HOUSE WHERE I WANT TO
4 PUT MY PLAY SET. IT CAN
5 PLAINLY BE SEEN FROM THE
6 STREET, AND HIS PLAY SET
7 IS PERHAPS TWICE AS BIG
8 AS THE ONE I WANTED TO
9 INSTALL, AND MY ARB
10 APPLICATION HAD A PICTURE
11 OF THE FINISHED ONE, SO
12 THEY KNEW HOW BIG MINE
13 WAS, AND THAT'S ANOTHER
14 PICTURE OF THE HOUSE OF
15 THAT INDIVIDUAL.
16 *****OFF THE RECORD*****
17 (ON THE RECORD.)
18 (MR. JARMUTH CONTINUES TESTIFYING.)
19 Mr. Jarmuth: Your Honor, I'm going to be
20 talking about the issues with my swing set
21 which is part of my Complaint. It actually ---
22 THE COURT: EXCUSE ME, YOUR SWING
23 SET?
24 Mr. Jarmuth: Swing set, the children's
25 swing set. This was actually the core which

1 brought on the other lawsuit 2010-CP-26 -- I
2 believe it's 13 -- 11320, which was merged with
3 this case, and in that situation, I attempted
4 to install a swing set on the right side of my
5 house, and we were already in litigation, so to
6 do due diligence and protect myself from a
7 possibly adverse ruling from the court about
8 deeds and the covenants, I filed an application
9 with the ARB which stated I was not waiving my
10 rights, this should not be used against me in
11 the lawsuit to say I waive an estoppel, and I
12 said this is punitive, because I did not even
13 recognize that authority as the IHOA, but I was
14 going to try to work with them on that. And to
15 summarize a lot of what went on, and I'll get
16 into the details as fast as I can, they said
17 that, that they never approved a swing set
18 where it's located, which would be on the side
19 of the house, but you can plainly see that that
20 house has one -- that house which is identical
21 to mine has one approved exactly where I wanted
22 to place it. Now, at the time I decided that
23 the need for the house was because I had foster
24 children who wanted to play on a swing set,
25 which I think is a fair use of my property, and

1 my, my Complaint recites that my neighbor, Jay
2 Cartman, to the right, when I told him, by
3 being a good neighbor, "Hey, I'm going to
4 install this," had an explosive -- was very
5 angry about it, to say the least, and at the
6 time he was a member of the ARB and he sat on
7 the ARB which disapproved my application, and
8 that is a lot of enmity going on that which I
9 need to get into on this case. I'd like to
10 pass out a picture. I believe it's one of the
11 pictures in the evidence. This is blown up at
12 the defense ---
13 THE COURT: GIVE US THE NUMBERS ON
14 IT, PLEASE, SIR, SO WE
15 ---
16 Mr. Jarmuth: I don't have that number
17 handy, yet. I'll get to it in my book, but
18 this is a picture, which I gave in the ARB
19 application, which is in evidence, of one part
20 installed. That big spire which you see over
21 there, it's one level, pretty much. It's no
22 higher than the swing set. It's an ordinary
23 swing set. Also, the safe footprint, and I say
24 this in my ARB application, stated by the, the
25 guy who sells it says you have to have fifteen

1 feet by, I think it was twenty-six feet long,
2 so that a child does not injure themselves by
3 hitting a wall or something behind it. There
4 is -- my ARB application has a plat of my land
5 which shows that the only place in my land
6 which satisfies that requirement is the left
7 side or right side of my land, exactly the
8 problem that that house has 'cause he's got
9 trees immediately behind his house and a close
10 property line, and the covenants from the PUD
11 say you can't cut down a tree which is more
12 than two inches thick, so he had no choice, as
13 a practical matter, to provide a swing set for
14 his kids there, and I was exactly in the same
15 boat.

16 I have it, my Plaintiff's
17 Exhibit 604 and 605 to my interrogatories to
18 the Defendant where I asked them -- it's the
19 wrong interrogatories on that, Your Honor.
20 Excuse me, I got the wrong one. Yeah, in my
21 interrogatories of -- which is at 604 and 605,
22 and in the answers -- yeah, here it is. It's
23 my 601. In my interrogatories, I asked them to
24 identify, by name and address and date,
25 actually not by date, but name and address,

1 everybody who was approved a swing -- play set,
2 and there was seventeen listed. Now, I've gone
3 around neighborhood. There are actually more
4 than that, but suffice to say that swing sets
5 are common through the area, seventeen. The
6 Defendant, of course, says none of them were
7 installed alongside a house on the right; and,
8 in fact, because I believe this decision was
9 made to interfere with familial status our
10 kids, because Mr. Cartman said, "I hate kids
11 and no one is going to install" ---

12 MR.CARTMAN: THAT'S A LIE.

13 Mr. Jarmuth: --- "a swing set which I
14 can see." And I filed a human rights complaint
15 with the appropriate commission of South
16 Carolina, and in an affidavit in response,
17 which I believe is in evidence from the
18 Defendant, they said that, "We did not approve
19 it because of the location of the house."

20 Fine, except the location of the house, they've
21 approved at least one. By the way, Your Honor,
22 the various comments of Mr. Cartman and what
23 went on there is a matter of record with the
24 Horry County Police. I have filed many police
25 reports regarding what went on and what was

1 initiated by Mr. Cartman regarding his
2 unhappiness, arising from his unhappiness with
3 my trying to have a swing set. I believe that
4 the -- this business about prohibiting my swing
5 set where I want is avoidable because by
6 approving that one, the Association abandoned
7 its right to disapprove the location of the
8 swing set. Plus going back to the Arcadian
9 which talks about that explicit language, there
10 was nothing in the language of the covenants
11 which prohibits a swing set. All it says, to
12 jump ahead, is that you can't put it beyond the
13 property line of your property unless they're
14 anchored, so it doesn't blow away in a
15 hurricane. That is the extent of what the
16 covenants said. The ARB guidelines, by the
17 way, Your Honor, say the same thing, not
18 conceding that the ARB guidelines are anything
19 more than suggestions, and even if they were
20 rules, we see the courts have said, "If they're
21 not in the covenants, forget about it."

22 Going back to the Arcadian
23 Shores Homeowners Association, they said
24 something I haven't cited before; "However,
25 extensive omissions or variations tend to show

1 that no scheme exists and that the restrictions
2 are only personal contracts." We know that
3 personal contracts do not survive the resell of
4 houses. And the Arcadian argument also said
5 that a association inconsistently enforce the
6 requirement, moreover, pictures of property
7 throughout the neighborhood show the absence of
8 any scheme, a restriction to such structures,
9 upheld, the association thus waived its rights
10 to review and approve." Then in Taylor v.
11 Lindsey, 333 South Carolina, 14498 Southeast
12 2nd says, "Restrictions of the use of personal
13 property, a property will be strictly construed
14 with all doubts resolved in favor of the free
15 use of the property." And in Hamilton v. CM,
16 Inc., 374 South Carolina, 152, 157, 363
17 Southeast 2nd, 378, it said, "A restriction on
18 use of the property must be created in express
19 terms or by a plain and mistakable location and
20 all such restrictions are to be strictly
21 construed with all doubts resolved in favor of
22 the free use of property." Hardee, et al v.
23 Aiken, which I have cited before yesterday says
24 the same thing, Queens Grant II Horizontal
25 Property Regime, v. Greenwood, the same thing.

1 Leven (phonetically spelled) v. Turner, said
2 deed restrictions are encumbrances of realty
3 and therefore under common law are to be
4 strictly construed in favor of the free use of
5 land. And so Silver Spur Addition Homes
6 Homeowners Association v. Clarksville Seniors
7 Apartments, 848 Southwest 2nd, 772 Texas, it
8 said, "Any ambiguity is resolved in favor of
9 the least restrictive reasonable
10 interpretation."

11 Now, at my 610 is a photo,
12 that one there, of what I wanted to install.
13 I've talked about the safe area. My safe area,
14 by the way, is at my 613. I'd ask The Court to
15 note that when the ARB considered my swing set
16 application, Mr. Cartman sat in the room.
17 Although I objected to his presence there, he
18 was allowed to remain when they deliberated and
19 I was, of course -- not of course, I was, over
20 my protest, excluded from listening to the
21 deliberation, and I believe he had a conflict
22 of interest and was unfairly allowed to
23 influence their decision. They told me that
24 other homeowners weren't even allowed in the
25 room to hear what I said, let alone his

1 deliberation, and she -- he should've, by that
2 argument, been excluded as in the same category
3 as some of those not allowed to be
4 deliberating.

5 Now, to show I went to try
6 to alleve any of his concerns, my ARB
7 application said that I offer to erect a fence
8 or palm trees to screen my place of proposed
9 swing set from him. I tried to do what I could
10 to squash him and that would reduce the noise,
11 and this was stated as an offer in the ARB
12 application, and the IHOA, I think, in bad
13 faith, I believe, not using the applied
14 covenant of good faith and fair dealing,
15 ignored those offers of a fence or a palm bed
16 to screen the concerns, apparent concerns it
17 could be seen by the neighbor. Of course, if
18 The Court looks at the pictures I have in
19 evidence, all these swing sets, every one of
20 those pictures was taken from the street, so
21 obviously lots of people can see their swing
22 sets. My application is at 601. At 602 is the
23 letter of denial sent, actually, by Julie Case
24 of Defendant K.A. Diehl, the reason given, the
25 installation of a swing set on the side of a

1 house which is visible from the street is
2 prohibited. This application was denied based
3 on location of a swing set. There is nothing
4 in the ARB guidelines or the covenants which
5 say anything about a particular location of a
6 swing set.

7 Now, the provision of swing
8 sets in the guidelines, which is one of my
9 items of evidence, reads as follows: "Swing
10 sets must be approved by the ARB, and if
11 approved, must be securely anchored per
12 hurricane specifications." That's all the ARB
13 guidelines say; and, of course, 7.2 of the
14 requirements of the old ARB has been waived,
15 and even if it wasn't waived, all the other
16 citations I've had, I would've met the
17 installation guidelines since I propose to
18 securely install it.

19 I want to point out to the
20 court that in my ARB application, which is of
21 record, I have pictures of swing sets on 109
22 Pickering Drive, which would've been bigger
23 than mine, at 105 Keswick, which was bigger
24 than mine, at 249 Pickering Drive, which is of
25 interest, because it's directly across the cul-

1 de-sac from me, two houses down, but from the
2 cul-de-sac, I could look out my window or stand
3 on my side porch and see everything that went
4 on on that swing set. I have a clear view of
5 the swing set, and by the way, Your Honor, that
6 area of the cul-de-sac is considered by the
7 county as part of Pickering Drive, and the
8 house numbers on it have Pickering Drive
9 addresses, so they are on Pickering Drive.
10 They can be seen from Pickering Drive. On Fox,
11 249 Pickering also bigger.

12 I'd like to read from Ms.
13 Toth's statement to the, to the, I think it was
14 human rights commission, "Because of Mr.
15 Jarmuth's property configuration, the swing set
16 would visibly be in the front yard of the next
17 door neighbor. The ARB has never approved a
18 swing set in any location other than the back
19 yard." And she signed it. I'm done, Your
20 Honor.

21 MS. GOLDING: NO QUESTIONS.

22 (MR. JARMUTH CONTINUES TESTIFYING.)

23 Mr. Jarmuth: The next topic is fences
24 and walls, and I'd like to stipulate I am not
25 at this point putting in my case against the

1 counterclaim, I'm putting it in the area of my
2 complaint about arbitrary capricious denial on
3 my application to install a fence and a wall,
4 which is, again, part of 11320, the other case.
5 Your Honor, I've cited to the Defendant's
6 responses to my rule 33 interrogatories. I'd
7 like to file with The Court the complete, as an
8 exhibit interrogatory, answer of the Defendant.
9 Ma'am, I've got a copy for you, and you can see
10 that's signed by defense counsel.

11 PLAINTIFF'S EXHIBIT NUMBER 758

12 MARKED FOR IDENTIFICATION.

13 MR. JARMUTH: I SAID IT, BECAUSE I WANT
14 TO CITE TO A PARTICULAR
15 PARAGRAPH SIXTEEN OF
16 THAT. DO YOU DESIRE A
17 COPY OF PARAGRAPH
18 SIXTEEN, WHICH IS AN
19 EXCERPT?

20 MS. THOMPSON: THANK YOU.

21 MR. JARMUTH: THIS IS WHAT I'D LIKE THE
22 COURT TO TAKE NOTE WITH,
23 SO IT DOESN'T HAVE TO
24 READ THE WHOLE THING.

25 MS. THOMPSON: ARE YOU MARKING THIS AS

1 AN EXHIBIT?

2 MR. JARMUTH: THAT WOULD PROBABLY BE

3 USEFUL TO MARK IT AS A

4 SEPARATE EXHIBIT AS WELL.

5 COURT REPORTER: YOU'RE MARKING SOMETHING

6 ELSE?

7 MR. JARMUTH: I WANT TO MARK THE

8 EXCERPT AS A SEPARATE

9 EXHIBIT.

10 PLAINTIFF'S EXHIBIT NUMBER 759

11 MARKED FOR IDENTIFICATION.

12 Mr. Jarmuth: Your Honor, I'd like The

13 Court to pay particular attention to my

14 Exhibits 47, 49, 25, 36 and 24, and this shows

15 that it's very common throughout the

16 neighborhood and even around my yard to have

17 edges used as edges for plant beds, and there's

18 no dispute that many of these circumstances

19 edges have been used. You've heard testimony

20 from numerous people saying that they also have

21 seen these edges used under the context of

22 edges, and Mr. Butryn testified the other day

23 that this has served no useful purpose in the

24 construction of a wall.

25 THE COURT: ARE ALL THOSE SMALLER VERSIONS IN?

1 MR. JARMUTH: A WALL, YOU NEED TO HAVE
2 A PAVER BASE AND THEN YOU
3 HAVE BIG BLOCK.
4 THE COURT: NO, I MEAN, ARE ALL THE SMALLER
5 VERSIONS OF THE PICTURES
6 NUMBERED AS EXHIBITS?
7 MR. JARMUTH: YES, YOUR HONOR, THEY'RE
8 NUMBERED WITH NUMBERS
9 RIGHT BESIDE THEM. I'D
10 LIKE TO HAVE ENTERED IN
11 EVIDENCE MY EXHIBIT 600
12 THROUGH 614. THAT'S
13 WRONG. THAT'S SWING
14 SETS. YEAH, I'D LIKE TO
15 HAVE THEM INTRODUCED AS
16 EVIDENCE, THE SWING SET,
17 600 THROUGH 614, AND OF
18 THE FENCES, MY EXHIBIT
19 620 THROUGH 635. THESE
20 HAVE, AMONG OTHER THINGS,
21 VARIOUS PICTURES AROUND
22 THE NEIGHBORHOOD, MY ARB
23 FINE CHECK, MY FENCE
24 APPLICATION PACKAGE.
25 (MR. JARMUTH CONTINUES TESTIFYING.)

1 Mr. Jarmuth: Your Honor, when I was
2 cross-examining the various witnesses for the
3 defense, I cited from the bylaws 13.4 -- 13.3,
4 procedure, and in that procedure, I'd like to
5 read certain requirements, that first in
6 13.3.1, you have to have a written notice from
7 the HOA citing the problem. I don't believe
8 there's anyone will argue they haven't given me
9 written notice that they were unhappy with my
10 failure to apply initially to the ARB, but I
11 remedied that by applying later, because it
12 says that you have ten days from the date of
13 notice to rectify it, and since I applied
14 immediately to the ARB, it said that that
15 cannot be considered a violation, because their
16 own procedures say in 13.1, no violations
17 occurred if you remedied it within ten days,
18 and immediately after, I filed a, under
19 protest, written ARB application, yet within --
20 they are fining me for failure to apply to the
21 ARB when the failure to apply disappeared by
22 their own bylaws. Then it goes on to say that
23 if I haven't rectified the situation which
24 includes also erecting paver base, which in
25 their counter-complaint they don't call it

1 landscaping and fencing, they call it a wall,
2 and The Court is free to read the counter-
3 complaint to see exactly what they call -- what
4 they accuse me of. It says if I haven't
5 rectified it within two months, then the Board
6 of directors, not K.A. Diehl, will send me a
7 notice saying the nature of the alleged
8 violation and invite me to a hearing. It
9 doesn't say I have to ask for the hearing, it
10 says they will invite me to a hearing to be
11 held within the Board, and it says that in 13
12 point -- in the thirteenth procedure it says
13 that no homeowner will be subject to a fine or
14 have any of his rights suspended until all of
15 the procedures have been completed, yet they've
16 been assessing me fines, they're trying to deny
17 me various rights while they have not yet
18 exhausted their administrative obligations, and
19 in 13.3 talks about the hearing. It says that,
20 first of all, they have to file in the minutes
21 of the Board of directors the notice signed by
22 someone saying they've given me this notice,
23 telling me all the details of the problem and
24 what they want me to do and as to how they --
25 certificate of service is how I actually got

1 this hearing notice. And then the minutes of
2 the Board have to talk about the nature of the
3 hearing and the argument went on and that the
4 results of the hearing and the sanctions
5 imposed, except they've never invited me to a
6 hearing. It gets worse than that, because as
7 I'll detail, I sent them a letter saying, "Hey,
8 haven't you forgotten your procedures at 13.3?"
9 Instead, I got back a letter which I'll talk
10 about, and I sent them a reminder letter. I
11 said, "Hey, how about 13.3 and the hearing?"
12 And they ignored it, yet they counter --
13 counter-sued and they've been fining me ever
14 since, and in the package over there which they
15 served me Wednesday, which I'd never seen,
16 which had never before been in one of the
17 exhibits, they have a statement of my account
18 which includes the compounding -- they
19 compounded a hundred dollars a month and
20 they've had no hearing. I'd like to put into
21 evidence a collection of these photos, which is
22 a compendium of these separate photos which
23 I've mentioned. Some of them are not in the
24 other thing, but all of them have been provided
25 to the Defendant, pictures of fences and walls.

1 THE COURT: EXCUSE ME, ARE ALL THESE
2 IN? ARE THESE NEW
3 PICTURES?
4 MR. JARMUTH: I THINK THERE MAY BE SOME
5 WHICH WERE NOT IN
6 SEPARATE EXHIBITS, ---
7 THE COURT: WELL, SHOW THOSE TO MS
8 GOLDING.
9 MR. JARMUTH: --- BUT THEY'VE ALL BEEN
10 SEVERED ON THE DEFENDANT
11 WELL BEFORE THIS, BEFORE
12 THIS HEARING. HERE'S A
13 COPY FOR YOU, MA'AM.
14 Mr. Jarmuth: And the purpose is to show
15 the court, without going to individual ones,
16 there's no a scheme of uniformity in that
17 you've got these things over the map, eight
18 foot high, six foot high, side yard. There's
19 even some depicted there which completely
20 surround the lot from the left lot line all the
21 way to the back, back down the back, up to the
22 front and into the side of the house completely
23 enclosing the side yard and the back yard which
24 is not what you're asked to do. I asked to do
25 something which is plainly seen as very common,

1 put a side yard fence up.

2 THE COURT: DOES THE DEFENSE HAVE ANY
3 PROBLEMS WITH THE
4 PICTURES?

5 MS. GOLDING: NO.

6 THE COURT: ALL RIGHT, GO AHEAD.

7 (MR. JARMUTH CONTINUES TESTIFYING.)

8 Mr. Jarmuth: Now, in the Defendant's
9 response to interrogatories, they listed
10 twenty-eight locations which had applied for
11 and had approval of fences. I note that the
12 three hundred or so feet long metal fence
13 erected between The Villas and the
14 International Club drive is not among them. It
15 also is made of metal which is explicitly
16 prohibited from the fences provision of the
17 covenants. The fences provisions of the
18 covenants, Your Honor, being one of the
19 provisions waived, and I pointed out in my ARB
20 application that that provision had been waived
21 as well as the requirement to seek ARB
22 approval. So they were on fair notice that
23 they were trying to enforce something which I
24 believe anyone who did due diligence would've
25 discovered is not an enforceable provision. I

1 believe that the attempt to enforce this
2 violated the implied covenant of good faith and
3 fair dealing and it interfered with my fair use
4 of my property. Why do I need that fence?
5 Well, as the ARB application said and as
6 there's photos in evidence there among the one
7 I had, I caught Mr. Jay Cartman driving stakes
8 into my side of the property line, said stakes
9 driving holes and disabling my sprinkler
10 system, so among other things, I reported this
11 to the police and there are police reports, and
12 it's mentioned in my ARB application, and I
13 said I needed to have something to keep -- stop
14 him from entering my land, and he further put
15 signs up on my side of the land saying this is
16 his land, no trespassing. I reported this to
17 the Defendant IHOA and I believe they ordered
18 him, eventually, to remove that stuff, and then
19 he put up a string line on my side of the
20 property and they required him to abandon it,
21 and the police told me, "Hire a surveyor," at
22 considerable cost, "Have them put, have them
23 put wood stakes in the ground marking the
24 terminus of my property line at intervening
25 points," and then I paid them extra to drive

1 four foot long, it might've been four foot, two
2 foot long metal stakes in the ground at the
3 survey points to make sure that nobody could
4 remove or alter my property line. And the
5 police suggested furthermore that I then put a
6 fence upon there, but first to stop him from
7 further destroying my sprinklers, put a line --
8 put a flowerbed in, and the edges were the
9 beginning of that flowerbed, and we'll get to
10 that portion of the ARB application. So I have
11 good reason, but it was appropriate self-help
12 which interfered with no one's use of the
13 property and was not at odds with other -- use
14 of other people's property or use of my own
15 property, because on the area between myself
16 and my other neighbor, the same edges are
17 there. The same edges as you can see from the
18 photo are all around my palm tree bed, approved
19 by the Defendant IHOA. They're all around my
20 house, approved by the Defendant HOA. They're
21 approved, they're all around my neighbor's
22 house, approved by the HOA, right beside these
23 houses, selective capricious enforcement.
24 There's also a photo in evidence of Cartman
25 physically driving such a stake. The Complaint

1 I sent the HOA regarding Cartman's actions was
2 September 7th, 2010, my 626.

3 Now, I point out that
4 ignoring waivers of covenants, there is no
5 provision in the ARB guidelines or the
6 covenants relating to landscaping edging. On
7 September 27th, 2010, my 627, they sent me the
8 violation notice. Without a hearing, they
9 immediately imposed the fine. The fine was
10 imposed by the contractor, not by the Board,
11 and at a prior Board meeting, I believe I heard
12 the Defendant, I believe it was Rosemary Toth,
13 say that their policy was that no violation
14 letters or fines will be sent to homeowners
15 until they've been shown to and approved by the
16 Board. Now, the letter, the violation said
17 that the ARB guidelines were the source of
18 authority. They're not the source of authority
19 for anything, not even rules. Okay. It was a
20 May 5th, 2010, my number 370, that the Board
21 made that announcement about no fines or other
22 sanctions until they've approved those letters,
23 and it related back to May 1st, 2010, the new
24 policy. The ARB guidelines which were in place
25 at the time, my 371.

1 Now, on page two of that
2 document, it lists their items which need no
3 approval. The strict application of 7.2 of the
4 covenants says you can't do that, you've got to
5 apply it to everything, so by their guidelines,
6 they already were departing from what they
7 argue was the strict language of 7.2 of the
8 covenants.

9 Now, the guidelines
10 regarding landscaping are section I, physical
11 page four, number three, and it talks about not
12 destroying large trees or bushes or doing all
13 sorts of lawn and garden maintenance, that you
14 must do the maintenance, and it says you do
15 that without the ARB application or approval.
16 There's no -- there are no -- there's not even
17 a statement or a hint of a statement in the ARB
18 guidelines regarding flowerbed maintenance.

19 Now, the other letter from
20 the -- the follow-up letter from the HOA says
21 the bylaws section on authority is the section
22 for authority, they cite section 13.2 which
23 proves that the author, K.A. Diehl employee,
24 Julie Case, was familiar with the bylaws and
25 familiar with the section which -- section

1 13.2, procedure, which she did not follow.

2 In examining the photos

3 I've put into evidence there, The Court is

4 invited to note the flowerbed in front of the

5 power box, that's part of the application, has

6 edges, and the HOA explicitly approved that and

7 had no problem with those same edges which

8 they're now calling a wall in back be used in

9 front for the flowerbed.

10 On September 29th, 2010, I

11 paid the supposed fifty dollar fine, under

12 protest, and I did this, among other things, so

13 they couldn't keep arguing I hadn't paid the

14 fine. I said to them explicitly, "This gives

15 me a cause of action for damage, it's in my

16 2010 Complaint for the basis I had been

17 directly injured in monetary damage by the

18 Defendant to the tune of the fifty dollars

19 there, and if it says I owe -- they're saying I

20 owe that, that's further damage, that being the

21 additional assessments, a hundred dollars a

22 month from the Defendant.

23 On September 20th, 2010, I

24 submitted my ARB application, which is my 629.

25 On page one it contained a stipulation it did

1 not waive, et ceteta. On page four of the
2 submission, I checked the box one, edging, as
3 well as fence. There's two different boxes
4 there. On page five is my plat which overlaid,
5 which overlaid what I desired to do. It showed
6 three things, one, flowerbeds around the power
7 box. This was seen in the pictures on either
8 side, my photo 424, brick edging along the
9 property line, as suggested by the Horry County
10 police, all the way from the curb to my rear
11 property line, and there's a separate hash line
12 on the plat showing. That is what I called
13 edging and that's what I wanted to install, and
14 that's what they're objecting to. This is
15 quickly taken care of by Cartman's instruction
16 -- would quickly take care of the destruction.
17 And the third thing I wanted to install was a
18 vinyl fence running from behind the power box
19 as the others -- not -- the front of the power
20 box is the cul-de-sac, the back is going back
21 to the -- my rear property line, a vinyl fence
22 from behind the power box all the way back to
23 my rear property line. The vinyl fence is
24 supported on posts. Posts are either set
25 directly in the ground or set into concrete.

1 The fence itself, the fence section does not
2 touch the ground. There's no role edges would
3 play in the fence. You can put the fence up
4 completely independently without having any
5 vinyl edges, without any landscaping edges at
6 all. The edges purpose was to mark the
7 property line, protect my sprinkler system from
8 Mr. Cartman, a member of the ARB at the time.

9 Now, on page eight, I filed
10 with the ARB my encroachment permit from Horry
11 County which told me, to either authority, to
12 do anything I wanted so long as it wasn't more
13 than four feet high on the area between my
14 property line on the street, so long, also, so
15 that if a car went off the road and hit it, it
16 wouldn't severely damage the car, and nothing I
17 propose to put them there, such as a flowerbed
18 there, interfered; as a matter-of-fact, if you
19 look at the photos I put in evidence, across
20 the street from me is Mr. Fletcher's lot and
21 you can see that Mr. Fletcher installed two
22 palm trees with edging around them on the curb,
23 in the roadway, without an encroachment permit,
24 with no permission from the ARB or the HOA to
25 install same, and the sizing girth of those

1 palm trees, as such, violates the Horry County
2 ordinances regarding not having anything more
3 than four inches so it would eventually damage
4 cars. So you have inconsistent enforcement of
5 the setback stuff and what you must do
6 regarding landscaping right there in my face
7 across the street. Relating to that, among the
8 photos I put in the evidence book listed is a
9 GIS photo from Horry County showing the houses
10 across the street and my house and showing
11 where the real edges of the roadway are, and
12 from that point you can see that the roadway,
13 the roadway extends twenty-one feet towards Mr.
14 Fletcher's house and only four feet towards my
15 house, so that roadway goes all over the place,
16 but Mr. Fletcher was permitted to install many
17 other landscaping features within the twenty-
18 one feet which belongs to the county without
19 any whimper from the IHOA, which shows, again,
20 they waived the business that you have to, you
21 have to obey what Horry County says.

22 I want to point out, Your
23 Honor, that K.A. Diehl, the Defendant, used to
24 get at least ten dollars every time they wrote
25 a violation letter whether or not that

1 violation was upheld, whether or not there was
2 any reasonable basis to believe a violation had
3 occurred. I believe, Your Honor, after
4 inspecting the contract since 2011, they also
5 get additional money for labor and other costs
6 related to those letters, plus they get paid to
7 drive around the neighborhood to look for these
8 violations. It's a money making operation.

9 On October 8th, 2010, Julie
10 Case of K.A. Diehl, my 631, wrote me saying my
11 request to install the fence was denied, and
12 they said I could install edging in front, but
13 not in back, no logic behind that why they
14 didn't want me to have the edging behind. It's
15 the same stuff.

16 October 30th, 2010, my 633,
17 I demanded the appeal which Julie Case
18 mentioned in a letter. Your Honor, I remind
19 you that the procedure of the bylaws did not
20 require me to make an appeal. It puts the
21 burden on them to schedule a hearing, yet Julie
22 Case said make a appeal, so I demanded an
23 appeal.

24 October 20th, 2010, Julie
25 Case mailed me a letter. It was postmarked

1 October 20th, 2010, but backdated to October
2 14th, 2010, my 634, where she acknowledged
3 receiving my demand for a hearing, which is
4 titled, "punitive appeal, October 8th,
5 disapproval of fence." The letter stated,
6 "unless you successfully appeal the ARB
7 decision, you must remove the brick fence
8 foundation," yet the procedures say nothing --
9 you don't have to do anything, no sanction will
10 be imposed, no rights will be lost until after
11 they've scheduled this hearing and you've lost

12 the hearing. That's not the end of it.
13 October 24th, 2010, my 635, I wrote the IHOA
14 through K.A. Diehl, another letter to remind
15 them of their refusal to follow section 13.3.
16 They were on notice of it, and I received no
17 further correspondence back from them after I
18 told them they were in violation of 13.3.

19 I referred to the exhibit
20 from the faxed waiver. I'll leave it at that.
21 Anderson v. Buonforte,
22 opinion Number 3998, South Carolina Court of
23 Appeals, filed June 13th, 2005, it said, "A
24 restriction on use of property must be granted
25 by express terms by a plain and unmistakable

1 implication, and also, its restrictions are to
2 be strictly construed with all doubts resolved
3 in the fair use of property." And in Penny
4 Creek v. Paragon 370, 5 South Carolina 267, 651
5 Southeast 2nd, 61, the South Carolina Court of
6 Appeals said, "Restrictions of use of property
7 are historically disfavored; thus, to enforce
8 restrictive covenants, party must show that
9 restrictions apply to the property either by
10 the covenants, express language, or by a plain
11 and unmistakable implication." These are
12 lacking here. In (unintelligible) v. Dill, an
13 Illinois case, they said, "Doubts, ambiguities
14 in covenants should be resolved in favor of
15 natural rights and against restrictions." And
16 in Jamis -- Jamis v. Fairway Oaks Villas
17 Horizontal Property Regime, 307 South Carolina,
18 339, 344, 409, 415 Southeast 2nd, 384, 381, it
19 said, "a waiver, a waiver is a voluntary and
20 intentional abandonment or relinquishment of a
21 known right."

22 I'd like to point The
23 Court's attention to section 6 point -- section
24 2.2 which is in the covenants, my 547, I
25 believe, Plan of Development of Additional

1 Property, and The Court is free to agree or
2 disagree with me, that it frees the developer's
3 ability completely from any, any restrictions
4 of the property regarding the arguments raised
5 when I talked to them regarding this fence
6 issue, that the waiver there in -- also in 7.2
7 does not -- the waiver applies to everybody,
8 they said it doesn't.

9 I ask the court for the
10 following relief: return of my fifty dollars
11 plus interest and adjustment of my account, an
12 order enjoining the Defendants, all of them,
13 from attempting to enforce any of these waive
14 sections, particularly 7.2 ARB and 7.4 fences
15 against any homeowner, court cost plus all
16 other costs because attempts by the IHOA to
17 enforce a non-existent covenant provision is,
18 in fact, a violation of covenants, and I'm free
19 to sue to enforce the provisions of the
20 covenants and to try to rectify a refusal to
21 obey the covenants, a written apology published
22 to every homeowner for the action against me
23 regarding the say of the approval, that people
24 become known about this, and punitive damages
25 in an amount to be set by the court at its sole

1 discretion. I'm done with the fences portion,
2 Your Honor.

3 MS. GOLDING: NO QUESTIONS, YOUR HONOR.

4 THE COURT: YOU MAY PROCEED. YOU
5 WANT TO TAKE A TEN MINUTE
6 BREAK BEFORE YOU GO.
7 FURTHER?

8 MR. JARMUTH; THANK YOU, YOUR HONOR, I
9 REALLY COULD.

10 THE COURT: TEN MINUTES.

11 ****OFF THE RECORD****

12 (ON THE RECORD.)

13 MR. JARMUTH: IF I MAY, YOUR HONOR, I'M
14 GOING TO START WITH ONE
15 OF MY PICTURES.

16 THE COURT: OKAY.

17 (MR. JARMUTH CONTINUES TESTIFYING.)

18 Mr. Jarmuth: At my 425 is a picture of,
19 really of my palm tree bed. This was approved
20 by the ARB, and the HOA Board has never had any
21 problem dealing with it. As you can see,
22 there's a lot of edges around it, lots of nice
23 palm trees. This bed is actually modeled on
24 Mr. George Comer who has a house down the
25 street from me, who has a very nice and large

1 palm tree bed, which is at the corner of
2 Pickering Drive, another street much like --
3 this is between my cul-de-sac and Pickering
4 Drive, and this is modeled exactly on what Mr.
5 Comer has done with edges and palm trees, and
6 you find this elsewhere very commonly around
7 the neighborhood, nothing exceptional about it.
8 Looking over there, again, you see the power
9 box. If we fail to -- well, if you use that
10 picture of my -- of the, of the back view of
11 the house there, as you can see, without a palm
12 tree bed, you see this very architecturally,
13 uninviting side of the house, so basically you
14 come down the street and see this big open
15 grass area and just blah, so this is my attempt
16 to beautify the neighborhood as a considerable
17 person expects. What I requested in the ARB
18 application was to put one more palm tree at
19 the end there and another palm tree around the
20 corner, plus to extend another palm tree bed
21 which is around the other side of my house,
22 because my house is here (indicating), there's
23 a palm tree bed there. My house sits between
24 two cul-de-sacs, and you can see this on the
25 plat of my ARB application, which is being put

1 into evidence; matter-of-fact, I'd like to put
2 in evidence my number 640, the deposition
3 extracts of Mr. Bill Freiboth relating to the
4 palm tree bed. I won't say anything about that
5 today. The Court is free to read it, and
6 extracts at 641 from Defendant Toth, and that's
7 a list, too. I'm not going to address that
8 today, waste The Court's time to read it.

9 642 is my palm tree request
10 package, and 643 was some emails back and forth
11 between me and K.A. Diehl regarding the
12 hearing, and 645 was a HOA letter, late notice
13 about my Plaintiff's accounts, I hadn't paid
14 their fine, and the big stuff is at 646, my
15 November 2011 modification request application
16 -- oh, excuse me. That's a blank form they use
17 for the application and there's some other
18 material there, in there. The big palm tree
19 package is at 642.

20 On February 27th, 2012,
21 before installing anything, I delivered a,
22 "putative ARB application" to K.A. Diehl. It
23 disputed the authority of the HOA and of the
24 ARB to regulate anything but said, I'm going
25 ahead anyway to keep everybody happy, requested

1 to add several palm trees identical to palm
2 trees and place at the end of -- at the ends of
3 my palm tree beds, my 642, also my photo at 25.
4 Similar palm trees are directly across the
5 street from me on Bill Fletcher's lot, my photo
6 at 452, last page, except there's two palm
7 trees which are on the curb. He has lots of
8 palm trees. Mine do not encroach on Horry
9 County roadway.

10 Now, in dealing with this
11 problem, time is of the essence, because good
12 size healthy palm trees are only available
13 annually in March and April of each year.
14 Either they disappear from the market
15 afterwards if the ARB delays it or they are
16 prohibitively expensive, so I suggested that
17 because I was denied this, it has caused me a
18 potentially very large increase in cost if I
19 was to be able to install it now or I'd have to
20 wait 'til next March before they become
21 available, so it has a definite impact on my
22 use of my property.

23 At a March 6, 2012 ARB, ARB
24 meeting referred to in my Plaintiff's 643, two
25 ARB members were present. That may be a

1 problem with the quorum. One is the husband of
2 co-Defendant Rosemary Toth, another problem
3 with proceeding, who has clearly a conflict of
4 interest on, on this ARB approval process. One
5 other person refused to identify himself, also
6 present, Vanessa Fattoross of K.A. Diehl, and
7 parenthetically, the contract between the IHOA
8 and K.A. Diehl provide that normally a Diehl
9 representative can only be at Board meetings,
10 not at ARB meetings, yet somehow the HOA was
11 paying additional expense, I think, at seventy-
12 five dollars an hour for a K.A. Diehl employee
13 to be there. She never explained why she was
14 there. She was taking notes. I was not
15 allowed to take notes. I asked to record the
16 proceedings, I was told I could either get out
17 of the room and be done or I could not record.
18 I chose to not record, because I thought it was
19 important to proceed. I believe I had an
20 absolute right, because the statutes say that
21 committee meetings, just like the Board
22 meetings, must be free and open.

23 On March 16th, 2012, the ARB
24 wrote me the letter at 644. It said, "For the
25 architectural review Board." Now, if we look

1 at that blank ARB form, which I mentioned
2 there, there are only four choices, approved,
3 disapproved, conditional approval, overthrown
4 by the applicant. The conditions they, the
5 conditions they impose are not approved or
6 disapproved or conditions approval, really,
7 because here's what they said: "Your ARB
8 request has been deferred for consideration,"
9 not approved with, with conditions, but
10 deferred by the ARB. They demanded that I pay
11 the HOA one thousand, seven hundred thirty-five
12 dollars and abandon my lawsuit about the fence
13 issue before they would do their duty to
14 consider or make a decision on the application,
15 be 2010-CP-26-11322 -- 320, because that's what
16 I'd be doing if I paid the fine and if I did
17 what they said, which is to remove my putative
18 wall or that edging back there. It said, "As
19 of today, your account balance is one thousand,
20 seven hundred thirty-five dollars." And that
21 was back on March of 2012, so up to now several
22 hundred dollars more. They said what do I have
23 to do to come into compliance, remove the
24 brickwork along the property line and restore
25 the sod which is, in effect, I'm interfering

1 with the decision authority of The Court to
2 resolve the matter which had previously been
3 put before the court, so I immediately sued in
4 the 2010 lawsuit.

5 The criteria that the ARB
6 is supposed to use in considering landscaping
7 is set out clearly in the covenants provision
8 relating to landscaping at section 7.33,
9 landscaping, my 547 at page twenty-one. It
10 said the landscaping, fences and items are
11 restricted where they are, "impediments to the
12 enjoyment of views, of natural areas or views
13 of strict -- of street intersections." Well,
14 as you can see from the photo there, I have no
15 -- no portion of my lot touches the golf
16 course. It doesn't impede anyone's views of
17 the golf course or any common area or any
18 natural area, it just impedes the view of the
19 side of my neighbor's house or impedes the view
20 of the side of my house, and it certainly
21 doesn't impede the view of the intersection
22 because the street goes that way and my palm
23 tree bed goes that way around the cul-de-sac.

24 The HOA policy for ARB
25 decision-making only provides for a yay or nay

1 based on the project information provided.
2 This is in the ARB guidelines, my 606, and the
3 ARB has no enforcement authority for assessment
4 status. The members have no need or right to
5 have access to homeowner accounts. This is
6 related to section 7.3, objectives of ARB, page
7 17 in the covenants.

8 Now, the ARB guidelines, my
9 606, do not even reference or include as a, as
10 a criteria the status of prior projects, and
11 again, at my 645 and 646, ARB decisions,
12 alternatives do not include deferring decision.
13 It says in the application, "I understand that
14 the ARB will act upon this request at the next
15 regular ARB meeting." I also understand that
16 if enough information is not included in this
17 application that it may be returned to me for
18 more information. It doesn't say defer, and it
19 didn't say I didn't have enough information,
20 clearly they had, and it said they'll act on it
21 at that meeting.

22 Now, there's an invasion of
23 privacy issue, because the letter -- the
24 information that Ms. Fattoross provided the ARB
25 group there which is reflected in their

1 decision that I had to pay the seventeen
2 thirty-five means that Ms. Fattoross of K.A.
3 Diehl told them about my account status, which
4 they'd have no way of knowing that it was just
5 a hundred dollars or that I had taken care of
6 the previous thing. They gave them an exact
7 number of the financial status of my account,
8 so I believe that Ms. Fattoross and K.A. Diehl
9 invaded my rights to financial privacy, and I
10 never signed a statement of privacy rights, nor
11 has one been offered to me by Defendant K.A.
12 Diehl. So they given improper acts of two
13 things, the status of my prior "violation" and
14 my current account balance, and the ARB members
15 are to have -- based upon what the document
16 said, the only thing they're supposed to use is
17 the information provided in the ARB
18 application, and if it's insufficient, you
19 return it. It doesn't say they'll use anything
20 else.

21 Now, one of the problems I
22 have is that ARB members themselves are not
23 required to sign a statement of non-disclosure
24 of anything they are given, so they were free
25 to provide other people information I owe

1 almost two thousand dollars, and I have another
2 open ARB violation, and this goes back to what
3 they told me about my being able to sit in on
4 my proceeding on other ARB applications. It's
5 so secret that it's so embedded with abuse of
6 privacy that no one can even listen to the
7 presentation of what someone wants to do.
8 Certainly, the financial status is even more
9 private than that, and I believe I have
10 reasonable expectation of privacy in that
11 information.

12 I want to point out in
13 curiosity in section 7.2, prior review of plans
14 not being waived. It said the prior review
15 will be done by the developer, and it says he
16 may transfer his right to approval under the
17 declaration, but I've never seen the document
18 where he transferred that right, the
19 developer's right to approve everything. Now,
20 it said that the right of approval will
21 evaporate when he sold three thousand, six
22 hundred fifty units, they haven't. So
23 presumably, the developer, not the HOA, still
24 has the right of prior approval of plans if it
25 has not been deleted. And this is reinforced,

1 because on June 20th, 2008, almost a year after
2 the so-called transition, the developer was
3 still exercising his rights, that is, he did an
4 amendment to the covenants, Amendment Number V,
5 my 563. Clearly, he had not transferred his
6 rights as a developer. Further the HOA's ARB
7 of the IHOA were acting ultra vires usurping
8 the developer's rights, if any.

9 Now, I ask The Court to
10 refer to Black's on exaction and Black's on
11 extortion, my 448 or 449, or on its own if it
12 doesn't think this is properly in evidence,
13 because The Court is asked to take judicial
14 notice of Black's regarding exaction and
15 extortion. I believe that what's happened here
16 is, in fact, exaction, extortion, and it's also
17 a breach of the covenants of good faith and
18 fair dealing. I believe it can be said that
19 good faith and fair dealing is "an honest
20 intention to sustain from taking any unconscien
21 -- unconscientious advantage of another even
22 though the form or technicalities of law,
23 together with an absence of all information or
24 belief of facts which would render the
25 transaction unconscientious." And that goes

1 back to the failure to obey 13.3 procedures.

2 I'm done, Your Honor, with that.

3 MS. GOLDING: NO QUESTIONS, YOUR HONOR.

4 THE COURT: OKAY.

5 (MR. JARMUTH CONTINUES TESTIFYING.)

6 Mr. Jarmuth: I've got three items left,

7 Your Honor, on the defamation issue, buildings

8 and grounds maintenance, spending money on

9 that, and the counterclaim. I'm going to ask

10 The Court regarding the buildings and grounds

11 issue to refer to the information provided by

12 Mr. Butryn, Mr. Pizzi, regarding the fact that

13 the HOA was expending significant amounts of

14 money on areas which were not owned by the HOA,

15 and that, in fact, the only real area needing

16 buildings and grounds maintenance owned by them

17 was the amenity center. We've gotten to this

18 ad nauseam about water and such, so I'm not

19 going to waste The Court's time referring to

20 that. Excuse me, Your Honor.

21 Your Honor, at this point,

22 I'm going to address the issue of defamation

23 through the written material and the website

24 which was provided and the email. I believe it

25 could be sufficiently shown when the 2009, May

1 28th, contemporaneous trot of the Defendant
2 K.A. Diehl's website run by them on behalf of
3 the IHOA was the website owned by the HOA,
4 administered by Defendant Rosemary Toth for
5 which the IHOA paid for that. Anything on the
6 website is their collective responsibility and
7 it can be shown that they were actually
8 publishing the material I'll be addressing on
9 the website, pushing people towards it, as well
10 as mailing it out.

11 Your Honor, in the exhibits
12 I've provided I'd like to cite from them and
13 have them admitted. It's under the section
14 called defamation, and for purposes of
15 expediency, I'd like to submit into evidence
16 500 through 539, which are the items which I
17 believe relate to defamation. For expediency,
18 I'd like to direct the court's attention to the
19 material relating to Carolina Mail House which
20 lists how many copies of this were actually
21 sent out. I believe, Your Honor, it was around
22 five hundred and forty-four, may have been five
23 hundred and forty-six. The actual exact
24 numbers are there, and I would assert that each
25 mailing to each of these homeowners, my

1 neighbors, was a separate defamation.
2 THE COURT: JUST A MINUTE. YOUR
3 EXHIBITS ARE 500 THROUGH
4 539?
5 MR. JARMUTH: YES, YOUR HONOR.
6 THE COURT: OKAY. MS. GOLDING, DO
7 YOU HAVE ANYTHING?
8 MS. GOLDING: WELL I'VE OBJECTED TO
9 THOSE, THOSE OF THE
10 CAROLINA MAIL HOUSE.
11 THE COURT: ALREADY? THEY'RE ALREADY
12 IN, THOUGH, AREN'T THEY,
13 ---
14 MS. GOLDING: YES, SIR, THEY ARE.
15 THE COURT: --- SUBJECT TO THE
16 OBJECTION?
17 MS. GOLDING: CORRECT.
18 THE COURT: I'M NOT LOOKING AT THEM,
19 SO I DON'T HAVE ANY WAY
20 OF KNOWING.
21 MS. GOLDING: RIGHT.
22 MR. JARMUTH: YES, YOUR HONOR. I
23 UNDERSTAND YOU'LL ---
24 THE COURT: WELL, THEY'RE ALREADY IN
25 SUBJECT TO HER OBJECTION.

1 MR. JARMUTH: SO YOU WILL DEAL WITH
2 THEM WHEN YOU GET AROUND
3 TO IT, YOUR HONOR.

4 THE COURT: I WILL.

5 Mr. Jarmuth: There's also a sheet which
6 relates to Julie Case. We argued about it the
7 other day. It's a report which someone in K.A.
8 Diehl gets back when they do a bulk email
9 mailing and it lists the exact number of emails
10 with this material, and Julie Case, an employee
11 of Defendant K.A. Diehl, an agent working for
12 the Defendant IHOA, emailed that, so you've got
13 an exact count of that as well. I believe
14 we've heard nobody say that they took the time
15 to independently check what was in here, and
16 it's my belief that from the nature of this
17 stuff, someone had a duty or an obligation for
18 potentially saying something that would injure
19 the reputation of someone else to read the
20 contents and if it sounds like it's possibly
21 injurious to investigate or maybe contact me
22 and ask me for my side of the story, but no one
23 bother, apparently, to do an independent
24 investigation or anything. I submit that if a
25 neighbor tells me or someone else tells me, no

1 matter what they are, no matter who they are,
2 something which is potentially defamatory, I
3 should independently look into it and I have an
4 obligation to do so.

5 It's clear that the
6 Defendants, all of them, published something
7 which relates to me. I assert that this
8 publication was a defamatory statement. It's
9 clear it was published to someone other than
10 myself, so it's clearly third persons, and I
11 assert and I intend to show that it injured my
12 reputation in the neighborhood.

13 At 525, is Julie Case's
14 number of communications. It's five forty --
15 she sent out five hundred and seventy-seven
16 emails.

17 At 522 is the cover letter
18 from Carolina Mail House which authenticated
19 the material which has the counts. I'd like to
20 refer The Court to the authorities, which I
21 consider Black's, on definition of defamation,
22 which is my 93, 94, and my definition of
23 conspiracy, which is 91, 92, which I take from
24 Black's. I assert that there's been a
25 defamation and a conspiracy involving K.A.

1 Diehl, the Board and -- well; at least all of
2 them and their respective, collective
3 employees.

4 Now, I find at 333, on July
5 24th, 2008, I have request to Rosemary Toth
6 personally as president of the HOA for the list
7 of members, so I could communicate with them.
8 This, again, was of record, and a valid reason
9 to communicate would be to tell people my side
10 of the story, but they refused to that, so they
11 deprived me of any effective way to offer my
12 side of the story about what was going on
13 there, and the only story that the homeowners
14 heard was their story.

15 Now, at my 517 is a letter
16 written by Mike Butryn to whom it may concern,
17 which he authenticated the other day, and it
18 relates to the fact that the Board fired his
19 fellow committee member, Pete Pizzi, for the
20 mere fact he was seen going to my house
21 carrying unknown papers, and so clearly, there
22 was an attempt by the, by the HOA Board in
23 their official capacity and individual
24 capacities to isolate me from the community and
25 deprive me of the fellowship of other

1 homeowners.

2 Now, on March 30th, 2009,

3 there was -- The Villas HOA, sub-HOA filed suit

4 and we have the decision letter, the settlement

5 agreement later on, but I assert that if we

6 look at the website, they didn't publish the

7 actual complaints and answers of the other, of

8 the other people who sued them. I assert that

9 if they did, they still have a problem, because

10 they didn't publish my complaint and my

11 answers, so the homeowners were deprived of

12 actual notice of what was going on. If their

13 attempt was to tell people what I was

14 complaining about, what better form than the

15 answer -- than the complaint, and their side of

16 the story, the answer. There was no useful

17 knowledge given to homeowners but with the

18 material they gave. It had absolutely no

19 bearing on what was going on.

20 The email, my 526, titled,

21 "Litigation details," had a link, if you

22 clicked on it, it took you to the website. If

23 you hit "reply to", it took you and sent you to

24 the email address of Julie Case, which happens

25 normally -- it sends you to the email address

1 of the person who sent it, so this is clear
2 indication, more likely than not, that Julie
3 Case is the one who actually sent this
4 litigation details email. And I say this, Your
5 Honor, because I believe I've got some
6 experience with internet websites, because for
7 a period of time I was a chief computer
8 scientist with the Army in the Pentagon.

9 At my 527, you see what
10 happens when you click on, her name pops up.

11 The May 28th, 2009, Exhibit
12 526, looking at it closely, it does not show
13 The Villas lawsuit at all, and that was filed
14 before mine, and as we can see, they paid a lot
15 of money in settlement, so clearly, this was of
16 great financial interest to the homeowners.

17 Turning to the list of
18 lawsuits associated with Ronald E. Jarmuth. I
19 assert, Your Honor, that this is not strictly
20 cut and paste from the West Law, that much of
21 this text actually was written by or modified
22 by somebody, so clearly, if there's an
23 alteration or addition, someone is responsible
24 for all, and I would assert that inclusion of
25 something which looks legitimate with something

1 which is added gives unfavorable, unfair
2 legitimacy which is not learned to the rest of
3 it.

4 Now, turning to Ronald E.

5 Jarmuth and Angela Frinzi v. Dr. Brian Krolczyk
6 in his capacity as et cetera, that's another
7 two list of cases. I'll provide, introduce
8 into evidence a document which shows that I
9 actually was represented by counsel, Pam
10 Follickman. I'll introduce into evidence the
11 fact that the caption of the case did not have
12 the word, "doctor," it was Brian Krolczyk.
13 I'll introduce into evidence the documents from
14 the West Virginia register and the West
15 Virginia Board which governs the practice of
16 psychology, West Virginia; that, in fact, Brian
17 Krolczyk, not a doctor, was engaged in the
18 unlicensed practice of psychology and that he
19 had told -- he appeared in a court case and
20 perjured himself. It's right there in the West
21 Virginia register and the sanctions, decision,
22 of the Board, a psychologist. He perjured
23 himself by saying, one, he was a licensed
24 psychologist, two, he was trained in the area
25 he was talking about, and three, that he had

1 the basis of training or something to make
2 decisions, and then signed other perjuries of
3 his own. During that case, I had the
4 opportunity to depose Mr. Krolczyk and other
5 matters came out which resulted in other people
6 losing their official offices in this state. I
7 don't depend on that. But in the letter from
8 McNair, it said I was unsuccessful in every
9 case and represented by pro se in every case,
10 and this tended to disparage whether my
11 intentions and hurt my reputation in the
12 community as an obnoxious person, just
13 harassing physicians and such. It turned out
14 that Valley Community Services was collecting
15 money from the United States Government
16 supposedly for services provided by licensed
17 personnel when it wasn't.

18 Jarmuth v. Tara Patterson,
19 Esquire. The word, "esquire," as the court is
20 aware, means attorney, so this looked like I
21 sued an attorney. I found it peculiar that
22 there is no caption of a case. I'll talk to
23 the case where it appears, but I never sued
24 Tara Patterson. There was no such case, and
25 there was opportunity, if you googled it, some

1 stuff would come up which would show something
2 else going on, which I'll get to.
3 Now, Jarmuth v. Janet Reno,
4 U.S. Attorney General, if you google that, you
5 come up with the fact that this was a FOIA
6 action, and if someone -- now, a FOIA action,
7 as The Court is aware, you sue the custodian of
8 records, you don't sue the person. This looked
9 like, on its face, that I was harassing the
10 Attorney General of the U.S. Actually, I was
11 asking for some contracting records of the U.S.
12 Department of Justice in connection with a
13 sting operation which alleged, someone asked
14 me, that a Department of Justice contracting
15 officer was corrupt and was acting fruition of
16 a contractor, and then as part of this case,
17 the DOJ agreed that simply, they would grant me
18 FOIA access. I went with a team of attorneys,
19 which they couldn't have done by themselves,
20 because of the way the personnel regulation is
21 written. We grabbed all the records, and then
22 it was proven that the contracting officer and
23 including contractor was selling the Department
24 of Justice WordPerfect Software Licenses, which
25 they never bought from WordPerfect, Oracle

1 Licenses for the database never bought from
2 Oracle, and other things they never bought from
3 anybody else. We were also able to prove, and
4 I did a financial analysis, that they were
5 charging illegal prices for various hardware
6 and for other software they didn't use. It was
7 also shown that they were providing the
8 Department of Justice Fee Scheduling Software,
9 which they never bought from the vendor, which
10 he then through a bankruptcy case was able to
11 collect from the Department of Justice. It's
12 curious here, because Janet Reno in 1999, wrote
13 a letter to Neil Ginnetti, the Assistant
14 Secretary of the Army Financial Management,
15 asking I be moved over to the FBI to do stuff
16 for them, and clearly, if she wasn't happy with
17 me, she wouldn't have written such a letter.

18 I point out, Your Honor,
19 that as recently as early this year I've had
20 background checks, which have failed to show
21 anything, and at least until 2008, I held an
22 FBI lifestyle clearance which goes down to the
23 level on the lie detector to even go through
24 the Wal-mart cash register without paying for
25 something. Certainly, if any of these things

1 were alleged, would've occurred, I wouldn't be
2 holding a lifestyle, a lifestyle clearance.

3 One of the documents which
4 I put in is my civil, my personnel record with
5 the U.S. Government. It shows that for almost
6 forty years I've worked -- I worked
7 continuously with the U.S. Government and was
8 never terminated for anything; as a matter-of-
9 fact, it shows that during the periods in
10 question, The Court can see for itself, I got
11 several thousand dollars in bonuses for the
12 work I did with the FBI over there. My
13 supervisor was the deputy director of the FBI's
14 white collar crime division, and subsequent to
15 this, he brought me back with homeland security
16 where he was deputy director then to do work
17 with the homeland security and anti-terrorist
18 stuff and in creating what's now secure flight,
19 which keeps people who shouldn't get them from
20 the act of getting permission to be employees
21 of airports or to get on airplanes. If you get
22 denied on an airplane, I'm sorry, I helped
23 write that stuff through homeland security, and
24 it's a continuous threat from what went on
25 then.

1 I also assert my duties
2 with the FBI over there then during the period
3 in question was working with the missing and
4 abused children organization which happened to
5 be located there in West Virginia to do things
6 regarding internet crime which involved missing
7 and abused children.

8 Looking at Jarmuth v.
9 Natalia McLemore, I notice there's no --
10 nothing which says what it is. I notice
11 there's a miscellaneous caption. This was yet
12 another FOIA thing where I desired to get
13 access to records, and if you look in one of
14 the exhibits, it has a list of FOIA exhibits.
15 If you put that name in, that FOIA request
16 comes up as a FOIA request, which by the way,
17 Your Honor, I got granted. It doesn't show up
18 as a civil case.

19 Moving on to Jarmuth v.
20 Verizon West Virginia, case number such and
21 such, if someone had done due diligence and
22 gotten the complete file, they would've seen
23 that I didn't sue Verizon, I put in a public
24 services complaint alleging that the Verizon
25 company had multiplexed my audio line. Let me

1 explain about that. When you get a voice
2 telephone line, normally you have a copper loop
3 back to where the digital end picks up, and
4 that audio line has a certain amount of band
5 width and stuff sounds good, but behind that
6 you actually have a digital version and they
7 can control the board rate of the digital side,
8 and if you're doing dial-up internet, as I was
9 doing at the time, a restriction on the board
10 rate on your voice line impairs your ability to
11 go to the internet, and that's why I alleged
12 that they had improperly restricted the board
13 rate so as to take the other band width and
14 give it to a neighbor rather than put it
15 another copper loop, which I've alleged they
16 should've done, and the public service
17 commission didn't say I was wrong. They
18 dismissed because they had no jurisdiction over
19 the issue of internet services and band width.

20 Coming to number ten,
21 Jarmuth v. Frinzi, I question who wrote this
22 caption. This caption here is not to be found
23 in any case citation. It says, "Legal action
24 by Jarmuth in which he alleged defamation by
25 some of his FB -- his co-employees at the FBI."

1 This seems to me to imply, and some of the
2 other witnesses have testified, that they were
3 led to believe that Frinzi was a co-employee of
4 mine at the FBI; in fact, he was never, to my
5 knowledge, ever employed by any federal agency,
6 how do I know, because I deposed him of that.
7 By the way, Your Honor, during that case the
8 judge had actually entered an order sealing the
9 entire case, so I've never been able to find
10 out how it got out. I confronted West Law over
11 it and they have no answer how they got access
12 to that case, and they said furthermore that my
13 allegations about their defamation led to my
14 termination of my employment with the FBI on
15 4/21/01. Actually, I was never terminated by
16 the FBI or by the federal government at all. I
17 continued to work for the federal government
18 and my personnel record shows that, and this
19 would imply that my allegations against my co-
20 workers was so heinous, arose to the level that
21 the federal government could fire someone with
22 more than thirty years of services or so, at
23 least more than twenty years of service which
24 would have to be absolutely for cause, because
25 among other things, I'm a veteran, I've got

1 even veteran additional rights. So it would
2 lead people to believe I was a really heinous
3 person as proven by the federal government.
4 That, by itself, is injurious to my reputation,
5 and that was published to, not only every
6 homeowner, but it also went to renters, and as
7 you look by -- from the Carolina Mail House
8 stuff, it wasn't homeowners living in the
9 place. If they were out of the state,
10 throughout the country, they got mail to their
11 address where assessment coupons were sent, so
12 they would be able to show the neighbors, "Look
13 what's going on with me by name," and it's
14 clearly referred to me.

15 Ronald Jarmuth v. Wallace

16 H. Weiss, if someone had honestly done a West
17 Law or a google search, they'd see there's
18 another case, Weiss v. Jarmuth related to that
19 case. It's so intimately that they were
20 jointly referred to together. In that case,
21 the other case, I was represented by the Deputy
22 Attorney General of the United States. I
23 prevailed. It was appealed to the court of
24 appeals, again, I prevailed with the Attorney
25 General of the U.S., not pro se, representing

1 me, and I won both. It was a prevailing, and I
2 believe that if the Attorney General of the
3 U.S. is representing you in the matter, it must
4 be something sound on my part going on, but
5 they left out that case because it would have
6 shown another side of the matter. And it says
7 in this case that, "The Court confirmed the
8 jury verdict." Actually, it never went to the
9 jury. The court dismissed on procedural
10 grounds without ever going to the jury, so by
11 its nature there, that provided additional
12 information which was never found in the West
13 Law citation, which is further injurious to me.
14 See, here they say a jury found against me.

15 All the matters relating to
16 Ronald Jarmuth v. Oxana Turetsky, the documents
17 will show I was in this case represented by
18 Attorney Ern Reynolds. The documents will show
19 that actually this went to, I believe, an eight
20 day jury trial, which numerous witnesses were
21 brought in, and Ms. Turetsky was represented by
22 counsel in which the jury awarded me a hundred
23 and fifty-three thousand dollars, which was,
24 stood, appealed to the United States Court of
25 Appeals for the District of Columbia Circuit.

1 This pertinent information was left out and the
2 improper implication was put in there. They
3 cite to the -- what went on in the bankruptcy
4 court where she filed for bankruptcy, and if
5 the person who wrote this provided all the
6 information which was available from West Law
7 about the bankruptcy case, she would've found
8 the bankruptcy court found that this was not a
9 debt that's chargeable by bankruptcy, upheld
10 for at least twelve years, the award, and the
11 trial court subsequently renewed this for
12 another twelve years, because of Ms. Turetsky's
13 evasion of an order for her arrest.

14 The case against Kevin Cox
15 is at 516. You can see that Ern Reynolds
16 represented me in the case they cite in the
17 court of appeals. I wasn't pro se there.

18 Now, I'd ask The Court to
19 look at the material on page two of the
20 material of Jarmuth v. Frinzi, and I think it's
21 inappropriate and injurious and there's no need
22 to read the allegations, but it's my argument
23 that if any of the Board members and even K.A.
24 Diehl or Carolina Mail House people had mailed
25 this, they should've, they had a duty to say,

1 "this is" -- "That's unusual, I should look
2 into this to see if there's anything injurious
3 to the reputation of another." And if they
4 looked at this page they'd see that they're
5 republishing material just clearly injurious to
6 me. It has allegations against me, unproven.
7 Now, Mr. Frinzi was free to make those
8 allegations in the court. I was required, as a
9 matter of law, to repeat the allegations in my
10 Complaint, because it was required, as a matter
11 of law, to say what Mr. Frinzi had said to my
12 supervisor about me which, which I thought
13 justified a defamation, but if Mr. Frinzi had
14 said those things out of the courtroom or if
15 someone else had heard what had been said or
16 gained a copy of what had been said and
17 repeated those allegations outside and they
18 wasn't a party to it, and this was many years
19 after, after the fact and there'd been no
20 decision which upheld that these were true and
21 there was no information to show these were
22 true, I believe they should've known they
23 should've at least had the duty to inquire into
24 this, and no one has admitted they inquired to
25 it, and apparently, someone was so flippant

1 they didn't, they're alleging they didn't read
2 it, which I disbelieve, but I believe -- I can
3 probably say some lied or not -- I'll just
4 leave it to the judge to make a decision on the
5 credibility.

6 At my 500 is a list of FOIA
7 cases. On page two is the Natalia McLemore
8 case.

9 At my 501 is the judgment
10 on the verdict of the, of the trial court
11 against Oxana Turetsky.

12 At 502 is the bankruptcy
13 things which show I was represented by Mr. Ern
14 Reynolds in that chapter seven proceeding. He
15 signed on page -- on the last page, I think, he
16 signs petitioner's representative, Ern
17 Reynolds, counsel, and he's admitted to
18 practice in federal courts.

19 Then at my 503, we look at
20 the Weiss Case. We see that Richard Parker,
21 Assistant U.S. Attorney, represented me, and we
22 see the order in that case that says, "The
23 claims against Defendant Jarmuth are dismissed
24 with prejudice."

25 At my 505, it shows that

1 Jarmuth v. Reno was a FOIA case, and I also
2 secured, administratively, waiver of fees, the
3 access to that material which was actually used
4 against the DOJ employee. By the way, Your
5 Honor, that case is sealed as a Ketown
6 (phonetically spelled) case, under Ketown
7 (phonetically spelled) federal law.

8 At 506, it shows that Brian
9 Krolczyk, it was announced that he would no
10 longer be -- that no one employing him or he
11 independently would no longer be paid by any
12 health insurer in the State of West Virginia of
13 any work he would ever provide. The bill came
14 and said he did the service, but we denied.

15 At 507, it's a West
16 Virginia register regarding the decision
17 against him. This is unique, Your Honor. It
18 is the only time in the history of West
19 Virginia where the State of West Virginia has
20 felt it was necessary to publish a decision
21 against someone practicing psychology without
22 the benefit of a license in the State of West
23 Virginia, and actually, the decision is
24 attached to it. The Court is free to read it
25 itself.

1 At 508 is the docketing
2 statement against Valley Comprehensive. It
3 says he wasn't, wasn't a doctor. See, it says
4 he was just Brian Krolczyk individually,
5 Defendant, and it says further on I was
6 represented by counselor Pam Follickman, West
7 Virginia bar number 7003.

8 And at 510, more of those
9 cases, FOIA cases.

10 At my 511, my personnel
11 record, which I've been referring to.

12 At 512, it shows at page
13 three that Tara Patterson was the interested,
14 interested party. It doesn't say she was
15 either a Plaintiff or a Defendant. It said
16 that the Pennsylvania State Police came in as a
17 interested party represented by Tara Patterson,
18 Pennsylvania State Police Attorney -- Deputy
19 Attorney General. And if they ask me, I'd say
20 that this was because she wanted to get the
21 record of my deposition of a certain state
22 police sergeant where he testified under oath
23 that, in fact -- and she attended the
24 deposition with my permission -- that he had
25 committed numerous crimes and eventually he was

1 fired from -- he was a Pennsylvania State
2 Police Sergeant in his capacity as with the
3 state police, because of the discovery I did in
4 the Frinzi case.

5 Now, again, further on 528
6 -- 09, only my case, no, no pleadings and not
7 the Valley -- not the preceding Villas case had
8 documents of record, in fact, it was defamatory
9 charges.

10 My 518, I received every
11 one of the emails which are listed there,
12 copies in ICbuzz, so I believe I am competent
13 to say these were written because I received
14 them. They were addressed to me. We have Tom
15 Reagan saying, "Do not expect to have to help
16 fund such an asinine action on behalf of a
17 person who spends half his life suing people."
18 That goes back to the impact of all this
19 business on my reputation.

20 Ron Bolka, "He shouldn't
21 get" -- "He will not get any money from me,
22 either. I'm so tired of this crap," and then,
23 "He has nothing better to do with his time than
24 to sue" -- "stir up controversy." These people
25 didn't even know who I was before as the Board

1 member testified the other day until they
2 brought my name to these people in that
3 context.

4 Aine Hukezalie, someone who
5 I don't recall ever meeting before. Certainly,
6 she had never -- She wrote the following email,
7 "They have medication for people like him."
8 This is referring to an email about me. "He
9 has trouble making behavior, has caused so many
10 people so much stress, not take -- I will not
11 take his negative energy anymore."

12 Carl DiIorenzo, "Mr.
13 Jarmuth's lawsuit will probably cost us at
14 least twenty-five hundred dollars, and if
15 you're planning to sell your home, you must
16 notify people that he has interfered with it.
17 Jarmuth is -- in fact I thought he'd run for
18 office, he said, "If you vote for Ron Jarmuth,
19 the lawsuit will not go away, does this sound
20 like blackmail to you?" He's like accusing me
21 of blackmail because of the material sent out
22 by the IH -- IHOA. And yet, another email from
23 Aine Hukezalie after she had presumably had a
24 chance to calm down, which she probably hadn't,
25 May 31st, '08, "Why not go to door" -- "why not

1 go door to door and found out just how much
2 stress and anguish he has caused a huge portion
3 of our community. He's someone as, someone as
4 negative and vindictive and combative as him
5 has finally pushed me to limitat -- limits. I
6 and twenty-five others are now going to take
7 action against him in person. I'll not have
8 that big bully do this to me any -- and my son.
9 How dare he? Surely, they have medication or
10 clinics for people like him. How dare he cause
11 such pain and stress to people he has never,
12 ever met, enough is enough." And I believe,
13 clearly, the Defendants, collectively and
14 individually, injured my reputation. I never
15 had any dealings with any of these people, and
16 as Maureen Sullivan said, they didn't know who
17 I was and they were really indifferent to me.
18 Thank you, Your Honor.

19 MS. GOLDING: NO QUESTIONS.

20 MR. JARMUTH: YOUR HONOR, AT THIS
21 POINT, I WOULD ASK THE
22 COURT WILL I BE PERMITTED
23 TO PUT ON MY COUNTERCLAIM
24 ONLY -- MY COUNTERCLAIM
25 AFTER I'VE HEARD THEM PUT

1 ON THEIR CLAIM AGAINST ME
2 FOR INSTALLING THE FENCE,
3 THAT THIS COUNTERCLAIM
4 RELATES TO THE FACT THAT
5 THEY HAVE FAILED TO PROVE
6 THEIR CASE, AND I'D LIKE
7 TO ASK THE COURT TO
8 RESERVE TO ME THE RIGHT
9 TO PUT ON MY COUNTERCLAIM
10 BY ITSELF, THAT THEY
11 FAILED TO PUT ON A CASE
12 TO PROVE THAT THEIR CLAIM
13 AGAINST ME WHICH IS PART
14 OF THEIR AMENDED
15 COMPLAINT, WHICH I
16 OBJECTED TO, TO -- WITH
17 THE CAUSE OF ACTION
18 AGAINST ME FOR NOT
19 SEEKING THE ARB APPROVAL
20 AND FOR INSTALLING WHAT
21 THEY CALL A WALL, NOT
22 EDGES. YOUR HONOR, WITH
23 THE COURT'S PERMISSION,
24 I'D LIKE NOT TO PUT IT ON
25 NOW WITH THAT CONDITION

1 IF THEY DON'T PUT ON THE
2 CAUSE OF ACTION WHICH I
3 WILL USE AS A REBUTTAL
4 TO, I WOULD BE PERMITTED
5 TO PUT ON THAT BECAUSE
6 I'M ASSERTING THAT IT IS
7 A FRIVOLOUS, FRIVOLOUS
8 CLAIM IN VIOLATION OF THE
9 SOUTH CAROLINA FRIVOLOUS
10 CLAIMS ACT.
11 MS. GOLDING: YOUR HONOR, HE'S
12 INTRODUCED ALL EVIDENCE
13 WITH REGARD TO THE
14 COUNTERCLAIM, WITH REGARD
15 TO -- THE COUNTERCLAIM IS
16 BASED ON HIS BREACH OF
17 THE COVENANTS AND
18 VIOLATION OF THE ARB
19 GUIDELINES AND THE FINES
20 THAT WE'RE ACCESSING, AND
21 HE'S GONE INTO ALL THE
22 ARB MATTERS, HE'S GONE
23 INTO ALL THE FINES THAT
24 ARE BEING ASSESSED, HE'S
25 DISCUSSED ALL OF THAT AND

1 THE BASIS OF WHY HE'S NOT
2 SUBJECT TO ARB OR SUBJECT
3 TO THE COVENANTS.
4 MR. JARMUTH: YOUR HONOR, THE CAUSE OF
5 ACTION FOR A FRIVOLOUS
6 ACTION, IF SOMEONE HAS
7 FILED A CAUSE OF ACTION
8 AGAINST YOU DOES NOT
9 ARISE UNTIL ANOTHER PARTY
10 FILES A COMPLAINT OR A
11 COUNTERCLAIM AGAINST YOU,
12 WHICH BY ITS FACE, IS
13 FRIVOLOUS. SO THEIR
14 FAILURE TO APPROVE MY
15 FENCE OR WALL DID NOT
16 GIVE RISE TO MY CAUSE OF
17 ACTION FOR VIOLATING THE
18 FRIVOLOUS, FRIVOLOUS
19 ACTION STATUTE, AND SO
20 THEREFORE, I DON'T
21 BELIEVE THAT THEY CAN
22 PROPERLY SAY THAT I'VE
23 PUT ON MY CASE REGARDING
24 THAT -- I'LL PUT ON THE
25 CASE RIGHT NOW. I'M

1 TRYING TO SAVE THE COURT

2 SOME TIME.

3 THE COURT: WELL, YOU GOT FIVE

4 MINUTES, SO YOU BETTER

5 GET ON WITH IT.

6 (MR. JARMUTH CONTINUES TESTIFYING.)

7 Mr. Jarmuth: Yes, Your Honor. Their

8 first counterclaim in their final amended

9 answer, my 50, they say -- assert that in the

10 counterclaim that their cause of action is

11 based upon a viable section, 7.2 requirement to

12 go to the ARB, and they say that the Defendant

13 HOA enacted architectural guidelines in 2005

14 and has amended them from time to time, and by

15 the information and belief, the Plaintiff

16 applied to the ARB for approval of improvements

17 in several occasions and the Plaintiff's plans

18 and specifications were approved, but they cite

19 the 7.4, which is also waived. They say in one

20 of their documents that the ARB approved,

21 approved the request for the flowerbed and

22 edging and denied Plaintiff's request to

23 construct the fence or wall -- and wall. It

24 says wall, Your Honor, it doesn't say edging,

25 denied the request to construct the fence or

1 wall because the proposed construction violated
2 the governing documents, the architectural
3 guidelines. They did not say in the counter-
4 complaint I put in edging, and they talked
5 about ARB.

6 They say the architectural
7 review Board also demands that the brick wall
8 be removed from the property within fifteen
9 days or he would be subject to monthly fines in
10 the amount of one hundred dollars, again, in
11 their paragraph sixty-five and thirty-two,
12 actually filed this in, both in 2010 and in
13 2009. That's why they're two paragraph
14 numbers, they use the same language.

15 It says in their paragraph
16 67, 38, "upon information and belief, the
17 Plaintiff paid the fine for construction -- for
18 constructing the brick wall in the amount of
19 fifty dollars imposed by the Defendant HOA
20 under protest several weeks later and
21 threatened to sue the Defendant HOA."

22 Basically, I said at that time, "You're acting
23 improperly, I don't want to sue you, fix it."
24 At their paragraph sixty-eight and thirty-nine,
25 "Although the Plaintiff's application for the

1 fence and the brick wall was denied and the
2 Defendant HOA directed the Plaintiff to remove
3 the brick wall, the Plaintiff has failed and
4 refused to remove the brick wall construction."
5 It said in seventy-two and forty-four, "as of
6 August 2011, the Plaintiff owes one thousand,
7 one hundred thirty-two dollars and no cents,
8 plus the cost of collection towards continuing
9 violation of the brick wall which the Plaintiff
10 has not paid this fine due demand being made
11 upon him, said assessment and fine," yet they
12 failed to mention that they weren't allowed to
13 impose such a sanction until they held the
14 hearing required by the bylaws, and they had
15 ignored my notice to them that they were in ...
16 violation of the requirement they announced at
17 the Board meeting and that they schedule it. I
18 have no requirement to do it, but I let them
19 know and they left it out. This is a material
20 part of the statement of what was going on
21 which they left out and didn't tell ---

22 It says, "as a direct and
23 proximate result of this, the Defendant HOA is
24 suing for collection of these fees and costs.
25 The Defendant HOA has and will continue to.

1 incur attorney's fees and cost." And it says,
2 "Plaintiff breached the terms of the governing
3 documents and the ARB guidelines." Again, I
4 believe it's a reach to say that the ARB
5 guidelines arise to the level of the
6 restrictions and covenants.

7 Now, in their paragraph
8 sixty-four and thirty-six, it says, "The
9 architectural review Board approved the
10 Plaintiff's request for the flowerbed and edges
11 and denied the Plaintiff's request to construct
12 the fence and wall because the proposed
13 construction violated the governing documents
14 in the ARB guidelines. It did not comply with
15 the general scheme of development for the
16 International Club." That's a meaningless
17 statement. There's no -- the general scheme of
18 development relates strictly to the roll-out by
19 the builder of additional areas of a PUD. It
20 has nothing to say in the covenants about
21 restrictions on use.

22 Sixty-five, thirty-seven,
23 "The architectural review Board also demanded
24 that the brick wall be removed from the
25 property within fifteen days or he would be

1 subject to monthly fines in the amount of a
2 hundred dollars, and I cite to the procedure.

3 Their next paragraph sixty-
4 seven -- actually, I skipped sixty-six, it's
5 irrelevant -- "upon information and belief, the
6 Plaintiff paid a fine for constructing the
7 brick wall," and it, I believe it was at fifty
8 dollars. And I point out that to The Court and
9 the fine was imposed by Defendant K.A. Diehl
10 with no authority in their contract to impose
11 any fine, and actually in violation of the
12 bylaws and provisions that are supposed to help
13 by running around the neighborhood looking at
14 ARB stuff to enforce the problem.

15 And they say at sixty --
16 their seventy-five, "Plaintiff's breach of the
17 terms of the" -- "breached the terms of the
18 governing documents and the architectural
19 guidelines." I don't have civil words to
20 describe that. I have previously referred to
21 the ARB guidelines and cases. I point out
22 there's a useful paragraph on page one of the
23 ARB guidelines which says, These guidelines are
24 not all inclusive. They are intended to
25 provide guidance to homeowners regarding the

1 most common improvements and decorative changes
2 to homes." How can you depend on that?
3 There's no specification to know anything to
4 regard such a statement is ambiguous and all
5 the court cases have shown that anything which
6 is so ambiguous must be void because that
7 interferes with the proper and free use of the
8 property and the restrictions must be
9 explicitly said. This ARB guideline which they
10 keep putting on is nothing more than
11 guidelines, it's not a rule, and they have no
12 business depending on it, and I told them so.
13 I'd point out that the
14 envelope which carried the -- all these letters
15 has the return address, International Club HOA,
16 Inc., and with the address of K.A. Diehl even
17 though -- which is the K.A. Diehl address, even
18 though they were signed by Julie Case for the
19 International Club. I believe it very closely
20 ties both of them together, because in the
21 deposition of Julie Case, which The Court is
22 free to refer to, she referred to the knowledge
23 she got from her participation in something,
24 material and training put out by community
25 association institute, so therefore she knew or

1 should've known about the guideline --
2 architectural guidelines or just guidelines
3 about the covenants the only real restrictions
4 of the use of property. So the professional
5 help were being paid to know about these things
6 and the professional help, co-Defendant, K.A.
7 Diehl who sent this stuff out, didn't do its
8 duty to apply to professional expertise to know
9 that in this counterclaim the waiver is
10 deletion and that more than that guidelines are
11 inapplicable. Thank you, Your Honor.

12 THE COURT: THANK YOU VERY MUCH.

13 MS. GOLDING: CALL MR. JEFF KING.

14 ****OFF THE RECORD****

15 (ON THE RECORD.)

16 JEFFREY KING, AFTER HAVING BEEN CALLED TO THE
17 STAND AND DULY SWORN, TESTIFIED AS FOLLOWS:

18 COURT REPORTER: WILL YOU STATE YOUR NAME
19 AND SPELL YOUR LAST?

20 MR. KING: JEFFREY KING, K-I-N-G.

21 DIRECT EXAMINATION

22 BY MS. GOLDING:

23 **Q: Mr. King, can you please tell the jury where**
24 **you live?**

25 A: 1303 Prince William Road in North Myrtle

1 Beach, South Carolina.

2 **Q: And how long have you lived in Horry County?**

3 A: Approximately fifteen years.

4 **Q: And what is your occupation?**

5 A: I'm an attorney.

6 **Q: And how long have you been an attorney?**

7 A: For fourteen years.

8 **Q: Are you licensed in any states as an attorney?**

9 A: South Carolina and North Carolina.

10 **Q: And what primary area do you practice in?**

11 A: Real estate development and general real
12 estate transactions.

13 **Q: And can you tell us what you've done with
14 respect to real estate development?**

15 A: Numerous projects. I usually represent the
16 developer from the beginning to the end
17 through the zoning and construction loan,
18 creation of the HOAs or property owners
19 associations. Some example projects would be
20 the Bay Watch Resort, the Carolinian, Prince
21 Resort, Anderson Ocean Club, Sea Mist. As far
22 as residential and subdivisions, I have
23 drafted restrictive covenants for or worked on
24 amendments for Sandpiper Bay in North
25 Carolina, Ocean Hill in North Myrtle Beach,

1 Arrowhead Grand in Myrtle Beach or outside
2 Myrtle Beach, several others. I can't
3 remember all of them, as well as during the
4 course of doing ---

5 MS. GOLDING: YOUR HONOR.

6 THE COURT: EXCUSE ME, SLIDE THAT

7 MIKE TOWARDS YOU JUST A

8 LITTLE BIT.

9 MR.KING: OH, I'M SORRY.

10 THE COURT: NO, YOU'RE FINE. OKAY.

11 A: In the course of general real estate closings,
12 of course, you have to review all of the
13 Declaration of Covenants for each of them. I
14 have no idea how many I may have done of
15 those, probably most of them in the county
16 over the last fourteen years.

17 **Q: And can you give a guesstimate as far as your**
18 **review, would it be over a hundred or ---**

19 A: A hundred would be a good guess. It's too
20 hard to remember.

21 **Q: And did you practice law with a firm?**

22 A: Yes... I've been with The Bellamy Law Firm in
23 Myrtle Beach since I became an attorney in '98
24 until just recently, I have opened my own
25 firm, King Cunningham.

1 MS. GOLDING: WE WOULD OFFER MR.KING AS
2 A REAL ESTATE ATTORNEY
3 WITH EXPERTISE IN
4 DEVELOPMENT OF REAL
5 ESTATE.

6 MR. JARMUTH: SUBJECT TO MY CHALLENGE
7 OF THAT. WILL I GET A
8 CHANCE TO ADDRESS IT OR
9 DOES THE COURT WANT ME TO
10 CHALLENGE IT NOW?

11 THE COURT: CHALLENGE IT IF YOU WANT
12 TO.

13 MR. JARMUTH: SIR?

14 THE COURT: GO AHEAD.

15 VOIR DIRE EXAMINATION

16 BY MR. JARMUTH:

17 Q: Mr. King, have you ever taught the subject in
18 any institution such as a technical college or
19 a university?

20 A: No.

21 Q: Have you authored any learned articles on this
22 which have been published in any Law Review?

23 A: I was a member of the Law Review and did, did
24 have an article but -- in law school, but that
25 was before. It wasn't on real estate.

1 Q: Have you ever published an article, a
2 literature regarding covenants and real estate
3 closings?

4 A: No, I have not.

5 Q: Have you ever, in exceptional cases beyond the
6 ordinary opening and closing, forming ordinary
7 covenants with exceptional aspects?

8 A: I'm not sure I understand the question.

9 Q: Can you cite any particular developments which
10 have exceptional requirements, conditions,
11 which require other than the boilerplate
12 covenants?

13 A: Each subdivision has different provisions
14 there. Each one is unique. There isn't
15 really such a thing as a boilerplate covenant.
16 The developer may want varied restrictions
17 that another developer doesn't want. Everyone
18 is drafted from scratch, although, of course,
19 they work from prior examples.

20 Q: How much variation is there between the
21 various covenants you provide in terms of what
22 I'd call significant differences in covenant
23 to covenant or are these all generally similar
24 or very different?

25 A: There are similarities in, in each set of

1 covenants, no doubt, but each one as the
2 property is different, it has unique
3 situations and the developer has unique
4 requirements. I really don't know how to
5 quantify how much variation there is, but
6 every one of them has issues that have to be
7 dealt with, with them one way or the other.

8 MR. JARMUTH: YOUR HONOR, I DON'T DOUBT

9 THAT MR. KING IS A

10 COMPETENT ATTORNEY, BUT I

11 SUGGEST THAT ALL HE'S

12 DONE IS GENERALLY THE

13 SAME STUFF OVER AND OVER

14 FOR TWENTY-NINE YEARS AND

15 HE'S DONE NOTHING

16 EXCEPTIONAL WHICH WOULD

17 CALL HIM AN EXPERT

18 EXCEPTIONAL SITUATIONS

19 AND LOOKING AT PROBLEMS

20 WHICH AROSE AFTERWARDS.

21 **Q: Let me ask you another question. Have you**
22 **ever been involved in a case like this where**
23 **covenants have been challenged?**

24 **A: Yes, I was just involved working with Skeets**
25 **Bellamy on a case down in Georgetown for the**

1 Shipyard Village. That was extensively about
2 the covenants for that subdivision and
3 challenging them, which we won, by the way.

4 **Q: Was there any aspects of that case which**
5 **talked about the elements of waiver and**
6 **deletion?**

7 A: The case involved having similar to that.
8 There were provisions and amendments that had
9 been made that the other side was challenging
10 were either valid or not. We took a different
11 position, so I don't know if we used the term,
12 "Waiver," but there were amendments in
13 question, was the whole crux of the case,
14 actually.

15 **Q: Were any of these cases you handled over the**
16 **twenty-nine years involving a question arising**
17 **over whether amendments, not whether they had**
18 **been properly made, but whether they'd**
19 **actually been deleted or waived out of**
20 **existence?**

21 A: It's fourteen years, not twenty-nine, but I
22 don't recall whether there was a specific
23 issue of a waiver, you know, but certainly
24 amendments were the issue at-hand.

25 MR. JARMUTH: YOUR HONOR, I WOULD

1 QUESTION WHETHER MR. KING
2 BRINGS PARTICULAR
3 EXPERTISE TO THE
4 QUESTIONS BEFORE THE
5 COURT. I SUGGEST HE MAY
6 BE AN EXPERT, A GREAT
7 WITNESS, AN EXPERT
8 LOOKING QUESTIONS OF
9 AMENDMENT, BUT WHEN IT
10 COMES TO QUESTIONS OF
11 HOA, I DON'T SEE THE
12 SPECIAL, EXCEPTIONAL
13 KNOWLEDGE HE'S BRINGING
14 TO US. THANK YOU, YOUR
15 HONOR.
16 THE COURT: I'M GOING TO FIND THAT
17 HE'S QUALIFIED. GO
18 AHEAD.

19 MS. GOLDING: THANK YOU, YOUR HONOR.

20 MS. GOLDING CONTINUES:

21 **Q: Mr. King, with respect to the restrictive**
22 **covenants in International Club, which is**
23 **Defendant's Exhibit Number 5, have you had an**
24 **opportunity to review those restrictive**
25 **covenants?**

1 A: I have.

2 Q: And have you also had an opportunity to review
3 the first amendment, which is Defendant's
4 Exhibit Number 4?

5 A: Yes.

6 Q: The Developer's Agreement, which is
7 Defendant's Exhibit Number 8?

8 A: Yes.

9 Q: The third amendment, is which is Defendant's
10 Exhibit Number 13?

11 A: Yes.

12 Q: The fourth amendment, which is Defendant's
13 Exhibit 17?

14 A: Yes.

15 Q: The deed to Mr. Jarmuth, which is Defendant's
16 Exhibit 25?

17 A: Yes.

18 Q: And the Fifth Amendment, which is Defendant's
19 Exhibit 32?

20 A: Yes.

21 Q: I believe, also, I might've been missed it,
22 but did you also review the second amendment?

23 A: I did.

24 MS. GOLDING: THANK YOU, YOUR HONOR.

25 Q: With respect to the covenants with the

1 declarations, when were they recorded in the
2 Register of Deeds office for County of Horry?

3 A: In February of 1999.

4 Q: And attached to those, what was attached to
5 those covenants with respect to any homeowners
6 association?

7 A: The bylaws for the association.

8 Q: And with respect to the bylaws being attached
9 to the declaration, is that a usual or
10 standard or customary way of presenting the
11 bylaws for a homeowners association?

12 A: Yes, it is.

13 Q: Based upon your experience as a real estate
14 attorney, do you have an opinion that the
15 bylaws that are attached to the declarations
16 are appropriate bylaws that govern the
17 International Club Homeowners Association?

18 A: I do, and I believe that they do govern the
19 Association.

20 Q: And with respect to the bylaws, what is your
21 opinion as to the bylaws and their effect as
22 to the members or the property owners in the
23 subdivision?

24 A: Well, the declaration references and includes
25 the bylaws which incorporates them and makes

1 them a part of the restrictive covenants on
2 the, on the property, such that they govern
3 how the Association should be run.

4 **Q: Does the declaration in this case with the**
5 **International Club set forth property that is**
6 **subject to the declarations?**

7 A: Yes, it does.

8 **Q: And let me ask you to look at a plat which we**
9 **have marked as Defendant's Exhibit "C", and**
10 **this is a blown up portion of it. Have you**
11 **reviewed this plat?**

12 A: I have.

13 MR. JARMUTH: COULD I SEE THE PLAT,
14 MA'AM?

15 **Q: With respect to the plat and the declaration,**
16 **can you identify the properties that are**
17 **subject to the declaration?**

18 A: Yes, and I believe they're the ones -- I just
19 want to make sure. The original declaration
20 submitted these parcels in green as well as
21 the pink, yes.

22 **Q: And you're looking at Defendant's Exhibit "C"?**

23 A: Yes.

24 **Q: Now, the parcels in green and the parcels in**
25 **pink, are those identified under the**

1 declaration as Exhibit "A"?

2 A: Yes, they're in Exhibit "A".

3 Q: And with respect to Exhibit "B" in the
4 declaration, what is the property that is
5 Exhibit "B"?

6 A: It refers to all of the property shown on
7 this, on this survey.

8 Q: Now, under Exhibit "B" in the declarations,
9 does the developer have a right to add
10 property to the -- that are subject to the
11 declarations?

12 A: Yes, that was the provision in the Master or
13 in the --

14 Q: And in your review of the amendments, did, in
15 fact, the developer -- did the developer add
16 property that was subject, that became subject
17 to the declarations?

18 A: Yes, a couple of the amendments included
19 additional property.

20 Q: Can you recall the property that was added to
21 be subject to the declarations?

22 A: I believe it's the property -- well, it is, at
23 least the one on the right coded in yellow, if
24 I could get a little ---

25 Q: Sure.

1 A: Right. These pieces were brought in, the
2 yellow pieces, the blue was not. I believe
3 that's all that has been -- I'd have to look
4 back at each of the amendments, but these
5 yellow pieces were brought in.

6 **Q: And the yellow pieces, can you identify the**
7 **development name that is subject?**

8 A: One is The Meadows, The Links, The Highlands,
9 The Glens, looks like Cambridge. Those were
10 the ones that were brought in with the
11 amendments.

12 **Q: So with respect to The Meadows development, is**
13 **it your opinion that The Meadows development**
14 **is subject to the International Club**
15 **declarations?**

16 A: Yes.

17 **Q: Now, with respect to the amendments that you**
18 **reviewed ---**

19 MR. JARMUTH: MAY I SEE THAT WHILE
20 YOU'RE NOT USING THAT,
21 MA'AM?

22 MS. GOLDING: IF YOU WANT TO, YOU CAN
23 LOOK AT IT.

24 **Q: With respect to the amendments that you**
25 **reviewed, did you see the initial amendment,**

1 it wasn't identified as first amendment, but
2 did you see the first amendment?

3 A: Yes, I reviewed that.

4 Q: And what is the property that became subject
5 to the declarations in the first amendment?

6 A: The first amendment, if I remember correctly,
7 really restated the initial property that was
8 in the declaration.

9 Q: When did The Villas become subject to the
10 amendment?

11 A: I believe that was the second amendment.

12 Q: Now, with respect to the developments known as
13 the Grand Vistas Fairways and Onclave, are
14 those developments subject to the covenants,
15 to your knowledge?

16 A: I'm sorry, and I may have misspoken. It may
17 be the third amendment. I'm looking at the
18 exhibit now. I'm trying to remember exactly
19 which one it was.

20 Q: Okay. But with respect to The Villas
21 condominium project, is it your opinion that
22 The Villas is subject to the declarations?

23 A: I'm sorry, which one was The Villas on there?
24 I've, I've referred -- the plats I reviewed
25 didn't necessarily have the names of the

1 subdivisions on there.

2 **Q: I understand, and I apologize.**

3 A: The blue, no, that was not subjected.

4 **Q: Now, this is The Villas, okay.**

5 A: No, I don't believe that was.

6 **Q: The Villas became subject subsequent to this**
7 **plat; is that correct?**

8 A: I can't read -- I'm sorry, but I didn't refer
9 to them as the names.

10 **Q: Okay.**

11 A: I believe on the survey that was referred to
12 as I(2), perhaps. I can't remember.

13 **Q: Mr. King, look at the blue area. That's the**
14 **fourth amendment.**

15 A: That's what I was just -- Yes, I'm sorry, the
16 fourth amendment brought that, that parcel
17 there.

18 **Q: Okay. Thank you. Now, with respect to an ARB**
19 **or a Architectural Review Board, are you**
20 **familiar with those types of groups?**

21 A: Yes, I am.

22 **Q: And in your practice, do restrictive covenants**
23 **or documents such as the declaration, do they**
24 **establish Architectural Review Boards?**

25 A: It is extremely common that that would be done

1 in a residential subdivision, yes.

2 **Q: Now, have you also looked to determine if**
3 **there are roads that are subject to the**
4 **properties in the declaration?**

5 A: I have. The, the entire tracts there are, so
6 any roads that were created in there would be
7 subject to the declarations as well.

8 **Q: What happens, in your opinion, if the roads**
9 **subsequent to the restrictive covenants being**
10 **filed are thereafter dedicated to a public**
11 **entity such as Horry County? What affect,**
12 **what legal affect does that have on the**
13 **declaration?**

14 A: That would not have any affect on the
15 declaration itself. It would grant the County
16 the right to, to do certain things as well,
17 but would not change the status as far as the
18 HOA is concerned.

19 **Q: I have no further questions. Thank you.**

20 THE COURT: YOU MIGHT EXAMINE.

21 CROSS EXAMINATION

22 BY MR. JARMUTH:

23 **Q: Mr. King, do you have expertise in a concept**
24 **planned unit development?**

25 A: Zoning PUDs? Yes.

1 Q: What can you tell us regarding the requirement
2 of a developer that goes to the Horry County
3 Planning Commission if they propose to -- how
4 to build or develop an area which would be
5 called a planned unit development?

6 A: The term, "Planned unit development," is used
7 in two different meanings, lenders, and, and
8 in general, any, any development that is
9 planned or such as this is referred to as a
10 PUD, planned unit development. In the zoning
11 context with the County, PUD is, is a special
12 type of zoning designation. As far as
13 requirements for what a developer would have
14 to do if their existing standard zoning
15 designation is -- meets their needs and is
16 sufficient and allows what they want to do,
17 then they don't have to do anything as far as
18 changing the zoning. To create a planned unit
19 development, you have to apply to the County
20 and go through the process to have the Council
21 approve it.

22 Q: Doesn't the size, the number of houses on any
23 particular street affect the number of roads
24 and the size of the roads and each of these
25 and the amount of amenities and open space

1 **required?**

2 A: A PUD is, is a specialty district, and the
3 Council -- it, it varies from the -- from PUD
4 to PUD, but certainly, that would be factors I
5 would believe the Council would take into
6 consideration as they approve the, the
7 development.

8 **Q: Don't the Horry County ordinances explicitly**
9 **say so many houses, so much open space, so**
10 **many road entrances, so much width of road,**
11 **doesn't actually say -- doesn't deem not the**
12 **discretion of the Council and Planning**
13 **Commission, but of the ordinance, what has to**
14 **be done given so many houses?**

15 A: There are regulations governing that, yes.

16 **Q: And isn't it a fact that if one adds more**
17 **houses or has a deeper street will have to go**
18 **back to the Planning Commission to extend the**
19 **PUD to confirm that you've met the open space,**
20 **amenity, number of entrances requirements?**

21 A: They would have to apply -- any time you
22 develop property, you would have to apply for
23 the permit, which would include a zoning
24 review, yes.

25 **Q: Have you found any documents to show that D.R.**

1 Horton made such an application before he
2 built The Meadows?

3 A: I have not reviewed any documents like that
4 and I have not been asked to look for any
5 documents like that.

6 Q: What is the effect on -- is a developer
7 supposed to -- under the Horry County
8 ordinances, is a developer allowed to enlarge
9 the PUD beyond the explicit limits stated in
10 the plat which defines how many houses you're
11 going to build, where they can be built, size
12 of streets? Isn't these plats, approval plats
13 restrictive on the development?

14 A: The plan of development does have to be
15 approved. Those can be amended by going to
16 the County and, and filing a new plat or --
17 I'm not sure I fully understand the question,
18 but yes, the County would review the plans
19 before the permit would be issued.

20 MR. JARMUTH: I'M GOING TO SHOW THE
21 WITNESS MY NUMBER 450,
22 MURRELLS INLET GOLF
23 PLANTATION, WHICH IS
24 APPROVED BY THE PLANNING
25 COMMISSION ON FEBRUARY

1 1ST, 1997, ON THE
2 APPLICATION OF THE
3 MURRELLS INLET
4 PLANTATION, I GUESS,
5 CORPORATION, MURRELLS
6 INLET GOLF, MURRELLS
7 INLET GOLF PLANTATION,
8 LLC.

9 Q: Could you please find The Meadows on it?

10 A: I haven't reviewed this survey, but it appears
11 to be in this area down here (indicating).

12 Q: Is that area within or without the area
13 approved by the Planning Commission?

14 A: I have no idea. I have not reviewed the PUD,
15 I wasn't asked to.

16 Q: Well, I see a line here which shows the bounds
17 of the PUD. Is that area outside or inside
18 those bounds?

19 A: It's inside the bounds.

20 Q: Where did you say ---

21 A: Is this the PUD plat, is that what you're ---

22 Q: This is the PUD plat approved by the Horry
23 County Planning Commission for the Murrells
24 Inlet Golf Plantation on February 1st, 1997.
25 I ask you, does that include the area which

1 eventually became The Meadows?

2 A: I'm sorry, never having seen this, I cannot
3 tell if this -- let me compare it to the other
4 plat to see if that is ---

5 Q: Well, I suggest that the area near the plat is
6 this area over here which is owned by Stella,
7 something else, is it over here?

8 A: If that is where the area is ---

9 Q: Let me show you the other one by comparison.

10 A: That's the problem, I have not looked.

11 Q: Would you like me to hold them or ---

12 A: If it is this area that's outside the lines,
13 then no, I would say it was not included in
14 this plat, but it's kind of hard to compare
15 that to that at this moment.

16 Q: Thank you. May 14th, 1999, now it's now
17 Plantation A.D. who is applying to the
18 Planning Commission for modification of the
19 terms which specify the use. Now, when you
20 look at this in phases, what is contained
21 under the -- please explain what's under --
22 what is the meaning of these numbers now?

23 A: That appears to be telling the acreage within
24 each area in the survey.

25 Q: And how about this thing which says, "Use?"

1 A: It's SF, which would normally mean single-
2 family.

3 Q: Is the developer allowed to build a multi-
4 family in that area?

5 A: I don't know if they can or not, but that,
6 that would indicate that it's intended to be
7 single-family.

8 Q: And it says, "Approved by -- May 14th, 1999 by
9 the Planning Commission, and that's the
10 signature there. How about the number of
11 units, is that a suggestion or a maximum
12 number imposed by the Planning Commission?

13 A: Actually, it doesn't seem to say. I don't see
14 that it indicates ---

15 Q: Do you see a number of units for each area?

16 A: I do.

17 Q: In your expert knowledge ---

18 A: That would normally be the planned number that
19 are approved.

20 Q: The maximum number?

21 A: Yes.

22 Q: If there is no area -- who owns this area
23 shown where The Meadows became?

24 A: I do not know. I have not searched the title.

25 Q: Could you please read it? It says.

1 A: The plat indicates at the time that Plantation
2 A.D., LLC was the owner.

3 Q: But when Plantation A.D. submitted this, he
4 didn't include it within the bounds of the
5 PUD, did he, bounds?

6 A: If that is the PUD document, then it does not
7 appear that it -- that that was included at
8 that time.

9 Q: Would you say that he had an opportunity to do
10 that if he had the intention to include it?

11 A: In the County approved it, certainly.

12 Q: That's not if the County approved it.
13 Plantation A.D. submitted this to the County,
14 saying, "This is what I want to do." He also
15 owned this other land, but he never bothered
16 to ask the County to include it within the
17 PUD. Did he have the opportunity to draw the
18 line to include The Meadows?

19 A: I'd have to assume he could have, yes.

20 Q: But he didn't, did he?

21 A: Not with that map, it does not appear so.

22 Q: When the County approves a PUD which specifies
23 the maximum number of units you can have, the
24 maximum number of acres you can have in each
25 little area, the specific use that can be put

1 to it, is that suggestive or regulatory?

2 A: In general, it would be the, the -- what is
3 approved for that property.

4 Q: Is that regulatory or suggestive?

5 A: It's not suggestive. It would be the approved
6 use of the property.

7 Q: Let me go to another -- back to the other
8 plat. This is the one you saw a few minutes
9 ago. I ask you to take a few moments to look
10 at the notes on that approval plat.

11 A: You want me to read all ---

12 Q: No, don't read them, just take a glance at
13 them. Put the nature of them in your mind,
14 please.

15 A: Okay.

16 Q: Are these restrictions on use or suggestions?

17 A: Those would be what, what were set as the
18 requirements for, for that subdivision.

19 Q: I see that one of them is a setback. Is that
20 a suggestion or a maximum that says, "You must
21 abide by that?"

22 A: The setbacks are usually requirements.

23 Q: Isn't it a fact that everything there in there
24 is the requirements?

25 A: I, I haven't read every word, but typically,

1 those would be what is approved to be done
2 with the property, yes.

3 **Q: And would these come from the Horry County**
4 **ordinances?**

5 A: Not -- if this -- this is a planned unit
6 development zoning, so those would probably
7 not match up exactly with any regular zoning
8 district, because that's the purpose of the
9 PUD zoning district, is to write a specialty
10 district for your property.

11 **Q: Isn't it a fact that referring to the Horry**
12 **County ordinances regarding these**
13 **developments, these typical ordinances are not**
14 **a special purpose district, but you'll find in**
15 **the ordinary course it now defines PUDS, under**
16 **the PUD based upon the number of houses in the**
17 **PUD?**

18 A: I'm sorry, I'm not sure I follow the question.
19 The, the zoning ordinance, which in this case,
20 is a specialty district which is referred to
21 as PUD is one that a developer comes in and
22 asks the County to approve what they have on
23 their plans, and typically, it is done because
24 it does -- because what they want to do does
25 not match up with any of the traditional

1 zoning districts.

2 Q: Excuse me a moment. About how many of these
3 developments within Horry County have you
4 submitted plans and applications for to the
5 Planning Commission?

6 A: For rezonings?

7 Q: Not for rezoning, the applications to build a
8 PUD, how many of them have you submitted to
9 the County?

10 A: I have submitted requests for zoning PUDs for
11 approximately ten or twelve projects over the
12 years, because I do zoning work for the
13 developers.

14 Q: In that capacity, have you ever had occasion
15 to read Horry County Ordinance Code 18-0004,
16 Section 2, Site Plan and Design Standards?

17 A: I have most likely looked at that at some
18 point during my career, yes.

19 Q: Have you looked at it recently, sir, in
20 preparation for this?

21 A: No, I have not.

22 MR. JARMUTH: I WOULD ASK THE COURT
23 INDEPENDENTLY TO LOOK AT
24 THAT AND SEE WHETHER I AM
25 CORRECT IN ASSERTING THAT

1 THE HORRY COUNTY PLANNING
2 COMMISSION HAS VERY
3 STRICT RULES ON LIMITS OF
4 PUDS AND WHAT YOU CAN DO.

5 **Q: And let me ask you the other question, which**
6 **is, if a developer goes to the Planning**
7 **Commission with one of those and says, "That's**
8 **what I want to do," and Horry County approves**
9 **it subject to the restrictions and all which**
10 **they both agreed upon and that one of which is**
11 **apparently being the PUD line, do they have**
12 **authority to depart from that such as to add**
13 **an additional area to the PUD without going**
14 **back to the County for approval?**

15 **A: I think we're confusing a PUD zoning district**
16 **and a planned unit development, which is just**
17 **the restrictive covenants. Yes, to, to change**
18 **the zoning of a piece that's outside of that**
19 **original submission is a PUD. Certainly, they**
20 **would have to get the approval of the County.**
21 **To add them to a declaration, which is also**
22 **referred to as a planned unit development, no,**
23 **they do not need any approval as long as what**
24 **they are building is related or is allowed**
25 **under the current zoning on that piece of**

1 property.

2 Q: Have you had occasion to read the covenants
3 quite carefully?

4 A: I have reviewed the covenants, yes.

5 Q: Would you agree or disagree that it says,
6 independently of Exhibit "A" or "B", that it
7 applies to the Murrells Inlet Golf Plantation
8 and by implication to the International Club
9 PUD? It says PUDs there? Does it say PUDs?

10 A: I, I don't remember it word for word, but it

11 ---

12 Q: Doesn't the covenants say it applies first to
13 the Murrells Inlet Golf Plantation planned
14 unit development and then there's an amendment
15 that changes it to International Club PUD?

16 A: It, it may refer to that, yes.

17 Q: Without referring to Exhibit "A" and "B", is
18 it, by its own words, limiting if it says it
19 applies to the PUD, then it applies to the
20 PUD?

21 A: No, it would not limit it.

22 Q: Why wouldn't it limit the covenants to a PUD
23 if it says this applies to a PUD?

24 A: The document specifically states which
25 property is subject to it and then by

1 amendment adds more, and those are legally
2 defined in the exhibits.

3 **Q: Have you found any document where D.R. Horton**
4 **asked the Planning Commission to expand the**
5 **community beyond the areas of those two areas?**

6 A: I haven't reviewed any of their submissions to
7 the County.

8 **Q: Now, how many bylaws have you been asked to**
9 **prepare for people who are actually**
10 **incorporating non-profit corporations?**

11 A: Twenty-five or thirty. I don't know.

12 **Q: Non-profit corporations?**

13 A: Yes.

14 **Q: I'm not referring to covenants for PUDs which**
15 **envision that. I'm talking about people would**
16 **say, "I'm forming a non-profit corporation, I**
17 **need to file the documents to the Secretary of**
18 **State."**

19 A: Yes, I understand what you're saying.

20 **Q: And you file documents to the Secretary of**
21 **State?**

22 A: Yes.

23 **Q: At what point did they write their bylaws?**

24 A: Well, typically, it would be done when we're
25 doing the declaration. It's, it's an exhibit

1 to the declaration.

2 **Q: Is the declaration given to the Secretary of**
3 **State?**

4 A: No. The bylaws are not sent to the Secretary
5 of State, you're sending the articles to form
6 the corporation.

7 **Q: Okay. Are you familiar with the provisions of**
8 **law regarding bylaws for non-profit**
9 **corporations?**

10 A: I am.

11 **Q: Will you please state from that your**
12 **interpretation of the requirement that the**
13 **bylaws be stated by the declarant or by the**
14 **Board at its first meeting or approved at the**
15 **first meeting by the members? What's your**
16 **take on that?**

17 A: The non-corporate -- the Non-profit Corporate
18 Act requires that either the incorporator of
19 the corporation or the, or the Board at the
20 first meeting can -- or any meeting -- can
21 adopt the bylaws.

22 **Q: Can or must?**

23 A: They are supposed to adopt bylaws, yes.

24 **Q: Is there anything there which provides that**
25 **someone else who's neither the declarant nor a**

1 member of the Board can declare bylaws which
2 control that corporation maybe a year before
3 the corporation is even incorporated?

4 A: It doesn't talk about the timing of when you
5 write your bylaws or do anything like that, it
6 just has a statement that they should be
7 adopted, and that's in the act, and ---

8 Q: Is the developer of a property who is not a
9 declarant or an officer of the Board one of
10 the people mentioned in the statute as being
11 legally eligible or obligated to do those
12 bylaws?

13 A: The Non-profit Corporation Act doesn't refer
14 to -- it's not -- that act is a general for
15 non-profit corporations. It is not, does not
16 speak to HOAs in particular, so it doesn't
17 refer to a declarant at all.

18 Q: It doesn't refer to a declarant of the
19 corporation?

20 A: An incorporator of the incorporation, yes.

21 Q: And HOAs are non-profit corporations?

22 A: They do not have to be incorporated at all.

23 Q: But if they choose to be incorporated under
24 the South Carolina Non-profit Corporation as
25 exemplified in their Articles of

1 Incorporation, are they subject to the act?

2 A: Yes, they would be.

3 Q: And if the act says that the bylaws must be
4 done by the declarant or the Board at the
5 first meeting or by the members, where do you
6 see that someone who is none of those has the
7 authority to control the operation of this
8 non-profit corporation, whoever it is, and not
9 be somehow, I think, beyond the law?

10 A: I'm not sure I fully understand the question,
11 but the bylaws do have to be properly adopted
12 under the act.

13 Q: Now, does the bylaws have to be authenticated
14 and signed?

15 A: No.

16 Q: Do they have to be recorded any place?

17 A: No.

18 Q: Are you saying that this document doesn't have
19 to be indexed?

20 A: Bylaws of the corporation do not have to be
21 recorded with the Secretary of State or
22 anywhere else. It is typical to record them
23 with a declaration that governs a homeowner
24 association in the Register of Deeds office.

25 Q: Now, have you written many of these bylaws?

1 A: Yes, I've written ---

2 Q: Have you ever done a name change for a non-
3 profit corporation?

4 A: I've changed the names of the corporations. I
5 don't know if I've ever done it for a non
6 profit one.

7 Q: Well, when you changed it for a corporation,
8 what are the procedural steps you have to
9 follow?

10 A: You file amended Articles of Incorporation
11 with the Secretary of State.

12 Q: Do you have to do anything to notify people
13 within the County they do business in that
14 there's been a name change?

15 A: I don't recall any notifications that are
16 required to anybody in the county.

17 Q: Isn't there a requirement to file such a
18 document with the recorder of deeds in the
19 county, every county they do business in
20 saying the prior and later names they used?

21 A: You would typically do that, yes. I can't
22 remember if it's actually a requirement or
23 not.

24 Q: Have you found such a document regarding the
25 change from the Murrells Inlet Golf Plantation

1 to the International Club?

2 A: The first amendment changed the name of the,
3 of the subdivision, yes.

4 Q: Was that document indexed with the recorder of
5 deeds to provide notice that there was a name
6 change so they could look at the old name and
7 find out, "Hey, I've got to go the new name?"

8 A: It is filed in the Register of Deeds office,
9 yes.

10 Q: What was it, sir? The amendment one was?

11 A: Amendment, yes, the amendment is filed in the
12 declar -- in the, I'm sorry, the Register of
13 Deeds office.

14 Q: And did this amendment one mention that the
15 corporation -- was a separate notice filed
16 with the recorder of deeds which said that the
17 prior name was changed to a new name,
18 something, cross-indexing?

19 A: The amendment that changed the name wherever
20 it appears in the declaration is filed in the
21 Register of Deeds office, yes.

22 Q: Are you familiar with what the name is that
23 the amendment one was indexed under?

24 A: I -- I'd have to ---

25 Q: Would you please refer to the -- Did the

1 Defendant give you the exhibits? Do you have
2 it before you, the amendment one?

3 A: I believe this is the first amendment, yes.

4 Q: Could you make a guess at what names that
5 would've been indexed under?

6 A: Plantation A.D., LLC.

7 Q: And what was the other name it would be
8 indexed under?

9 A: That probably should be it. That's the only
10 party that executed this document.

11 Q: Would there be anything to tell someone who's
12 inquiring about the rights and obligations of
13 the Murrells Inlet Golf Plantation Association
14 to tell them that he should look to this other
15 name, some other name in that index?

16 A: This amendment would give public notice of
17 that.

18 Q: Is the Murrells Inlet Golf Plantation
19 Association one of the indexes that you think
20 be put?

21 A: I, I don't know. I don't believe it would be
22 in this case, because they're not a signatory
23 to it.

24 MR. JARMUTH: NOT TO WASTE THE COURT'S
25 TIME, I SUGGEST TO THE

1 COURT THAT IT CAN
2 INDEPENDENTLY VERIFY THAT
3 THIS WAS ONLY INDEXED,
4 AMENDMENT ONE, TO THE
5 MURRELLS INLET GOLF
6 PLANTATION PUD AND THE
7 INTERNATIONAL CLUB.
8 THERE WAS NO REFERENCE TO
9 CHANGES, INDEXING OF
10 CHANGE OF NAME.

11 **Q: Let me go to another question. Do you know of**
12 **any case law which relates to something called**
13 **a waiver in the covenants, something other**
14 **than a deletion?**

15 A: The, the language -- I'm not sure I fully
16 understand the question. No, I've not
17 researched any case law that talks about ---

18 **Q: One of the matters in question before The**
19 **Court is whether a waiver in that amendment**
20 **one is equated to deletion and I'm asking you,**
21 **do you have anything to offer us regarding**
22 **that question?**

23 A: I'm familiar with the language you're talking
24 about, and I'm not of the opinion that waiver
25 deleted it for the entire subdivision.

1 Q: And that's based upon what?

2 A: The -- an interpretation of the document under
3 contract interpretation rules.

4 Q: Can you cite any case law which says that the
5 waiver is not a deletion?

6 A: I have not researched for that specific
7 language, but there is numerous and
8 longstanding case law on how you interpret a
9 contract document, and you look to the intent
10 and the language used.

11 Q: Now, looking to these numerous developments
12 you were involved in, was there any
13 restrictions the covenants provide on what the
14 builder or developer could do while he was
15 rolling out houses?

16 A: I -- I'm sorry, I don't follow exactly what
17 you're asking.

18 Q: You have a new development and it's got
19 covenants.

20 A: Right.

21 Q: Was the builder or developer, yes or no, able
22 to do whatever he wanted in the development?

23 A: I would depend on what the document said.

24 Q: If the document said -- have you read the
25 covenant, the basic covenant here?

1 A: Yes.

2 Q: Isn't it a fact that the basic covenant says
3 the builder can do whatever he wants, he can
4 build whatever he wants and have any design he
5 wants while he's rolling out houses? Isn't
6 that what it says?

7 A: It sets up the Architectural Review Board to
8 review plans. I don't know that it -- I, I,
9 in fact, I don't recall that it specifically
10 says he can do whatever he wants or, or puts --
11 -- it has certain restrictions on what can be
12 done which would apply.

13 Q: Doesn't the last paragraph of 7.3 say that 7.2
14 does not apply to developers or builders?
15 Well, we can look at it.

16 A: I will.

17 Q: I believe that's a quote or very close to a
18 quote.

19 A: 7.5?

20 Q: No, right above 7.2 is another paragraph ---

21 A: Oh.

22 Q: --- which says 7.2 does not apply to builders
23 or developers; isn't that correct?

24 A: 7.2 states that the -- or I'm sorry, this --
25 there is a statement that Section 7.2 shall

1 not apply to the developer or any designated
2 builder unless specified to the contrary by
3 the developer.

4 **Q: Why then would he have to waive his own rights**
5 **to something -- why would he have to waive an**
6 **obligation which does not exist to him?**

7 A: Because he was transferring that property to
8 another person who would be subject to that if
9 he did not waive it.

10 **Q: Who was he transferring the property to at**
11 **that time?**

12 A: I don't recall. It was being transferred to
13 another owner, so that owner would want it to
14 be waived so they wouldn't be subject to it.

15 **Q: Doesn't it say or builder and doesn't**
16 **amendment one and subsequent amendments grant**
17 **all these subsequent builders to develop a**
18 **status and doesn't it say that people develop**
19 **a status only subject to this as well?**

20 A: There is some language in some of these that
21 grants other entities developer status as to
22 their parcel, right.

23 **Q: Given that, I'm still trying to figure out why**
24 **the, the declarant of amendment one would use**
25 **the word, "Waive," if it doesn't apply to the**

1 developer unless he meant it to apply to
2 everybody in the covenants.

3 A: Because the lawyer for the entity buying the
4 property wanted to make sure it was properly
5 documented so they wouldn't have to explain
6 that later.

7 Q: Do you have any factual basis for that?

8 A: Practice and fourteen years.

9 Q: Do you have any factual basis that this
10 particular developer and his particular
11 counsel had that intention?

12 A: You're asking me to make a guess at what was
13 there. I'm telling you why I would do it.

14 Q: I'm not asking you to make a guess. I'm
15 asking you of your actual knowledge ---

16 A: I do not. I was not there.

17 Q: Have you talked to the developer about that?

18 A: No.

19 Q: Have you talked to his counsel about that?

20 A: No.

21 Q: Do you know of any case law which you can find
22 again, I hope I haven't asked this before,
23 which said that a waiver is something other
24 than deletion?

25 A: I, I have not researched case law for a

1 specific discussion of the word, "Waiver," no.

2 Q: Now, are you familiar with any instances where
3 any public entity has taken possession of a
4 road because it does maintenance on the road
5 and puts street -- regulatory signs on it and
6 does other work on the road?

7 A: The counties and cities will often take
8 dedication of the roads, yes.

9 Q: That's not my question. My question is, are
10 you familiar with instances where, because a
11 county or a public entity has actually
12 performed work on a road and done maintenance
13 on the road and put speed limits on the road
14 and the public use it where they've asserted
15 title to the road?

16 A: I, I would assume that has happened, but I am
17 not familiar with that. I can't cite an
18 instance of it, if that's what you're --

19 Q: Are you familiar with that area of case law?

20 A: With road dedication?

21 Q: No, the case law applicable to a public entity
22 gaining title to a road because they're
23 actually repairing it, maintaining it,
24 regulating, controlling, and the public has
25 had longstanding free use of it?

1 A: That would all, I believe, fall under
2 dedication, which can happen in various ways.

3 Q: And isn't that one ---

4 A: Yes, I mean, I'm familiar with, with how a
5 county or a city would get title to a road.

6 Q: Isn't that one of them?

7 A: Isn't what one of them?

8 Q: If the county or city, number one, public has
9 free and unstricted access to it, number two,
10 the County starts the maintenance of it and
11 controls it and repairs it ---

12 A: I'm not, I'm not aware ---

13 Q: --- and this is with the knowledge of the
14 owner?

15 A: Well, I'm not aware of any case law that would
16 say just because the County or any other
17 person starts to do something on somebody
18 else's property that that would give them
19 title, other than perhaps adverse possession
20 over a number of years.

21 Q: Now, if the County doesn't own those roads,
22 who owns it?

23 A: I'd have to do a title search, but it would be
24 whoever the owner of the property is.

25 THE COURT: LET'S STOP JUST A MINUTE.

1 IT'S RIGHT AT ONE
2 O'CLOCK. I DON'T WANT TO
3 INTERRUPT YOU, BUT WE'LL
4 PUT YOU ON PAUSE AND COME
5 BACK AT TWO. LET'S GO TO
6 LUNCH, AND YOU CAN PICK
7 IT UP RIGHT WHERE YOU
8 LEFT IT OFF, OKAY, AND
9 WE'LL CALL YOU BACK
10 AGAIN.
11 MR. JARMUTH: THANK YOU, YOUR HONOR.
12 THE COURT: ALL RIGHT. THANK YOU.
13 MR. JARMUTH: YES, YOUR HONOR.
14 *****OFF THE RECORD*****
15 (ON THE RECORD).
16 THE COURT: I'LL REMIND YOU THAT
17 YOU'RE STILL UNDER OATH.
18 MR. JARMUTH: YOUR HONOR, I'M DONE WITH
19 THIS WITNESS. THANK YOU.
20 THE COURT: YOU'RE SURE?
21 MR. JARMUTH: YES, YOUR HONOR.
22 THE COURT: OKAY.
23 MS. GOLDING: MAY THE WITNESS BE
24 EXCUSED, YOUR HONOR?
25 THE COURT: DO YOU HAVE ANY OBJECTION

1 TO HIM LEAVING?
2 MR. JARMUTH: NO, YOUR HONOR, I'M JUST
3 SORRY I DIDN'T REALIZE
4 THAT BEFORE WE ALL BROKE
5 FOR LUNCH.
6 THE COURT: OKAY. IT'S ALL RIGHT.
7 YOU'RE EXCUSED.
8 MR.KING: THANK YOU.
9 MS. GOLDING: YOUR HONOR, WE HAVE THE
10 EXHIBITS THAT WE
11 REFERENCED DURING
12 MR.KING'S DEPOSITION WERE
13 THE PLATS, WHICH WERE
14 DEFENDANT'S EXHIBITS "A"
15 THROUGH "J" AS WELL AS
16 THE VARIOUS EXHIBITS I'VE
17 REFERENCED, WHICH WERE
18 DEFENDANT'S EXHIBITS 3---
19 THE COURT: HAND THOSE UP TO THE
20 COURT REPORTER, AND WHILE
21 WE'RE TALKING ABOUT THAT,
22 PLEASE DO NOT TAKE
23 EXHIBITS HOME WITH YOU,
24 BECAUSE SHE'D HAVE NO WAY
25 TO GET THEM IF YOU DO.

1 BEFORE WE LEAVE TODAY, BE
2 SURE THAT SHE'S GOT IT,
3 BECAUSE THE ONLY PLACE I
4 CAN GET THEM IS FROM HER.
5 MS. JARMUTH: OKAY.
6 MR. JARMUTH: YES, YOUR HONOR.
7 THE COURT: OKAY. ALL RIGHT.
8 MS. GOLDING: BASICALLY, IT'S MY
9 UNDERSTANDING IF WE REFER
10 OR DISCUSS EXHIBITS ON
11 THE WITNESS STAND, THEN
12 THOSE COME INTO EVIDENCE,
13 ESSENTIALLY.
14 THE COURT: WELL, I THINK EVERY --
15 WHAT I INTENDED TO DO TO
16 TRY TO MAKE THE THING GO
17 AS SMOOTH AND QUICKLY AS
18 IT COULD IS BECAUSE AFTER
19 I READ EVERYTHING, I KNEW
20 WE'D BE HERE A WHILE,
21 WAS, PRETTY MUCH,
22 CONDITIONALLY ADMIT
23 EVERYTHING, AND I THINK
24 I'VE DONE THAT. NOW,
25 WHEN I LOOK BACK AT

1 SOMETHING, LIKE ONE OF
2 THESE PLATS, I MAY DECIDE
3 FOR ONE REASON OR
4 ANOTHER, BASED ON
5 SOMEBODY'S OBJECTIONS OR
6 JUST FOR MY OWN REASON,
7 THAT IT'S NOT ADMISSIBLE
8 AND EXCLUDE IT, BUT YES,
9 ---
10 MS. GOLDING: GOT YOU.
11 THE COURT: --- YOU NEED TO GET THEM
12 TO HER AND THEN I'LL TRY
13 TO GO THROUGH THEM AND
14 DECIDE.
15 MS. GOLDING: OKAY, GOOD.
16 THE COURT: IT'LL TAKE ME A LITTLE
17 LONGER, BUT IT'LL TAKE
18 Y'ALL A LOT LESS TIME,
19 AND THERE'S NO USE TO PAY
20 THREE PEOPLE WHEN YOU CAN
21 PAY ONE.
22 MS. GOLDING: RIGHT. OKAY. THANK YOU,
23 YOUR HONOR. WE HAVE
24 ALREADY PROVIDED THE
25 COURT REPORTER WITH OUR

1 PLAINTIFF'S, EXCUSE ME,
2 DEFENDANT'S EXHIBITS AND
3 OUR EXHIBIT LIST.
4 THE COURT: OKAY, THAT'S FINE.
5 MS. GOLDING: THANK YOU, YOUR HONOR.
6 THE OTHER THING, YOUR
7 HONOR, WE ARE GOING TO
8 INTRODUCE ---
9 THE COURT: I KEEP THINKING OF THINGS.
10 OUT OF ORDER, BUT MR.
11 JARMUTH, WHEN YOU DO YOUR
12 PROPOSED ORDER, AND,
13 HENRI, WHEN YOU DO YOURS,
14 IF YOU'D DO THE SAME
15 FORMAT. I KNOW YOU HAVE
16 AN ORDER IN YOUR
17 ARGUMENTS THAT YOU WERE
18 DOING, IF YOU CAN
19 REMEMBER AND KIND OF HOLD
20 THE SAME ORDER, BECAUSE
21 I'LL BE GOING BACK
22 THROUGH THE TESTIMONY,
23 AND IT'LL BE A LOT EASIER
24 FOR ME TO FIND STUFF
25 RATHER THAN JUMPING ALL

1 AROUND.

2 MS. GOLDING: WE WILL.

3 MR. JARMUTH: YES, YOUR HONOR.

4 THE COURT: IF THAT'S NOT A PROBLEM.

5 MS. GOLDING: NO, IT'S NOT, YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 MS. GOLDING: AND ALSO, WE'RE GOING TO

8 SUBMIT THE DEPOSITION OF

9 RONALD SCOTT PYLE FOR THE

10 COURT'S REVIEW.

11 THE COURT: OKAY.

12 DEFENDANTS' EXHIBIT NUMBER 108

13 MARKED FOR IDENTIFICATION.

14 MS. GOLDING: AND THE ORIGINAL

15 DEPOSITION WAS TAKEN BY

16 MR. JARMUTH, SO HE HAS

17 THE ORIGINAL IN HIS

18 POSSESSION.

19 THE COURT: OKAY.

20 MR. JARMUTH: JUST FOR THE COURT'S

21 UNDERSTANDING, IT'S MY

22 UNDERSTANDING WE PUT ALL

23 THE DEPOSITIONS IN FOR

24 THE BENEFIT OF THE COURT

25 TO DETERMINE IF THERE'S

1 ANYTHING OF VALUE FOR THE
2 COURT AND ALL THE
3 OBJECTIONS OF MS. GOLDING
4 ARE THERE, TOO, SO THE
5 COURT WILL BE ABLE TO
6 CONSIDER OBJECTIONS AND
7 ANYTHING OF VALUE THE
8 VARIOUS WITNESSES CAN
9 OFFER THROUGH THE
10 DEPOSITIONS.
11 THE COURT: WELL, SHE'LL INTRODUCE
12 WHAT SHE WANTS TO. IF
13 YOU WANT TO INTRODUCE ALL
14 OF YOURS OR SOME OF HERS
15 ---
16 MR. JARMUTH: YES, YOUR HONOR. I WANT
17 TO INTRODUCE ALL OF MY
18 DEPOSITIONS SO THEY BE --
19 HAVING THE WITNESSES AT
20 EXPENSIVE TIME. IT WAS
21 LIKE, I THINK, THREE OR
22 FOUR DAYS OR SOMETHING,
23 AT LEAST, AND I THINK IT
24 STATES -- IT SAYS WHAT IT
25 SAYS IN THE DEPOSITION

1 TESTIMONY, AND MS.
2 GOLDING HAS MADE HER
3 POINTS ON THAT, SO IT'S
4 ALL THERE, YOUR HONOR.
5 THE COURT: THAT'S FINE.
6 MS. GOLDING: THE DEPOSITIONS THAT HE
7 TOOK, HIS WITNESSES ARE
8 ALL TESTIFYING, ALL THE
9 WITNESSES ARE TESTIFYING.
10 THE ONLY DEPOSITION, THE
11 ONLY INDIVIDUAL THAT'S
12 NOT GOING TO TESTIFY IS
13 MR. PYLE, AND THAT'S WHY
14 I WANT TO INTRODUCE HIS
15 DEPOSITION.
16 THE COURT: WELL, I'M GOING TO TAKE
17 HIS, ALSO.
18 MS. GOLDING: OKAY. THANK YOU, YOUR
19 HONOR.
20 THE COURT: I REMEMBER WHAT THEIR
21 TESTIMONY IS, BUT I'LL
22 LOOK AT THE DEPOS -- IT
23 MAY BE HELPFUL TO LOOK
24 BACK AT THE TRANSCRIPT.
25 MS. GOLDING: AND I'LL CALL MR. BILL

1 FREIBOTH, PLEASE.

2 BILL FREIBOTH, AFTER HAVING BEEN CALLED TO THE

3 STAND AND DULY SWORN, TESTIFIED AS FOLLOWS:

4 COURT REPORTER: WILL YOU STATE YOUR NAME

5 AND SPELL YOUR LAST?

6 MR.FREIBOTH: BILL FREIBOTH, F-R-E-I-B-

7 O-T-H.

8 DIRECT EXAMINATION

9 BY MS. GOLDING:

10 **Q: Mr. Freiboth, would you please tell us where**
11 **you live, and how long have you lived at that**
12 **location?**

13 A: Yes. I live at 208 Wicklow Drive in Pebble
14 Creek, and I have lived there since July 2006.

15 **Q: And can you give us the benefit of your**
16 **educational background?**

17 A: Yes. I have a bachelor's in, in mathematics
18 and computer science.

19 **Q: And have you ever served with the Defendant**
20 **International Club Homeowners Association?**

21 A: Yes. I'm completing my third year as a Board
22 member and my second year as president.

23 **Q: With respect to the International Club**
24 **Homeowners Association, we've seen various**
25 **names around that have been used. How many**

1 entities are there that govern the
2 International Club subdivision?

3 A: Well, first of all, there's the Master
4 Association, International Club Homeowners
5 Association, and then there are sub-
6 associations. There's The Villas, The
7 Cambridge and The Glens, and it's not there,
8 yet, but eventually there'll be another one
9 called Valley Castle.

10 Q: And with respect to the Defendant corporation,
11 is that a South Carolina non-profit
12 corporation?

13 A: It is.

14 Q: And we've introduced as exhibits, I believe
15 it's Exhibits 104 and 105, Defendant's
16 exhibits, are the Articles of Incorporation.
17 I'm going to give you my exhibit book, so you
18 can take a look, and what is Exhibit 105?

19 A: Articles of Incorporation, South Carolina Non-
20 profit Corporation.

21 Q: And for what entity?

22 A: International Club Homeowners Association.

23 Q: How many homeowners association, master
24 homeowners associations, are there for the
25 International Club subdivision?

1 A: One.

2 Q: To your knowledge, has this one entity been
3 called some various names throughout the years?

4 A: It's officially, I think, International
5 Homeowners Association. Sometimes it's called
6 International Club, sometimes it's called
7 International Club HOA by the, by the residents
8 and maybe even by some of the vendors.

9 Q: Is it sometimes referred to as a Master HOA?

10 A: Yes.

11 Q: And to your knowledge, has that ever caused
12 confusion as to what entity is actually the
13 Homeowners Association?

14 A: No.

15 Q: What is the governing document, the primary
16 governing document that exists for the
17 International Club Homeowners Association?

18 A: The primary is the covenants.

19 Q: And is that referred to as the Declaration?

20 A: Declaration covenants.

21 Q: And are there any amendments to that Declaration?

22 A: Yes, there are five amendments.

23 Q: Does the Declarations set forth anything about
24 the Architectural Review Board?

25 A: It certainly does.

1 Q: And what does it set forth?

2 A: In Section 7.2, it gives the Architectural Review
3 Board essentially its authority and charter, and
4 it does so separate from the Board of Directors.

5 Q: And have there been guidelines that have been
6 utilized throughout the course of the history of
7 this development?

8 A: Yes, Architectural Review Guidelines.

9 Q: And I want you to take a look, I've got four
10 exhibits, Defendant's exhibits. The first one is
11 Exhibit Number 18. Identify Exhibit 18.

12 A: Regular meeting of the Board of Directors,
13 International Club ---

14 Q: And what date?

15 A: January 18th, 2005.

16 Q: And at that point, were guidelines adopted?

17 A: Yes.

18 Q: And then I want you to take a look at Exhibit 28.

19 A: All right.

20 Q: And what is Exhibit 28?

21 A: It's the International Club Homeowners
22 Association Architectural Guidelines.

23 Q: Do those have a date?

24 A: They, they do, January 2005, and amended June
25 2005, November 2005, January 2007, April 2008.

1 Q: And then take a look at Exhibit Number 80.

2 A: Yes. It's International Club Homeowners
3 Association Architectural Guidelines.

4 Q: And what's the version of that?

5 A: It has all the prior dates, might be redundant
6 here, April 2008, all the way through July of
7 2010.

8 Q: Okay, and then take a look at Exhibit 94.

9 A: Yes, International club Homeowners Association
10 Architectural Guidelines. The last two are July
11 2010 and November 2011.

12 Q: Now, with respect to the ARB, what entity
13 appoints the members to the ARB?

14 A: The Board of Directors.

15 Q: And what is the responsibility of the ARB?

16 A: The ARB has authority to look at -- to, to write
17 and, and enforce architectural guidelines,
18 homeowners submit external modification requests
19 to the ARB. So they can write and enforce, they
20 can do their own procedures and, and other
21 matters related to their scope.

22 Q: Are any communities in the International Club,
23 that are members of the International Club
24 Homeowners Association exempt from the ARB?

25 A: The Villas is exempt.

1 **Q: And what is The Villas?**

2 A: The Villas is a condo association within our
3 community, and it's subject to the Horizontal
4 Property Regime.

5 **Q: And The Villas, when, to your knowledge, did the**
6 **developer waive the obligations of The Villas to**
7 **conform to the ARB?**

8 A: May I look at the modifications?

9 **Q: Please.**

10 A: Okay. I'm, I'm looking at, at Covenant
11 Modification I, and I believe it's 8th day of May
12 2000, and at paragraph twelve, "The developer
13 hereby waives its right, the developer here --
14 hereby waives its right" -- no, it's paragraph
15 eleven, "The declarant hereby waives the
16 architectural control set forth in the two
17 numbered Section 7.2 of Article 7 and Section
18 7.4, 7 -- Section 7.25 and 7.31 of the
19 Declaration."

20 **Q: Okay. But the end result, we don't need to read**
21 **it out, Mr. Freiboth, but the end result was**
22 **which amendment to the Declaration waived the ARB**
23 **requirements as to The Villas?**

24 A: I believe it was the same one.

25 **Q: The first one?**

1 A: Yeah.

2 Q: With respect to the ARB, if you had to
3 guesstimate the number of applications that the
4 ARB has considered since 2005, what would your
5 guesstimate be?

6 A: Roughly, thirty, forty a year.

7 Q: And the applications, are those submitted by
8 property owners in the subdivision?

9 A: Yes.

10 Q: And with respect to the thirty and forty a year,
11 and that's what now, been seven years, so it's
12 approximately at least two hundred or more; would
13 that be fair?

14 A: That's fair.

15 Q: Other than Mr. Jarmuth, has any other homeowner
16 ever contested the existence of the ARB, to your
17 knowledge?

18 A: No.

19 Q: With respect to the ARB and the enforcement of
20 the covenants, are those covenants set forth in
21 the Declaration?

22 A: Yes.

23 Q: And those covenants, do they provide primarily
24 for residential, for the International Club being
25 a residential community?

1 A: Yes, that's correct.

2 Q: And does the ARB enforce the residential nature
3 of the community?

4 A: Yes, they do.

5 Q: Has there been any breakdown of these covenants
6 in the International Club subdivision?

7 A: No.

8 Q: Now, let's go to Mr. Jarmuth's request for -- the
9 first one we'll say for the swing set, and I
10 believe -- I want you look at exhibits,

11 Defendant's Exhibits 58 and 59 and then 63.

12 A: Do you want me to read all three of them first?

13 Q: No, I don't want you to read them. I just want
14 you to -- I'm going to ask you some questions
15 about them. I was giving you reference to the
16 exhibits...

17 A: All right.

18 Q: Exhibit 58, is that Mr. Jarmuth's application?

19 A: Yes.

20 Q: And is that the application for the swing set?

21 A: Yes.

22 Q: And is that application requesting that the swing
23 set be set on the side of Mr. Jarmuth's house?

24 A: "To be erected on the right side of my house."

25 Q: And was that application approved?

1 A: I believe it wasn't.

2 Q: And why?

3 A: I believe that we don't approve applications on
4 the side of the house.

5 Q: Look at Exhibit 59.

6 A: Okay. It was, request denied based on it being
7 on the side of the home visible from the street
8 and, and, and infringing on the homeowners
9 enjoyment of their property, and that they don't
10 do that for other homes.

11 Q: Is it explicitly set forth in the guidelines that
12 no fences or, excuse me, no swing set should be
13 at the side of a person's property?

14 A: I'd have to look. I think so.

15 Q: And are there -- to your knowledge, are there
16 swing sets in International Club subdivision that
17 were approved by the ARB to be situated on the
18 side of a home?

19 A: Not to my knowledge, no.

20 Q: Now, with respect to the one neighbor in, I think
21 it's Pebble Creek, it's Mr. Pizzi's daughter ---

22 A: Sobczyk.

23 Q: I'm sorry?

24 A: The Sobczyks.

25 Q: Can you spell that name for the court reporter?

1 A: S-O-B-C-Z-Y-K.

2 Q: Was their swing set approved as being on the side
3 of the house?

4 A: No, it was not.

5 Q: And where was the approvals for their swing set
6 -- where is the location of the swing set?

7 A: We looked at that location and for that citing,
8 we concluded that it was actually in the back.

9 Q: Now, I want you to look at Exhibit 63.

10 A: Yes,

11 Q: Exhibit 63 is a decision issued by the South
12 Carolina Human Affairs Commission; is that
13 correct?

14 A: That's correct.

15 Q: And did Mr. Jarmuth file a claim against the
16 Homeowners Association?

17 A: Yes, he did.

18 Q: And his claim was defended by the Homeowners
19 Association; is that correct?

20 A: That's correct.

21 Q: And that defense that the Homeowners Association
22 undertook was to enforce the covenants and the
23 guidelines; is that correct?

24 A: That is correct.

25 Q: And did the Association have to pay two thousand,

1 five hundred dollars to an attorney to enforce
2 the covenants as a result of this complaint with
3 the South Carolina Human Affairs Commission?

4 A: Yes, we did.

5 Q: To your knowledge, did Mr. Freiboth ever apply to
6 the ARB to have a swing set in the back of his
7 yard?

8 A: I think the question was, did Mr. Jarmuth apply.

9 Q: Right.

10 A: To my knowledge, he did not.

11 Q: Did anyone prevent Mr. Jarmuth from making an
12 application to have the swing set in the back of
13 his yard?

14 A: No, they did not.

15 Q: Next, let's look at the fence application of Mr.
16 Jarmuth, and I'm going to ask you to look at
17 Exhibits, I think it starts with 82.

18 A: Okay.

19 Q: Now, Exhibit 82 is what?

20 A: That's a violation notice for having started his
21 project without first submitting it for prior --
22 for, for review by the Architectural Review
23 Board.

24 Q: And when was that violation notice issued?

25 A: September 27th, 2010.

1 Q: And next, look at Exhibit 85.

2 A: Yes.

3 Q: And what is Exhibit 85?

4 A: That's a notice of approval from the ARB to
5 install a flowerbed and edging in the county
6 easement near the power box. It also supposedly
7 an encroachment permit.

8 Q: And who made that request to install the
9 flowerbed?

10 A: Mr. Jarmuth.

11 Q: And when was that approval issued?

12 A: The notice is October 10th, 2010.

13 Q: So that was after he had installed or he had
14 attempted to install a fence, is that correct,
15 without approval?

16 A: Correct.

17 Q: Next, look at Exhibit 86, and what is Exhibit 86?

18 A: It's a notice of disapproval of a request,
19 disapproved request.

20 Q: And does it identify the request that was
21 disapproved?

22 A: The request was to install a six foot vinyl fence
23 with a brick foundation to side yard.

24 Q: And whose request was that?

25 A: Mr. Jarmuth's.

1 Q: And why was this, Mr. Jarmuth's request to
2 install the fence with a brick foundation, why
3 was that denied?

4 A: Direct conflict with the covenants.

5 Q: And what was the direct conflict with the
6 covenants?

7 A: I believe that we wouldn't install anything, any
8 permanent structure within the, within the side
9 setback.

10 Q: And so when you say side setback, is that the
11 certain amount of property or footage to the
12 boundary line of Mr. Jarmuth's lot?

13 A: Yeah. It's, it's the zone within five foot of
14 the side boundary.

15 Q: And to your knowledge, is that what Mr. Jarmuth
16 was trying to seek, install a fence within the
17 setback line?

18 A: A fence with a brick front base.

19 Q: Now, there was previous discussion or evidence
20 introduced with respect to other fences that are
21 in the International Club subdivision. Do you
22 recall that testimony?

23 A: Yes.

24 Q: Now, with respect to other fences and the
25 photographs that were introduced, are those

1 **privacy fences?**

2 A: Privacy fences around a deck.

3 **Q: Are privacy fences permitted in the covenants?**

4 A: Yes, they are.

5 **Q: Now, was there also photographs of a fence around**
6 **the property line at one location?**

7 A: Yes.

8 **Q: And was that fence in existence before 2005?**

9 A: Yes.

10 **Q: Was there also fencing -- other than that one**
11 **fence, do you have knowledge of other fences in**
12 **this six hundred plus lot unit community being on**
13 **the sidelines, on the boundary lines?**

14 A: No.

15 **Q: With respect to fences in the front yards of the**
16 **units in International Club, are those permitted?**

17 A: No.

18 **Q: To your knowledge, are there any fences in the**
19 **International Club community in the front yard?**

20 A: To my knowledge, no.

21 **Q: Please take a look at Exhibit 87.**

22 A: Yes.

23 **Q: And what is Exhibit 87?**

24 A: It's a letter from Mr. Jarmuth to the Homeowners
25 Association through our registered agent related

1 to a putative appeal of the October 8th, 2010 --
2 it's related to the disapproval of the fence.

3 Q: And in that letter that Mr. Jarmuth sent, did he
4 exercise his right to appeal? What does he say
5 about appealing that decision?

6 A: He, he disputes the necessity to make any appeal.

7 Q: Now, I want you to take a look at Exhibit 88, and
8 what is Exhibit 88?

9 A: It's the minutes of a ARB meeting.

10 Q: And did the ARB meeting discuss the denial of the
11 fences request of Mr. Jarmuth?

12 A: Yes.

13 Q: Now, to your knowledge, did Mr. Jarmuth appeal
14 the denial of the fencing to the Board of
15 Directors?

16 A: No. I expected him to, and he never did.

17 Q: And as a result of Mr. Jarmuth not appealing the
18 denial of the fences, was he entitled to any type
19 of hearing by the Board of Directors?

20 A: We expected, after his denial, that he would want
21 to have a hearing, and in the denial letter, it,
22 it literally said, "That your fence is denied
23 unless you successfully appeal this denial to the
24 Board of Directors." So I was expecting there,
25 there would be an appeal. Did I, did I answer

1 your question?

2 Q: Yes. So because he did not appeal, was there a
3 hearing in front of the Board of Directors?

4 A: We discussed the fence.

5 Q: And did the Board of Directors affirm the ruling
6 of the ARB?

7 A: Yes, we did.

8 Q: Now, as a result of the Board of Directors
9 affirming the disapproval issue by the ARB, was
10 any fines assessed to Mr. Jarmuth?

11 A: He would have the -- as specified in the
12 Architectural Guidelines, he would have a hundred
13 dollar a month fine, which is separate from his
14 original fine, which was install -- starting a
15 project without prior review of the plans.

16 Q: Now, you said that there was a brick foundation.

17 A: Yes.

18 Q: Was there a ruling by the ARB that the brick
19 foundation had to be removed?

20 A: There was, and it was an integral part of his
21 fence project, and we asked that it be removed.

22 Q: And was that in the ARB notice to Mr. Jarmuth
23 that he needed to remove the brick foundation?

24 A: Yes, it was.

25 Q: We've heard the evidence in about a wall. Is

1 that essentially the brick foundation that Mr.
2 Jarmuth is saying is a wall?

3 A: I wouldn't classify it as a wall. I think some
4 earlier correspondence led to some confusion and
5 that it temporarily got called a wall, but it was
6 really a fence with an integral foundation.

7 Q: And to date, has Mr. Jarmuth removed that brick
8 foundation in his yard?

9 A: No, he's refused.

10 Q: And did Mr. Jarmuth appeal the request by the ARB
11 that he remove the foundation?

12 A: No.

13 Q: As a result of Mr. Jarmuth not removing that
14 brick foundation, has the Homeowners Association
15 assessed any fines?

16 A: Yes, we have.

17 Q: And what are the fines that had been assessed
18 against Mr. Jarmuth?

19 A: Well, the fifty dollar plus the hundred dollar a
20 month. I don't think I have the right number in
21 front of me, but it's about twenty-three hundred
22 dollars at this point.

23 Q: Let's look at -- first of all, let's go to
24 Exhibit 82. This is Defendant's Exhibit 82, and
25 what is Defendant's Exhibit 82?

1 A: It's a violation notice from the International
2 Club Homeowners Association.

3 **Q: And what's that violation notice for?**

4 A: It's a, it's a, it's a violation notice for a
5 landscape bed with curbing as well as a brick
6 stone addition. It looks like it's a -- it's for
7 failure to get prior review of the plan.

8 **Q: Now, let's look at 83, Defendant's Exhibit 83.**

9 A: Okay.

10 **Q: And what is Exhibit 83?**

11 A: Well, it's titled, "Architectural Review Board
12 Modification Information Documentation," by -- I
13 believe by Ronald Jarmuth.

14 **Q: And when is that dated?**

15 A: September 30th, 2010.

16 **Q: Now, let's look at Defendant's Exhibit 95.**

17 A: Yes. That's an -- that's a -- it's a, it's a
18 modification request application by Mr. Jarmuth.

19 **Q: And when is that dated?**

20 A: February 27th, 2012.

21 **Q: And what was that modification for?**

22 A: To -- it's proposed to add one Pindo Palm to the
23 right end of the bed to extend the bed with the
24 same brick edging. It's opposed (proposed) to
25 add one Pindo Palm to the left of the existing

1 palm bed to, to modifications to bed.

2 Q: Now, at the time that this exhibit, this
3 modification was made in February of 2012, had
4 Mr. Jarmuth removed the brick foundation as
5 ordered by the ARB?

6 A: No.

7 Q: Let's look at Exhibit 96, Defendant's 96.

8 A: Okay.

9 Q: And what is that?

10 A: It looks like it's correspondence from one of our
11 managers, Vanessa Fattoross, to, to Mr. Jarmuth.

12 Q: And what's the date?

13 A: March 5th, 2012.

14 Q: And what does it state?

15 A: Well, that if, if you want to receive emails from
16 the Association, including Friday Facts, you must
17 be registered on the Association's website.

18 Q: And let's look at Defendant's Exhibit 97.

19 A: Okay.

20 Q: And what is Exhibit 97?

21 A: It's a letter to Mr. Jarmuth from one of our
22 assistant -- our assistant manager.

23 Q: And what's the date of that letter?

24 A: March 16th, 2012.

25 Q: And what is the purpose of the letter?

1 A: It's to inform Mr. Jarmuth that the -- that ARB
2 has deferred consideration until his present ARB
3 violation is remedied by removing the brickwork
4 and that his account needs to be brought current.

5 Q: And is that deferring the consideration with
6 respect to the request he made for the palm tree
7 in February of 2012?

8 A: Yes.

9 Q: And to your knowledge, did Mr. Jarmuth appeal
10 that letter, decision of deferral? Did he
11 request an appeal to the Board of Directors?

12 A: Not to my knowledge.

13 Q: Now, let's go to Defendant's Exhibit 103.

14 A: All right.

15 Q: And how much in fines does Mr. Jarmuth owe today
16 for failing to abide by the ARB directives?

17 A: Two thousand, three hundred and twenty-six
18 dollars.

19 Q: And is that the monthly fine of one hundred
20 dollars a month?

21 A: Plus the original -- well, he may have paid the
22 original fifty, I don't recall, but that's
23 accumulative fines that are on the books for the
24 violations.

25 Q: Now, in addition to the Association paying two

1 thousand, five hundred dollars to enforce the
2 swing set regulations, did the Association also
3 have to pay two thousand, five hundred to enforce
4 the covenants in this action?

5 A: Yes, we did.

6 Q: I want you to go to Defendant's Exhibit 62,
7 please.

8 A: All right.

9 Q: And Exhibit 62 is a copy of a check from the
10 Association to the McNair Law Firm?

11 A: Yes.

12 Q: And what's the date, can you read the date on
13 that check?

14 A: October 15th, 2009.

15 Q: And the amount of that check?

16 A: Twenty-five hundred dollars.

17 Q: And for what reason was that twenty-five hundred
18 dollars paid to the McNair Law Firm?

19 A: I believe that was our insurance deductible for
20 this lawsuit.

21 Q: Those are attorney's fees to enforce the
22 covenants?

23 A: Yes, they are.

24 Q: I want you to go to Exhibit 79.

25 A: All right.

1 Q: Defendant's Exhibit 79 is what?

2 A: That's another check for twenty-five hundred
3 dollars.

4 Q: And who's it payable to?

5 A: McNair Law Firm.

6 Q: And the date of that check?

7 A: I'm having a little trouble seeing it, but I
8 think it's August 10th, 2010.

9 Q: So how much in attorney's fees has the
10 Homeowner's Association paid to the McNair Law
11 Firm to enforce the covenants with respect to Mr.
12 Jarmuth?

13 A: With those two checks, five thousand dollars.

14 Q: If you add up together the fines of two thousand,
15 three hundred twenty-six dollars and five
16 thousand dollars, that would be seven thousand,
17 three hundred and twenty-six dollars?

18 A: That's correct.

19 Q: Is the Association seeking a judgment against Mr.
20 Jarmuth for the sum of seven thousand, three
21 hundred and twenty-six dollars?

22 A: Yes, we are.

23 Q: Is the Association seeking an Order of the Court
24 requiring Mr. Jarmuth to remove the brick
25 foundation that was not approved?

1 A: Yes, we are.

2 Q: Now, let's go to the cable contract with HTC.

3 Are you familiar with the cable contract with
4 HTC?

5 A: Yes, I am.

6 Q: And is that Defendant's Exhibit 56?

7 A: No, 56 is the -- it's a letter to Denise Ambuhl,
8 capital credit, for capital credits.

9 Q: With respect to The Villas, does the Homeowners
10 Association pay for The Villas cable services?

11 A: No.

12 Q: And would it be incorrect if Mr. Jarmuth said
13 that the Homeowners Association funds were used
14 to pay The Villas cable services; would that be
15 incorrect?

16 A: Yes. To my knowledge, that would be incorrect.

17 Q: Next, let's talk about some of the parking
18 restrictions, Mr. Freiboth.

19 A: All right.

20 Q: Now, what roads are parking restrictions enforced
21 upon in the International Club Association?

22 A: Any road in the subdivision that was brought into
23 the subdivision as part of adding property.

24 Q: And why does the Homeowners Association enforce
25 the parking restrictions?

1 A: It's Section 725, 7.25 in our covenants for
2 restrict terms of the parking.

3 **Q: And what's the purpose for enforcing parking**
4 **restrictions on the streets?**

5 A: Well, one of the purposes is to keep the streets
6 clear for passage and another is that people not
7 bring boats and trailers and leave them there and
8 various prohibited vehicles.

9 **Q: With respect to Mr. Astorino who testified**
10 **yesterday, has his vehicle parking on the streets**
11 **interfered with any emergency vehicles at any**
12 **time?**

13 A: Yes.

14 **Q: And tell the Court about that, please.**

15 A: His neighbor across the street died, Mr. Helper,
16 and at the time that the coroner came over to
17 pick up the body, the coroner had a lot of
18 difficulty getting into the driveway, and this
19 wouldn't be an emergency situation, but when his
20 wife then went to the funeral home, she couldn't
21 get out of the driveway, either, to try and make
22 arrangements.

23 **Q: And why could she not get out of the driveway?**

24 MR. JARMUTH: EXCUSE ME, I'LL HAVE TO
25 OBJECT TO THAT. THAT'S

1 IRRELEVANT TO THE ISSUES

2 BEFORE THE COURT.

3 THE COURT: GO AHEAD AND ANSWER.

4 Q: Mr. Astorino or one of -- there was a vehicle
5 parked immediately across from her driveway in
6 the road at the base of Mr. Astorino's driveway.

7 Q: What do the restrictive covenants in Section 7
8 require as to parking? Where can an owner park
9 their cars?

10 A: Generally, they can park their cars on the cement
11 parking pads, their driveways at their house, and
12 also at the amenity center where we have a pool
13 and, and an amenity center.

14 Q: To your knowledge, how long as the Homeowners
15 Association been enforcing the parking
16 restrictions?

17 A: We've been sending letters out for this since, as
18 far as I know, way back, way before I was on the
19 Board.

20 Q: Other than Mr. Astorino and Mr. Jarmuth today,
21 does any homeowner contest that the Homeowners
22 Association does not have the power to regulate
23 parking in the subdivision?

24 A: Not to my -- well, would, would you repeat that?

25 Q: Other than Mr. Astorino and Mr. Jarmuth, does a

1 homeowner contend that the Association does not
2 have authority to regulate parking?

3 A: Not to my knowledge.

4 Q: Does Horry County maintain the roads in the
5 subdivision?

6 A: Yes, they do.

7 Q: And has Horry County ever, or has the Homeowners
8 Association ever received notice from Horry
9 County that the roads are not subject to the
10 Declaration and covenants of the Homeowners
11 Association?

12 A: No, we've never received such notice; in fact,
13 quite the opposite, they said that we could
14 enforce parking.

15 Q: Next, let's refer to the monies collected for the
16 capital contributions from D.H. Horton.

17 A: Yes.

18 Q: Have you looked into that issue?

19 A: Yes, I have.

20 Q: And tell us about your conclusions as to the
21 monies collected from D.R. Horton from 2004 to
22 2007.

23 A: The monies collected from D.R. Horton, the report
24 that D.R. Horton gave us indicating what they
25 thought they had collected, it does match what --

1 the report that we get from our management
2 company about what we had reported, about what we
3 have on-hand, what we had collected.

4 Q: Did you find any evidence of any kind that K.A.
5 Diehl took a hundred and sixteen thousand dollars
6 of these capital contributions?

7 A: No.

8 Q: Did you find any evidence of any kind that K.A.
9 Diehl used over a half a million dollars for its
10 own purpose from these capital contributions?

11 A: No, we did not.

12 Q: Let's now address the golf course agreement.

13 A: Yes.

14 Q: And is that Defendant's Exhibit Number 11?

15 A: Yes.

16 Q: Now, the golf course agreement provided that the
17 golf course conveyed property to the Homeowners
18 Association; is that correct?

19 A: Yes.

20 Q: And what property did the golf course convey to
21 the Homeowners Association?

22 A: The golf course conveyed property immediately
23 adjacent to the amenity center, and let me
24 explain that at the time they wanted to expand
25 and add a pool, that the County told us we needed

1 extra parking in order to have an amenity center
2 with a pool, and that was really the only
3 property that was perfectly situated and it was
4 really the property that was available to us to
5 allow us to extend.

6 **Q: And what did the Homeowners Association pay to**
7 **the golf course for that parking lot to the**
8 **amenity center? Was the payment by reduction of**
9 **the assessments?**

10 A: I'm having a little trouble answering that
11 question, because originally there were fifty-
12 five units of assessment, and what happened is
13 that there was a, that there was a substitution
14 of alternate forms. Part of it was, was the
15 land, for sure, and other consideration.

16 **Q: So in addition to the land as basically payment**
17 **of assessments, what else did the golf course**
18 **give to the Homeowners Association in lieu of**
19 **actual cash for the assessments?**

20 A: They gave us the right to use their watering
21 system, including the extensive invest --
22 investment that they made. We didn't have to
23 make our own investment.

24 **Q: So what consideration did the Homeowners**
25 **Association get for the golf course not paying**

1 **the full assessments?**

2 A: We, we got the, the two property -- the, the
3 right to use the water and we got the parking
4 lot, and indirectly, we got other benefit in that
5 when they had trial memberships, we got more
6 homeowners quicker, and I believe it helped save
7 the golf course when they were in financial
8 difficulty in the beginning. It couldn't pay
9 fifty-five assessments on the first day.

10 **Q: Now, have you reviewed the accounting records of**
11 **the Homeowners Association to determine if the**
12 **golf course has paid all the assessments due to**
13 **the Homeowners Association?**

14 A: Under the golf course agreement, yes.

15 **Q: And has the homeowner, excuse me, has the golf**
16 **course paid all the assessments that are due to**
17 **the Association?**

18 A: Yes.

19 **Q: There was reference to a lawsuit that was brought**
20 **for collection of assessments. Has that lawsuit**
21 **been resolved with the golf course?**

22 A: Yes.

23 **Q: And that was just recently, within the last week?**

24 A: Yes.

25 **Q: Now, you heard testimony or attempted evidence to**

1 the effect that Rosemary Toth had utilized funds
2 or attempted to utilize funds personally that
3 belonged to the HOA. Were you on the Board when
4 Ms. Rosemary Toth served as president?

5 A: I sure was.

6 Q: And are you familiar with the books and records
7 of the Homeowners Association with respect to the
8 monies it has collected? Have you reviewed the
9 general ledgers?

10 A: Yes.

11 Q: And did you find any evidence that Ms. Toth in
12 any way used any assets, including funds, of the
13 Homeowners Association for her personal benefit?

14 A: No. Rosemary wouldn't even buy a cup of coffee
15 from the -- using Association funds.

16 Q: Now, let's talk about the Central Electric Power
17 easement.

18 A: Yes.

19 Q: Were you involved in the granting of an easement
20 to the Central Electric Power?

21 A: From the beginning.

22 Q: And did the Board of Directors grant that
23 easement?

24 A: The Board of Directors did.

25 Q: And why did the Board of Directors grant that

1 **easement?**

2 A: We looked into the proposal and the affect on the
3 community. We looked very closely before we did
4 anything and we concluded, overall, that the
5 agreement was beneficial to the community and
6 that it would help us with landscaping and it
7 would also secure a source of power that's -- a
8 home should have power if it's going to have
9 value, and we were running -- the, the power was
10 tight, we believe.

11 **Q: Now, this land upon which the Central Electric**
12 **easement is situated is owned by what entity?**

13 A: That's owned by the International Club Homeowners
14 Association.

15 **Q: And is that land usable in any respect, can it be**
16 **sold for a home or anything like that?**

17 A: Oh, no.

18 **Q: And what did the Association do with that land**
19 **before it granted the easement to Central**
20 **Electric Power?**

21 A: That's really our front entrance and we landscape
22 it quite extensively.

23 **Q: And who now landscapes that property?**

24 A: We do.

25 **Q: And what role does Central Electric Power have**

1 with landscaping that easement area?

2 A: In the beginning, they had to remove tall trees
3 based on restrictions for their power lines.

4 They removed trees and other vegetation, and we
5 had a Landscape Remediation Agreement for them to
6 make it right, and if it wasn't right, to keep
7 making it right until we were satisfied that it
8 was made right.

9 Q: I'm not sure if I've got this right, but Exhibit
10 Number, Defendant's Exhibit 76, is that the
11 Landscape Mediation Agreement?

12 A: Yes.

13 Q: And that was entered into with Central Electric?

14 A: At the same time we granted the easement.

15 Q: And what was the purpose of that agreement?

16 A: We wanted to be sure that we could restore the
17 look of the front entrance and that they would do
18 a lot of planting, and subsequently they gave us
19 irrigation. We wanted to make sure that we had a
20 really nice looking front entrance and that we
21 restored the land.

22 Q: Now, also with respect to the easement, the
23 Association received some monies from Central
24 Electric Power; is that correct?

25 A: Correct.

1 **Q: And how much was received?**

2 A: I believe, initially, that was eighty-three
3 thousand dollars.

4 **Q: And can you tell us how those monies were**
5 **utilized by the Homeowners Association?**

6 A: We talked to the Central Electric Power in the
7 beginning about the need for homeowner
8 transparency, so we set aside three thousand
9 dollars so we could have a homeowners meeting to
10 -- at the time that we were going to approve,
11 that was part of it, though there were several
12 presentations before that and the public was
13 invited. We used about fifty thousand dollars of
14 that to return benefit to the homeowners, and we
15 set aside other money for other purposes within
16 the Association.

17 **Q: And did the Board, as a whole, deliberate in**
18 **depth with respect to the easement and the**
19 **compensation received with the easement?**

20 A: Yes, we did, and I'd like to just elaborate
21 briefly.

22 **Q: Please do.**

23 A: I was at the original meeting and the
24 representative, Bill Rogers, set down a contract.

25 **Q: Representative from where?**

1 A: From Central Electric Power, and looked at it and
2 he was -- he wanted to go ahead and start talking
3 turkey about this agreement, and I said, "I, I
4 really don't recommend that we go any further
5 until we understand what the impact on the
6 community would be, what the benefit on the
7 community would be, we'll just set that aside
8 until we do due diligence and understand what
9 we're doing and understand what we should ask."

10 **Q: Now, there were also notices sent out to the**
11 **Homeowners Association with respect to the**
12 **proposal to grant an easement; were there not?**

13 A: Yes, not only for the, for the meeting where we
14 approved it, but we had a presentation at the
15 amenity center that would show before and after
16 photos, and the representatives were there to
17 answer anybody's concern about EMF or anything
18 related to power lines. We sent out several
19 Friday Facts notices. We, we had a lot of
20 communication with homeowners. It was extremely
21 important to us to do that before we got to the
22 conclusion.

23 **Q: With respect to any websites by Mr. Jarmuth, do**
24 **you know of any websites that he has or had**
25 **participated in, to your knowledge?**

1 A: He has a website that's called ICbuzz, and I
2 believe he participates in another website called
3 Open Forum.

4 Q: And does he use pseudo names with different
5 websites, do you know, or other names?

6 A: I'm not sure.

7 Q: Does K.A. Diehl render any charges for attending
8 ARB meetings, to your knowledge?

9 A: No, it's part of the standard service.

10 Q: With respect to a gentleman by the name of Mr.
11 Fletcher, isn't it a fact that he was never a
12 Board member?

13 A: That's correct.

14 MS. GOLDING: ONE MOMENT, YOUR HONOR.

15 Q: No further questions. Thank you.

16 MR. JARMUTH: YOUR HONOR, IT'S COME TO

17 MY ATTENTION THAT WITH

18 THE PREVIOUS WITNESS, THE

19 PREVIOUS WITNESS SEEMED

20 TO BE OBSERVING MS.

21 GOLDING AND EVERY TIME HE

22 WAS ASKED A QUESTION, SHE

23 WOULD NOD YES OR NO, AND

24 I OBSERVED AND I BELIEVE

25 IT WAS BROUGHT TO MY

1 ATTENTION THAT THE ANSWER
2 OF THE PREVIOUS WITNESS
3 FOLLOWED THE GUIDANCE AND
4 SUGGESTIONS BY ANSWERING.
5 MS. GOLDING SEEMED TO
6 COMMUNICATE BY NODDING
7 YAY OR NAY. I'D LIKE TO
8 ASK THE COURT TO DIRECT
9 MS. GOLDING NOT TO DO
10 THAT THIS TIME.
11 THE COURT: I DIDN'T SEE THAT OR I
12 WOULD HAVE IF THAT IS
13 CORRECT.
14 MS. GOLDING: I'M NOT, I'M NOT DOING
15 THAT, YOUR HONOR. I'M
16 SORRY IF MR. JARMUTH
17 THINKS I AM.
18 THE COURT: SO SHE'S -- I DIDN'T SEE
19 THAT, BUT IF YOU DID IT'S
20 -- I'LL LOOK BETTER.
21 CROSS EXAMINATION
22 BY MR. JARMUTH:
23 Q: Mr. Freiboth, I must first salute you for making
24 improvements to the operation of the IHOA Board
25 since you came in office. I understand you're

1 not responsible for the acts of your predecessor
2 and you've been making efforts to improve that;
3 however, let me ask you about the K.A. Diehl
4 contracts. How knowledgeable are you about the
5 contents of the present and former K.A. Diehl
6 contracts?

7 A: Fairly knowledgeable.

8 Q: Isn't it a fact that the standard services in
9 those contracts provide for K.A. Diehl to have a
10 representative -- representative at four meetings
11 of the Board of Directors?

12 A: There, there is for the annual and quarter --
13 quarterly meetings, yes.

14 Q: Does it also say, "And four meetings of the Board
15 of Directors?"

16 A: I believe there's a limit to the number of
17 meetings. It's one annual and four quarterly for
18 the Board of Directors. They're all Board of
19 Directors meetings.

20 Q: And the quarterly meetings are the Board of
21 Directors meetings?

22 A: Yes.

23 Q: Isn't there also in all these contracts a
24 provision, I think it might be seventy-five
25 dollars for any additional meetings an hour that

1 **K.A. Diehl representatives go to?**

2 A: They could charge that, but, but like for the
3 ARB, that's never happened. It's extremely rare,
4 if any. That's in there, but we've been very --
5 they've been very generous to us and they've not
6 charged us.

7 **Q: Have you made that information known to**
8 **homeowners at all in any way?**

9 A: Since we weren't being charged for anything, we
10 didn't perceive there was a need to do so.

11 **Q: Now, you mentioned ICbuzz. Are you a subscriber**
12 **to ICbuzz?**

13 A: Yes, I do.

14 **Q: Are you a subscriber to Open Forum?**

15 A: No.

16 **Q: I'm just wondering how you have knowledge about**
17 **anything I did in Open Forum if you're not a**
18 **subscriber?**

19 A: Some of the letters that were relayed were, were
20 through Open Quorum from third parties.

21 **Q: Looking to both ICbuzz and Open Quorum, in 2012,**
22 **have you seen a single email from me which**
23 **appeared in either?**

24 A: Probably not.

25 **Q: How about 2011?**

1 A: I'm not sure when you, when you last were
2 contributing, Mr. Jarmuth, but not recently.

3 Q: Isn't it a fact that from the moment the lawsuit
4 was instituted in 2009, I haven't submitted a
5 single email in either form?

6 A: I'm not sure, but it's ---

7 Q: You can't cite any?

8 A: No.

9 Q: Who runs ICbuzz?

10 A: At present, you do.

11 Q: And what is ICbuzz, actually?

12 A: It's a, it's a private website. It's a Yahoo
13 group's website and most -- you can be a person,
14 if you allow that, that can sign in and look at
15 the postings, or if you receive email and you
16 respond, your email will go back to the site and
17 be distributed to others.

18 Q: True or false, ICbuzz is nothing more than an
19 email address you can send something to which is
20 then retransmitted to any number of people who
21 have said, "I want to receive and accept ICbuzz?"

22 A: I would have to say that's false, because I log
23 in and look at all the history, you can see who's
24 subscribing, not by name, but just a number of
25 subscribers and the general use. So it's

1 primarily email, but it's also retention and
2 statistics.

3 **Q: Would it be true or false to say that retention**
4 **consists of the emails that people have sent**
5 **ICbuzz to be retransmitted elsewhere?**

6 A: I believe on that site that's true. There are
7 possibilities -- well, it used to be a
8 possibility that we could post on a calendar and
9 there is a capability of storage of records, but
10 to my knowledge, that part hasn't been used.

11 **Q: True or false, the function of the ICbuzz**
12 **administrator is to help people get signed up or**
13 **if they request to help them get signed off?**

14 A: False.

15 **Q: What else does he do?**

16 A: The administrator would do what you suggest, but
17 an administrator would also most -- a good
18 administrator would most likely publish rules of
19 the road and a theme, and if, if somebody is, is
20 flagrantly violating the rules of the road, they
21 would let them know.

22 **Q: But would you agree that I have sent nothing out,**
23 **at least that you have been able to find,**
24 **regarding anything, including rules of the road**
25 **or anything?**

1 A: I didn't hear part of that sentence.

2 Q: Isn't it, isn't it a fact that, not only have I
3 have not sent any emails out, to your knowledge,
4 without any these rules or roads or anything?

5 A: No, it's not a fact. You had a dispute with a
6 homeowner who complained that, that they had
7 posted something that was countered to something
8 you posted and then the next day they were
9 rejected from the site and you had an explanation
10 for that.

11 Q: Wasn't that prior to the lawsuit back in March of
12 2009?

13 A: I don't know the date, but it was a while ago.

14 Q: Now, you talked about the, something about --
15 well, how do you know that the value that Central
16 Electric was offering you was the appropriate
17 amount to accept?

18 A: We believe that it far exceeded anything they
19 offered and that it was a reasonable amount and
20 that not only would we collect what we got
21 originally, but we were getting assurances that
22 if the landscape was not correct that it would be
23 corrected, and that turned out to be -- oh, wait,
24 you're talking Central Electric, right?

25 Q: Central Electric.

1 A: Yeah, that we would get -- if there were other
2 needs, we would get substantially more money, I'd
3 say thirty, forty thousand dollars in addition
4 for the remediation that was more scope than we
5 thought showed that, showed that it was good
6 reason to have a remediation contract with an
7 extended term.

8 Q: True or false, Michael Butryn sitting down there
9 made known to you and I believe may have said to
10 you a study done by the State of Virginia which
11 talked about other damage, which according to the
12 study, had a value far in excess of what Central
13 Electric was offering?

14 A: Other damage?

15 Q: The damage of various, whose total amount was far
16 in excess of what Central Electric was offering.

17 A: I do remember him talking about a study. I don't
18 remember that specific point. I, I do -- I do
19 remember there was at least one point about it
20 and I had an interchange with Mike, and it was,
21 it was a different issue.

22 Q: And do you see any reason to be able to say that
23 there wasn't a study done by the State of
24 Virginia officially?

25 A: I seem to recall that, that there was a study.

1 Q: Now, were you on the Board at the time?

2 A: At the time of the easement sale, yes.

3 Q: Did you obtain an independent evaluation of the
4 assessment of the amount of money that someone
5 should receive for capital -- that Central
6 Electric was proposing to do?

7 A: We didn't have an appraisal, however, I did talk
8 to other associations and found out that they got
9 far, far less than we did.

10 Q: But I'm not talking about their failure to do due
11 diligence, I'm asking you, did your Board that
12 you are on ask for independent assessments other
13 than taking the word of Central Electric for what
14 the damage was worth or believing that that was
15 more than the fair market value?

16 A: The damage, we covered the damage when we did due
17 diligence, we covered the damage when we did a
18 Landscape Remediation Contract with a detailed
19 plan, and we covered the damage because it had
20 multiple subsequent phases in, in case, in case
21 the, the original plan was inadequate. So we
22 basically covered through three layers, being
23 sure we could make that site whole.

24 Q: Now, did some other homeowners come to you and
25 say, "Hey, how about the impact on the value of

1 my home, because now people coming in the
2 development will have to go under these overhead
3 wires?"

4 A: I had looked at some research. There were a
5 couple of homeowners that did that, and I had
6 looked at some research and didn't look like --
7 it is so far away from the homes it really didn't
8 look like that was valid.

9 Q: Did anyone -- did any source of authority
10 actually give you such a statement that there
11 would be no meaningful impact on the values of
12 homeowners' homes?

13 A: I did some research on the, on the -- what, what
14 would constitute damage and it was very far away.
15 Mr. Butryn tried to provide some research and I
16 think it might've been from the Virginia study,
17 saying that it could be harmful, but I believe
18 even that study said it depends on where it's
19 located, and that there was some discussion in
20 there that I pointed out at the time it was
21 presented that, that his own study contradicted
22 him with respect to how far this was from homes,
23 that there really wasn't any damage.

24 Q: Now, Mr. Freiboth, I understand you're very
25 knowledgeable in the area you're in, but have you

1 ever performed an appraisal of property for pay
2 on any property? Have you ever been paid to
3 perform a property appraisal or a study which
4 deals with any sort of impact on property values,
5 or in the alternative, to state the value of
6 property?

7 A: Not, not real estate.

8 Q: Let's talk about those returned benefits to the
9 homeowners. What do you mean by the returned
10 benefits?

11 A: Well, the, the front entrance was, was our
12 property. We, we granted an easement and got
13 some money and -- as a benefit of that sale and
14 we returned some of the money to the homeowners.

15 Q: Is that the fifty-five thousand so dollars you
16 sent to the homeowners at seventy-five dollars a
17 head?

18 A: I think it was fifty thousand, and it was
19 seventy-five, yeah.

20 Q: Did the homeowners own a personal equitable
21 interest in the area of concern?

22 A: Let me try to answer that. I'm, I'm not sure.
23 The area concerned is owned by the Homeowners
24 Association, if that helps.

25 Q: Yes. Do homeowners have any property rights in

1 **land owned by the IHOA Association?**

2 A: I'm not sure about that question. I, I, I know
3 it's owned by the Homeowners Association. I
4 don't think every homeowner could come in and ask
5 for their share. I think it would stay there,
6 but by the way, we didn't sell any property, we
7 granted an easement, which is just a part of a
8 bundle of rights for property. We still have the
9 deed to that property. There's no sale of
10 property.

11 **Q: What did homeowners give up in exchange for that**
12 **seventy-five dollars?**

13 A: I don't believe they gave anything up, but I
14 think they benefited greatly.

15 **Q: Have you had occasion, in preparing for your**
16 **testimony today, to refer to the golf course**
17 **agreement of which you testified to a few minutes**
18 **ago?**

19 A: Sure.

20 **Q: Who signed the agreement?**

21 A: I would have to look at it, but my recollection
22 is it was -- I'll show -- you can show it to me.
23 Well, that'd be Brian Gardner for, for Horton.
24 That would be Doug Brown, President of the
25 International Club Homeowners Association, and

1 Plantation, AD, and -- I don't believe I can read
2 that signature.

3 **Q: Is Doug Brown for the Association?**

4 A: President, yes.

5 **Q: Now, when you read this agreement, did you happen**
6 **to -- yes or no, did Doug Brown get a free golf**
7 **course membership out of this?**

8 A: He may have.

9 **Q: What did D.R. Horton give up in exchange for**
10 **whatever they might've received under this**
11 **contract?**

12 A: I, I don't ---

13 **Q: I'll let you take a look at the document.**

14 A: Yeah, let me look at it. I just want to recall
15 the elements of it, that's why I'm hesitating. I
16 don't believe that, that Horton gave anything up.
17 I think there were some things that were helpful.

18 **Q: Now, is it the Association's business to do what**
19 **you said to help Horton sell houses?**

20 A: It's -- I'm going to answer that and then I'm
21 going to explain. No, it's, it's not the
22 Association's business to sell houses. What was
23 happening was that the community was developing
24 slowly and the secondary benefit we would have
25 from the sale of houses or the giving of trial

1 memberships, well, or free golf rounds while
2 they're looking is it helped stabilize the
3 business to get more homeowners in here so we
4 could have a Homeowners Association with people
5 that could pay to support the maintenance of our
6 property, if that answers your question.

7 **Q: Is it true or false the memberships, D.R. Horton**
8 **got seventy-five reduced price golf course**
9 **memberships, at least a substantially reduced**
10 **price at seven hundred dollars each?**

11 A: I believe so, and I'm not sure what the history
12 was there, but yes.

13 **Q: In addition to being president of the HOA, who**
14 **did Doug Brown work for at the time?**

15 A: Oh, he worked for D.R. Horton.

16 **Q: Do you see any conflict of interest there?**

17 A: I don't see any in what he did, but there's a
18 theoretical one.

19 **Q: Let me look at another one. True or false, D.R.**
20 **Horton received twenty rounds of golf per month**
21 **at the golf course for no charge at all so long**
22 **as Horton was selling houses?**

23 A: Could I see the agreement again for a second?

24 **Q: Where my thumb is.**

25 A: Yeah, thank you. Yes, those are promotional

1 memberships, and I believe that was used for
2 people that were looking at the property, was
3 helping to sell property.

4 **Q: These people were the people looking to buy into**
5 **the community, ---**

6 A: I think that ---

7 **Q: --- to buy into the community?**

8 A: I think so.

9 **Q: So would I be correct, yes or no, the people who**
10 **would be actually playing golf would not be**
11 **homeowners?**

12 A: If that's how, how they gave them out, yes. It
13 was a marketing membership. Wasn't that the ---

14 **Q: Yes.**

15 A: That marketing, marketing.

16 **Q: Looking at the next paragraph, didn't D.R. Horton**
17 **also get the free use of the golf course, the**
18 **clubhouse -- no, did he not get to use the**
19 **facilities at a reduced price plus food and**
20 **beverage for sales events?**

21 A: I don't have the agreement to look at, but I
22 believe that's probably correct.

23 **Q: Do you actually see a conflict of interest here?**

24 A: There's a potential for conflict of interest, but
25 as I say, from what they did, I think we

1 benefited.

2 Q: Now, we've talked about irrigation. During the
3 time this is written, who owned that front
4 entrance?

5 A: I don't recall when it was deeded over to us, but
6 it, it may have been, it may have been Horton,
7 but it was intended to come to us. I don't have
8 the date the deed was ---

9 Q: What year did the IHOA take title to the front
10 entrance?

11 A: I'm not sure. I would guess it was in the 2009
12 time frame.

13 Q: Wasn't it immediately -- 2010, immediately before
14 the Central Electric deal was made?

15 A: Well, we had title to the front entrance at the
16 time, but it wasn't related to that. It was
17 whenever it was done.

18 Q: So if this back in 2003, which was within days of
19 the time Horton took ownership of the area which
20 he eventually developed it, and if the IHOA
21 didn't take title to that area until 2009, 2010,
22 who owned that front entrance at the time? Who
23 did you buy it from?

24 A: I, I, I would, I would believe that it was D.R.
25 Horton and that all the common areas and any road

1 turnovers were the last things to be done. They
2 basically held the land for a long time. We have
3 separate parcels of land. We have the front
4 entrance. I think the road dedications came
5 later, 'cause there had to be an inspection.
6 Most of that stuff would be at the back end of
7 the development process.

8 **Q: Now, if the irrigation -- paragraph five provides**
9 **irrigating this area, a relatively long stretch**
10 **of road, which was owned by D.R. Horton, who**
11 **benefited by the irrigation portion of that**
12 **agreement?**

13 A: I, I believe that there would be three parties.

14 **Q: Yes or no?**

15 A: No, you wanted to know who benefited. That's not
16 a yes or no.

17 **Q: Please answer.**

18 A: I believe there would be three parties, at least.

19 **Q: Let's hear your answer.**

20 A: The first, obviously, the perspective homeowners
21 would benefit, as they do today now that we --
22 that people resell; second, the owners who live
23 here and want a beautiful entrance, a grand
24 entrance, would benefit; and third, the
25 commercial golf course that pays us a lot in

1 assessments, that's their main entrance, that's
2 what their customers are going to see when they
3 come. The Villas and Cambridge are right on that
4 street.

5 Q: Now, getting down to the yes or no question, who
6 owned that entrance back between 2003 and in 2009
7 or '10?

8 A: I think you've confused me.

9 Q: Who did the HOA get title to the front entrance
10 from in 2009 or 2010?

11 A: I think it came from D.R. Horton.

12 Q: Yes or no, D.R. Horton benefited by having the
13 irrigation provision put in?

14 A: I'll answer your question yes, and then I'll say
15 that they weren't the only ones.

16 Q: Now, when you drive down Pickering Drive, do you
17 have occasion to go by my house?

18 A: Yes.

19 Q: Now, in the same context, doesn't the whole
20 community benefit by seeing my beautiful palm
21 tree bed which I put in at my expense?

22 MS. GOLDING: YOUR HONOR, I DON'T ---

23 MR. JARMUTH: I'M JUST FOLLOWING HIS

24 ---

25 A: Everybody benefits from the beautification that

1 homeowners do.

2 Q: I'm just wondering why the IHOA doesn't pay to
3 irrigate my lawn because of the same general
4 benefit when it decided to pay to benefit, to
5 irrigate the Horton area when it also has the
6 identical general benefit?

7 A: Because you would sue me for doing private
8 property. That's what you're doing here.

9 Q: Back in 2006?

10 A: Yeah. You -- a lot of the claims that we've had
11 are that we're trying to handle -- you're
12 claiming that we're, we're mowing property that
13 doesn't belong to us and that it's either a
14 breach of fiduciary responsibility or a waste of
15 money. Certainly, after all this, the last thing
16 I'd want to do is step on, on, on an individual
17 homeowner's property and take over maintenance.

18 Q: Now, turning to the area of the ponds, looking at
19 the pond to the left and the right side -- let's
20 just look at the left side of the golf course
21 pond, the one adjacent to the amenity center. Is
22 there a fountain there?

23 A: Sure.

24 Q: Who owns the pond?

25 A: The pond is owned by the golf course and we have

1 an easement, and we also talked to them before we
2 put in the fountain.

3 Q: Now, who paid to put in the fountain?

4 A: We did.

5 Q: Who pays the electric to run it?

6 A: We do.

7 Q: Who pays to maintain that pond?

8 A: We do, and it's part of the beautification and
9 we've gotten a ton of compliments from owners.

10 Q: I'm not disputing that. Now, as that is golf
11 course property and as some people have asserted
12 that the owner of the pond is responsible to
13 maintain the pond, isn't provision seven of the
14 contract which provides that the HOA will
15 maintain that pond a benefit to the golf course?

16 A: Well, the HOA actually never intended to, to, to
17 -- in that particular case, we never intended to
18 maintain that pond, nor do we view that we are.
19 We just notice that as part of, of having a nice
20 fountain, which is what we were really after
21 because of the location, that it does do some
22 aeration, and because it looks nicer as a result,
23 but our, our -- really, our only intent was
24 beautification.

25 Q: I don't doubt your intent. Now, let's look back

1 at 2003 when Doug Brown was on the place. Can
2 you please read paragraph seven when there was no
3 one talking about beautifying the pond?

4 A: Yes, "Within ninety days of this agreement, the
5 golf course shall convey a recordable, perpetual,
6 non-exclusive, assignable easement for
7 maintenance and repair."

8 **Q: Just keep going, the whole thing.**

9 A: "Of two ponds and the clubhouse entrance, which
10 shall include enlargement and excavation, as more
11 particularly described in Exhibit "B". We don't
12 have to -- we have no intent to enlarge or, or
13 excavate, nor to take over dredging of that pond.

14 **Q: Again, I'm not questioning your intentions today.**
15 **Turning back to 2003, can you disagree that the**
16 **owner of those ponds had lost the financial**
17 **burden for this by having to maintain those two**
18 **ponds to this contract?????**

19 A: No, I, I don't. All we got was an easement, and
20 we have no intent to maintain -- not only no
21 intent, but no obligation, and nobody ever
22 bothered us for all these years until we decided
23 it was good idea to have a beautiful mountain
24 there. There was no -- nobody asking us to come
25 over, "Would you please maintain this pond?"

1 Q: Now, turning to this 2003 agreement, now I notice
2 that during your tenure you have the practice of
3 making sure the minutes of the Board's records
4 record with the signature of every Board member,
5 as required by statute and the bylaws, any
6 decision made outside of the meeting of the
7 Board. Now, I notice that you are trying to make
8 sure every significant decision which requires
9 expense or money for the Board is recorded in the
10 minutes of the Board, and have you had the
11 opportunity to look back at the minutes as far
12 back as 2003 of the meetings of the Board of
13 Directors?

14 A: Sure.

15 Q: Have you been able to find, ever find any
16 approval by the Board of Directors of the terms
17 of this golf course agreement?

18 A: Yes.

19 Q: As recorded in the minutes?

20 A: Yes.

21 Q: In 2003?

22 A: It was the first minutes. It was either 2003 or
23 2002.

24 Q: Isn't it a fact ---

25 A: It was, it was really the controlling entity at

1 the time, the representative of Plantation, AD, I
2 believe.

3 Q: Isn't it a fact that the November 2003 minutes of
4 the Board of Directors meeting said they were
5 going to forgive no more than fifteen thousand
6 dollars of debt in exchange for the quarter acre
7 parking lot and no more?

8 A: Can I see that agreement?

9 Q: That's in the Board -- that's not the agreement,
10 that's the minutes of the Board of Directors.

11 A: Well, can I, can I see those minutes? I don't
12 recall what that said.

13 MR. JARMUTH: WELL, I'LL LET THAT PASS
14 BY. I'D LIKE THE COURT
15 TO BE ABLE TO LOOK AT IT
16 ITSELF. I'LL JUST
17 WITHDRAW THE QUESTION.

18 Q: Now, turning to this business of what I
19 supposedly owe the Court for attorney fees and
20 all this other business, could you break down
21 that sum, that seventy -- seven thousand, five
22 hundred dollars, again, by lawsuit, supposedly,
23 you're advocating to enforce the covenants?

24 A: This, this lawsuit, when it was originally filed,
25 the claims of wrongdoing, ARB Board members for

1 the Human Affairs, and the violations for your
2 ARB requests that were, were not taken out.

3 Q: Yes or no, a lawsuit to enforce the covenants
4 results in someone doing, removing property or
5 doing something or making an alteration of their
6 property, to bring them into conformance with the
7 covenants, true or false? Shall I repeat it to
8 you?

9 A: Yes.

10 Q: True or false, in the lawsuit to enforce the
11 covenants will result if you are successful in
12 the alterations of property which will restore
13 the property to the previous condition before the
14 violation of the covenants occur, true or false?

15 A: False. They're not only in this case, but there
16 are many other reasons that, that you could be in
17 court, a person could be in court for violation
18 of the covenants besides this particular type of
19 agreement.

20 Q: Well, let's look at -- I filed a South Carolina
21 Human Rights, Civil Rights complaint. If, when
22 you apparently, ultimately prevailed because Ms.
23 Toth told them the covenants, the covenants had a
24 provision which I couldn't find, saying that you
25 could not build a swing set on the side yard,

1 **what change to my property resulted?**

2 A: I, I believe that -- that's a long question.

3 Could you give that back to me again?

4 **Q: Well, I filed the South Carolina Human Rights**
5 **Commission complaint, build swing sets?**

6 A: Uh-huh (affirmative response).

7 **Q: Sir?**

8 A: You, you did file one, yes.

9 **Q: When I filed that complaint, had I done any**
10 **modification to my property?**

11 A: You accused the ARB members of wrongdoing and we
12 hired an attorney as we would for any proceeding
13 like that.

14 **Q: I think you can answer the question. Had I made**
15 **any modification to my property?**

16 A: I don't believe that ---

17 **Q: Can I take that ---**

18 A: No.

19 **Q: --- as a no?**

20 A: No. No.

21 **Q: What particular violation of the covenant can you**
22 **cite that entitles you to get money because you**
23 **prevailed in the South Carolina Human Rights**
24 **complaint?**

25 A: I believe you were challenging our authority to

1 -- of, of, of how we were enforcing the
2 covenants.

3 Q: True or false, didn't I say simply that one of
4 the ARB members had stated that he hates
5 children, that being Mr. Cartman, and he was a
6 member of the ARB official, and that was my
7 belief that the denial of my swing set was
8 because that it was related to my familial
9 status; isn't that what I told them?

10 A: I'm not sure what you told them in that case, but
11 I believe that your suit was more because your
12 swing set was denied and that your belief about
13 it being -- it shouldn't have been.

14 Q: Well, let's talk about the Civil Rights aspect.
15 Do you know anything about Civil Rights
16 complaints?

17 A: Not extensively, no.

18 MR. JARMUTH: I THINK I'D BE WASTING MY
19 TIME PURSUING THIS. I
20 THINK THE COURT CAN TAKE
21 JUDICIAL NOTICE OF THE
22 POINT I'M MAKING.

23 Q: Now, let's look at the next one. What was the
24 next twenty-five hundred dollars for?

25 A: Well, first of all, you added, I believe, to this

1 lawsuit your ARB violation that, that is still
2 running, lawsuit itself, but mostly I think we're
3 enforcing the covenants.

4 **Q: Let's go back to this originally captioned case,**
5 **2009-CP-26-3596. By filing that lawsuit where I**
6 **alleged that the Board was in violation of the**
7 **covenants, what violation of the covenant did I**
8 **commit?**

9 A: I believe you were challenging its authority to
10 enforce its own covenants in many aspects.

11 **Q: But please answer the question, what violation of**
12 **the covenants did I make that would entitle you**
13 **to collect attorney's fees to enforce the**
14 **covenants.**

15 A: For the original, for the original lawsuit.

16 **Q: Original lawsuit.**

17 A: I don't have the text of all the details. There
18 were a lot of them there, and I would stick to
19 the answer that I have, you were challenging our
20 authority as an Association to be here and to
21 enforce covenants.

22 **Q: Have you read the Answer to the original**
23 **Complaint?**

24 A: A long time ago.

25 **Q: Isn't it true that the only Counter-Complaint**

1 which was, I believe, at the tenth defense where
2 it said, "And we want attorney's fees," and that
3 did not cite any covenant violation?

4 A: I don't recall.

5 MR. JARMUTH: THE COURT IS -- I'D ASK
6 THE COURT, IN ITS
7 DISCRETION, TO READ THAT,
8 AND I'D PROFFER THAT IT
9 DID NOT -- THAT AT THE
10 TIME OF THE ORIGINAL
11 COMPLAINT, THE DEFENDANT
12 DID NOT CITE ANY
13 VIOLATION OF COVENANTS.

14 Q: Now, let's turn to the last twenty-five hundred
15 dollars. Now, looking at the palm tree
16 application, did I actually install any palm
17 trees?

18 A: No, and we didn't deny your request. We, we
19 tabled it.

20 Q: But wouldn't you agree that in conjunction with
21 the palm tree which you -- I just heard a few
22 minutes ago as a basis for attorney fees, I
23 -- true or false, I did not violate any
24 covenants?

25 A: It wasn't for the palm trees, it was for the ARB

1 violation for your fence. The palm tree hasn't
2 been decided. All that was done was to table it.

3 MR. JARMUTH: I'D LIKE FOR THE COURT TO

4 TAKE THAT AS A NO, THE

5 DEFENDANT IS UNABLE TO

6 CITE A VIOLATION OF THE

7 COVENANTS IN CONJUNCTION

8 WITH THE PALM TREE. I

9 BELIEVE THE COURT WE WILL

10 FIND THAT THE DEFENDANT

11 CITED TO THE PALM TREES.

12 **Q: Now, let's look at -- that leads to the, the, the**
13 **fence. Now, in your Counter-Complaint, did you**
14 **say that I laid paver bases or did you say I**
15 **built a wall?**

16 **A:** I don't remember what was in, in the Counter-
17 Complaint. I remember the instance of how it
18 started and evolved.

19 **Q: Isn't it true that Ms. Golding, the defense**
20 **counsel, a little while ago led you through**
21 **answering yes or no when she referred to walls,**
22 **not edges?**

23 **A:** No. I'm very familiar with that history.

24 **Q: Now, have you ever personally installed a fence**
25 **or had a fence installed for you at any property**

1 **you owned?**

2 A: Yes.

3 **Q: Could you tell us about that?**

4 A: It was a property in California that we were
5 restarting a fence that, that had been there.

6 **Q: Please describe the fence.**

7 A: It was just a simple fence and it wasn't in this
8 area or subject to our covenants.

9 **Q: Now, could you describe what span from post to**
10 **post?**

11 A: Well, in that case it was a fence that just had
12 wire, it was just to keep out deer.

13 **Q: Chain link fence?**

14 A: No, just a real thin wire fence with posts.

15 **Q: Now, when you go around the neighborhood, do you**
16 **frequently see vinyl fences?**

17 A: There are fences in the neighborhood, yeah. I
18 don't know if they're -- I assume they're mostly
19 vinyl, yeah.

20 **Q: What supports each fence panel?**

21 A: There's usually fence posts, but depending on
22 what it is, it's probably also hooked up to the
23 house in some type times.

24 **Q: Does a panel -- is a panel able to stand without**
25 **the posts?**

1 A: Probably not for long.

2 **Q: Now, you keep calling my edges foundation. What**
3 **is the physical connection between edges which**
4 **are several inches below the panel and the panel?**
5 **What's the function of that edges to be making it**
6 **a foundation as against this landscaping edges?**

7 A: I don't argue anything about foundation. I'm
8 using your own words from your application that
9 you were installing a vinyl fence with, starting
10 with a brick foundation, I think it was. I, I
11 used your own word, I didn't create this.

12 **Q: Is a brick foundation there today?**

13 A: What you put in place and claimed was a brick
14 foundation in your application is still in place
15 today, yes, sir.

16 **Q: True or false, those are landscaping edges?**

17 A: False. According to your own claims, it was a
18 foundation, and it's sitting right on the
19 property line.

20 **Q: I'm asking you for a conclusion of your eyes.**

21 **True or false, are those nothing more than**
22 **landscaping edges?**

23 A: Yes, it was part of your project that was
24 supposed to be removed, because you started it
25 and you didn't finish it, and we weren't.

1 authorizing it.

2 MR. JARMUTH: I THINK THE COURT CAN

3 TAKE THAT AS A YES.

4 A: I take that -- no.

5 **Q: Now, in conjunction with this fence business, is**
6 **it your contention that I'm getting a fine**
7 **because I never bothered to appeal this decision?**

8 A: You're getting a fine because you refuse to
9 remove it and you cited that we weren't an entity
10 that had any authority over it, nor did the ARB.
11 It's still there and all we're doing is enforcing
12 the Architectural Guidelines that have been there
13 -- that aspect has been there since the earliest
14 guideline available.

15 **Q: Now, wasn't it your testimony a little while ago**
16 **that everybody on the Board expected me to file**
17 **an appeal?**

18 A: My testimony was that I expected you to file an
19 appeal, because if you recall, Beckie Abel and I
20 drove up at the time it was being installed and
21 chatted with you briefly that day and saw that
22 there was a property line dispute between you and
23 your neighbor. So I saw it happening, I knew
24 that you hadn't applied, and I, I followed what
25 was happening, so I assumed there would be an

1 appeal, yes.

2 **Q: Now, if there had been -- if I had filed an**
3 **appeal, what would've followed?**

4 A: Well, first of all, we would've tried to
5 understand what was the extent of your -- what
6 was the extent of your appeal and what were you
7 suggesting to do and -- at that point.

8 **Q: Walk me through the whole process, please. Next?**

9 A: We would, we would ask a homeowner to comment
10 about their project. In most cases where we
11 hadn't seen the project, we want to make sure
12 that, that we have an understanding of what the
13 situation is and that we haven't overlooked some
14 elements that haven't been mentioned. So step
15 one would just be understanding. If there was a
16 violation, we would want to know what you
17 proposed to do to cure the violation
18 satisfactorily at that point.

19 **Q: Is it -- true or false, is it your belief that I**
20 **didn't do anything which would've brought on this**
21 **inquiry process you're talking about?**

22 A: I believe you did something that would've
23 required an appeal if you wanted to keep that
24 fence in place.

25 **Q: Is it true or false that you're, that you've**

1 described that your inquiry would follow with
2 someone filing an appeal as the next step?

3 A: People can -- it's not a true or false. Let me
4 explain a little bit. People can file an appeal.
5 If we see something wrong, such as several years
6 ago when you were given a violation for putting a
7 garbage can out and we looked at it and said,
8 "Wait a minute, we can't see that garbage can
9 from the street, remove that violation and issue
10 an apology to Mr. Jarmuth," we saw something
11 wrong and we stepped in. We could do it either
12 way. We would normally -- if nothing happened,
13 we would certainly let you know you had a right
14 to appeal or contact you, but you, you contacted
15 us first and said it was fruitless to have an
16 appeal. I fully expected you to come to an
17 appeal, to want to have an appeal.

18 Q: True or false, the inquiry you described is
19 dependent on someone telling you they're
20 appealing?

21 A: No, an appeal is, is dependent on there being a
22 violation, period, not, not on someone saying
23 they want an appeal or not.

24 Q: Stipulating that there was some event which you
25 considered a violation and stipulating that you

1 had told them, "You're in violation," and someone
2 had concluded that it was a violation, and
3 stipulating that you said there should be an
4 appeal, is the inquiry stage dependent on someone
5 filing that appeal, which you have suggested?

6 A: Not necessarily. I, I might add that -- aren't
7 you discussing this appeal as part of Section 13?
8 Is that ---

9 Q: That was not my question.

10 A: Isn't that what this is part of?

11 Q: I won't go beyond my question now. Now, assuming
12 someone filed the appeal and you did the inquiry,
13 what comes next?

14 A: The Board would then discuss the situation and
15 determine what the next step is, whether -- yours
16 is a hypothetical 'cause there -- it wasn't
17 appealed by you and you indicated no need to, to
18 have the appeal, but if it was a landscape
19 violation, if we saw that people were doing most
20 of the work and having a minor problem, we'd cut
21 them a little slack and give them a little more
22 time, if it was someone that simply refused to do
23 it, then we might impose a sanction, or if we
24 were wrong, we would back it out.

25 Q: Assuming that your inquiry resulted in your

1 concluding that it's a violation, and assuming
2 you heard nothing that said it was to be
3 remedied, what is your next step as a Board?

4 A: I'm trying to wrap my hand around your question
5 here.

6 Q: Okay. So far all you've done is the -- you've
7 told them to make an appeal, they haven't
8 appealed or end of story, you impose -- so the
9 end of story, then you impose a fine? You said
10 appeal, they don't appeal, you impose a fine?

11 A: We could. We would discuss it first to decide --
12 we wouldn't just do anything automatically in
13 that case. We would -- we -- if there was to be
14 a hearing on that, we would discuss the
15 particulars and decide what to do before -- we
16 would discuss it before moving. If, if we, we
17 were in a hearing state -- in your case, there
18 was already a violation and I, I think it was
19 clear that there was and you didn't want to
20 appeal it.

21 Q: Now, assuming I had appealed it, you did an
22 inquiry, decided that it was a violation, I
23 refused to agree, what is the next step that you
24 would follow, according to your procedures?

25 A: Well, this is, this is hypothetical, because I'm

1 only one Board member and you never did appeal
2 it, and I don't know what you would've had to say
3 at that time.

4 **Q: So hypothetical since you're responsible to**
5 **establish the procedures and follow for all these**
6 **homeowners who may possibly do a violation. So**
7 **someone has -- let me, say, I've done this**
8 **violation, you told me to appeal, if I would've**
9 **appealed -- I won't fix it, you say, "It's a**
10 **violation, we'll fix it," true or false, you next**
11 **call a Board meeting?**

12 A: We would -- false. We would call a Board meeting
13 if you said, even if you said you wouldn't fix
14 it, but you waived your right. We, we would call
15 a Board meeting in a case where we were afforded
16 the opportunity to do that, and we would make
17 sure, first of all, that we understood the facts
18 and that we, we were doing -- we were behaving
19 properly.

20 **Q: Upon reconsideration, it's your statement I**
21 **didn't -- you said this many times, I didn't**
22 **appeal.**

23 A: You said the appeal was -- I'm not sure what the
24 word is, unnecessary, useless, that it wouldn't
25 -- you didn't want to appeal.

1 MR. JARMUTH: NOW, I'M GOING TO SHOW
2 THE WITNESS MY EXHIBIT
3 633 DATED OCTOBER 11TH,
4 2010.

5 **Q: Please read the subject line to the Court and**
6 **just read that subject line.**

7 A: "Putative appeal October 8th, 2010, disapproval
8 of fence, approval of flowerbed." And I'd like
9 to look at this closely.

10 **Q: Go ahead.**

11 A: (Pause while reviewing document). Okay.

12 MR. JARMUTH: I'D LIKE THE COURT TO
13 TAKE NOTICE THAT THE
14 WITNESS SEEMED TO, AS FAR
15 AS I CAN SEE, SAY I DID,
16 IN FACT, FILE AN APPEAL.

17 A: No, you did not. I'd like to see it again,
18 though. You did everything but appeal.

19 **Q: Please read the title of the subject again, the**
20 **letter.**

21 THE COURT: I'LL REMEMBER THE TITLE.
22 DON'T MAKE HIM READ
23 ANYTHING ELSE.

24 MR. JARMUTH: FINE. THANK YOU, YOUR
25 HONOR.

1 MR. FREIBOTH: NO.
2 THE COURT: UNLESS YOU ---
3 MR. FREIBOTH: YOUR HONOR, THIS IS, THIS
4 IS THE NOTE WHERE HE
5 WAIVES HIS RIGHT TO AN
6 APPEAL, IT'S RIGHT IN
7 HERE, ---
8 THE COURT: ALL RIGHT.
9 MR. FREIBOTH: --- EVEN IF IT'S IN THE
10 TITLE. ON THE LAST PAGE,
11 "I RESERVE MY RIGHT TO
12 TAKE PARALLEL RECOURSE AT
13 LAW OR IN EQUITY, SINCE
14 DISPUTING THE AUTHORITY
15 OF THE HOA ON THIS
16 MATTER, I AM DISPUTING
17 THE NECESSITY OF AN
18 APPEAL." AND HE DISPUTES
19 THE AUTHORITY OF THE ARB
20 TO DO ANYTHING, THE HOA
21 TO DO ANYTHING, THAT WE
22 HAVE ANY REGULATION OF
23 THE ROAD. HE USES THE
24 WORD, "APPEAL," IN THE
25 SUBJECT, BUT IN THE

1 DETAIL, HE DOESN'T WANT
2 TO APPEAL ANYTHING.
3 THE COURT: WELL, I THINK THAT'S IN
4 EVIDENCE; IS IT NOT?
5 MS. GOLDING: YES, YOUR HONOR.
6 THE COURT: WHAT'S THE EXHIBIT
7 NUMBER?
8 MR. JARMUTH: THAT'S EXHIBIT NUMBER
9 633, AND ---
10 THE COURT: DON'T READ ME ANYTHING
11 ELSE.
12 MR. JARMUTH: YES, YOUR HONOR.
13 THE COURT: I CAN READ IT.
14 Q: Now, going beyond that, you recited that your --
15 did I correctly hear that you're familiar with
16 Section 13.3, Procedures, of the bylaws?
17 A: I am, yes.
18 Q: Could you please take a moment to refresh
19 yourself for the record?
20 MR. JARMUTH: I'M PROVIDING THE WITNESS
21 A COPY OF SECTION 13.3,
22 PROCEDURES.
23 A: Okay.
24 Q: Could you please read the first sentence to the
25 period, from the beginning of that first sentence

1 to the period?

2 A: "Except with respect to failure to pay
3 assessments, the Board shall," and you've got it
4 underlined here, "shall not impose a fine,
5 suspending voting rights or infringing upon or
6 suspension of any other right of an owner or
7 other occupant of a subdivision for a violation
8 of the Declaration, bylaws or any rules and
9 regulations to the Association, unless the
10 following procedure is followed."

11 Q: Thank you. Is there anywhere in the sentence you
12 just read that gives the Board an out from the
13 phrase, "Shall not impose a fine or suspend
14 voting rights?"

15 A: Just a second. Just a second, okay, let's see
16 what you're saying.

17 MS. GOLDING: AND LET HIM LOOK AT
18 SECTION 13.3.2.

19 MR. JARMUTH: I JUST ---

20 A: I have it. Excuse me, once again, you want to
21 know if there's anything in this section that ---

22 Q: I'm asking, is there anything in the -- to use a
23 term of English -- in the imperative command in
24 the bylaws which tells that a Board shall not do
25 something, I take that as a imperative command,

1 is there anything in that imperative command
2 which makes it not an imperative command, in that
3 first sentence ---

4 A: We're ---

5 Q: --- where it says ---

6 A: We're actually arguing about the wrong part of
7 the covenants as I told you once before. This is
8 a procedure for the Board of Directors, not the
9 Architectural Review Board. We're wasting time
10 on this. The actual applicable statement for the
11 Architectural Review Board is in 7.2 of the
12 covenants. It's not in the bylaws. It's in the
13 covenants and the actual applicable statement,
14 which this is, "Architectural Review Board shall
15 have the right and authority to establish, amend
16 and enforce architectural guidelines, rules and
17 regulations, to the Architectural Review Board
18 and owners in establishing an orderly and
19 efficient procedure for accomplishing its duties
20 and powers hereunder." You're misconstruing
21 Section 13 as, as the -- for the Architectural
22 Review Board. It's for the Board of Directors,
23 and it would override the authority given to the
24 Architectural Review Board in the covenants if
25 you construed it that way.

1 Q: Now, Mr. Freiboth, I hear the word, "Procedure,"
2 there. Is any procedure described other than the
3 procedure in the bylaws?

4 A: The procedure that's appropriate is the one
5 that's referred to in the passage I just read in
6 7.2 of the covenants. It's the Architectural
7 Guidelines that apply here in this section of the
8 covenants, not that section of the bylaws.

9 MR. JARMUTH: I THINK THE COURT TAKES
10 MY POINT THAT IT ALL SAYS
11 PROCEDURE.

12 Q: Now, does the bylaws govern the operation of the
13 organization for which you are president?

14 A: It, it governs the operation, the, the activities
15 of the Board of Directors. Well, the bylaws, but
16 that particular passage is Board of Directors,
17 but the bylaws is, is an instrument relating to
18 how the organization is run, yes.

19 Q: And isn't the activities of the Board part of
20 your way the Board and the IHOA is run; isn't
21 that procedure of your organization?

22 A: For other types of violations, that's a procedure
23 for the Board, but there's actually no --
24 there's, there's hardly any. There's only one
25 instance of any mention of an Architectural

1 Review Board in there, and that's only after
2 something is destroyed and it comes back. The --
3 that -- that's not -- that's about the
4 Association homeowners and the Board of
5 Directors, it's not really about the
6 Architectural Review Board.

7 **Q: Isn't the IHOA, in its counterclaim, acting for**
8 **the IHOA in its capacity as the IHOA?**

9 A: We're acting on behalf of the Association,
10 correct.

11 **Q: Are you suing about the covenants in an**
12 **individual capacity, as an individual homeowner?**

13 A: I'm suing -- we're suing on behalf -- well,
14 actually, this started out in response to your
15 litigation.

16 **Q: Looking at the counterclaim which has the**
17 **(unintelligible) of an independent lawsuit, is**
18 **that, in any of you individually or on behalf of**
19 **the IHOA as a corporation?**

20 A: I believe our activities in, in response to your
21 lawsuit are in response to the entity you sued.
22 You didn't sue individuals, you sued -- well,
23 you, you sued, for most of these things, the
24 Board of Director -- the, the Association and the
25 Board.

1 Q: Looking at your counterclaim which claims I
2 violated the covenants, is it not your
3 organization which is counter-suing me for the
4 violation of the covenants?

5 A: I don't have the counterclaim in front of me, but
6 it may be. Are you talking about a counterclaim
7 related to the ARB violation? I don't, I don't
8 have that in front of me.

9 MR. JARMUTH: I THINK THE COURT GETS
10 WHAT I'M TRYING TO GET
11 TO.

12 THE COURT: WELL, MOVE ON TO
13 SOMETHING ELSE.

14 MR. JARMUTH: YES, YOUR HONOR.

15 THE COURT: HE'S ANSWERED IT TWO OR
16 THREE DIFFERENT WAYS.

17 Q: The last question I'll have on that is, did your
18 Board ever send me an invitation to attend a
19 meeting of the Board to deal with what you allege
20 was a violation of covenants?

21 A: For, for the fence?

22 Q: For the fence?

23 A: I made sure that the response from the ARB
24 covered inviting you to either -- to, to
25 establish the disposition of the fence or to come

1 to us for an appeal. I was expecting an appeal.
2 That was the only capacity I was interested in,
3 is that you were offered an appeal, and you would
4 know, you would know the disposition of the fence
5 after it had -- if you didn't appeal.

6 MR. JARMUTH: I THINK THE COURT CAN
7 READ 13.2 BY ITSELF.

8 Q: Have you personally had any problems with the
9 golf course, as a homeowner?

10 A: At present, no.

11 Q: Is the golf course situate behind your premises?

12 A: Sure, there's a fairway there.

13 Q: Are you aware of any neighbors yourself who have
14 made complaints regarding problems with the golf
15 course?

16 A: Not recently. When?

17 Q: Going back to the beginning of your presence as a
18 homeowner, are you aware of any -- let's just go
19 back as far as 2007 when Rosemary Toth became
20 President of the HOA. Are you aware of any of
21 your neighbors complaining that the golf course
22 did anything particularly which they allege may
23 have been a violation of the covenants?

24 A: I'm going to guess that you're referring to the
25 time that they, they landscaped along their

1 property with bushes.

2 **Q: Yes, I am.**

3 A: Yeah.

4 **Q: What can you tell us about that?**

5 A: A lot of homeowners were unhappy because the golf
6 course had added mostly wax Myrtles near the
7 border of their property line and fairways and
8 people previously had unobstructed views of the
9 fairways. At first, we thought that it was
10 regulated by the HOA, and then we learned that it
11 wasn't regulated by the HOA.

12 **Q: Isn't it true that the section of the covenants,**
13 **a section which no one has claimed has been**
14 **waived or deleted or anything, isn't it true that**
15 **it says no landscaping will be installed which**
16 **obstructs views of natural areas or the golf**
17 **course?**

18 A: Which, which one is that?

19 **Q: Do you have the covenants there?**

20 A: Sure.

21 **Q: It's in Section 7.**

22 A: Okay.

23 **Q: Mr. Freiboth, do you need a moment to break, I**
24 **see you're shaking?**

25 A: No, I'm just -- it's late in the day. I think I

1 need a drink.

2 MS. GOLDING: 7.33.

3 A: She said 7.33.

4 **Q: Will you please read 7.33? Please read it to the**
5 **Court.**

6 A: Yes, "Landscaping: The developer reserves the
7 right to restrict the placement of landscaping,
8 fences and other impediments to the enjoyment of
9 views, natural areas or of street intersections,
10 and to remove or require an owner to remove such
11 items as shall obstruct such views."

12 **Q: Is the golf course owner of an area of land**
13 **subject to the covenants?**

14 A: The golf course is not an owner, that's the
15 problem. Owners are, are -- have unit -- unit,
16 unit -- owners -- the golf course is not an
17 owner. They don't -- in this case, they're not
18 an owner of a residential unit. That's what an
19 owner is in the context of this case. That's
20 been the problem, is that the, the guidelines for
21 architectural control don't cover the golf
22 course. They're, they're -- it's a commercial
23 entity, they're not an owner. In this case, they
24 don't have residential property. They do own a
25 condo in The Glens, but it has nothing to do with

1 this, then they're an owner, but for the
2 commercial course, they are not an owner or
3 subject to our architectural controls that relate
4 to an owner or a unit. That's the problem.

5 **Q: Mr. Freiboth, if it could be shown that the deed**
6 **to the golf course said that the land conveyed to**
7 **the golf course is subject to the covenants, will**
8 **you then agree that they were subject to the**
9 **covenants?**

10 A: No. That's the problem, you have to read every
11 covenant and see who it is that this -- is this
12 for the Board, is this for the declarant, is this
13 for the unit owner, is this for the builder?
14 They're so many people in this document that you
15 have to know -- you have to have a viewpoint of
16 each covenant and who it applies, who they're
17 talking about it.

18 MR. JARMUTH: THE COURT IS INVITED TO
19 INSPECT THE DEED OF THE
20 GOLF COURSE FROM
21 PLANTATION AD TO
22 PLANTATION GOLF.

23 THE COURT: TELL ME THAT AGAIN.

24 MR. JARMUTH: IN ONE OF THE PIECE OF
25 EVIDENCE -- A DOCUMENT IS

1 IN EVIDENCE, THE DEED
2 SECTION, IS THE DEED TO
3 THE GOLF COURSE FROM
4 PLANTATION AD TO
5 PLANTATION GOLF, I THINK,
6 LLC, AND I PROFFER TO THE
7 COURT THAT IT'LL FIND IT
8 SAYS IT'S SUBJECT TO THE
9 COVENANTS.

10 MR. FREIBOTH: MAY I MAKE AN ADDITIONAL
11 COMMENT ON THIS?

12 THE COURT: NO, LET'S DON'T WANDER
13 OFF. WE'VE GOT ENOUGH TO
14 DO.

15 MR. FREIBOTH: OKAY.

16 THE COURT: JUST ANSWER THE
17 QUESTIONS.

18 **Q: When you began your testimony, you talked about**
19 **the Articles of Incorporation. Is there anything**
20 **attached to the Article -- Have you had a chance**
21 **to read the Articles of Incorporation?**

22 A: Yes. Are you talking -- wait a minute now. Are
23 you talking about the covenants themselves?

24 **Q: The Article of Incorporation of the IHOA.**

25 A: If I have, it's been a while, if that's -- you're

1 not talking about the covenants? You're not
2 talking about the covenants, correct?

3 Q: If I, if I am correct, you said, not the exact
4 quote, that, "The Articles of Incorporation
5 provide additional guidance." I'm wondering what
6 additional guidance the Articles of Incorporation
7 have, because what I can see is that when there's
8 an option to attach additional material, none was
9 attached.

10 A: Are you saying that there's no bylaws attached to
11 the covenants; is that where we're going?

12 Q: No. You used the phrase or you were -- maybe you
13 were forced to use the phrase, Articles of
14 Incorporation, I heard that attached to the
15 Articles of Incorporation or the Articles of
16 Incorporation provide you additional guidance to
17 follow, but in looking at the Articles of
18 Incorporation, I could find only the name of the
19 declarant and who the registered agent. I'm
20 wondering if you can cite anything I've missed
21 regarding this additional guidance the articles
22 was providing.

23 A: I want to establish that we're talking about the
24 covenants. I don't recall the exact wording of
25 the earlier request, but I just want to

1 establish, are we talking about the International
2 Club covenants?

3 Q: I'm just referring to what you testified to. I'm
4 taking the Articles of Incorporation to be what
5 the statutes say, which is a document is filed
6 with the Secretary of State where a non-profit
7 corporation or a corporation is incorporated, and
8 such a document provides for provisions which
9 would be binding on the operation procedurally of
10 that corporation, and I am not the one who
11 referred to it. I believe you did.

12 MR. FREIBOTH: YOUR HONOR, I'M, I'M, I'M
13 TRYING TO CLARIFY WHAT
14 YOU'RE TALKING -- WHAT
15 HE'S TALKING ABOUT.

16 MR. JARMUTH: LET'S NOT ANSWER, YOUR
17 HONOR.

18 A: I -- I'm glad to answer the question.

19 THE COURT: ARE YOU WITHDRAWING YOUR
20 QUESTION?

21 MR. JARMUTH: I'LL WITHDRAW MY
22 QUESTION.

23 Q: Now, you stated that amendment number one --
24 could you find amendment number one, please?

25 A: Okay.

1 Q: Can you find the language where it says that The
2 Villas, by name, is exempt from the provisions of
3 -- I was unsure. You said they were exempt from
4 the provisions of a use restrictions or was
5 exemptions required for the ARB. What was the
6 exemption that you were referring to in amendment
7 one relating specifically to The Villas by name?

8 A: I believe I was referring to paragraph eleven,
9 "The, the declarant here, here -- hereby waives
10 architectural controls set forth in the two
11 numbered sections, 7.2 in the Article 7, 7.4,
12 7.25, 7.31."

13 Q: And where was The Villas name related to that?

14 A: You have to look at it in the context of the
15 amendment, and it's clear from the amendment that
16 I believe they're talking about The Villas.

17 Q: Can I see this, please?

18 *****OFF THE RECORD*****

19 (ON THE RECORD.)

20 Q: Now, could you read paragraph two of amendment
21 one?

22 A: Okay. Paragraph two, "The property set forth and
23 described in Exhibit "A", which is attached
24 hereto and incorporated herein by reference is
25 hereby subjected to the Declaration. Such

1 property (the Multi-family Parcel) is being
2 conveyed by the Declaration to International Club
3 Villas, LLC, a South Carolina Limited Liability
4 Company. The declarant hereby grants to The
5 Villas Club, LLC, all its rights contained in the
6 Declaration to develop multi-family parcel and
7 create thereon units and recreational amenities
8 and subject such amenities to Multi-family
9 Associations."

10 **Q: Yes or no, that paragraph establishes the builder**
11 **as a recognized builder in the community?**

12 A: As best as I can tell, no. Usually, there'd be a
13 designated builder statement. I think this is
14 just talking about what property this is.

15 **Q: So yes or no, this article which is specific to**
16 **The Villas, specific, not a general provision of**
17 **the covenants, specifically says, from your point**
18 **of view, that the owner is not a designated**
19 **builder? Basically, it's ---**

20 A: This, this paragraph may not.

21 **Q: And from your examination of all the amendments**
22 **by the habit of the declarant if he wanted**
23 **someone to be the designated builder, he'd so**
24 **say?**

25 A: I believe they were -- it was done later in ---

1 Q: The amendment following?

2 A: Four.

3 Q: Four. Okay. So ---

4 A: And that they went back and pointed to this and
5 said, "I, I meant that everything in here
6 basically was ---

7 Q: Now, assuming that four says that at this point
8 The Villas would be a designated builder, what
9 rights and exemptions do designated builders have
10 from the original covenants?

11 A: A designated builder, when they convey property
12 to a third party, that's when the collection of,
13 of, of assessments starts. They can build.

14 Q: True or false, a designated builder does not have
15 to apply to the ARB for any permission to do
16 anything?

17 A: False. That -- the only -- the party that -- the
18 developer is different from the designated
19 builder. The developer, I think, is who you're,
20 you're talking about there.

21 MR. JARMUTH: THE COURT IS -- TO SAVE
22 TIME, I'M SUGGESTING THE
23 COURT LOOK AT THE
24 ORIGINAL COVENANTS TO SEE
25 WHETHER THE EXEMPTION

1 CONTROLS WHICH I CITED
2 THE TESTIMONY APPLIES TO
3 THE DEVELOPER AND TO
4 DESIGNATED BUILDERS.

5 Q: Assuming that the provision which talks about The
6 Villas there exempted them in the same capacity
7 as the declarant, can you see any reason why --
8 which this says, "Waives, waives, waives," did
9 not talk about The Villas by name?

10 A: Well, they're, they're not the same as the
11 declarant, that they wouldn't have talked about
12 The Villas by name in that particular section.
13 They were waiving architectural controls and they
14 were trying to add The Villas as, as property
15 that would be part of the Association at that
16 time.

17 Q: I've heard argument today that the intention was
18 to waive the controls for the builder who was
19 buying at the time. This was back in 2001, I
20 believe, the amendment. Let's see, true or
21 false, the only actual entity building houses at
22 the time was Sunbelt, 2001?

23 A: Plantation AD could've, but I think Sunbelt was.

24 Q: True or false, Horton did not appear 'til 2003?

25 A: I believe that's probably correct. That's about

1 the right time frame.

2 **Q: True or false, the only entity which was about to**
3 **build houses at the time that was written was The**
4 **Villas? Go back to Section 2.**

5 A: I'm putting it back together. What's the date
6 here? This is in early 2003. I don't recall
7 exact -- oh, that would be amendment two.

8 **Q: Look at amendment one.**

9 A: Oh, wait a minute. Yeah, it looks like amendment
10 one was 2000, so probably -- I'm not sure when
11 exactly Sunbelt came in, but Sunbelt and the, The
12 Villas -- Valley Castle was added earlier, but
13 there was no building activity.

14 **Q: And at this time, we can see that in Section 2,**
15 **provision was made specifically for The Villas**
16 **and the other section was made generally to 7.2,**
17 **deleted or waived, it was just a general**
18 **statement then?**

19 A: No, it's not.

20 **Q: Does it name any -- does it name homeowners?**

21 A: It names the declarant. It's clear who it was,
22 and the declarant wasn't The Villas, it was the
23 person declaring to The Villas, and he explained
24 earlier, if I understand the testimony, that he
25 had to do that, that, that any developer that was

1 receiving property would've wanted it that way by
2 the declarant to the builder.

3 Q: I believe the Court gets the gist of what's going
4 on. Could you please find the ARB Guidelines in
5 force when I went to build the play set?

6 A: That was in 2010? I don't, I don't ---

7 Q: No, the play set was, I think, much earlier. I
8 think the play set was ---

9 A: 2009?

10 Q: --- in 2009?

11 A: Do we know what exhibit that is? You cited
12 several ARB exhibits earlier. It was in, it was
13 in the thick book.

14 MS. GOLDING: LOOK AT 58 AND 59,
15 DEFENDANT'S EXHIBIT 58
16 AND 59.

17 Q: I believe you'll find it at the ARB Guidelines
18 dated 8/1/2008, my number 600. My application
19 was 7/23 -- 7/21 of 2009. Now ---

20 A: No, I don't have them in any of these pages. Do
21 you have, do you have it? I don't think that was
22 the ---

23 MS. GOLDING: WE'RE LOOKING FOR THE
24 GUIDELINES.

25 MR. FREIBOTH: THAT WERE IN EFFECT IN

1 2010.

2 MS. GOLDING: LOOK AT EXHIBIT 80.

3 MR. FREIBOTH: EIGHTY?

4 MS. GOLDING: YES, IN THE BIG BOOK.

5 MR. JARMUTH: WE'LL HAVE IT IN A

6 MOMENT, YOUR HONOR.

7 MR. FREIBOTH: I THINK I HAVE IT. I

8 THINK IT'S EXHIBIT 80.

9 THE COURT: BE SURE YOU'RE ON THE

10 SAME EXHIBIT NOW.

11 MS. GOLDING: DEFENDANT'S EXHIBIT 80.

12 MR. FREIBOTH: LET'S COMPARE IT. IT'S

13 ---

14 THE COURT: EIGHTY?

15 MR. FREIBOTH: IT, IT SHOULD START 2005

16 THROUGH JULY -- NO, HERE.

17 WHEN WERE YOU -- THIS ONE

18 GOES THROUGH JULY 2010.

19 MR. JARMUTH: THIS IS THE ONE THAT ENDS

20 AT 2008. THE SWING SET

21 APPLICATION WAS IN 2009.

22 I'D LIKE TO OFFER THE

23 WITNESS MY NUMBER 600 FOR

24 THE PURPOSES OF THE

25 QUESTION, YOUR HONOR.

1 A: Okay.

2 **Q: Will you agree that ---**

3 THE COURT: WAIT A MINUTE NOW.

4 YOU'VE CHANGED EXHIBITS.

5 WHICH EXHIBIT IS HE IN?

6 MR. JARMUTH: I HAVEN'T CHANGED -- I

7 OFFERED IT ---

8 MR. FREIBOTH: SIX HUNDRED?

9 THE COURT: SIX HUNDRED?

10 MR. JARMUTH: YES, WHICH IS ---

11 THE COURT: MS. GOLDING, ARE YOU ON

12 THE SAME EXHIBIT?

13 MR. FREIBOTH: HENRIETTA, ARE YOU ON THE

14 SAME PAGE WITH 600?

15 MS. GOLDING: YES.

16 MR. FREIBOTH: IT'S, IT'S DATED -- THE,

17 THE LAST UPDATE IS APRIL

18 2008.

19 MS. GOLDING: YES.

20 THE COURT: ALL RIGHT, GOOD. GO

21 AHEAD.

22 **Q: Will you agree, Mr. Freiboth, that that would be**

23 **the ARB Guidelines in force until 2010?**

24 A: Sure.

25 **Q: Now, can you find me -- I heard you state in**

1 testimony that the ARB Guidelines in force at the
2 time had an obligation, not your words, that a
3 homeowner could only build a swing set in the
4 back and not on the side. Can you find me one or
5 both of those things, that a swing set can only
6 be built in the back or that it cannot be built
7 on the side?

8 A: I'm looking to see what's in here says, if
9 anything. Mr. Jarmuth, I don't see them in here.
10 Is that, is that the expected result that you ---

11 Q: Yes, I'm glad that you ---

12 A: Okay. And, and then I'd like to add a comment
13 ---

14 Q: Go ahead.

15 A: --- with that in mind. What these represent is
16 the most common guidelines that would be used.
17 It's like a subset, but we also, of course, have
18 covenants, and there's, there's a statement in
19 this document that these guidelines are not all
20 inclusive. They're intended to provide guidance
21 to homeowners regarding the most common
22 improvements and decorative changes to homes.
23 Since there are many requests for other changes
24 than those covered in these guidelines,
25 homeowners are advised to contact any member of

1 the ARB before undertaking change which
2 represents a difference in appearance of one's
3 home. The ARB members will advise whether formal
4 application is necessary. Homeowners should also
5 refer to the covenants. So this is, this is kind
6 of a cheat sheet to the most common modifications
7 to help homeowners.

8 **Q: Thank you.**

9 A: Did I answer your question?

10 **Q: Yes, you did. Going back to your testimony under**
11 **oath, would you like to retract your statement**
12 **that the ARB guidelines in force at the time had**
13 **a prohibition on erecting swing sets on the side**
14 **and had a restriction that swing sets could only**
15 **be erected in the back?**

16 A: I was looking at the later ones. I, I know that
17 there's a -- that they don't -- that they allow
18 them in the back, but not on the sides. I'm not
19 sure if it was in this guideline or a later one
20 or not at all, but I do know that that was the
21 criteria.

22 **Q: And where will I see that criteria?**

23 A: If it wasn't in here, you would've talked to the
24 ARB, as, as it said in the paragraph I just read,
25 'cause it would not have been one that was

1 included and the most common at that point.

2 Q: And is it your testimony that that restriction
3 was not then in the guidelines?

4 A: I don't see it in the 2008 guidelines, correct.

5 Q: Thank you. Now, you also testified that the same
6 restriction which said, "You got to do it in the
7 back and you can't do it on the side," was in the
8 covenants. Can you find that in the covenants in
9 the section of the covenants marked, "Use
10 restrictions?"

11 A: I don't think it's -- I'm not sure that I said
12 that. It's not -- it's, it's an ARB guideline,
13 but it may not be one that's in the ARB
14 Guidelines. Covenants -- I'm thinking. I don't
15 think the covenants are that specific.

16 Q: At this point, is it your testimony that you are
17 able to find it in the covenants or not able to
18 find it in the covenants?

19 A: Let me take a quick look, 'cause I have an index.

20 Q: Go ahead.

21 A: I had an index.

22 Q: We're looking at swing sets. It'll be under the
23 section called, "Use restrictions."

24 A: I don't see it in here. I have an index and I
25 don't see it.

1 Q: Thank you. I can't find it, either. Now, going
2 on to another one of your statements under oath,
3 you testified that I attempted to install a fence
4 without approval. Could you please explain that
5 statement?

6 A: I took that -- well, you started a project
7 without approval, and since it was without
8 approval, we had no documentation about what your
9 project was, other than you were out there
10 installing it. When, when the description of the
11 project came back to the ARB with Mr. -- by Mr.
12 Jarmuth, the description of his project, it was
13 no longer just a line of bricks, trying to
14 resolve a property line dispute that was
15 bubbling, but it had been promoted to -- it was
16 the base of my seven foot fence. We never
17 created the fence idea, the wall idea, the -- any
18 of that. I took it as his description of his
19 project. That was the first definition we had of
20 what he was attempting to do.

21 Q: So when I put -- is it your testimony that when I
22 actually put the landscape edges in, you had no
23 idea that I was intending to install a fence?

24 A: At that time, that's all I saw, and we didn't
25 discuss it in a great deal of detail, and since

1 there was a property line dispute brewing, I
2 believe I said, "I'm here just as an observer at
3 the moment." I didn't want to get drawn into
4 what appeared to be a dispute between two
5 neighbors about their property line and something
6 that I wasn't fully understanding.

7 **Q: But looking at what was going on here, when I**
8 **sent in my ARB application, could I, as part of**
9 **the application, said I wanted to install some**
10 **trees?**

11 A: You could've made -- you -- some, some trees?

12 **Q: Yeah, it's a common request.**

13 A: You, you could've -- you can make an ARB
14 application to install trees, but I would not
15 make any judgment on it. I -- the ARB is the
16 expert, in fact, I purposely don't sit on the
17 ARB, because I don't want to be appearing to ride
18 herd over them. They're an independent body, and
19 only by exception would we get involved.

20 **Q: Now, I'm just wondering how, from when I -- yes**
21 **or no, when I submitted the ARB application, at**
22 **that point I could've added anything I wanted**
23 **which is permitted by the covenants?**

24 A: You hadn't ---

25 **Q: Yes or no?**

1 A: Since you hadn't made, you hadn't made at that
2 point any submission, you could've submitted it
3 for the project that we saw, which is what we
4 expected, or if you had other items that you were
5 planning to modify, that's frequently done.
6 There's more than one -- I've done that myself,
7 two different modifications.

8 **Q: So is there any evidence you have that my request**
9 **to install a fence was in my mind when I**
10 **installed the edges and not as you just**
11 **testified, something that came to mind when it**
12 **came time to submit the ARB application?**

13 A: At the time, we -- all I could see being
14 installed was the edges and from the gist of what
15 I thought was going on was there was an attempt
16 to put a brick edge right smack on the property
17 line because both parties on both sides had
18 claimed the other party was moving their, their
19 rebar, and there, there had been a property line
20 dispute, so that's all I saw. We didn't talk in
21 great detail. I'm judging what you did from your
22 actual application that came later.

23 **Q: I think the Court gets the gist of that. Now ---**

24 A: Everybody can hear me, I trust, it's getting a
25 little late.

1 MR. JARMUTH: I'M GOING TO SHOW THE

2 WITNESS MY EXHIBIT 36.

3 A: Uh-huh (affirmative response).

4 Q: Will you agree that the house over there is that
5 of Mr. Cartman?

6 A: Can I see that a little closer? This is your
7 line, and this is the ---

8 Q: Would you agree that these line of edges are the
9 edges we're talking about?

10 A: The picture you're showing me, it, it looks like
11 that's it, a line, ---

12 MR. JARMUTH: I'D LIKE TO SHOW THE

13 COURT ---

14 A: --- a straight line of brick.

15 MR. JARMUTH: --- THE PICTURE WE'RE

16 TALKING ABOUT, SO THE

17 COURT WILL RECOGNIZE WHAT

18 WE'RE TALKING ABOUT.

19 Q: Now, looking at the line of edges, what's on the
20 left side -- if that's the cul-de-sac -- if this
21 is the cul-de-sac over here and that's the power
22 box here, what's over here? I'm pointing to the
23 right side of the line of edges.

24 A: I think that would be Mr. Cartman's property.

25 Q: Thank you. And is that the front of his house?

1 A: That -- that's his house and that's his property.
2 It's cut off. I -- I'll accept that that's his
3 house and that's his property.

4 MR. JARMUTH: I'D PROFFER THAT THAT'S
5 THE SIDE OF HIS GARAGE
6 AND THAT'S THE LEFT SIDE
7 OF HIS HOUSE.

8 Q: Now, have you been on my property?

9 A: No. No, I was next to your property watching you
10 install the brick, the brickwork.

11 Q: Fine. When you stood in front of where the
12 picture is taken, is that -- will you agree that
13 where my finger is in the far top left of the
14 picture is my rear property line, Bernstein
15 ---

16 A: I'm trying to be sure I have a reference here.

17 Q: --- where Bernstein, Cartman and Jarmuth come
18 together, the back right of my property line on
19 my plat?

20 A: Mr. Jarmuth, is this then your -- the edge of
21 your bed in the front?

22 Q: This is the, this is the, this is the power box,
23 that's my house, that's the landscape of bricks
24 and that's Cartman.

25 MR. FREIBOTH: I DON'T HAVE A COMPLETE

1 PICTURE, BUT I'LL TAKE
2 THAT THIS IS THE LINE OF
3 BRICKS NEXT TO HIS
4 NEIGHBOR. I, I DON'T
5 REALLY HAVE A -- WHERE,
6 WHERE YOU WERE STANDING
7 WHEN YOU SEE THIS.

8 **Q: Have you looked at the ARB application?**

9 A: I did at the time, and I saw your project at the
10 time.

11 **Q: Is the rear end of the line of landscape edges,**
12 **the rear end of my property?**

13 A: The, the bricks goes towards the end of your
14 property along the property line, that's -- or
15 what you perceive to be the property line.

16 **Q: And what is to the left of that line of bricks?**

17 A: Well, that would be your property.

18 **Q: Is there a house there?**

19 A: Somewhere to the left of the picture, sure.

20 **Q: Is that the front of my house?**

21 A: I don't have a reference. I just -- it's, it's
22 from the, the street view, yeah, if that would
23 help. I'm accepting what you say, but I just
24 don't have a reference to, to know where you're,
25 where you're standing.

1 Q: Could you find my ARB application up there for
2 the play set?

3 A: I don't -- I'm familiar with, I'm, I'm familiar
4 with the layout of your house and where you were
5 going. I just -- the picture is what's confusing
6 me, but from that, I understand.

7 Q: Now, it's your testimony that where the edges
8 are, I was going to erect the fence?

9 A: It's my testimony that you defined your project
10 and that's where I got it, that that was -- that
11 that, what I had seen going up was the base and
12 it had now been promoted to a base plus a fence.

13 Q: Could you please answer the question. The
14 question is, I'll repeat it, you identified the
15 edges just now as being to the right of my house
16 and the side of my house which is to the left,
17 certainly not in front of my house.

18 A: To the ---

19 Q: Would you then agree that the fence was going to
20 be erected in the same location, at least, as
21 where the line of edges are?

22 A: My understanding is the fence was going to be
23 located where the bricks are.

24 Q: Thank you. And yes or no, the right side of my
25 house is appurtenant or facing that line of

1 **bricks and then the proposed fence?**

2 A: Yeah, the bricks are between the side of your
3 house and the, and the, the -- well, the cul-de-
4 sac there.

5 **Q: I'm not referring to Mr. Cartman's property. I'm**
6 **referring to my property.**

7 A: They're on the right side of your house if I'm
8 looking from Pickering.

9 **Q: Have you ever looked at the plat and paid**
10 **attention to the area, the rear of my house as**
11 **shown on the plat?**

12 A: No, I've really -- I know that there are bushes
13 back around the back, but I -- I've never really
14 stood -- I've never really closely looked at the
15 back of your house.

16 **Q: So was it your suggestion I heard earlier that I**
17 **could've applied -- positioned my swing set to**
18 **the rear of the house?**

19 MR. FREIBOTH: WHAT WAS SUGGESTED IS
20 THAT WHEN HIS ORIGINAL
21 SWING SET APPLICATION WAS
22 DENIED, IT SAID, I
23 BELIEVE, AND I DIDN'T
24 WRITE IT, BUT I BELIEVE
25 IT SAID IN THE

1 APPLICATION THAT HE OUGHT
2 TO CONSIDER AN ALTERNATE
3 LOCATION, AND IT MAY HAVE
4 BEEN SPECIFIC TO SAY THE
5 REAR OF THE HOUSE, BUT
6 THERE WAS AN ALTERNATE
7 LOCATION -- IT WAS
8 SUGGESTED THAT HE, HE
9 LOOK AT ANOTHER PART OF
10 HIS PROPERTY FOR THIS
11 PROJECT.

12 **Q: But isn't your testimony I can't put a swing set**
13 **in the front?**

14 A: I don't think you can put it -- you, you are on a
15 peninsula. You're really -- the problem is his
16 property has, has got -- it's -- it is basically
17 exposed to the street on all of those areas.

18 **Q: Is it your testimony, yes or no, that I'm not**
19 **permitted to put a swing set in the front of my**
20 **house?**

21 A: I don't believe so.

22 **Q: Is it your testimony, yes or no, that I'm not**
23 **permitted to put a swing set, according to your**
24 **guidelines or your restrictions, on the side of**
25 **the house?**

1 A: It's not my -- it's my understanding that the
2 swing set is on the side of the house.

3 Q: Well, if a house has four sides, which side of
4 the house remains?

5 A: The back of the house. I just didn't know if
6 that's what it said on the application.

7 Q: That's not what I said, what I said. Now, if
8 you're suggesting that I put it some place else
9 and I can't put it on the left and I can't put it
10 on the right, I can't put it in the front, did
11 anyone, that you know of, ever check to see
12 whether there was actually any physical room back
13 there to put the swing set to satisfy the
14 suggestion you may or may not have been making?

15 A: Again, I didn't process this application. I had
16 nothing to do with it, initially. I -- I'm just
17 -- I have rudimentary understanding of the back
18 of your house. I, I -- I've really never been
19 there.

20 THE COURT: SO YOU DON'T KNOW.

21 A: I don't know.

22 Q: If you don't know, you don't know.

23 A: Thank you.

24 Q: Are you familiar with the timelines relating
25 between when I got the violation letter and when

1 I put in my putative ARB application?

2 A: Is that the one from the palm trees?

3 Q: That's the one for the fence with edges.

4 A: Okay.

5 Q: Are you familiar with the timeline on that?

6 A: Well, that was September 2009. I was on the
7 Board two weeks when that happened.

8 Q: Side yard fence between houses, ARB violation
9 letter 9/27/2010.

10 A: Oh, it was 2010.

11 Q: ARB package, 9/30/2010, how many days elapsed
12 between then, the violation letter and when I put
13 my package in?

14 A: I'm totally confused. I'm totally confused about
15 what applications you ---

16 Q: Side yard fence, the wall, ---

17 A: Oh.

18 Q: --- the one we were talking about?

19 A: I think that was in -- I thought that was in
20 2009. Well, what -- do you have it? What date
21 was it?

22 Q: Yes. If I did the side yard fence between houses
23 ---

24 A: Over the brickwork.

25 Q: Let's -- I withdraw that. We'll get back to the

1 other one. Yes, that's the one I want. In
2 putting down the edges, your organization sent me
3 a violation letter on 9/27/2010. Do you have any
4 reason to disagree with that?

5 A: If it was 2010, we sent you a violation for not
6 getting approval.

7 Q: My 627, and then at my 629, it shows that on the
8 30th of September 2010, I submitted an ARB fence
9 package.

10 A: Okay, or shortly thereafter you did.

11 Q: And isn't it a fact that your procedures say that
12 I'll be given ten days to rectify the problem,
13 which in this case you have said was failure to
14 submit an ARB application? Now, if I had been
15 given ten days to remedy it and I'd actually
16 submitted my application three days after the
17 violation had come out, is there any reason to be
18 able to say that I had not fully remedied the
19 violation of failing to submit the ARB
20 application?

21 A: You had -- you certainly submitted an application
22 by that time.

23 Q: And if your violation letter says I got ten days
24 to submit it and if your procedures say that I'd
25 remedy the application within -- if I submit it

1 within ten days, how can you be alleging now that
2 I violated your requirement to submit an ARB
3 application if I followed your guidelines and
4 remedied it within the time required before a
5 violation would be imposed?

6 A: You addressed the issue of submitting the
7 application. The problem was the application was
8 denied and you refused to remove your project as
9 requested.

10 Q: Weren't there, in fact, two violations? One was
11 failing to submit the ARB application, and that's
12 the element now of the counterclaim, and isn't
13 the other element that you're saying and building
14 a wall? Aren't there two elements?

15 A: Yes. You failed to submit an ARB application,
16 and then you submitted an application to build a
17 fence with a brick base. Let's keep it
18 consistent.

19 Q: And isn't the ARB application which was submitted
20 within the ten days also provides for the work
21 you saw on the ground?

22 A: The application would've covered the, the
23 brickwork and your proposed other parts of the
24 project, yes.

25 Q: Thank you.

1 MR. JARMUTH: THANK YOU. I'M DONE WITH
2 THIS WITNESS, YOUR HONOR.
3 MS. GOLDING: NO MORE QUESTIONS. NO
4 MORE QUESTIONS. WE CALL
5 BECKIE ABEL.
6 THE COURT: THE COURT REPORTER WANTS
7 TO TAKE A BREAK. WE'LL
8 BE BACK IN TEN MINUTES.
9 ****OFF THE RECORD****
10 (ON THE RECORD.)
11 BECKIE ABEL, AFTER HAVING BEEN CALLED TO THE STAND
12 AND DULY SWORN, TESTIFIED AS FOLLOWS:
13 COURT REPORTER: WILL YOU STATE YOUR NAME
14 AND SPELL YOUR LAST?
15 MS. ABEL: BECKIE A-B-E-L
16 DIRECT EXAMINATION
17 BY MS. GOLDING:
18 **Q: Ms. Abel, can you please tell us where you live?**
19 A: I live at 5908 Long Leaf Drive in Myrtle Beach.
20 **Q: And, Ms. Abel, tell us where you work.**
21 A: I work for K.A. Diehl & Associates.
22 **Q: And how long have you worked with K.A. Diehl &**
23 **Associates?**
24 A: For ten years.
25 **Q: And what's the business of K.A. Diehl &**

1 **Associates?**

2 A: We're a community management company.

3 **Q: And with respect to K.A. Diehl & Associates, what**
4 **is your job?**

5 A: I'm a senior community manager and I am the
6 responsible -- my portfolio has fifteen
7 properties.

8 **Q: And do you hold any licenses with the State of**
9 **South Carolina or any agency?**

10 A: I hold the Professional Community Association
11 Management designation through CAI.

12 **Q: What has been your responsibility with respect to**
13 **the International Club?**

14 A: I was the Association manager there from 2000 --
15 the end of 2006 to 2011, through 2011.

16 **Q: Before that, were you associated with the club as**
17 **an assistant to the manager?**

18 A: Yes, I was -- Vickie Gallagher was the manager at
19 the time, and I was her assistant.

20 **Q: How long has K.A. Diehl, the company, been the**
21 **property manager for the International Club**
22 **Homeowners Association?**

23 A: I believe since about 2002.

24 **Q: Are you familiar with the ARB of the**
25 **International Club Homeowners Association?**

1 A: I am.

2 Q: How long has that entity, the ARB, for the
3 International Club been in existed?

4 A: I believe, also, it was -- it started in 2002.

5 Q: And since 2002 to the present, can you quantify
6 the number of applications that the ARB has
7 processed through those many years?

8 A: It must be in the thousands by now, probably
9 around fifty or sixty a year.

10 Q: And does K.A. Diehl & Associates charge for your
11 time to attend the ARB meetings?

12 A: No, that's called -- we just provide
13 administrative assistance for the A --
14 Architectural Review Board, so it's, it's part of
15 our contract.

16 Q: Now, with respect to Mr. Jarmuth, you've heard
17 testimony as far as request of documents?

18 A: Uh-huh (affirmative response).

19 Q: Tell us what you know about Mr. Jarmuth's request
20 for documents and the Association's compliance
21 with those requests.

22 A: As I've said before, I personally am responsible
23 for fifteen properties, so K.A. Diehl &
24 Associates has over sixty properties in the Grand
25 Strand area, which we are responsible and hold

1 records for. When Mr. Jarmuth asked for records,
2 we asked him to give us a, you know, give us a
3 few days. We provided a time. I put the boxes
4 and the records that he wanted out for him. At
5 one point, he and his wife were even permitted to
6 come in the office with their own copy machine
7 and sit and copy files that they had requested.
8 We also have provided every International Club
9 box in the archives and sent them to Henrietta's
10 office for him to be able to inspect at his
11 leisure. So we've always provided everything
12 he's asked for.

13 **Q: You've heard testimony about a members list. Do**
14 **you recall the communications Mr. Jarmuth sent to**
15 **you asking for members' information?**

16 **A:** Yes. I think it was around election time, and he
17 wanted members' information. I provided him a
18 list that just provided the names of the
19 homeowners and their International Club address.
20 I -- because of the Privacy Act, we're not
21 allowed to give out phone numbers and email
22 addresses without that homeowner's approval.

23 **Q: Did Mr. Jarmuth ask for the emails and the**
24 **personal phone numbers of all the members in the**
25 **International Club?**

1 A: He did.

2 Q: And was there a letter sent to Mr. Jarmuth,
3 saying that he was asking for too much
4 information with respect to the emails?

5 A: I can't remember if there was a letter, but there
6 was communication.

7 Q: Let's look at Exhibit 53, I have that notebook in
8 front of you, please, and it's Defendant's
9 Exhibit 53. Now, Defendant's Exhibit 53, there's
10 first a letter in that from Mr. Jarmuth; is that
11 correct?

12 A: Yes.

13 Q: And what is the date of Mr. Jarmuth's letter?

14 A: April 28th, 2009.

15 Q: And is this letter requesting a voter list with
16 emails, telephone numbers and addresses?

17 A: Yes.

18 Q: Does Mr. Jarmuth also request the account
19 information for the property owners in that
20 request?

21 A: Yes, he's requesting the arrears status of the
22 homeowners.

23 Q: And what response, and that's the next letter in
24 Exhibit 53, what response was made and the date
25 and who made that response?

1 A: This came from McNair Law Firm, and it was April
2 the 28th, 2009, and the response was -- I think
3 basically what I said, they could -- we could
4 give him the homeowners list, but no further
5 information.

6 Q: Do you know of any document that Mr. Jarmuth has
7 requested that has not been provided that could
8 be provided and is accessible to every homeowner?

9 A: No.

10 Q: To your knowledge, have you attempted to provide
11 or K.A. Diehl attempted to provide Mr. Jarmuth
12 all the information he's requested that is
13 permissible to provide a homeowner?

14 A: Yes.

15 Q: You've heard some testimony with regard to the
16 Highway 17 Connector.

17 A: Yes.

18 Q: How much does each unit owner or property owner
19 in the International Club subdivision pay
20 annually to that association?

21 A: I believe it's approximately six dollars and
22 fifty cents annually.

23 Q: With respect to the account, the general ledgers
24 for the International Club Homeowners Association
25 and the monies that come in, the financial

1 records of the International Club Homeowners
2 Association, are those audited?

3 A: They have been audited since -- a full audit done
4 since 2007, and prior to that we were having
5 audit reviews done by an independent CPA.

6 Q: The audits that are done since the calendar year
7 2007 to the present, are those audits performed
8 by an independent CPA for the International Club
9 Homeowners. ---

10 A: Yes.

11 Q: --- Association?

12 A: Yes.

13 Q: Those independent reviews that were done prior to
14 2007, were those performed by an independent CPA
15 for the International Club Homeowners
16 Association?

17 A: Yes.

18 Q: What monies, if any, has K.A. Diehl embezzled,
19 stole, misappropriated, in any way from the
20 International Club Homeowners Association?

21 A: Absolutely nothing.

22 Q: No further questions.

23 CROSS EXAMINATION

24 BY MR. JARMUTH:

25 Q: Ms. Abel, during your testimony just now, you

1 talked about a request I sent in April 28th, 2009
2 for the voter list. Have there been any other
3 requests for that voter list which you received
4 from me?

5 A: From you?

6 Q: Yes, ma'am.

7 A: I don't recall.

8 Q: In preparation for ---

9 A: Yes.

10 Q: Do you want to ---

11 A: This is -- there's one, yes. It was brought to
12 my -- just brought to my attention. In August of
13 '08, you were provided with a resident telephone
14 directory for the homeowners via email.

15 Q: You seem to have copies of everything. Do you
16 have a copy of what was provided me or a copy of
17 the email which sent it to me?

18 A: This is the copy of the email. It's Defendant's
19 Exhibit 35.

20 Q: Could I please see it? Could you please read the
21 title of the attachment?

22 A: "Print owner telephone directory."

23 Q: How is that different from being -- yes or no, is
24 that just a dump of the list of names and phone
25 numbers, addresses that people have given you to

1 **put out on the website?**

2 A: This is, this is from our system, our accounting
3 system, the TOPs System. We, we have now got a
4 new accounting system, but at the time, and
5 you'll see it on the top of this page, it says,
6 "TOPS 2000 email report." Those are the names
7 and, and telephone numbers of the homeowners that
8 we had in our system that we billed.

9 **Q: In your system?**

10 A: Yes.

11 **Q: In your system, does it have -- well, let me**
12 **recollect. What did I ask for? Let me refresh**
13 **your memory. Let's go back to the attachment to**
14 **the Defendant's 53. Could you please read the**
15 **"A" through "F" things I asked for?**

16 A: I have it right here.

17 **Q: Okay. Could you please read them for the Court,**
18 **one by one? What's the first one?**

19 A: "A satisfactory voter list will include full name
20 of homeowner, voter, full" ---

21 **Q: Just stop at that one, ma'am.**

22 MS. GOLDING: YOUR HONOR, HE ASKED HER
23 TO READ THE WHOLE ---

24 **Q: One by one.**

25 THE COURT: YES, LET HER FINISH. GO

1 AHEAD, MA'AM.

2 A: "Full name of homeowner/voter, full contact
3 address or physical mail, email address if
4 disclosed to the HOA by homeowner, all telephone
5 numbers disclosed by homeowner to the HOA, the
6 number of votes which this homeowner is entitled
7 to cast, the arrears status of any homeowner
8 which might preclude him from voting."

9 Q: Now, are you familiar with the bylaws of the
10 IHOA?

11 A: I'm familiar with a lot of bylaws, but I, I do
12 recall reading them, yes.

13 Q: The bylaws of this particular ---

14 A: Yes.

15 Q: --- Defendant HOA?

16 A: Uh-huh (affirmative response).

17 Q: Are you familiar with the covenants of this
18 particular IHOA?

19 A: Yes.

20 Q: Are you familiar with a provision in its
21 procedures that says under certain circumstances
22 which include arrears, members may be deprived of
23 their vote?

24 A: Yes.

25 Q: Are you familiar with the statement in the

1 beginning of 13.1 that assessment non-payment is
2 among the reasons why a person will be deprived
3 to vote without the necessity to having a Board
4 hearing?

5 A: Is that in the covenants?

6 Q: Let me bring out the procedures. This is my 548
7 exhibit, Bylaws, Section 13.3. Could you please
8 look at the first sentence of 13.3, Procedure."

9 A: And these are in the bylaws?

10 Q: Yes, ma'am.

11 A: Okay. Well, you do understand that the
12 Declaration supersedes the bylaws, "The Board
13 shall not impose a fine, suspend voting rights or
14 infringe upon or suspend any other rights of an
15 owner or other occupant of the subdivision for
16 violations of the Declaration, bylaws or any
17 rules and regulations for the Association, unless
18 and until the following procedure is followed."

19 Q: Now, I didn't hear the first part of that
20 sentence. What was the "Except" provision?

21 A: "Except with the respect to the failure to pay
22 assessments," ---

23 Q: Thank you.

24 A: --- except for that.

25 Q: Yes. So these procedures do not apply if someone

1 hasn't paid assessments, and one of the things
2 you read is that they suspend voting rights?

3 A: Yes.

4 Q: And is it not the right of every member of the
5 Association to try to assure that someone will
6 not vote whose voting rights have been suspended?

7 A: I don't understand where you're going with ---

8 Q: Well, give me your opinion here. The Board has
9 suspended someone's voting rights, ---

10 A: Uh-huh (affirmative response).

11 Q: --- hopefully for cause, let's say for cause,
12 okay, haven't paid the assessments, okay, that's
13 the reason given, and there's going to be an
14 election, do you think it's a right of a member
15 of the Association to want to know whose rights
16 have been suspended so that they can make sure
17 that those people will not vote?

18 A: No.

19 Q: Say again.

20 A: No. I don't think it's the member's rights, it's
21 the individual homeowner's right to know if he's
22 not, and he should know, if he's not eligible to
23 vote.

24 Q: Don't the covenants provide that every homeowner
25 has a right to enforce the covenants

1 **individually?**

2 A: I would have to see that. It may -- they may --
3 well, I'll say that I'm not sure.

4 **Q: And doesn't a homeowner, in your belief, have a**
5 **right to ensure that it is a fair election?**

6 A: Yes.

7 **Q: And wouldn't an election be unfair if someone**
8 **votes who doesn't have a right to vote?**

9 A: But it's the Board of Directors' responsibility
10 and fiduciary duty to make sure that doesn't
11 happen. That's not really the homeowner's
12 responsibility.

13 **Q: Are you familiar with the South Carolina Non-**
14 **profit Corporation Act?**

15 A: Yes.

16 **Q: Doesn't that act have a provision that says that**
17 **any member of the non-profit corporation at the**
18 **time of voting has a right to see the list of**
19 **voters then or even previously before that to**
20 **verify the voting status of any particular member**
21 **of the Association?**

22 A: It may say that and I think it does say that. At
23 one point, I did provide the voting list for --
24 to Mike without any -- just the homeowner's
25 voting list to Mike Butryn and Pete Pizzi on your

1 behalf.

2 **Q: On my behalf?**

3 A: That's ---

4 **Q: How can you say that?**

5 A: Well, that's what they said.

6 **Q: Did I say that?**

7 A: No, but that's what they said.

8 **Q: Do you know they gave it to me?**

9 A: I have no idea.

10 **Q: So how could you have said that it was on my**
11 **behalf?**

12 A: Because that's what they said.

13 **Q: But you have no evidence that's true?**

14 A: I have no evidence.

15 **Q: And you have no evidence or actual knowledge that**
16 **they actually gave it to me?**

17 A: No, I have none.

18 **Q: Now, in response, you said that at the time I**
19 **made the original request, the other one you sent**
20 **me was much later, that you weren't going to**
21 **provide me anything because what was asked for**
22 **was beyond the scope of that which I was entitled**
23 **to; isn't that what the answer was?**

24 A: Yes.

25 **Q: Did it occur to you to provide me that**

1 information which you believed I was entitled to?

2 A: I was following the, and I believe the Board also
3 was following, the recommendations of their
4 attorney.

5 Q: Now, looking at my next (unintelligible), was I
6 entitled to the full name of the homeowner and
7 voter who's entitled to vote by virtue of his
8 ownership of property?

9 A: And I believe you were provided that in 2008.

10 Q: On April 29th -- well, does the statutes says
11 every time there's an election I get a new copy
12 of the voter list?

13 A: If you request it. It's just the voter list.

14 Q: In April 2009, was that a request?

15 A: You had a list of, of things that you requested
16 that were -- that we couldn't provide.

17 Q: Is it your statement, your testimony, if I get it
18 in one year, I can't have it in a subsequent
19 year?

20 A: Just the voter list you can have.

21 Q: I seem to hear you saying that because I got
22 something in 2008, you wouldn't give it to me in
23 2009.

24 A: No, that's not what I said. We gave you -- the
25 list you asked for in 2008 was a telephone

1 directory. In 2009, you require a voter list
2 which included mailing addresses, telephone
3 numbers, and also arrears status. This was
4 information that we were not going to provide to
5 you because the attorney recommended it.

6 **Q: Now, isn't the arrears status the same as**
7 **eligible to vote because you paid assessments,**
8 **were ineligible for not -- because you didn't pay**
9 **you somehow have a voting issue? Isn't that the**
10 **same as the procedure 13.1, which says that they**
11 **can suspend the voting rights if you are in**
12 **arrears on your assessment?**

13 A: You wanted the status.

14 **Q: Did I ask for the amount they were in arrears?**

15 A: You said the arrears status.

16 **Q: Did I ask for the amount they were in arrears?**

17 A: That would be the status.

18 **Q: Isn't status a yes/no thing, ---**

19 A: No.

20 **Q: --- either you are or are not?**

21 A: No.

22 MR. JARMUTH: I ASK THE COURT TO MAKE

23 ITS OWN INTERPRETATION.

24 I'D PROFFER THAT STATUS

25 IS A YES/NO SITUATION,

1 EITHER YOU'RE ELIGIBLE TO
2 VOTE OR YOU'RE NOT.

3 Q: Now, doesn't the State Law say that I'm entitled
4 to attach to a name the number of votes that the
5 homeowner is entitled to cast?

6 A: Yes. It clearly says in the documents that each
7 owner gets one vote, one unit, one vote.

8 Q: Well, wasn't I entitled then to know for each
9 name you provided me that he had one vote?

10 A: I -- I'm sorry, I just thought that was, you
11 know, you would understand that. The documents
12 say clearly one unit, one vote, you see the name,
13 they got one vote.

14 Q: Now, in 2009, was the golf course paying the full
15 fifty unit assessments being charged in the --
16 which the covenants said they should pay?

17 A: We were following the golf course agreement when
18 billing the golf course in 2009.

19 Q: And was the golf course, by virtue of some
20 document, entitled to vote in the election?

21 A: Yes.

22 Q: And therefore, in their voter, wouldn't that be
23 some number other than one which they were
24 casting a vote?

25 A: Yes.

1 Q: And is there some -- Let's see, isn't it a fact
2 they weren't paying fifty assessment units?

3 A: Yes, that's -- it was -- we were going according
4 to the golf course agreement.

5 Q: And didn't that agreement provide they were
6 paying some number less than fifty?

7 A: Yes.

8 Q: How many votes was the golf course being allowed
9 to vote during the period between 2003 and the
10 present, ---

11 A: Well, it depends on ---

12 Q: --- a year?

13 A: It depends on what year.

14 Q: Pick a year.

15 A: I really can't -- couldn't tell you. I would
16 have to look at the budget and see how many units
17 they were.

18 Q: Well, wouldn't you ---

19 A: The, the documents, the governing documents and
20 actually the golf course agreement doesn't
21 address the number of votes that a golf course
22 has. The governing documents, the Declaration,
23 states that the golf course is -- has the right
24 to have fifty votes. They never chose to use
25 those -- that right. They only voted for the

1 amount of units that, that they were paying for.

2 Q: Under the law, didn't I have a right to know the
3 number of votes which they could've cast had they
4 shown up to vote, because it says, "Number of
5 votes which this homeowner is entitled to cast?"

6 A: Entitled, they were entitled fifty votes, which
7 is in your Declaration.

8 Q: And why wasn't I entitled to know that
9 information?

10 A: Because it's in your Declaration, it says it
11 clearly that they're entitled to vote fifty
12 votes.

13 Q: Does the State Law say if I can get this
14 information from some place else I'm not entitled
15 to get it from you?

16 A: I don't think so.

17 Q: I've read it. Now, the second thing I asked for
18 is a full contact address of the homeowner
19 entitled to vote. Am I entitled to that?

20 A: Entitled to what, sir?

21 Q: The full contact address of each ---

22 A: No.

23 Q: --- unit owner?

24 A: No.

25 Q: Doesn't the statute say I'm entitled to that?

1 A: No.

2 MR. JARMUTH: THE COURT IS INVITED TO
3 NOTE THAT.

4 A: You're not, you're not entitled to their mailing
5 address, you're entitled to their home, the
6 ownership address, their unit address, that's
7 all.

8 Q: Did you offer to give me the unit address,
9 instead?

10 A: This particular request, the 2009, this was after
11 the lawsuit was filed, we turned this over to the
12 attorney and the attorney sent you her response
13 of what you would -- what you could receive. We
14 were following the recommendation and the opinion
15 of the Association attorney.

16 Q: Is it your statement that because I was involved
17 in a civil suit, I lost all my rights under the
18 South Carolina Non-profit Corporation Act?

19 A: It's not my representation, no.

20 Q: No, is it your opinion, ---

21 A: No.

22 Q: --- your personal opinion?

23 A: No. I don't have a personal opinion about that.

24 Q: Is it your opinion as a professional in the field
25 of homeowner association management that the

1 existence of a civil suit, yes or no, interrupts
2 the right of a homeowner to get the voter list
3 stated in the South Carolina Non-profit
4 Corporation Act?

5 A: I really don't know. It -- it's up to the Board.
6 It's really up to the Board. When there's a
7 lawsuit and, and we already have the -- an
8 attorney involved, I believe you continue to get
9 the opinion of your, your attorney.

10 Q: Isn't it a fact the response to my letter of
11 April 28th, 2009, instead of provide me at least
12 something, which the things you feel I was
13 entitled to, you, in fact, provided me nothing?

14 A: We followed the, the opinion of the Association's
15 attorney.

16 Q: Is that yes or no, that you provided me nothing?

17 A: It's yes, we provided you nothing.

18 Q: Thank you. Now, until about a year ago, let's
19 see, until through at least 2010, what was the
20 title on the sign in front of K.A. Diehl's
21 offices?

22 A: K.A. Diehl Specializing in Management Property
23 Services, Property Management Services.

24 Q: Didn't the sign on the marquee in front of your
25 building, the front big sign say, "K.A. Diehl,

1 **Property Management," and nothing else?**

2 A: Services. No, it said, "Services."

3 **Q: Say again.**

4 A: Property Management Services.

5 **Q: Doesn't the section of the South Carolina Code**
6 **which deals with professions and licenses,**
7 **particularly realtors, say that nobody may use**
8 **the phrase, "Property management," unless they're**
9 **a licensed realtor?**

10 A: I have no idea if that's what that says, because
11 we're, we're not property managers. We provide
12 property management services.

13 **Q: Is your company using the term, "Property**
14 **Management Service now," or Community Management?**

15 A: I, I would have to look at the website. I don't
16 really know what their -- what's on the website
17 for sure.

18 MR. JARMUTH; I'D PROFFER TO THE COURT
19 THAT AMONG MY PICTURES I
20 HAVE ILLUSTRATED IS A
21 PICTURE OF THE FRONT
22 MARQUEE OF THE OFFICES
23 WHERE IT SAYS THAT THEY
24 WERE PROVIDING -- THAT THEY
25 WERE A PROPERTY MANAGER,

1 PROPERTY MANAGEMENT, AND
2 THAT THIS IS A VIOLATION OF
3 THE STATE LAW REGARDING
4 REALTORS.

5 **Q: Now, let's go on to your credentials, then. I**
6 **believe that you said it and there's some purpose**
7 **for it. What is CAI?**

8 A: Community Association's Institute.

9 **Q: Isn't that a trade group?**

10 A: I don't know if it's a trade group. I do know
11 that it's a large group of professionals in this
12 field who have worked very hard to educate and
13 make sure that all the people working in this
14 field are highly educated and properly
15 knowledgeable in, in the field that they're in.

16 **Q: What does CAI provide its members?**

17 A: Educational classes, we are provided with
18 seminars and, and updated information via
19 magazines and website information. The
20 educational courses are provided. You can -- you
21 take these courses and you get -- go for
22 designations and the higher, you know, to the
23 highest designation, which is what I've done.

24 **Q: And would you give some sample titles of some of**
25 **these courses?**

1 A: Community Association Management, the Community
2 Management and The Law, the Communications, up or
3 large scale communities.

4 Q: Now, looking at your contractor agreement, which
5 every person who wants to be eligible to bid on
6 IHOA work is required to sign, I found in there a
7 requirement for them to join CAI. This would
8 apply to people who mow grass and maybe do
9 maintenance of the pool. What value to them do
10 you see would be for these property management
11 courses?

12 A: There are other courses, and the vendors are
13 provided a format to do networking with other
14 vendors, they go -- they have specific classes.
15 The classes that I attend, because I'm not a
16 vendor, doesn't have anything to do with those,
17 but there are classes for vendors to go to for,
18 for -- to -- so that they can know how to deal
19 with homeowners associations.

20 Q: Can you cite a single course which would be a
21 value to a ---

22 A: No, I ---

23 Q: --- small scale landscaper?

24 A: No, I don't. I -- like I said, I'm not a vendor,
25 so I really don't know that.

1 Q: Now, is CAI an educational institution chartered
2 by any State or the Federal Government?

3 A: I don't believe so.

4 Q: You say you have a CIA certificate; is that
5 correct?

6 A: CAI, yes.

7 Q: Is CII -- CAI entitled to do any licensing of
8 anything by any State or the Federal Government?

9 A: No.

10 Q: To your knowledge, can you get special financial
11 support such as student aid of any sort to take
12 CIA training?

13 A: No.

14 Q: Are CAI licenses recognized by the State of South
15 Carolina for its educational requirements to
16 become a realtor ---

17 A: No.

18 Q: --- or a property manager?

19 A: The real estate industry is a completely
20 different industry than community management. I
21 don't deal in rentals, I don't deal in home
22 sales. I managed homeowners associations.

23 Q: Now, does K.A. Diehl have a contract with the
24 ARB?

25 A: No.

1 Q: Who's their contract with?

2 A: The International Club Association, Homeowners
3 Association.

4 Q: And ultimately, the payment for everything you do
5 associated with the IHOA comes from which entity?

6 A: The International Club HOA.

7 Q: Thank you on that. Now, you made a statement
8 that you previously provided the archives to the
9 McNair Law Firm so that I could inspect it at
10 leisure. How do you know I had any opportunity
11 to inspect it at all?

12 A: I, I don't know. That's why it was taken there
13 for you to do so.

14 Q: Under the South Carolina Non-profit Corporation
15 Act and under your agreement -- is K.A. Diehl the
16 registered agent for the IHOA?

17 A: Yes.

18 Q: Under the South Carolina Non-profit Corporation
19 Act, don't I have a right to get any of the
20 documents which is authorized to release directly
21 from the registered agent?

22 A: You did.

23 Q: I couldn't get them.

24 A: Yeah, you got them several times, but we have a
25 place of business there, and we opted and it was

1 thought to be in the best, the best for you and
2 the Association if you looked at the files
3 offsite. I couldn't let you in the file room,
4 because we're responsible for over sixty other
5 properties that have files back there, so.

6 **Q: Isn't it a fact that after April of 2009, the**
7 **registered agent, K.A. Diehl, would not permit me**
8 **to inspect a copy, in the office of the**
9 **registered agent, a single document relating to**
10 **the IHOA?**

11 A: You were not allowed to copy, I do know that. I
12 don't know if we provided you documents or not.
13 We did email you a lot of documents and ---

14 **Q: Isn't it a fact I didn't get anything from K.A.**
15 **Diehl in any manner after April 2009?**

16 A: Yes, it, it -- no, it's not a fact. You went to
17 the law firm's office and looked at all of those
18 files.

19 **Q: How do you have knowledge of that?**

20 A: You were provided the files from the ---

21 **Q: Please answer the question, ma'am.**

22 A: --- McNair Law Firm. I'm ---

23 **Q: How do you have knowledge of that?**

24 THE COURT: GIVE HER A CHANCE TO

25 ANSWER, PLEASE. GO AHEAD

1 AND ANSWER.

2 A: I was not at the office. I was told that you
3 were provided the information.

4 Q: Who told you that?

5 A: Alicia Thompson.

6 Q: And why were you having that conversation?

7 A: Because she was the Association's legal
8 representative.

9 Q: And when did you have that conversation?

10 A: I don't remember.

11 Q: Do you recall when I had this access to the
12 records, what year?

13 A: I think it was 2010, 2000 -- the end of 2009,
14 2010.

15 Q: Isn't it a fact that the only time I had an
16 opportunity to inspect the records from the
17 Defendant was October 3rd, 2011 and no other day?

18 A: I don't know that that's a fact at all, sir.

19 Q: Now, you said you're familiar with the quantity
20 of records which was sent over to McNair.

21 A: Uh-huh (affirmative response).

22 Q: Is that correct?

23 A: Uh-huh (affirmative response).

24 Q: Could you describe the number of coffins which
25 were sent over?

1 A: By coffins, I'm assuming you mean boxes?

2 Q: Of the documents?

3 A: Yes. I believe there were between seven and ten.

4 Q: Big large coffins?

5 A: Yes.

6 Q: But between April of 2009, October 3rd, 2011,
7 your firm, the registered agent, provided me
8 nothing?

9 MS. GOLDING: YOUR HONOR, WE WERE
10 REPRESENTING -- K.A.
11 DIEHL IS A DEFENDANT IN
12 THIS LAWSUIT AND THROUGH
13 THE ATTORNEY, K.A. DIEHL
14 PROVIDED EVERYTHING MR.
15 JARMUTH EVER REQUESTED.
16 MR. JARMUTH: I'LL ASK THE COURT TO
17 TAKE NOTICE THAT THAT
18 OCCURRED ON ONE DAY WHEN
19 THEY GAVE ME A SINGLE
20 OPPORTUNITY TO COME INTO
21 THE OFFICE OCTOBER 3RD,
22 2011. I WAS NOT
23 PERMITTED TO BRING IN
24 ANYONE ELSE TO HELP ME GO
25 THROUGH THESE, HOW MANY

1 COFFINS OF STUFF, AND I
2 WAS NOT PERMITTED THE
3 OPPORTUNITY TO BRING MY
4 COPY MACHINE IN TO COPY.
5 I SUGGEST TO THE COURT
6 THAT THAT WAS NOT A FAIR
7 OPPORTUNITY TO SATISFY MY
8 INSPECTION COPY RIGHTS
9 UNDER THE SOUTH CAROLINA
10 NON-PROFIT CORPORATION
11 ACT WHICH ARE INDEPENDENT
12 OF THE LITIGATION, AND
13 THAT BETWEEN 2009 AND
14 2011, THE ENTITY, THE
15 IHOA, AND ITS REGISTERED
16 AGENT BOTH IMPROPERLY
17 DENIED ME A STATUTORY
18 RIGHT.
19 THE COURT: ALL RIGHT. WELL, LET'S
20 STAY FOCUSED ON THIS
21 WITNESS UNDER CROSS-
22 EXAMINATION.
23 THE COURT: I HAVE NO FURTHER
24 QUESTIONS, YOUR HONOR.
25 THE COURT: ALL RIGHT. THANK YOU.

1 MS. GOLDING: NO MORE WITNESSES.
2 THE COURT: YOU MIGHT COME DOWN.
3 THAT WILL CONCLUDE THIS
4 CASE WITH THE EXCEPTION,
5 DO YOU HAVE ANY -- DOES
6 THE PLAINTIFF OR
7 DEFENDANT HAVE ANY
8 MOTIONS AT THIS TIME?
9 MS. GOLDING: WELL, YOUR HONOR, I HAD
10 MOTIONS WITH RESPECT TO
11 THE DISMISSAL OF THE
12 COMPLAINTS, BUT I THOUGHT
13 WE WOULD ADDRESS THAT
14 BASICALLY IN THE ORDER.
15 THE COURT: I THINK THAT'S THE BEST
16 THING TO DO OR EITHER
17 SEPARATELY MAYBE, NOT IN
18 THE ORDER.
19 MS. GOLDING: VERY GOOD.
20 THE COURT: ALSO, TOO, AND MR.
21 JARMUTH, THIS IS DIRECTED
22 TO YOU MORE THAN MS.
23 GOLDING, IF YOU WOULD
24 LIKE TO SUBMIT A BRIEF,
25 NOT ONLY AN ORDER, I'LL

1 BE GLAD TO LOOK AT IT.
2 DO YOU SEE WHAT I'M
3 SAYING, A SEPARATE LEGAL
4 BRIEF, AN ARGUMENT,
5 WHATEVER? IF YOU WOULD
6 LIKE TO DO THAT AT THE
7 SAME TIME THAT YOU SEND
8 YOUR FINAL ORDER IN, I'LL
9 BE GLAD TO TAKE A LOOK AT
10 THAT, ALSO.
11 MR. JARMUTH: YOUR HONOR, GIVEN THE
12 FACT THERE WERE THREE
13 DAYS OF ARGUMENT AND
14 INNUMERABLE
15 (UNINTELLIGIBLE), I'M
16 WONDERING WHAT SORT OF
17 LIMITATION ON SIZE YOU
18 WOULD IMPOSE. I CAN SEE
19 TOPICS HAVE TAKEN THIS
20 MUCH TIME, PERHAPS AS
21 MUCH AS FIVE OR SEVEN
22 PAGES FOR EACH,
23 UNFORTUNATELY. IT SEEMS
24 TO ME EACH OF THESE
25 TOPICS COULD'VE EASILY

1 BEEN A COMPLETELY
2 INDEPENDENT SOURCE OF
3 LITIGATION.

4 THE COURT: WELL, YOU SHOULD'VE ---

5 MR. JARMUTH: I HAVE TO APOLOGIZE, I'M
6 NOT THE ONE WHO CREATED
7 ALL THESE THINGS WHICH I
8 BELIEVE ARE INDEPENDENT
9 THOUGHTS.

10 THE COURT: WELL, I'M GOING TO LEAVE
11 THAT UP TO YOU, OKAY?

12 MR. JARMUTH: THANK YOU, YOUR HONOR.

13 THE COURT: BUT LET ME SAY THIS
14 BEFORE WE PART WAYS AT
15 FIVE-THIRTY. FIRST OF
16 ALL, LET ME THANK YOU FOR
17 COMING. OUR PEOPLE IN THE
18 BACK FOR BEING COURTEOUS
19 AND NOT BRINGING CELL
20 PHONES AND CIGARS AND
21 DRINKS AND STUFF LIKE
22 THAT AND BEING POLITE AND
23 QUIET. IT'S VERY
24 DISTRACTING TO HAVE
25 SOMEBODY TALKING IF

1 YOU'RE TRYING TO LISTEN
2 TO SOMEBODY ELSE, AND I
3 APPRECIATE IT. AND TO
4 THE ATTORNEYS, MS.
5 THOMPSON, AND HENRI,
6 THANK YOU FOR BEING
7 PREPARED AND ORGANIZED
8 AND COOPERATING WITH THE
9 COURT AND THE CIVILITY
10 YOU SHOWED TOWARDS THE
11 OTHER SIDE AND THE
12 WITNESSES. IT MAKES A
13 DIFFICULT JOB BETTER.
14 MR. JARMUTH, YOU HAD EVEN
15 A TOUGHER ROAD IN DOING
16 YOUR OWN PRO SE, AND IT'S
17 SORT OF LIKE TAKING YOUR
18 OWN APPENDIX OUT. I'VE
19 TRIED TO DO SOME OF THAT
20 MYSELF AND IT'S TOUGH
21 BECAUSE YOU'RE INVOLVED
22 AND YOU'RE EMOTIONALLY
23 INVOLVED AND YOU'RE ALSO
24 TRYING TO DO A JOB, AND
25 YOU DID A GOOD JOB AND

1 YOU DID A LOT OF WORK, I
2 MEAN, A LOT OF WORK AND
3 YOU'VE GOT A GOOD HELPER
4 HANDING YOU THINGS, ---
5 MS. JARMUTH: THANK YOU.
6 THE COURT: --- TOO. SO I APPRECIATE
7 IT, AND I APPRECIATE YOUR
8 COURTESY TO EVERYBODY AND
9 IN HANDLING THE WITNESSES
10 AS YOU DID. ALL THESE
11 CASES LIKE THIS ARE VERY
12 DIFFICULT, BECAUSE PEOPLE
13 ARE UPSET AT EACH OTHER,
14 AND I'M GLAD IT WENT AS
15 WELL AS IT DID. I THINK
16 WE'VE AGREED NOW THAT
17 WE'RE GOING TO DO THE --
18 WHATEVER YOU'RE GOING TO
19 DO BY TEN DAYS. WHEN IS
20 THAT, AUGUST THE 20TH,
21 MONDAY?
22 MS. GOLDING: MONDAY, AUGUST THE 20TH.
23 THE COURT: MONDAY, AUGUST THE 20TH,
24 AND PLEASE DON'T SEND
25 THEM TO ME AT HOME. SEND

1 THEM HERE TO THE CLERK'S
2 OFFICE. AS I TOLD YOU
3 WHEN WE STARTED, I WORKED
4 FOR JUDGE HOFFMAN FOR A
5 LONG TIME, AND HE SAID
6 THAT BEING A JUDGE IS
7 REAL EASY, ALL YOU HAD TO
8 DO WAS THE RIGHT THING,
9 AND HE WAS RIGHT, OF
10 COURSE, HE DIDN'T TELL ME
11 WHAT THE HELL THAT WAS,
12 AND THAT'S THE HARD PART,
13 AND THESE ARE DIFFICULT
14 CALLS, THERE'S NO
15 QUESTION ABOUT IT. I'LL
16 DO THE VERY BEST I CAN
17 FOR YOU, AND I WON'T HOLD
18 YOU UP, OKAY.
19 MR. JARMUTH: YOUR HONOR, ARE WE
20 CORRECT IN SAYING IT GOES
21 TO SUSAN STONE IN THE
22 MASTER-IN-EQUITY'S OFFICE
23 AT THE COURTHOUSE?
24 THE COURT: SUSAN STONE WHO'S IN THE
25 -- SHE WORKS WITH ME. I

1 GUESS I WORK FOR HER,
2 MAYBE. YOU CAN EITHER
3 BRING IT UP OR MAIL IT,
4 EITHER WAY, BUT TRY TO
5 HAVE IT HERE BY MONDAY,
6 AND THEN PLEASE SEND EACH
7 OTHER -- WHATEVER YOU
8 SEND ME, SEND HER AND
9 VICE-VERSA. ANYTHING
10 ELSE?
11 MR. JARMUTH: NO, YOUR HONOR. THANK
12 YOU FOR HELPING US
13 RESOLVE THIS CASE,
14 BECAUSE WE WERE HAVING A
15 PROBLEM GETTING
16 SUFFICIENT JUDICIAL TIME,
17 NOT DUE TO THE FAULT OF
18 THE FIFTEENTH CIRCUIT,
19 BECAUSE OBVIOUSLY SOMEONE
20 DOWN IN COLUMBIA HAD TO
21 GIVE YOU SUBSTANTIAL
22 REASON, AND I'M THANKFUL
23 THAT YOU WERE WILLING TO
24 STEP IN AND RESOLVE THE
25 ISSUE.

1 THE COURT: YOU'RE WELCOME. THANK
2 YOU VERY MUCH.
3 (THIS HEARING CONCLUDED AT 5:28 P.M.)
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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-26-3596

Ronald Jarmuth,)
Plaintiff,)

vs.)

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

**DEFENDANTS' RULE 16
PRETRIAL BRIEF**

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

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

Ronald Jarmuth,)
Plaintiff,)

vs.)

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

Defendants, The International Club Homeowners Association, Inc. ("HOA"), Rosemary Toth ("Ms. Toth"), and K.A. Diehl Associates, Inc. ("K.A. Diehl") (collectively hereinafter "Defendants") hereby provide this Pre-Trial Brief pursuant to Rule 16(c) of the South Carolina Rules of Civil Procedure.

INTRODUCTION

Consolidated Civil Action Numbers 2009-CP-26-3596 ("2009 Lawsuit") and 2010-CP-26-11320 ("2010 Lawsuit") (collectively hereinafter "Consolidated Cases") were filed by the pro se Plaintiff, Jarmuth ("Plaintiff" or "Jarmuth"). In both cases, Plaintiff asserts a declaratory judgment action challenging the HOA's authority to perform several functions, including but not limited to, the HOA's power to assess, to review architectural changes to the homeowners' lots, to enforce restrictive covenants, and to negotiate contracts with third party vendors.

PROCEDURAL HISTORY

Jarmuth filed the 2009 Lawsuit on April 7, 2009, against Rosemary Toth (former HOA President) and the HOA, seeking a declaratory judgment regarding the validity and interpretation of the restrictive covenants and other governing documents of the HOA. Two (2) months later, Jarmuth amended his complaint to assert additional causes of action against Ms. Toth and the HOA and added K.A. Diehl and the HOA's attorney, Ms. Henrietta Golding, as Defendants. The additional claims included 1) defamation; 2) invasion of privacy; 3) intentional infliction of emotional distress; 4) breach of contract; and 5) failure to produce documents. The Court dismissed the claims against Ms. Golding on July 28, 2009, and Jarmuth appealed the Court's order of dismissal on August 3, 2009. The South Carolina Court of Appeals affirmed Ms. Golding's dismissal and remittitur was issued on July 28, 2011.

While the 2009 Lawsuit was on appeal, Jarmuth filed the 2010 Lawsuit against the HOA in Magistrate's Court on October 18, 2010 alleging that assessments were invalid, that the HOA did not have authority to act under the restrictive covenants, and seeking a declaratory judgment with respect to the HOA's rights of architectural review under the restrictive covenants and the Architectural Guidelines. The HOA moved to dismiss the case, or in the alternative, remove the

case to the circuit court, and the HOA's motion for removal was granted on December 1, 2010. Thereafter, Jarmuth moved for partial summary judgment as to the HOA's ability to enforce the restrictive covenants and moved to deposit with the Clerk's office his assessments due to the HOA until the resolution of the 2010 Lawsuit. This Court denied Jarmuth's motions on April 18, 2011. Thereafter, the HOA moved to consolidate the 2010 Lawsuit under the 2009 Lawsuit, and this Court granted the HOA's motion on August 11, 2011 followed by a Formal Order dated August 29, 2011 and filed September 16, 2011.

The Defendants moved to amend their Answer to assert additional defenses and for the HOA to add a counterclaim seeking the payment of a fine related to Jarmuth's violation of the restrictive covenants and the removal of a brick foundation for his unapproved fence. This Court granted the HOA's motion to amend its answers in an Order filed on October 11, 2011 and the HOA filed Amended Answers and Counterclaims. In Reply to the Defendants' Amended Answers and Counterclaims, Jarmuth filed a Motion to Dismiss and a Counterclaim for Violation of the South Carolina Frivolous Proceedings Act. Defendants filed a Motion to Strike the Plaintiffs' Counterclaim on December 28, 2011.

On September 13, 2011, Jarmuth filed a Motion for Summary Judgment and Preliminary Injunction seeking a declaratory judgment as to ninety two (92) legal issues in the Consolidated Cases and Motions to Dismiss the Counterclaims and for Preliminary Injunctions. Jarmuth's motions to dismiss, motions for preliminary injunctions, and motion for summary judgment were denied with the Court entering a Form 4 Order dated December 7, 2011. A formal proposed order has been submitted to the Court but not executed.

Defendant K.A. Diehl withdrew its motion to dismiss at a hearing on October 11, 2011 and on October 14, 2011 filed and served its Answer to the 2009 Amended Complaint. Although

Jarmuth was served with the Answer via U.S. Mail, on December 15, 2011 he filed Motions for Entry of Default and Default Judgment Against K.A. Diehl. Upon receipt of the default motions, the undersigned provided Jarmuth a clocked copy of Diehl's Answer and the Certificate of Service; however, Jarmuth has refused to withdraw his motion.

This matter appeared on the non-jury roster on or around December 19, 2011 for trial the week of January 17, 2012. Jarmuth filed a Petition for Writs of Mandamus and Prohibition with the Supreme Court of South Carolina on December 22, 2011 ("Petition"), requesting that the Supreme Court order this Court to continue the trial, enter a scheduling order regarding discovery, and an order compelling Defendants' discovery responses in the 2009 and 2010 Lawsuits.¹ On December 29, 2011, Jarmuth filed a Motion for Continuance of Trial Assignment of Errors on Appeal and for Discovery seeking essentially the same relief as his Petition. Because his Motion for Continuance was not immediately addressed, Jarmuth filed a Motion to Stay with the Supreme Court on January 5, 2012 seeking a stay of the Consolidated Cases. The Supreme Court has not ruled on Jarmuth's Petition and Motion to Stay.

The pending motions in 2009 and 2010 Lawsuits include the following:

- Non-Party D.R. Horton, Inc.'s Motion for Reconsideration dated November 4, 2011;
- Jarmuth's Motion to Hold Non-Party Association Voice, Inc. in Contempt of Court for Failure to Obey Order Enforcing Subpoena Duces Tecum dated November 15, 2011;
- Jarmuth's Motions for Default Judgment and Entry of Default against K.A. Diehl dated December 15, 2011;
- Defendants' Motion to Strike Jarmuth's Counterclaim to Defendants' Counterclaim which motion was filed December 28, 2011;

¹ Defendants served answers to Jarmuth's hundreds of discovery requests in early October 2011, including over 4,000 pages of documents. Jarmuth did not file a motion to compel discovery until this case was placed on the trial roster two months later. No discovery requests are pending.

Amended Complaint dated June 9, 2009:

Claims against K.A. Diehl, Rosemary Toth, and International Club HOA:

- Defamation;
- Invasion of Privacy;
- Intentional Infliction of Emotional Distress;
- Breach of Contract alleging the HOA has not dealt in good faith and fairly with Jarmuth;
- The HOA failed to properly provide information to Jarmuth.

Defendant K.A. Diehl's Answer to the Complaint and First Amendment to Complaint dated October 12, 2011:

- General Denial;
- Statute of Limitations;
- Waiver, Estoppel, Laches;
- Business Judgment Rule;
- Unclean Hands;
- Consent and/or Novation;
- Privileged;
- Communications were made in Good Faith and are privileged;
- Comments about Plaintiff were fair comment and are protected;
- Comments made about Plaintiff are neutral reportage and are protected;
- All facts relating to litigation involving Plaintiff are privileged;
- Plaintiff has failed to add indispensable parties;
- Ambiguous Declaration;
- Payment.

Defendants' HOA and Toth's Amended Answer to the Complaint and First Amendment to Complaint and Counterclaim dated October 24, 2011:

- General Denial;
- Statute of Limitations;
- Waiver, Estoppel, Laches;
- Business Judgment Rule;
- Unclean Hands;
- Consent and/or Novation;
- Immunity with respect to Toth;
- Privileged;
- Communications were made in Good Faith and are privileged;
- Comments about Plaintiff were fair comment and are protected;
- Comments made about Plaintiff are neutral reportage and are protected;
- All facts relating to litigation involving Plaintiff are privileged;

- Plaintiff has failed to add indispensable parties;
- Ambiguous Declaration;
- Payment;
- Counterclaim seeking attorney's fees and costs;
- Counterclaim of the HOA for Breach of Covenants and Architectural Guidelines.

Reply to Amended Answer and Counterclaim dated December 20, 2011:

- General Denial;
- Res Judicata;
- Lack of Standing;
- Collateral Estoppel;
- Waiver, Consent, Laches, Estoppel;
- Defendant HOA's Waiver of Restrictive Covenants;
- Good Faith and Compliance with Restrictive Covenants;
- Novation;
- Unclean Hands;
- Laches;
- Harassment and Violation of South Carolina Rules of Ethical Practice;
- Counterclaim—Violation of South Carolina Frivolous Proceedings Act.

2010-CP-26-11320

Complaint dated October 18, 2010:

1. Declaratory Judgment Action:

- International Club Home Owners' Association, Inc. does not have the authority to collect assessments or enter contracts pursuant to the Declaration;
- The Cable TV Assessments are invalid;
- The Waste Management Assessments are invalid;
- All HOA Assessments are invalid;
- The Amendments to the Declaration removed restrictions on fences and architectural review board rights and control;
- The HOA lacks standing to enforce the Declaration, because Murrells Inlet Golf Plantation is the valid HOA;
- The Architectural Review Board did not followed the proper procedures under the Declaration;
- The Bylaws are invalid;
- The ARB Rules are invalid;

2. Harassment and Interference with Enjoyment of Property.

Amended Answer and Counterclaim dated October 24, 2011:

- General Denial;
- Dismiss pursuant to Rule 12(b)(8);
- Lack of Standing;
- Res Judicata/Collateral Estoppel;
- Estoppel, Consent, Waiver, and Laches;
- Compliance with Governing Documents;
- Business Judgment Rule;
- Equitable Estoppel;
- Payment;
- Unclean Hands;
- Counterclaim: Breach of Covenants and Architectural Guidelines.

Reply to Amended Answer and Counterclaim dated December 20, 2011:

- General Denial;
- Res Judicata;
- Lack of Standing;
- Collateral Estoppel;
- Waiver, Consent, Laches, Estoppel;
- Defendant HOA's Waiver of Restrictive Covenants;
- Good Faith and Compliance with Restrictive Covenants;
- Novation;
- Unclean Hands;
- Laches;
- Harassment and Violation of South Carolina Rules of Ethical Practice;
- Counterclaim—Violation of South Carolina Frivolous Proceedings Act.

UNDISPUTED FACTS

I. BACKGROUND INFORMATION REGARDING JARMUTH

Jarmuth resides in the International Club community, a large residential community consisting of over 800 single family and multi-family units. This community came into existence in 1999 and is located off of Highway 707 in Horry County approximately ten (10) miles south of Myrtle Beach. Jarmuth resides in the Pebble Creek phase, a neighborhood consisting of single family homes. He bought his home on October 23, 2006 from Cheryl Essex for \$358,000.00. Ms. Essex bought the home in September, 2001.

II. DEVELOPMENT OF THE INTERNATIONAL CLUB COMMUNITY

The International Club Community was developed by several builders in different phases.

The phases include the following:

- Pebble Creek: Single Family Homes
- The Glens: Townhouse Homes
- The Highlands: Phase I – Single Family Homes
Phase I(a) – Single Family Homes
Phase II – Single Family Homes
Phase III – Single Family Homes
- The Meadows: Single Family Homes
- The Links: Phase I – Single Family Homes
Phase II – Single Family Homes
Phase III – Single Family Homes
Phase IV – Single Family Homes
- The Villas: Large Multi Family Development (condominiums).
- The Cambridge: Small Multi Family Development (condominiums).

In addition to the different residential phases, a golf course called “The International Club” is located in the community. This golf course is privately owned but open to the public. Pursuant to the Declaration (the Restrictive Covenants), the golf course owner is obligated to pay annual assessments fifty (50) times the rate of the Unit owners’ annual assessments.

The original Developer (Declarant) was Plantation A.D., LLC, however, Plantation A.D., LLC did not develop neighborhoods within the International Club. Instead, third parties bought acreage from Plantation A.D., LLC and constructed subdivisions and horizontal property regimes. The International Club community’s original name was “Murrells Inlet Golf Plantation”, the name shown on the Declaration of Covenants and Restrictions for Murrells Inlet Golf Plantation filed on February 8, 1999 in Deed Book 2117, Page 1353 (“Restrictive

Covenants”). In 2003, D.R. Horton, Inc. (“D.R. Horton”) was assigned Declarant and Developer rights under the Third Amendment to the Restrictive Covenants.

Since 1999, the Restrictive Covenants have been amended five (5) different times. The amendments include:

- First Amendment, May 9, 2000: This amendment changed the name of the development to “International Club”, amended provisions of the Restrictive Covenants, added property subject to the Restrictive Covenants that was to be developed as the Villas Horizontal Property Regime and waived the Declarant’s rights under certain provisions within the Restrictive Covenants. The waiver was with respect to Villas Horizontal Property Regime, but Jarmuth claims the Declarant waived its rights as to all neighborhoods in the International Club.
- Second Amendment, April 25, 2003: This amendment assigned to D.R. Horton, Inc. all the rights and powers of the original Developer, Plantation A.D. LLC, except that Plantation A.D. continued as owner of the roads and streets in The International Club community. Therefore, as of April 25, 2003, the Developer was D.R. Horton.
- Third Amendment, March 26, 2004: This amendment added approximately 100 acres of property to the development (The Glens, The Meadows, The Links, The Highlands, and The Cambridge) as well amended a provision in the Restrictive Covenants regarding capital contributions from new owners in the development and added “Designated Builders” as defined by the Restrictive Covenants.
- Fourth Amendment, December 23, 2004: The Villas, a ten acre multi-family development, was added to The International Club community, resolving the issues with the First Amendment.
- Fifth Amendment, June 20, 2008: This Amendment adds 14.10 acres for the development of a multi-family phase. This property was also subjected to the Restrictive Covenant pursuant to Exhibit “A” of the governing documents. The development has not commenced, however, the horizontal property regime will be called The Ballycastle.

The developers of each of the neighborhoods include the following:

- Pebble Creek: Sunbelt Associates, LLC (“Sunbelt Associates”);
- The Meadows, the Links, the Highlands, the Cambridge, and the Glens: D.R. Horton, Inc.;
- The Villas: Seacoast Associates, LLC (“Seacoast Associates”).

When D.R. Horton assumed the authority and rights of the Declarant and Developer of International Club from Plantation A.D., LLC in 2003, it entered into a Developer's Agreement on May 16, 2003. The parties to this Developer's Agreement are DR Horton, Plantation A.D., LLC, and Sunbelt Associates. This agreement sets forth that D.R. Horton agrees to "construct an amenities center on Parcel D ... and that "the amenities center will be used as a clubhouse with a pool and other recreational facilities for the use and enjoyment of the Class A members of International Club Homeowners Association or other association to be formed by D.R. Horton..." Sunbelt Associates agreed to pay \$1,000.00 for each home it previously sold and for each lot sold after the execution of the agreement for the construction of the amenities center.

On October 3, 2003, a Golf Course Agreement was entered into by D.R. Horton, Plantation Golf A.D., LLC (the owner of the golf course at the time) and the Defendant HOA. This agreement sets forth that all assessments due before December 31, 2003 from the golf course owner were forgiven and the HOA assessments due from the golf course owner would be calculated as follows:

- (1) for the calendar year of 2004, the golf course owner owed assessments twenty (20) times the rate of Unit Owners who pay for recreational amenities;
- (2) for the calendar year 2005, the golf course owner owed assessments twenty three (23) times the rate of the Unit Owners who pay for recreational amenities; and
- (3) the amount increased by three units through 2014 (2014 adding 4 units).

Other neighborhoods adjacent to the International Club Community utilize the same infrastructure of the International Club; however, those properties were not subjected to the Restrictive Covenants. The neighborhoods are the Fairways and the Enclave (constructed by Signature Homes) and the Grand Vistas (constructed by D.R. Horton). The Fairways and the

Enclave appear to be part of the original Planned Unit Development; however they were never subjected to the Restrictive Covenants.

III. JARMUTH'S DISPUTES WITH HOA INVOLVE THREE GENERAL AREAS

Jarmuth argues the following:

- (1) the HOA's assessment for utilities is invalid;
- (2) the HOA and the Architectural Review Board ("ARB") do not have the authority to review applications for improvements on lots within the International Club nor enforce the architectural review provisions in the Restrictive Covenants.
- (3) he was not provided a voter's list and other HOA documents.

From October 23, 2006 to the present, Jarmuth paid assessments to the HOA as required by the Restrictive Covenants. He also received benefits such as garbage collection, cable, and the use of an Amenity Center that includes a pool and fitness center. The former owner of Lot 12, Cheryl Essex, also paid assessments to the HOA. Since September 2001, the owner of Lot 12 has been assessed in excess of \$8,000.00, and the assessments have been paid.

Jarmuth applied for a swing set on July 24, 2009. His application was denied because he desired to construct the swing set in his side yard. Sometime in the fall of 2010, Mr. Jarmuth extended his flower bed and installed edging around the garden and installed a brick foundation along his property line. By notice dated September 27, 2010, the HOA sent him a violation notice that his improvements were not approved by the ARB and fined him \$50.00. Mr. Jarmuth paid the \$50.00 fine under protest and applied for an extension to his flower bed, brick edging, and a fence along his property line with a brick foundation. The flower bed and brick edging were approved. The fence and its foundation were denied because only privacy fences are allowed pursuant to the Restrictive Covenants, and the fence was within the setback. The ARB requested that Mr. Jarmuth remove the brick foundation. To date, Mr. Jarmuth has refused to

remove the brick foundation, because he maintains that it constitutes brick edging that was approved by the HOA, or in the alternative, the HOA has no rights of architectural review pursuant to the First Amendment.

FACTS IN DISPUTE

The HOA asserts, while Jarmuth disputes, the following facts:

1. The Declarant intended the First Amendment to waive its rights of architectural review with respect to only the Villas and not with respect to the other neighborhoods within International Club.
2. The HOA denied the foundation of Jarmuth's brick fence.
3. The Bylaws of the HOA were properly signed, indexed, and acknowledged by the Declarant as the organizer of the HOA.
4. The Declarant intended the Restrictive Covenants to require builders to pay the Declarant, not the HOA, \$1,000.00 for each home constructed in Pebble Creek as a contribution for the construction of the Amenity Center.
5. The HOA granted Jarmuth access to its HOA documents on numerous occasions.
6. The Enclave, Fairways, and Grand Vistas are not subject to the Restrictive Covenants.
7. The Declarant intended the Glens to be considered a single family home neighborhood that is allowed access to the Amenity Center.
8. The HOA properly managed and spent HOA revenue, including assessments and capital contributions.
9. The HOA owns title to the parking lots for the Amenity Center.

LEGAL DEFENSES

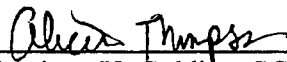
1. Jarmuth's claims regarding the 2007 and 2008 elections and the 2009 maintenance contract are moot.
2. Jarmuth's claims regarding neighborhoods other than Pebble Creek in the International Club must be dismissed for failure to join the owners within those neighborhoods pursuant to SCRCF Rule 19. *Bancohio Nat'l Bank v. Neville*, 310 S.C. 323, 326, 426 S.E.2d 773, 775 (1993).
3. Jarmuth lacks standing to bring the claims related to the rights and obligations of owners in neighborhoods other than Pebble Creek. S.C. Code Ann. § 15-53-20 (1976).

4. Assuming arguendo that Jarmuth has standing and joined necessary parties, the Glens are entitled to the use of the Amenity Center pursuant to the Restrictive Covenants.
5. Assuming arguendo that Jarmuth has standing and joined necessary parties, the Grand Vistas Horizontal Property Regime is not subject to the Restrictive Covenants.
6. Assuming arguendo that Jarmuth has standing and joined necessary parties, the Fairways Horizontal Property Regime is not subject to the Restrictive Covenants.
7. Assuming arguendo that Jarmuth has standing and joined necessary parties, the Enclave Horizontal Property Regime is not subject to the Restrictive Covenants.
8. Jarmuth's claims regarding the Golf Course Agreement must be dismissed for failure to join the Golf Course owner pursuant to SCRCP Rule 19. *Neville*, 310 S.C. at 326, 426 S.E.2d at 775.
9. Jarmuth's claims regarding the Developer Agreement must be dismissed for failure to join D.R. Horton, Inc., Sunbelt Associates, and Plantation A.D., LLC pursuant to SCRCP Rule 19. *Id.*
10. Jarmuth does not have standing to bring claims regarding the meaning of the Developer's Agreement, because he is not a party to the contract. S.C. Code Ann. § 15-53-20 (1976).
11. Jarmuth's claims regarding the Golf Course Agreement are barred by the doctrine of laches. *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 296, 519 S.E.2d 583, 598 (Ct. App. 1999).
12. Jarmuth's claims regarding §§ 4.10 (Easement for Utilities), 4.11 (Easements for Walks, Trails, and Signs), 4.12 (Easements for Association), 4.16 (Environmental Easement), and 4.17 (Wells and Effluent) are not ripe, because Jarmuth has no dispute with the HOA regarding these provisions. *Sloan v. Greenville County*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct.App. 2003).
13. The HOA did not waive rights under §§ 4.10, 4.11, 4.12, 4.16, 4.17, 7.2 (Prior Review of all Plans), 7.4 (Fences), 7.25 (Parking), and 7.31 (Prohibition of Open Outdoor Storage) pursuant to the First Amendment with respect to Pebble Creek owners. *Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006).
14. The Restrictive Covenants are valid and enforceable against Jarmuth. *Queen's Grant II Horizontal Property Regime v. Greenwood Development Corporation*, 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct. App. 2006).

15. The Bylaws are valid. S.C. Code Ann. § 33-31-206 (1976); *Arcadian Shores Homeowners Ass'n v. Cromer*, 373 S.C. 292, 644 S.E.2d 778 (Ct. App. 2007).
16. The Architectural Guidelines are valid. *Arcadian Shores Homeowners Ass'n v. Cromer*, 373 S.C. 292, 644 S.E.2d 778 (Ct. App. 2007).
17. The ARB's denials of Jarmuth's applications for a fence and swing set are valid, because the ARB has the authority to deny the application and the denial was in good faith and reasonable. *River Hills Prop. Owners Ass'n, Inc. v. Amato*, 326 S.C. 255, 259, 487 S.E.2d 179, 181 (1997) (holding that an HOA board acted reasonably and in good faith in denying approval of a landowner's plan to build a fence and pool based upon aesthetic reasons); *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 271, 363 S.E.2d 891, 894 (1987) (holding that ARB's denial of an application based upon aesthetic reasons was valid where guidelines are in place).
18. The ARB did not waive its architectural review rights, because the Restrictive Covenants regarding improvements has been enforced even handedly against all owners and the ARB has exercised the rights consistently since 2003. *Arcadian Shores Homeowners Ass'n v. Cromer*, 373 S.C. 292, 644 S.E.2d 778 (Ct. App. 2007).
19. Jarmuth did not assert any claims regarding the parking restrictions contained in the Restrictive Covenants, and therefore, the issues are not before this Court.
20. Jarmuth does not have standing to bring claims regarding parking disputes on behalf of other homeowners.
21. Assuming that Jarmuth has standing to assert claims regarding other owners' disputes with the HOA regarding parking restrictions, the HOA has the right to restrict parking on the Amenity Center parking lots and the streets within the International Club. *Sloan v. City of Greenville*, 111 235 S.C. 277, 111 S.E.2d 573 (1959); 77 Am. Jur. Proof of Facts 3d 1 (2004).
22. Jarmuth's request for the voter's list was properly denied. S.C. Code Ann. § 33-31-1602-05 (1976).
23. The HOA's assessments for cable TV and garbage services "touch and concern the land" and are valid. 21 C.J.S. Covenants § 42 (2011); *Greenwood Development Corp.*, 368 S.C. at 358, 628 S.E.2d at 911 (Ct. App. 2006).
24. The HOA's contract for cable TV services does not violate FCC Regulations. *In the Matter of Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, 25 FCC Rcd. 2460, 2010 WL 709834 (F.C.C. 2010).
25. Jarmuth does not have an equitable ownership interest in the capital contributions nor the Amenity Center.

26. The Third and Fourth Amendments to the Restrictive Covenants are valid, because the Declarant had the right to unilaterally amend the Restrictive Covenants and the Declarant followed the procedure for amendment. *Greenwood Development Corp*, 368 S.C. at 350, 628 S.E.2d at 907.
27. The Plaintiff's breach of fiduciary duty claim against Ms. Toth is without merit and/or is barred by the business judgment rule. *Dockside Ass'n v. Deyton*, 291 S.C. 214, 352 S.E.2d 714 (Ct. App. 1987); *Kuznik v. Bees Ferry Associates*, 342 S.C. 579, 538 S.E.2d 15 (2001).
28. The Plaintiff's defamation claim is barred by the defense of truth because the Defendants' statements regarding Jarmuth's lawsuits are substantially true. *Parker v. Evening Post Publishing Co.*, 317 S.C. 236, 452 S.E.2d 640, 644 (Ct.App. 1994).
29. The Defendants' statements regarding Jarmuth are privileged. *Murray v. Holnam, Inc.*, 344 S.C. 129, 141, 542 S.E.2d 743, 749 (Ct. App. 2001); *Constant v. Spartanburg Steel Prods., Inc.*, 316 S.C. 86, 89, 447 S.E.2d 194, 196 (1994); *Fulton v. Atlantic Coast Line R.R.*, 220 S.C. 287, 297, 67 S.E.2d 425, 429 (1951).
30. Jarmuth fails to meet the elements of invasion of privacy, because the Defendants' statements regarding Jarmuth's lawsuits did not publish private affairs. *Meetze v. The Associated Press*, 230 S.C. 330, 335, 95 S.E.2d 606 (1956).
31. Jarmuth fails to meet the elements of intentional infliction of emotional distress because the Defendants' conduct does not exceed all possible bounds of decency is not intolerable in society, the Plaintiff has other remedies available, and the Plaintiff did not incur any medical expenses of any kind. *State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 530 S.E.2d 132, 160 (Ct.App. 2000).
32. The HOA is entitled to monetary damages for fines, as well as interest, attorneys' fees and costs, and injunctive relief against Jarmuth ordering him to remove the brick foundation of his fence as a result of his violation of the Restrictive Covenants. See *Sea Pines Plantation Co.*, 294 S.C. at 271, 363 S.E.2d at 894.

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Attorneys for the Defendants

Myrtle Beach, South Carolina
January 11, 2012

DEFENDANTS' LIST OF EXHIBITS AND WITNESSES**I. Defendants' Exhibits**

- Exhibit 1: Subdivision Survey of 9.79 Acres and 5.42 Acres for Suntech Management, Inc. filed on October 21, 1998 filed in Plat Book 158 at Page 155 (reflects 9.79 Acres, Grand Vistas, plat referred to in Exhibit "B" to Restrictive Covenants)
- Exhibit 2: Lantana P.U.D. Revised Master Plan (Plat 1) (formerly known as Murrells Inlet Golf Plantation) Horry County, South Carolina, Prepared for Plantation A.D. approved May 14, 1999
- Exhibit 3: Plat of 459.22 Acres of Land Located West of McDowell Shortcut Road, Socastee Township, Horry County, South Carolina prepared for Plantation A.D., LLC filed in Plat Book 160, Page 79 (reflects property annexed into the International Club pursuant to Exhibit "A" of the Restrictive Covenants, the golf course and Pebble Creek and reflects additional property that may be annexed pursuant to Exhibit "B" of the Restrictive Covenants, the Glens, the Highlands, the Links, the Meadows, and the Cambridge)
- Exhibit 4: Declaration of Covenants and Restrictions for Murrells Inlet Golf Plantation (International Club), and Exhibits "A" through "C" filed on February 8, 1999 in Deed Book 2117, Page 1353
- Exhibit 5: Subdivision Plat of Tract I-1A of Phase I-1 at International Club PUD, filed on May 5, 2000 in Deed Book 169, Page 115 (property added per Third Amendment)
- Exhibit 6: Amendment to Declaration of Covenants and Restrictions for Murrells Inlet Golf Plantation (Now International Club) and Submission of Additional Property Thereto filed on May 9, 2000 in Deed Book 2258, Page 1453
- Exhibit 7: Plat of Phasing Plan Villas at International Club revised June 6, 2000 filed in Plat Book 171, Page 149 (Villas property added per Fourth Amendment)
- Exhibit 8: Waste Industries, Inc. Service Agreement with International Club HOA dated May 24, 2001
- Exhibit 9: Plat of 205.36 Acres International Club Golf Course Horry County, SC prepared for Plantation Golf, A.D. filed on January 2, 2002 in Deed Book 181, Page 89
- Exhibit 10: Quitclaim Deed from Plantation Golf A.D., LLC to the HOA filed August 22, 2002 in Deed Book 2511, Page 0967 (Parcel "D" containing 1.56 Acres—Amenity Center and parking lot)
- Exhibit 11: Plat of Tract 2 & 3 Totaling 94.06 Acres located International Club Golf Course filed April 29, 2003 in Deed Book 189, Page 154 (property annexed per Third Amendment)
- Exhibit 12: Amendment to the Declaration of Covenants and Restrictions for International Club and Assignment of Developer/Declarant Rights filed on April 29, 2003 in Deed Book 2588, Page 1441

- Exhibit 59: Jarmuth's Application to the ARB for a swing set dated July 21, 2009
- Exhibit 60: Notice of Disapproved Request from ARB to Jarmuth for swing set dated August 5, 2009
- Exhibit 61: Email from John White to ARB Board and K.A. Diehl regarding denial of the swing set dated August 22, 2009
- Exhibit 62: State of South Carolina Human Affairs Commission Determination of No Reasonable Cause in Ronald Jarmuth v. International Club HOA dated December 11, 2009
- Exhibit 63: Jarmuth's Application to the ARB for an extension of palm bed dated March 22, 2010
- Exhibit 64: Notice of Approval from ARB of Jarmuth's Application for the extension of the palm bed dated April 8, 2010
- Exhibit 65: Jarmuth's Application to the ARB for the installation of a bench dated April 22, 2010
- Exhibit 66: Notice of Approval from ARB of Jarmuth's Application for the bench dated May 10, 2010
- Exhibit 67: Architectural Guidelines amended July 2010
- Exhibit 68: Violation Notice from ARB to Jarmuth for the landscape with curbing and brick addition to yard dated September 27, 2010
- Exhibit 69: Letter to the ARB from Jarmuth dated September 30, 2010 enclosing application for fence and lawn edging
- Exhibit 70: International Club ARB Meeting Minutes – October 5, 2010
- Exhibit 71: Notice of Approval from ARB of Jarmuth's Application for flower bed and edging dated October 8, 2010
- Exhibit 72: Notice of Disapproved Request from the ARB to Jarmuth for vinyl fence with brick foundation to side yard dated October 8, 2010
- Exhibit 73: Letter from Jarmuth to the ARB received by the ARB on October 13, 2010 enclosing a check from Jarmuth in the amount of \$50.00
- Exhibit 74: International Club ARB Meeting Minutes – December 7, 2010
- Exhibit 75: Action taken by written consent of Board of HOA dated July 25, 2011 regarding parking violations
- Exhibit 76: Letter from Horry County Planning & Zoning Department dated September 13, 2011 to Jarmuth
- Exhibit 77: Email from Jarmuth dated September 21, 2011 confirming 2009 maintenance contract and 2007 and 2008 election issues are moot
- Exhibit 78: International Club Subdivision Tax Map
- Exhibit 79: Subdivision Maps

II. Defendants' Witnesses

1. William ("Bill") Freiboth
2. Rosemary Toth
3. Rebecca ("Beckie") Abel
4. Vicki Gallagher
5. R. Scott Pyle
6. Jeffrey W. King, Esq.
7. William ("Bill") Fletcher

EVIDENTIARY ISSUES

Jarmuth noticed a hearing for sanctions against Sunbelt Associates for spoliation of evidence, however, there is no motion supporting this hearing.

STATUS OF SETTLEMENT NEGOTIATIONS

Settlement negotiations are futile.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF Horry	)	
	)	Civil Action No. 2009-CP-26-3596
Ronald Jarmuth	)	consolidated with
Plaintiff	)	Civil Action No. 2010-CP-26-11320
	)	
vs.	)	PLAINTIFF'S RULE 16
	)	STATEMENT
The International Club	)	
Homeowners Association, Inc.,	)	
et al	)	
Defendants	)	

HISTORY AND SUMMARY

In 2008 through early 2009 there were many views as to what the covenants actually were. On it's web site the HOA only posted the original covenants and Amendment #1 and the board members refused to acknowledge the existences of Amendments #2 through #5. There was also a difference of opinion on the authority of the HOA to enforce the contract between the Developer HOA Board and the Horry Telephone Cooperative (HTC) for cable services, the similar agreement with Waste Management, and the agreement the Developer made with the Golf Course to excuse the Golf Course from paying the assessments mandated in the Covenants. There were additional issues regarding the conduct of HOA elections and access to HOA documents.

The HOA's own Buildings and Grounds Committee took issue with spending most of the HOA's grounds maintenance budget to maintain private property – especially the Golf Course, particularly since the later was escaping it's covenant mandated payment obligation. Other differences of opinion existed over the effect of County ownership of roads – and even over who owned the roads.

The HOA Board adamantly refused to even discuss these issues. Rosemary Toth, the HOA President, made independent decisions which many, including Plaintiff, considered a breach of fiduciary duty.

It is legitimate for differences of opinion on these issues. The HOA Board's refused to discuss these matters. The HOA Board even went so far as to assert that it could prohibit or control flag poles – pre-empted by South Carolina law, or the placement of satellite dishes – pre-empted by federal law.

It became apparent that the only way to resolve these matters was to file a Complaint and Derivative Action demanding, among other things, a Declaratory Judgment. Such an action should not have been adversarial, because all people of good will should have been interested in hearing the Court's analysis of the matters, particularly of

the Covenants, since only a Court Order would settle these questions. Without it, an agreement between the sides could be challenged by any homeowner in the future.

With no other course of action, many homeowners signed a petition to force a recall election of the existing board. This was a legitimate exercise in democracy. The material carefully avoided addressing the reputations of the existing board and spoke only of actions in office. Plaintiff stood for election as a replacement board member, along with four other homeowners.

Plaintiff filed such a Complaint – 2009-CP-26-3596.

The HOA Board, particularly Rosemary Toth, changed the context. Instead of directing it's attention at gathering relevant facts and case law relating to these questions, Toth and her supporters conspired to concoct a campaign of defamation against Plaintiff and further to start a "whispering campaign" to urge homeowners to dis-associate themselves with Jarmuth. This was particularly done by Mike Templeton, a board member, and others. The objective of the campaign was to so humiliate or otherwise harm Jarmuth in reputation that he would leave the development, thus mooted his complaint.

Toth and the HOA Board authorized the expenditure of thousands of dollars to prepare a defamation campaign involving email, US Mail, and a web site. This involved the efforts of KA Diehl, the contractor, which used it's initiative in preparing the material. The Defamations were mailed or emailed (directed at) to at least 670 homes. Many recipients were not voting members of the Association.

The defamation campaign was meant to change the focus from the acts of the board to one of reputations. The immediate effect was that Jarmuth received threatening emails and phone threats – which were reported to the Horry County Police which made a record of same. One homeowner threatened to come to Jarmuth's house with a mob.

To remove the distraction Jarmuth withdrew as a candidate, which meant that the HOA should have ceased it's campaign of defamation if it was in furtherance of it's defense of it's office. It never did. Board member Templeton, among others, was still telling homeowners to socially isolate Jarmuth, among other things he said. What Toth said is unavailable as the HOA Defendant has stonewalled on disclosing it's emails.

Defendant's employee Julie Case, in an admission against interest, admitted the campaign. The KA Diehl / HOA web site with the information about Jarmuth, supposedly about the case, doesn't have the complaints or answers or any of the pleadings – or any other information about the case.

The campaign against Plaintiff went on, and in 2010 Jarmuth filed a separate suit in Magistrate Court regarding it's refusal to allow erection of a fence and it's levying a "fine" for a non-existent fence or wall. The HOA also selectively and capriciously and without covenant authority also refused permission to erect a children's swing set. In Jarmuth's applications, Jarmuth consistently preserved his objections to the authority of the HOA

and asserted the lack of covenant authority for the HOA's actions. The HOA had the case transferred to the Court of Common Pleas from the Magistrate.

From 2009 through the end of 2011 the Court ignored Jarmuth's requests for the Court to intervene on his behalf to secure him the discovery which he holds by right. Subpoenas against Sunbelt, KA Diehl, and Horton went un-enforced. While Jarmuth produced thousands of pages of documents, the HOA did not even cooperate in discovery until October 3, 2011 when it allowed Jarmuth only 5 hours, with no assistants, to go through approximately 80,000 pages of documents, much of it trash accounting records, in random order. The KA Diehl defendant has never produced a single document and has ignored the subpoena against it. All deponents admitted the existence of a lot of documents when they objected to the subpoenas. Sunbelt admitted in October 2011 that it did not place a litigation hold on documents and destroyed all documents. Sunbelt's attorney is the HOA's attorney.

In December 2011 after over two years, KA Diehl's Rule 12(b)(6) objection was called for hearing – which it abandoned at the hearing, making Diehl a defendant only days before the case was sent to trial. Likewise, an order was entered AFTER the case was sent to trial allowing a counter – claim and changed answers. Many other discovery matters are unsettled. In all, Plaintiff only had approximately 60 days for discovery on some issues against some defendants and no discovery at all against others (Diehl). Defendants have filed a Motion to Strike in each case against Plaintiff's mandatory counter – claim implicated by the Amended Answer of Defendants from December, 2011.

PLEADINGS

The Court is requested to consult with the Docket as these are so numerous. There is an original and amended complaint with respective answers, and an Amended Answer as of December 2011 with a new Counter – Complaint implicating a Plaintiff answer to the counter claim and a mandatory claim related to the counter claim. Defendants have not answered the implicated Plaintiff claim (required to avoid Res Judicata).

The Court is asked to refer to Plaintiff's Omnibus Motion for Continuance Discovery and other relief for a listing of open matters.

UNDISPUTED FACTS AND LAW

The only thing agreed to are the jurisdictional issues. All other matters are subject to dispute. At a hearing held on December 7, 2011 the Court held that there are no undisputed issues of law or fact.

ISSUES

Highway 17 Connector Association

Does the HOA have an obligation or right to collect the Highway 17 Connector Association assessments, and whether the contract / covenants are voidable due to changed circumstances?

Planned Unit Development

Which subcommunities are within the PUD and or are subject to the covenants and or must be involuntary members of the Homeowners' Association, whichever one that it is?

Are The Enclaves and The Fairways inside the PUD and subject to the Covenants?

Did the exercise of architectural control over The Fairways and The Enclaves demonstrate their membership in the HOA and subordination to the Covenants?

What is the fiduciary responsibility of the HOA Board to collect the arrears from "The Enclaves" and "The Fairways" – two developments within the PUD?

If Amendments #2 through #5 are invalid, are the sections added to the HOA through those amendments members of the HOA?

Amenity Center

Who has an equity interest in the facility and how much?

Interpret the covenants to determine who must involuntarily pay assessments to support the Amenity Center.

Interpret the covenants to determine who may use the Amenity Center.

Who was required to pay for the construction of the Amenity Center and for acquisition of the Amenity Center parking lots?

Were homeowners required to pay assessments to support the Amenity Center before builder claims to the building and pool were transferred to the HOA?

What are the boundaries of the Amenity Center and it's parking lots.

Did Rosemary Toth breach her fiduciary duty or act to the detriment of the HOA when, as President, she declared the lots owned by the golf course and ordered the removal of the parking lot warning signs. Did she willfully transfer value to the golf course and Joe Bernacki Golf Academy when she transferred control of the parking lots to the golf course?

Golf Course Assessments

What is legally required to change the rate of assessments for the Golf Course from that mandated in the covenants?

Is the "Golf Course Agreement" to change the rate of assessments for the Golf Course invalid for any of various reasons?

Did the signers of the Agreement commit a breach of fiduciary duty by entering into such an agreement? Did they in effect steal money from the HOA?

Did the HOA board in 2009 and Rosemary Toth in particular commit a breach of fiduciary duty by failing to get a legal opinion on this and by disregarding the prior legal opinion referred to in prior Board Minutes which advised against this? Who is liable for the money which the golf course was permitted to "not pay".

Did the Developer DR Horton have the authority to unilaterally, without the vote of

the Board on the minutes, enter into the agreement which benefitted everyone except the HOA and which gave Horton many free or reduced price golf memberships and other compensation in exchange for the deal? Did Horton's employee, the "HOA President" R Doug Brown, commit a breach of fiduciary duty by obtaining a free golf course membership for himself?

Grounds Maintenance

What is the obligation of homeowners to THEMSELVES to maintain areas outside their deeded lots? (e.g., from their lot lines to the curb?)

Can the HOA force homeowners to pay assessments to maintain property not owned by the HOA ? (e.g., Golf Course tract, county owned property, areas deeded to homeowners, areas deeded to sub-HOA associations ((The Glens)), areas owned by the Developer (who did not pay assessments on his lots)?

Actions of Board of Directors Prior to September, 2007 Election of Board

As a matter of law, was the HOA required to hold an election in (March) 2002 at which the members of the HOA would elect the Board – and in each year thereafter?

As a matter of law, Given that no election was held until September, 2007, were the acts of the unelected board appointed by the Developer "Ultra – Vires" and unenforceable?

As a matter of law, When a vacancy on the unelected board occurred, was the Developer entitled to make the selection of the replacement, or was that choice only available to the remaining board in a vote by them, or by open election by homeowners?

HOA Bylaws

Are the Bylaws of the "Murrells Inlet Golf Plantation Association", "MIGPA", legally the bylaws of the International Club Homeowners Association, Inc?

As a matter of law, who can declare the bylaws of a new non-profit corporation and under what circumstances?

Are the acts of the HOA which are taken under the purported authority of the putative bylaws ultra-vires as a matter of law?

In the absence of legally effective bylaws, what controls what the HOA can and can't do beyond those acts explicitly specified in the covenants?

Cable TV Contract

Is the cable tv contract unenforceable:

Is the cable tv contract unenforceable as a matter of lack of privity?

Is the cable tv contract unenforceable as a matter of federal pre-emption?

Is the cable tv contract unenforceable because neither the IHOA nor the homeowners are parties to it?

Is the cable tv contract unenforceable because the IHOA board never authorized the contract?

Is the cable tv contract unenforceable because the acts of the board at that time are ultra – vires?

Capital Contributions per Covenants

- "A RESTRAINT ON ALIENATION OF REAL PROPERTY"

Could DR Horton by Amendment get rid of his obligation to pay a capital contribution assessment to the HOA at original sale of a unit and replace it with a new obligation for homeowners to pay a capital contribution assessment to the HOA on every sale or resale – without the agreement of the existing homeowners?

Could Sunbelt and DR Horton divert the capital contribution assessment on original sale of any unit, from payment the HOA to payment to Horton to build the Amenity Complex used for single family home owners only?

Can the later developer Horton limit the operation of covenant on capital contributions through a private contract between developers / builders?

Is a covenant valid which imposes a new KIND OF assessment obligation on existing

Can a developer amend the covenants years after purchase of property by homeowners years after they made their original purchase, requiring them to pay the HOA a capital contribution assessment on resale (without a consent vote by the homeowners) and which requires payment of

- uncertain sum (it is tied to a varying and unknowable assessment sum)
- uneven sum (it is different for condo and single family home owners)
- lacks privity and is in nature of a personal contract between HOA and

homeowner (Amendment #3)

What is the effect of ignoring the advice of attorneys regarding the advisability of such an amendment (board minutes)

Central Electric – Sale of Right of Way and Use of Proceeds

Was the sale of the Right of Way to Central Electric without an approving vote of the homeowners contrary to law?

Does the HOA Board Members (at the time) owe the HOA the value of the right of way as determined by the amount paid by Central Electric for selling the right of way in violation of the law and the Bylaws?

Did the HOA Board Members at the time violate the law and bylaws by distributing part of the proceeds to some of the homeowners in violation of the Bylaws instead of retaining it in the HOA – without a vote of the members?

Does the HOA Board at the time owe the HOA the amount of money they distributed in violation of the Bylaws? And how much do they owe?

The HOA Counter – Claim (It's a WALL !) And Jarmuth's Responsive claim for Sanctions framing the HOA's action a Frivolous Proceeding

Is Jarmuth or anyone else required to seek the PRIOR permission of the HOA Architectural Review Board for anything?

If so, did Jarmuth substantially comply?

Is there an explicit and enforceable covenant controlling plant edgers or flower beds?

If so, has the widespread and varied installation resulted in changed circumstances such that there is no longer a "standard"?

Is there an explicit and enforceable covenant controlling fences and walls?

If so, has the widespread and varied installation of fences resulted in changed circumstances such that there is no longer a fence or wall "standard"?

Did Jarmuth actually build a fence or wall?

Is the power to impose a fine limited to the HOA Board or can the ARB or the contractor manager do so prior to a hearing?

Does the imposition of a fine require a hearing on notice? Did the HOA Board offer one? Did Jarmuth request same? Was the request ignored?

Was the enforcement selective and capricious?

Was the enforcement of non-existing covenants and refusal to conduct an appeal hearing malicious and an abuse of HOA process?

Was suing out non-existent covenants (ARB and fence) alleging something that wasn't even done (building a wall) a frivolous proceeding under the law and how much of a sanction is merited?

Covenant Amendments

Are Amendments #2 through #5 invalid because of failure to notify homeowners of intent to Amend PRIOR to amending and that the amendments were made AFTER amending?

Are Amendments #2 through #5 invalid as to the addition of more houses sharing the amenity facilities because of dilution of interest without the consent of the existing homeowners?

What covenant provisions have been deleted or otherwise made ineffective and unenforceable and what is the effect of those deletions?

What are the consequences of the HOA Board acting knowingly and willfully contrary to the dicta of the amendments in force at the time of a particular act?

Can a covenant that runs with the land control behavior on property which neither the HOA nor the homeowners actually still own – PRIVACY?

Is a covenant lawful which requires a homeowner to accept goods or services, which does not go directly to the actual use of the actual land? Is a covenant lawful that requires a homeowner to join a club?

Breach of fiduciary duty

What is the obligation of a member of the Board to the HOA if said member breaches his fiduciary duty to the HOA?

Has any particular HOA Board Member so breached his fiduciary duty causing financial loss to the HOA and what is his / her consequential obligation to the HOA?

Has any particular HOA Board Member used his position to cause financial gain to himself or his employer contrary to the Non-Profit Corporation Act and to the Covenants and By-Laws and what is the consequential legal effect on the particular act or decision of

the HOA Board?

What is the financial consequence on the HOA Board Member or his employer of such an act?

Defamation

Have the defendants defamed Plaintiff?

How many defamations were there?

Were the defamations willful and maliciously intended?

Have they caused statutory damages to Plaintiff's reputation?

What is the extent of the damages Plaintiff is entitled to recover?

From whom and in what amount are damages payable?

Fences and Walls and Other Landscaping

By reason of lack of a consistent standard, widespread erection, deletion of provisions in covenants, or absence of a specific restriction in covenants, are there any enforceable provisions on

- fences or walls
- flower or other landscape beds
- edgers
- landscape decorations
- vegetable beds
- or other landscape items not explicitly prohibited?

Homeowner Association Committees and Fines

By virtue of the South Carolina Non-Profit Corporation Act, do all HOA committees have to have TWO members of the board on them for committee acts to be valid?

Can HOA committees impose fines independent of an action of the Board?

Can the HOA board impose any fine without an explicit vote by the Board on the minutes of the Board?

Can the power to impose fines be delegated to a contractor?

Contracting

Is the homeowner association entitled to any rebates, refunds, or other considerations a contracting agent gets relateable to the purchase by the agent of goods or services on behalf of the HOA? (e.g., after purchase credit card rebates, discounts, or manufacturer rebates)

The Glens

Is The Glens a "multi-family" area per the Covenants?

As a consequence, are residents of The Glens entitled to use the Amenity Center or are they restricted in the same manner as owners of Townhouses in The Cambridge area or The Villas condominiums?

Are The Glens "Townhouses" – the court may not need to reach this conclusion if the question of whether The Glens is a Multi-Family is sufficient to address eligibility to use the Amenity Center.

Roads

Do the roads for which the Horry County Council passed resolutions accepting them into the County Maintenance System belong to Horry County or to someone else?

Does the HOA own the roads and (except for the southern end of International Club Drive), did the HOA EVER own any road?

Who is responsible to maintain the roads?

Who is responsible to maintain the area from the curb of roads to the property lines of the adjacent lots? Can the HOA "fine" said homeowner for ignoring such areas outside his property?

Do South Carolina state and Horry County Ordinances pertaining to parking on streets pre-empt HOA parking rules?

Are provisions of covenants invalid which relate to activities such as parking, or mail boxes on land NOT owned by the HOA or by individual homeowners due to lack of privity?

Are there any covenants effective as to activities on "roads"

Can the HOA enact "rules" which have restrictions on roads not reflected in the Covenants?

Is it legally permissible to compel homeowners to pay for the maintenance of areas not owned by themselves or the HOA – i.e., road shoulders?

Jarmuth Children's Swing Set

Is Jarmuth entitled to set up the swing set as demanded because of –

- selective and capricious enforcement of existing rules?**
- no actual prohibition on swing sets or specific requirements as to placement**
- approval by HOA board of another swing set located in a side yard**

Did the applicable ARB "Guidelines" at the time of disapproval have any explicit location requirements?

Or was the only requirement to for storm wind "proof" attachment?

Are the Horry County "set backs" stated in the PUD approval documents the only controlling limits on swing set placement?

Was the ARB denial based on a non-existent restriction?

Is the statement made by Toth to the South Carolina Human Rights Commission on November 19, 2009 that the HOA "never" approves swing sets in any location other than a backyard true?

Did the admitted approval by the HOA of at least 17 swingsets including one also visible from a cul de sac (across the street from Jarmuth) constitute "changed circumstances" or selective and capricious enforcement mandating approval of Jarmuth's swing set?
Is Jarmuth required to obtain the prior approval of the HOA's ARB to erect a swing set?

EXHIBITS

Highway 17 Connector

Case Law
Highway 17 Connector Covenants, extract
Lantana PUD Planning Commission Plat, extract
Tournament Boulevard Improvement Association February 19, 2008 Budget
extracts
Murrells Inlet Golf Course Planning Commission Plat
December 1, 2008 Letter to Jarmuth from Hwy 17 Association

Planned Unit Development (PUD) Limits

Amenity Center

Case Law
HOA Covenants, extract
January 19, 1999 Golf Course Membership Agreement
February 8, 1999 Golf Course Membership Agreement
August 22, 2002 Quit Claim Deed for Amenity Center lot.
Horry County GIS of original Amenity Center lot as of August 22, 2002 TNS 1940002162.
August 4, 2004 deed to second Amenity Center parking lot.
Copy of Horry County Recorder of Deeds automated summary for August 4, 2004 transaction.
Horry County GIS of expanded Amenity Center lot as of August 4, 2004, revised TNS 1940002162.
Plat of additional property conveyed on August 4, 2004 (second parking lot) from Planning Commission added to Parcel D.
Table of Assessments for Amenity Center, 2007-2012, from HOA annual budgets.
November 2006 HOA Budget Statement.
December 7, 2007 HOA Budget Statement.
November 2008 HOA Budget Statement notes of CPA "Diez".
November 9, 2009 HOA Budget Statement.
November 16, 2010 HOA Budget Statement.
January, 2012 Plaintiff Assessment Coupon from HOA.

Amenity Center Parking Lot

March 24, 2008 HOA Board Minutes
Plat Book 181 Page 89 Parcel D.
August 22, 2002 Recorder of Deeds Summary of Transfer of Parcel D to HOA.
Horry County GIS showing original parking lot in Parcel D.
November 20, 2003 HOA Board Minutes, extract.
August 4, 2004 Deed, extract Book 2271 Page 1482.
Plat Book 192 Page 245, second parking lot.
Horry County GIS of second parking lot.
Current Horry County Real Property Application showing current bounds of TNS
1940002162, Parcel D.
Plat Book 181 Page 89, original.
Revised Plat Book 181, Page 89 marked by Planning Commission to show second
parking lot added. and recorded as Plat Book 192 Page 245.

Golf Course Assessments

Table of Golf Course Arrears from Plaintiff's 2009 Complaint.
Toth February 7, 2009 letter to homeowners.
Covenant extract applying to Rate of Assessment.
Statute applying to Amendments which affect rate of assessments.
Covenant extract applying to amending the covenants.
September 3, 2003 Board Minutes, extract
November 20, 2003 Board Minutes extract.
July 30, 2004 Annual Meeting of Members minutes extract.
Statute pertaining to inspection of records by members.
HOA Bylaws pertaining to Amendment.
Covenant as to voting rights.
Covenant as to rate of assessment.
January 22, 2004 extract from deed showing declared value of transaction.
November 3, 2003 Golf Course Agreement.
November, 2004 Year End Bulleting, extract
HOA Bylaws on compensation of Directors.

Grounds Maintenance of areas not owned by HOA at HOA Expense.

Case Law
Covenant
April 16, 2009 Letter from Horry County to Rosemary Toth
March 10, 2008 Letter from Amazing Blades (Landscaper) to Beckie Abel – 2998
Landscape Contract signed by Rosemary Toth
December 22, 2008 Landscape Contract – 2009
February 2, 2009 HOA Buildings & Grounds Presentation at Board Meeting
Horry County Recorder of Deeds GIS AND Ownership Info for TNS 1944301060 –
The Glens HOA Common Property #1
Horry County Recorder of Deeds GIS AND Ownership Info for TNS 1944301072 –
The Glens HOA Common Property #2
June 25, 2008 HOA Building and Grounds Presentation to the HOA Board.

Actions of Board Ultra – Vires Before September 2007

March 1, 2001 HOA Certificate of Incorporation
March, 2001 Calendar
August 8, 2007 Notice of September 19, 2007 HOA Election
Extract of September 7, 2001 Deed of Sale for Plaintiff's Lot
September 10, 2002 Board Minutes, extract
September 3, 2003 Board Minutes, extract
South Carolina Non-Profit Corporation Statute 33-31-705 on Elections
March, 2002 Calendar
July 30, 2004 First Annual Members Meeting, extract
August 16, 2006 Board Minutes, extract
HOA Bylaws re Annual and Special Elections

Board of Directors Meeting and Annual Members Meeting Minutes

February 2, 2002 through November 11, 2008
as found on HOA Website
as found in KA Diehl files
as placed in McNair boxes October 3, 2011 (Annual Meeting Minutes).

Bylaws of HOA

SC Non-Profit Corporation Law as to Creating and Amending Bylaws
IHOA "Bylaws" as to Amendment of the Bylaws
February 8, 1999 MIGPA Bylaws recorded as Exhibit C
to Covenants at Book 2117 Page 1384
February 8, 1999 Recorder of Deeds record of Grantor / Grantee
May 9, 2000 Amendment #1 to Covenants. IHOA not a grantee or grantor
Recorder of Deeds – Deeds search through April 29, 2003
for "International Club".
Recorder of Deeds – Deeds search through April 29, 2003
for "Murrells Inlet Golf Plantation"
March 1, 2001 Articles of Incorporation for IHOA

Cable TV Contract

Covenant case law.
FCC 07-189 Order October 31, 2007
FCC Enforcement Guide, May 8, 2008
47 USC 548
47 CFR 76.2000
NCTA v FCC, 2009 U.S. App. LEXIS 11002, ;
567 F.3d 659; 47 Comm. Reg. (P & F) 1242
October 30, 2002 Cable Contract

February 27, 2009 letter from CEO of HTC to Jarmuth

Capital Contributions per Covenants

March 26, 2004 Covenant Amendment #3
January 13, 2009 Letter to Charles Flynn / Sunbelt
January 19, 2009 Letter to DR Horton
February 12, 2009 Charles Flynn / Sunbelt response
Cases
Developer Agreement
Computation of Capital Contributions owed the HOA
HOA 2004, 2005, and 2007 Year End Budget Statements
Covenant provisions for Capital Contributions

Central Electric – Sale of Right of Way and Use of Proceeds
– International Club Drive –

The HOA Counter – Claim (It's a WALL !)

The HOA Counter
Mark-up to HOA Counter – claim
Original Covenants – ARB and Fence restrictions
Amendment #1 to Covenants
Bylaws Article 18 Procedures
ARB Guidelines as of April 2008
June 10, 2005 HOA Board Meeting Minutes
December 4, 2006 HOA Board Meeting Minutes
March 14, 2008 HOA Board Meeting Minutes
June 10, 2008 HOA Board Meeting Minutes
September 29, 2010 Violation Letter Envelope
September 27, 2010 Violation Letter
September 30, 2010 Violation Fine Paid (Check)
September 30, 2010 Violation Fine Receipt
October 5, 2010 Julie Case (KA Diehl for HOA) email
September 30, 2010 Jarmuth ARB courtesy application
October 8, 2010 ARB approval of bed and edging
October 8, 2010 ARB disapproval of fence
HOA Bylaws Article 13, Procedure
October 11, 2010 Jarmuth Fence Appeal
October 20, 2010 HOA Response ignoring Appeal Request
October 23, 2010 Jarmuth letter to HOA reminding them they violated their own
procedure.

Covenant Amendments

Black's Legal Dictionary, 1st Edition, on Waiver

Case Law citations
Covenants – extracts of original and amended sections
Bylaw amendment – Law and the Bylaws

Defamation

Black's Legal Dictionary, 1st Edition, on Defamation
Black's Legal Dictionary, 1st Edition, on Conspiracy
Elements of Defamation
July 24, 2008 Jarmuth letter to Toth
Affidavit of Service of Complaint 2009-CP-26-3596 on Toth
February 10, 2009 Board Minutes
May 27, 2009 Statement by Mike Butryn
March 30, 2009 Complaint by Villas against HOA (Extract)
Extract from Westlaw of Cox lawsuit
May 12, 2009 Cover Letter transmitting defendant's answer in 3596 case
May 27, 2009 Golding email to Beckie Abel and Board members
May 28, 2009 Table of 1st Class Mail Package and cost
May 28, 2009 KA Diehl and HOA Defamatory Email
May 28, 2009 KA Diehl and HOA Defamatory webpages
May 29, 2009 through May 31, 2009 "impact" emails by homeowners
May 31, 2009 Horry County Police Report - Threats
June 1, 2009 Horry County Police Report - Harassment
June 2, 2009 Jane Pizzi statement
January 11, 1994 Jarmuth v Turetsky judgement on verdict
Jarmuth v Krolczyk docketing statement
July 7, 2003 West Virginia State Register – Krolczyk extract
August 15, 2006 Docket Jarmuth v Waters (extract)
May 16, 2009 Decision USCA-4 Jarmuth v Cox pg 1
December 18, 2009 Jarmuth V Verizon staff decision pg 1
1996 US Department of Justice FOIA Decision list
1993 US Department of Justice FOIA Decision list
November 6, 2009 Beckie Abel memo

PUD Plat Book

PLATS:

Deed Book 156 @ 155
Deed Book 160 @ 79
Deed Book 164 @ 199
Deed Book 169 @ 114
Deed Book 169 @ 115
Deed Book 169 @ 116
Deed Book 171 @ 149
Deed Book 181 @ 89
Deed Book 185 @ 165
Deed Book 189 @ 154

Deed Book 192 @ 245
Deed Book 197 @ 171
Deed Book 214 @ 5
Deed Book 215 @ 191

Covenants, Original and Amendments #1 through #5

Deed Book

Golf Course Agreement - Kaminski - January 19 1999
99 Year Golf Course Restriction February 8 1999
Sunbelt Deed February 8 1999
Sunbelt Golf Agreement February 8 1999
Horton Deed April 29, 2003
Parking Lot Deed August 4, 2004
GIS Parcel D with both parking lots

Horry County Planning Commission Documents

PUD Approval Document Package

Road Dedication Documents

Resolutions accepting roads
Warranty agreement
Roads accepted maps
Right of Way easements
February 4, 2009 Charles Ferrera email with February 4, 2009 Horry Engineering
Email with February 2, 2009 email with January 30, 2009 emails (are part of first email listed)
Toth / HOA Encroachment permit application / approval for International Club Drive
Horry County Council Resolution and minutes accepting roads
Photo Horry County Road Maintenance "sweeper"
on Pickering Drive, September 22, 2011

Fences and Walls Book

Case Law
Covenant (original) and Amendment #1
Black's Legal Dictionary on Waiver
March 18, 2011 Defendant response to Interrogatories
Photos of various houses in PUD with fences or walls, including Horry County GIS
Photos of Jarmuth plant beds

The Glens Mutlifamily Area

Covenants applicable to multi-family areas
Horry County Planning Commission Lantana PUD Approval Plat
Glens HOA Corporate Record
Glens sub-HOA covenants, extracts
Deed to Maureen Sullivan townhouse in The Glens
Horry County Recorder of Deeds GIS of 2 Common Areas belonging
to The Glens HOA and ownership records
Horry County Planning Commission Murrells Inlet Golf
Plantation PUD Approval Plat and extracts
Horry County Recorder of Deeds GIS of several The Glens townhouses
Horry County Recorder of Deeds The Glens approval plat and extracts
Realtor listing documents on several The Glens townhouses

Miscellaneous

July 15, 2008 Toth email to Jarmuth re Late Fee
July 17, 2008 Toth email to Jarmuth re Late Fee

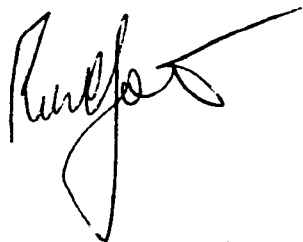
Roads

Covenants
April 16, 2009 Letter from Horry County to Rosemary Toth
August 24, 2009 Letter from Horry County to Mike Butryn
October 20, 2009 Horry County Council Meeting Agenda
October 20, 2009 Horry County Council Meeting Minutes
February 4, 2009 Emails between Charles Ferrera and Horry County Engineering
reflectin meeting with Toth
April 2, 2009 Approved Encroachment Permit Application by Toth / HOA for
International Club Drive, southern end

Swing Set

Case Law
Covenants
Murrells Inlet Golf Plantation PUD Plat restrictions cited in Covenant 7.11
ARB Guidelines in 2009 through 2011
Murrells Inlet Golf Plantation PUD Plat cited by Covenants
Jarmuth July 21, 2009 Swing Set Application
HOA August 5, 2009 Denial
Photos of other swing sets in PUD
November 18, 2009 Toth letter to South Carolina Human Rights Commission
HOA Answer to Jarmuth Interrogatories

Submitted by Plaintiff:

A handwritten signature in black ink, appearing to read 'Ronald Jarmuth', written over a horizontal line.

By:

Ronald Jarmuth, Plaintiff
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
January 16, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	Civil Action No. 2009-CP-26-3596
Ronald Jarmuth	)	consolidated with
Plaintiff	)	Civil Action No. 2010-CP-26-11320
	)	
vs.	)	PLAINTIFF'S SUPPLEMENT TO HIS
	)	
The International Club	)	RULE 16 STATEMENT
Homeowners Association, Inc.,	)	
et al	)	
Defendants	)	

1. Plaintiff Ronald Jarmuth, Pro Se, supplements the Rule 16 Statement he filed on January 17, 2012, with an index to the Exhibits he has prepared for use at trial. The index is organized into related groups which matches the sets of Exhibits. The exhibits themselves have numbers at the upper right corner of the first page (of each) corresponding to the numbers in the indices.

2. The exhibits are attached (as a set) as Exhibit A to this supplemental Statement .

3. They are organized as follows:

a.	Photos and images:	1 to 135.
b.	Statutory or Regulatory Authority:	200 to 259.
c.	Documents related to the Defendants including Minutes of Meetings, mail, email, contracts, financial statements, newsletters, committee presentations, solicitations, and web pages:	300 to 388.
d.	CD with five voice files:	390.
e.	Horry County Road Dedications:	400 to 414.
f.	Plats:	449 to 470.
g.	Defamation related documents:	500 to 539.
h.	Deeds:	540 to 566.
i.	ARB related:	
	(1) Swing Set:	600 to 614.
	(2) Side Yard Fence:	620 to 635.

(3) Palm Bed Extension: 640 to 644.

Note: many of the photos relate to ARB issues.

4. In addition the transcripts of eight depositions have previously been filed with the Court in accordance with SCRCivP Rule 32:

- a. Peter Pizzi.
- b. Jane Pizzi.
- c. Michael Butryn.
- d. Louis Astorino.
- e. Rosemary Toth.
- f. William Freiboth.
- g. R. Scott Pyle.
- h. Julie Case.

5. There are a number of interlocutory motions currently pending before the Court:

a. Plaintiff's March 20, 2012 motion to amend to add a tort that occurred in March, 2012, that being "Exaction" (as explained in the Motion to Amend) and failure to act in good faith and fair dealing in matters relating to a Palm Tree Bed, causing monetary damage unrelated to Defendant's prior bad acts. The motion seeks to add a related additional defendant (Charles Roche individually and representing the Architectural Review Board) who according to the sworn statements of two defendants acted independently of the HOA Defendant (which may or may not be true).

b. Plaintiff's April 11, 2012 Motion for a continuance and for findings of fact and of law related to the hiding, by Defendants, of an important witness and her records: Angela Goodman of Carolina Mail House, who assembled and mailed the defamatory material.

c. Defendants' February 20, 2012 Motion for a Protective order relating to certain questions posed her clients during their depositions, which actually relate to unprivileged but very damaging correspondence between, to, or from attorneys. There is a question as to the representative capacity of Defense Counsel for the time period which the deposition questions related to, and the effect of Defendants' having claimed the Business Judgment Rule as a defense.

Submitted by Plaintiff:

By:

**Ronald Jarmuth, Plaintiff
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
May 7, 2012**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	Civil Action No. 2009-CP-26-3596
Ronald Jarmuth	)	consolidated with
Plaintiff	)	Civil Action No. 2010-CP-26-11320
	)	
vs.	)	PLAINTIFF'S RULE 16
	)	STATEMENT
The International Club	)	(Revised for May 14, 2012)
Homeowners Association, Inc.,	)	
et al	)	
Defendants	)	
	)	

HISTORY AND SUMMARY

In 2008 through early 2009 there were many views as to what the covenants actually were. On it's web site the HOA only posted the original covenants and Amendment #1 and the board members refused to acknowledge the existences of Amendments #2 through #5. There was also a difference of opinion on the authority of the HOA to enforce the contract between the Developer HOA Board and the Horry Telephone Cooperative (HTC) for cable services, the similar agreement with Waste Management, and the agreement the Developer made with the Golf Course to excuse the Golf Course from paying the assessments mandated in the Covenants. There were additional issues regarding the conduct of HOA elections and access to HOA documents.

The HOA's own Buildings and Grounds Committee took issue with spending most of the HOA's grounds maintenance budget to maintain private property – especially the Golf Course, particularly since the later was escaping it's covenant mandated payment obligation. Other differences of opinion existed over the effect of County ownership of roads – and even over who owned the roads.

The HOA Board adamantly refused to even discuss these issues. Rosemary Toth, the HOA President, made independent decisions which many, including Plaintiff, considered a breach of fiduciary duty.

It is legitimate for differences of opinion on these issues. The HOA Board's refused to discuss these matters. The HOA Board even went so far as to assert that it could prohibit or control flag poles – pre-empted by South Carolina law, or the placement of satellite dishes – pre-empted by federal law.

It became apparent that the only way to resolve these matters was to file a Complaint and Derivative Action demanding, among other things, a Declaratory Judgment. Such an action should not have been adversarial, because all people of good will should have been interested in hearing the Court's analysis of the matters, particularly of

the Covenants, since only a Court Order would settle these questions. Without it, an agreement between the sides could be challenged by any homeowner in the future.

With no other course of action, many homeowners signed a petition to force a recall election of the existing board. This was a legitimate exercise in democracy. The material carefully avoided addressing the reputations of the existing board and spoke only of actions in office. Plaintiff stood for election as a replacement board member, along with four other homeowners.

Plaintiff filed such a Complaint – 2009-CP-26-3596.

The HOA Board, particularly Rosemary Toth, changed the context. Instead of directing it's attention at gathering relevant facts and case law relating to these questions, Toth and her supporters conspired to concoct a campaign of defamation against Plaintiff and further to start a "whispering campaign" to urge homeowners to dis-associate themselves with Jarmuth. This was particularly done by Mike Templeton, a board member, and others. The objective of the campaign was to so humiliate or otherwise harm Jarmuth in reputation that he would leave the development, thus mooted his complaint.

Toth and the HOA Board met secretly and authorized the expenditure of thousands of dollars to prepare a defamation campaign against Plaintiff involving email, US Mail, and a web site. This involved the efforts of KA Diehl, the contractor, which used it's initiative in preparing the material. The Defamations were mailed or emailed (directed at) to at least 646 homes with the expectation that they would be read by all who live there. Many recipients were not voting members of the Association. Email copies were emailed to over 200 homeowner families. Thus a total of approximately 846 homeowners – and their families – were provided the defamatory material. The Board also approved and paid for the alteration of the HOA's web site to make the defamatory material obvious to homeowners visiting the HOA web site. While it purported to provide information about the lawsuit it never actually gave a copy of the Complaint or the Defendants' Answer.

The Board hid the cost of the campaign. Printing and mailing the defamatory material cost approximately \$ 3,800 just for the printing and postage. There were additional charges from the management company for the web site and it's work, including preparing the email. All invoices and other paperwork were kept out of the HOA's files. The Defendants lied about their knowledge of the contractor, since the HOA paid the mailing contractor almost \$20,000 in 2009 alone – using 30 invoices, making the mailing contractor one of the largest vendors the HOA used in terms of invoices and dollar amount. Since co-defendant KA Diehl used this mail contractor for the approximately 50 or so other HOA's it manages, it is estimated that Diehl paid perhaps 1000 invoices for Carolina Mail House in 2009 and paid that contractor over \$ 100,000. Yet in depositions the HOA President and most involved Diehl employee said they could not remember who the mail contractor was or how many mailings were made. In discovery they also hid all paperwork which related in any way to the mail contractor – although this should perhaps be blamed on the attorney, who witness testimony says orchestrated the whole scheme.

The defamation campaign was meant to change the focus from the acts of the board to one of reputations. The immediate effect was that Jarmuth received threatening emails and phone threats – which were reported to the Horry County Police which made a record of same. One homeowner threatened to come to Jarmuth's house with a mob.

To remove the distraction Jarmuth withdrew as a candidate, which meant that the HOA should have ceased its campaign of defamation if it was in furtherance of its defense of its office. It never did. Board member Templeton, among others, was still telling homeowners to socially isolate Jarmuth, among other things he said. What Toth said is unavailable as the HOA Defendant has stonewalled on disclosing its emails.

Defendant's employee Julie Case, in an admission against interest, admitted the campaign. The KA Diehl / HOA web site with the information about Jarmuth, supposedly about the case, doesn't have the complaints or answers or any of the pleadings – or any other information about the case.

The campaign against Plaintiff went on, and in 2010 Jarmuth filed a separate suit in Magistrate Court regarding its refusal to allow erection of a fence and its levying a "fine" for a non-existent fence or wall. The HOA also selectively and capriciously and without covenant authority also refused permission to erect a children's swing set. In Jarmuth's applications, Jarmuth consistently preserved his objections to the authority of the HOA and asserted the lack of covenant authority for the HOA's actions. The HOA had the case transferred to the Court of Common Pleas from the Magistrate.

From 2009 through the end of 2011 the Court ignored Jarmuth's requests for the Court to intervene on his behalf to secure him the discovery which he holds by right. Subpoenas against Sunbelt, KA Diehl, and Horton went un-enforced. While Jarmuth produced thousands of pages of documents, the HOA did not even cooperate in discovery until October 3, 2011 when it allowed Jarmuth only 5 hours, with no assistants, to go through approximately 80,000 pages of documents, much of it trash accounting records, in random order. The KA Diehl defendant has never produced a single document and has ignored the subpoena against it. All deponents admitted the existence of a lot of documents when they objected to the subpoenas. Sunbelt admitted in October 2011 that it did not place a litigation hold on documents and destroyed all documents. Sunbelt's attorney is the HOA's attorney.

In December 2011 after over two years, KA Diehl's Rule 12(b)(6) objection was called for hearing – which it abandoned at the hearing, making Diehl a defendant only days before the case was sent to trial. Likewise, an order was entered AFTER the case was sent to trial allowing a counter – claim and changed answers. Many other discovery matters are unsettled. In all, Plaintiff only had approximately 60 days for discovery on some issues against some defendants and no discovery at all against others (Diehl). Defendants have filed a Motion to Strike in each case against Plaintiff's mandatory counter – claim implicated by the Amended Answer of Defendants from December, 2011.

After filing the original complaint the case was appealed to the Court of Appeals

because the trial court dismissed Henrietta Golding as a defendant. Because the Defendant refused to participate in discovery during the appeal and the Court refused to force discovery during the appeal, the case sat idle for approximately 30 months.

During that period Plaintiff desired to add a swing set for foster children and grand children and applied, reserving objections as to the requirement to do so, to the HOA's Architectural Review Board ("ARB") for a swing set which was refused even though there are scores of them around the neighborhood – including right across the street. One of the HOA's ARB members lives next door to Plaintiff and commenced to destroy Plaintiff's sprinkler system by driving stakes into the control wires and water line on Plaintiff's property near where it adjoins said ARB member. Said ARB individual also scattered hypodermic needles on Plaintiff's lawn. Police Reports were filed and the Horry County Police collected the needles as evidence/ Pictures were taken. Plaintiff was advised to build a fence along the property line. A surveyor was employed and the lot line marked. The ARB refused to approve the fence despite no covenant controlling fences and the omnipresence of fences throughout the neighborhood. It commenced to "fine" Plaintiff for a non-existent "wall".

Plaintiff also sought to expand existing Palm Tree beds, including planting palm trees directly across the street from similar palm trees in neighbor yards (one of which is owned by a homeowner who is the "financial advisor" to the HOA board). It was refused, not because it violated an ARB Guideline, but because the ARB / HOA demanded Plaintiff drop his lawsuit and pay several thousand dollars to the HOA – extortion and exaction.

To avoid the effect of Res Judicata and Collateral Estoppel, Plaintiff filed another lawsuit against the HOA involving ARB issues. This was later merged with the original suit for purposes of findings of common facts and law.

PLEADINGS

The Court is requested to consult with the Docket as these are so numerous. There is an original and amended complaint with respective answers, and an Amended Answer as of December 2011 with a new Counter – Complaint implicating a Plaintiff answer to the counter claim and a mandatory claim related to the counter claim. Defendants have not answered the implicated Plaintiff claim (required to avoid Res Judicata).

There are a number of open Procedural Motions before the Court:

1. Plaintiff's Motion for a "Protective Order" from appearing on certain dates so as to obtain medical treatment. The Court has already granted an ex-parte request by Defense Counsel.
2. Plaintiff's Motion to Continue and to Amend, adding the "Palm Tree" incident in March, 2012, and Charles Roche individually and as representative of the ARB.
3. Plaintiff's Motion to Continue and to Make Findings of Fact and of Law

because the Defendant's hid the existence of the mail contractor and continue to hide all defendant records relating to that mail contractor.

Relatedly, Plaintiff is demanding that Defendant be compelled to produce the documents requested in 2009 as to (invoices and work orders and bills related to) the mail contractor. In deposition testimony, defendants have admitted hiding all traces of their involvement in the defamatory campaign.

4. Defendant Motion for a Protective Order related to certain deposition questions; this actually seeks protection from the impact of certain non-privileged attorney letters which were used at the depositions.

5. The matter of the mistreatment by Defense Counsel Henrietta Golding of Louis Astorino in particular and plaintiff's witnesses in general at a deposition held April 17th, 2012. Instead of taking the usual seat a dozen or more feet from the witnesses, Golding positioned herself 18 inches or so from the deponents' faces and also interfered with their handling of evidence presented to them – which shared table space with her papers. Mr. Astorino, in particular, had medical issues immediately after the deposition, which Plaintiff tried to halt before Plaintiff was finished because of Astorino's medical condition. Mr. Astorino has a life – threatening situation which requires immediate medical attention at this time (May 14, 2012).

UNDISPUTED FACTS AND LAW

The only thing agreed to are the jurisdictional issues. All other matters are subject to dispute. At a hearing held on December 7, 2011 the Court held that there are no undisputed issues of law or fact.

ISSUES

Federal, State and County Laws

Determine the rights and obligations of the HOA Board and the developers given various laws and regulations. Determine if violation of certain renders the acts of the Board "Ultra Vires".

Covenant Amendments.

What portions of the Covenants have been deleted by the impact of successive Amendments? What is the effect of these deletions on what the HOA and homeowners may and may not do? Can the HOA control conduct on property not owned by any homeowner nor by the HOA? Can the HOA force homeowners to pay assessments to maintain property outside the Planned Unit Development limits / outside the land subjected to the covenants / land which is not common property nor HOA owned property

within the area subjected to the covenants?

Which is the HOA?

Is the HOA which has rights and obligations under the covenants the "Murrells Inlet Golf Plantation Association", as is named in the Covenants, the "International Club Association" which is the name reached by applying a phrase in Covenant Amendment 1, or the defendant "International Club Home Owners Association"? All three were organized as non-profit corporations in South Carolina.

Highway 17 Connector Association

Does the HOA have an obligation or right to collect the Highway 17 Connector Association assessments, and whether any related contracts / covenants are voidable due to changed circumstances?

Roads

Are the roads owned by Horry County, to whom they were dedicated and which maintains them, or are they owned or subject to the HOA's control, even though the HOA never actually owned the roads? Can the HOA control parking on those roads and the selection of mail boxes on said county property?

ARB

Is the ARB a committee of the HOA or an independent entity?
What are the rights and obligations of the ARB?
What is the validity of various ARB Guidelines.
Do ARB "Guidelines" actually have any regulatory effect?
What is the liability of ARB members for their actions?

Fences and Palm Trees

Are there any remaining controls?
Does the extensive and permeating presence of fences and plant beds of wide variety render fence and tree controls void?
Was the ARB / HOA conduct towards Plaintiff malicious, selective, or capricious?
Did it violate the implied covenant of good faith and fair dealing?

Swing Sets

What controls and limitations do the Covenants impose?
Given the variety and presence of swing sets, are further limitations void?
Was the ARB / HOA conduct towards Plaintiff malicious, selective, or capricious?
Did it violate the implied covenant of good faith and fair dealing?

Parking

Have parking controls been deleted in the covenants

Amenity Center Parking Lots

Who owns the parking lots?

What towing can be imposed on those lots?

Grounds Watering

Does the HOA own the water in the retention ponds, despite private ownership of the pond bottoms, through the operation of a provision in the covenants?

Is it improper for the HOA to pay the Golf Course to use the retention pond water?

Retention Ponds

What is the HOA's rights and obligations regarding retention ponds which are privately owned? Can the HOA force homeowners to pay assessments for fountains and other beautification of privately owned ponds?

Planned Unit Development

Which subcommunities are within the PUD and or are subject to the covenants and or must be involuntary members of the Homeowners' Association, whichever one that it is?

Are The Enclaves and The Fairways inside the PUD and subject to the Covenants?

Did the exercise of architectural control over The Fairways and The Enclaves demonstrate their membership in the HOA and subordination to the Covenants?

What is the fiduciary responsibility of the HOA Board to collect the arrears from "The Enclaves" and "The Fairways" – two developments within the PUD?

If Amendments #2 through #5 are invalid, are the sections added to the HOA through those amendments members of the HOA?

Amenity Center

Interpret the covenants to determine who must involuntarily pay assessments to support the Amenity Center – if anyone..

Interpret the covenants to determine who may use the Amenity Center.

Who was required to pay for the construction of the Amenity Center and for acquisition of the Amenity Center parking lots?

Were homeowners required to pay assessments to support the Amenity Center before builder claims to the building and pool were transferred to the HOA?

What are the boundaries of the Amenity Center and it's parking lots.

Did Rosemary Toth breach her fiduciary duty or act to the detriment of the HOA when, as President, she declared the lots owned by the golf course and ordered the removal

of the parking lot warning signs. Did she willfully transfer value to the golf course and Joe Bernacki Golf Academy when she transferred control of the parking lots to the golf course?

Golf Course Assessments

What is legally required to change the rate of assessments for the Golf Course from that mandated in the covenants?

Is the "Golf Course Agreement" to change the rate of assessments for the Golf Course invalid for any of various reasons?

Did the signers of the Agreement commit a breach of fiduciary duty by entering into such an agreement? Did they in effect steal money from the HOA?

Did the HOA board in 2009 and Rosemary Toth in particular commit a breach of fiduciary duty by failing to get a legal opinion on this and by disregarding the prior legal opinion referred to in prior Board Minutes which advised against this? Who is liable for the money which the golf course was permitted to "not pay".

Did the Developer DR Horton have the authority to unilaterally, without the vote of the Board on the minutes, enter into the agreement which benefitted everyone except the HOA and which gave Horton many free or reduced price golf memberships and other compensation in exchange for the deal? Did Horton's employee, the "HOA President" R Doug Brown, commit a breach of fiduciary duty by obtaining a free golf course membership for himself?

Grounds Maintenance

What is the obligation of homeowners to THEMSELVES to maintain areas outside their deeded lots? (e.g, from their lot lines to the curb?)

Can the HOA force homeowners to pay assessments to maintain property not owned by the HOA ? (e.g., Golf Course tract, county owned property, areas deeded to homeowners, areas deeded to sub-HOA associations ((The Glens)), areas owned by the Developer (who did not pay assessments on his lots)?

Actions of Board of Directors Prior to September, 2007 Election of Board

As a matter of law, was the HOA required to hold an election in (March) 2002 at which the members of the HOA would elect the Board – and in each year thereafter?

As a matter of law, Given that no election was held until September, 2007, were the acts of the unelected board appointed by the Developer "Ultra – Vires" and unenforceable?

As a matter of law, When a vacancy on the unelected board occurred, was the Developer entitled to make the selection of the replacement, or was that choice only available to the remaining board in a vote by them, or by open election by homeowners?

HOA Bylaws

Are the Bylaws of the "Murrells Inlet Golf Plantation Association", "MIGPA", legally the bylaws of the International Club Homeowners Association, Inc?

As a matter of law, who can declare the bylaws of a new non-profit corporation and under what circumstances?

Are the acts of the HOA which are taken under the purported authority of the putative bylaws ultra-vires as a matter of law?

In the absence of legally effective bylaws, what controls what the HOA can and can't do beyond those acts explicitly specified in the covenants?

Cable TV Contract

Is the cable tv contract unenforceable:

Is the cable tv contract unenforceable as a matter of lack of privity?

Is the cable tv contract unenforceable as a matter of federal pre-emption?

Is the cable tv contract unenforceable because neither the IHOA nor the homeowners are parties to it?

Is the cable tv contract unenforceable because the IHOA board never authorized the contract?

Is the cable tv contract unenforceable because the acts of the board at that time are ultra - vires?

Capital Contributions per Covenants

- "A RESTRAINT ON ALIENATION OF REAL PROPERTY"

Could DR Horton by Amendment get rid of his obligation to pay a capital contribution assessment to the HOA at original sale of a unit and replace it with a new obligation for homeowners to pay a capital contribution assessment to the HOA on every sale or resale - without the agreement of the existing homeowners?

Could Sunbelt and DR Horton divert the capital contribution assessment on original sale of any unit, from payment to the HOA to payment to Horton to build the Amenity Complex used for single family home owners only?

Can the later developer Horton limit the operation of covenant on capital contributions through a private contract between developers / builders?

Is a covenant valid which imposes a new KIND OF assessment obligation on existing

Can a developer amend the covenants years after purchase of property by homeowners years after they made their original purchase, requiring them to pay the HOA a capital contribution assessment on resale (without a consent vote by the homeowners) and which requires payment of

- uncertain sum (it is tied to a varying and unknowable assessment sum)

- uneven sum (it is different for condo and single family home owners)

- lacks privity and is in nature of a personal contract between HOA and homeowner (Amendment #3)

What is the effect of ignoring the advice of attorneys regarding the advisability of such an amendment (board minutes)

Central Electric - Sale of Right of Way and Use of Proceeds

Was the sale of the Right of Way to Central Electric without an approving vote of

the homeowners contrary to law?

Does the HOA Board Members (at the time) owe the HOA the value of the right of way as determined by the amount paid by Central Electric for selling the right of way in violation of the law and the Bylaws?

Did the HOA Board Members at the time violate the law and bylaws by distributing part of the proceeds to some of the homeowners in violation of the Bylaws instead of retaining it in the HOA – without a vote of the members?

Does the HOA Board at the time owe the HOA the amount of money they distributed in violation of the Bylaws? And how much do they owe?

The HOA Counter – Claim (It's a WALL !) And Jarmuth's Responsive claim for Sanctions framing the HOA's action a Frivolous Proceeding

Is Jarmuth or anyone else required to seek the PRIOR permission of the HOA Architectural Review Board for anything?

If so, did Jarmuth substantially comply?

Is there an explicit and enforceable covenant controlling plant edgers or flower beds?

If so, has the widespread and varied installation resulted in changed circumstances such that there is no longer a "standard"?

Is there an explicit and enforceable covenant controlling fences and walls?

If so, has the widespread and varied installation of fences resulted in changed circumstances such that there is no longer a fence or wall "standard"?

Did Jarmuth actually build a fence or wall?

Is the power to impose a fine limited to the HOA Board or can the ARB or the contractor manager do so prior to a hearing?

Does the imposition of a fine require a hearing on notice? Did the HOA Board offer one? Did Jarmuth request same? Was the request ignored?

Was the enforcement selective and capricious?

Was the enforcement of non-existing covenants and refusal to conduct an appeal hearing malicious and an abuse of HOA process?

Was suing out non-existent covenants (ARB and fence) alleging something that wasn't even done (building a wall) a frivolous proceeding under the law and how much of a sanction is merited?

Covenant Amendments

Are Amendments #2 through #5 invalid because of failure to notify homeowners of intent to Amend PRIOR to amending and that the amendments were made AFTER amending?

Are Amendments #2 through #5 invalid as to the addition of more houses sharing the amenity facilities because of dilution of interest without the consent of the existing homeowners?

What covenant provisions have been deleted or otherwise made ineffective and unenforceable and what is the effect of those deletions?

What is the consequences of the HOA Board acting knowingly and willfully

contrary to the dicta of the amendments in force at the time of a particular act?

Can a covenant that runs with the land control behavior on property which neither the HOA nor the homeowners actually still own – PRIVACY>

Is a covenant lawful which requires a homeowner to accept goods or services, which does not go directly to the actual use of the actual land? Is a covenant lawful that requires a homeowner to join a club?

Breach of fiduciary duty

What is the obligation of a member of the Board to the HOA if said member breaches his fiduciary duty to the HOA?

Has any particular HOA Board Member so breached his fiduciary duty causing financial loss to the HOA and what is his / her consequential obligation to the HOA?

Has any particular HOA Board Member used his position to cause financial gain to himself or his employer contrary to the Non-Profit Corporation Act and to the Covenants and By-Laws and what is the consequential legal effect on the particular act or decision of the HOA Board?

What is the financial consequence on the HOA Board Member or his employer of such an act?

Defamation

Have the defendants defamed Plaintiff?

How many defamations were there?

Were the defamations willful and maliciously intended?

Have they caused statutory damages to Plaintiff's reputation?

What is the extent of the damages Plaintiff is entitled to recover?

From whom and in what amount are damages payable?

Fences and Walls and Other Landscaping

By reason of lack of a consistent standard, widespread erection, deletion of provisions in covenants, or absence of a specific restriction in covenants, are there any enforceable provisions on

- fences or walls
- flower or other landscape beds
- edgers
- landscape decorations
- vegetable beds
- or other landscape items not explicitly prohibited?

Homeowner Association Committees and Fines

By virtue of the South Carolina Non-Profit Corporation Act, do all HOA committees have to have TWO members of the board on them for committee acts to be valid?

Can HOA committees impose fines independent of an action of the Board?

Can the HOA board impose any fine without an explicit vote by the Board on the minutes of the Board?

Can the power to impose fines be delegated to a contractor?

Contracting

Is the homeowner association entitled to any rebates, refunds, or other considerations a contracting agent gets relateable to the purchase by the agent of goods or services on behalf of the HOA? (e.g., after purchase credit card rebates, discounts, or manufacturer rebates)

The Glens

Is The Glens a "multi-family" area per the Covenants?

As a consequence, are residents of The Glens entitled to use the Amenity Center or are they restricted in the same manner as owners of Townhouses in The Cambridge area or The Villas condominiums?

Are The Glens "Townhouses" – the court may not need to reach this conclusion if the question of whether The Glens is a Multi-Family is sufficient to address eligibility to use the Amenity Center.

Roads

Do the roads for which the Horry County Council passed resolutions accepting them into the County Maintenance System belong to Horry County or to someone else?

Does the HOA own the roads and (except for the southern end of International Club Drive), did the HOA EVER own any road?

Who is responsible to maintain the roads?

Who is responsible to maintain the area from the curb of roads to the property lines of the adjacent lots? Can the HOA "fine" said homeowner for ignoring such areas outside his property?

Do South Carolina state and Horry County Ordinances pertaining to parking on streets pre-empt HOA parking rules?

Are provisions of covenants invalid which relate to activities such as parking, or mail boxes on land NOT owned by the HOA or by individual homeowners due to lack of privity?

Are there any covenants effective as to activities on "roads"?

Can the HOA enact "rules" which have restrictions on roads not reflected in the Covenants?

Is it legally permissible to compel homeowners to pay for the maintenance of areas not owned by themselves or the HOA – i.e., road shoulders?

Jarmuth Children's Swing Set

Is Jarmuth entitled to set up the swing set as demanded because of –

- selective and capricious enforcement of existing rules?**
- no actual prohibition on swing sets or specific requirements as to placement**
- approval by HOA board of another swing set located in a side yard**

Did the applicable ARB "Guidelines" at the time of disapproval have any explicit location requirements?

Or was the only requirement to for storm wind "proof" attachment?

Are the Horry County "set backs" stated in the PUD approval documents the only controlling limits on swing set placement?

Was the ARB denial based on a non-existent restriction?

Is the statement made by Toth to the South Carolina Human Rights Commission on November 19, 2009 that the HOA "never" approves swing sets in any location other than a backyard true?

Did the admitted approval by the HOA of at least 17 swingsets including one also visible from a cul de sac (across the street from Jarmuth) constitute "changed circumstances" or selective and capricious enforcement mandating approval of Jarmuth's swing set?
Is Jarmuth required to obtain the prior approval of the HOA's ARB to erect a swing set?

EXHIBITS

See attached Exhibit List

WITNESSES

Rosemary Toth
Julie Case
William Freiboth
Michael Butryn
Peter Pizzi
Jane Pizzi
Louis Astorino
Charles Ferrera
Jamison Martin or other employee of Amazing Blades
Michael "Mike" Templeton

Submitted by Plaintiff:

By:

**Ronald Jarmuth, Plaintiff
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
May 14, 2012**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	Civil Action No. 2009-CP-26-3596
Ronald Jarmuth	)	consolidated with
Plaintiff	)	Civil Action No. 2010-CP-26-11320
	)	
vs.	)	PLAINTIFF'S RULE 16
	)	STATEMENT
The International Club	)	(Revised July 16, 2012)
Homeowners Association, Inc.,	)	
et al	)	and Rule 32(b) Statement
Defendants	)	

(revised July 16, 2012)

HISTORY AND SUMMARY

In 2008 through early 2009 there were many views as to what the covenants actually were. On it's web site the HOA posted only the original covenants and Amendment #1. HOA Board members refused to acknowledge the existences of Amendments #2 through #5. There was also a difference of opinion on the authority of the HOA to enforce the contract between the Developer HOA Board and the Horry Telephone Cooperative (HTC) for cable services, the similar agreement with Waste Management, and the agreement the Developer made with the Golf Course to excuse the Golf Course from paying the assessments mandated in the Covenants. There were additional issues regarding the conduct of HOA elections and access to HOA documents.

The HOA's own Buildings and Grounds Committee took issue with spending most of the HOA's grounds maintenance budget to maintain private property – especially the Golf Course, particularly since the later was not paying either the assessments stated in the covenants nor the assessments stated in the golf course agreement.

Other differences of opinion existed over the effect of County ownership of roads – and even over who owned the roads. The HOA asserted it owned the roads even though the roads were never deeded to the HOA, and that the county had some sort of easement for the public from the HOA.

Several requests were made to the HOA for a copy of the “voter / homeowner” list so as to be able to communicate with the other homeowners. These requests were all refused, even though access is guaranteed by state law. At the membership meeting called to elect board members on September 19, 2007, when Plaintiff demanded to see the votes and tallies, Pat Walsh, Developer Horton’s Director of Land Development and outgoing

board member, stated to Plaintiff and in the presence of another person that he had picked the new board – a statement that was consistent with contemporary HOA documents. The question then arose as to the legality of the incumbency of the new board. There was also the question of when a new board takes office, because the annual meeting specified in the bylaws takes place in March. Relatedly, after each election, at least one board member resigns and is replaced by an appointee. A dispute exists as to whether the appointee must stand for election at the next meeting of members, as is required by state law, or whether he can serve out the unexpired remainder of a board member term, the HOA practice which is contrary to state law.

The HOA Board adamantly refused to even discuss these issues. Rosemary Toth, the HOA President, made independent decisions which many, including Plaintiff, considered a breach of fiduciary duty.

It is legitimate for differences of opinion on these issues. The HOA Board's refused to discuss these matters. The HOA Board even went so far as to assert that it could prohibit or control flag poles – pre-empted by South Carolina law, or the placement of satellite dishes – pre-empted by federal law.

It became apparent that the only way to resolve these matters was to file a Complaint and Derivative Action demanding, among other things, a Declaratory Judgment. Such an action should not have been adversarial, because all people of good will should have been interested in hearing the Court's analysis of the matters, particularly of the Covenants, since only a Court Order would settle these questions. Without it, an agreement between the sides could be challenged by any homeowner in the future.

With no other course of action, many homeowners signed a petition to force a recall election of the existing board. This was a legitimate exercise in democracy. The material carefully avoided addressing the reputations of the existing board and spoke only of actions in office. Plaintiff stood for election as a replacement board member, along with four other homeowners.

Plaintiff filed such a Complaint – 2009-CP-26-3596.

The HOA Board, particularly Rosemary Toth, changed the context. Instead of directing it's attention at gathering relevant facts and case law relating to these questions, Toth and her supporters conspired to concoct a campaign of defamation against Plaintiff and further to start a "whispering campaign" to urge homeowners to dis-associate themselves with Jarmuth. This was particularly done by Bill Fletcher, a transition committee and Architectural Review Board (ARB) member and others. The objective of the campaign was to so humiliate or otherwise harm Jarmuth in reputation that he would leave the development, thus mooting his complaint.

Toth and the HOA Board met secretly and authorized the expenditure of thousands of dollars to prepare a defamation campaign against Plaintiff involving email, US Mail, and a web site. This involved the efforts of KA Diehl, the contractor, which used it's initiative

in preparing the material. The Defamations were mailed or emailed (directed at) to at least 646 homes with the expectation that they would be read by all who live there. Many recipients were not voting members of the Association. Email copies were emailed to over 200 homeowner families. Thus a total of approximately 846 homeowners – and their families – were provided the defamatory material. The Board also approved and paid for the alteration of the HOA's web site to make the defamatory material obvious to homeowners visiting the HOA web site. While it purported to provide information about the lawsuit it never actually gave a copy of the Complaint or the Defendants' Answer.

The Board hid the cost of the campaign. Printing and mailing the defamatory material cost approximately \$ 3,800 just for the printing and postage plus additional charges from the management company for the web site and it's work. All invoices and other paperwork were kept out of the HOA's files. The Defendants lied about their knowledge of the contractor, since the HOA paid the mailing contractor almost \$20,000 in 2009 alone – using 30 invoices, making the mailing contractor one of the largest vendors the HOA used in terms of invoices and dollar amount. Co-defendant KA Diehl used this mail contractor for the approximately 50 or so other HOA's it manages, so it is estimated that Diehl paid perhaps 1000 invoices for Carolina Mail House in 2009 and paid that contractor over \$ 100,000. Yet in depositions the HOA President and most involved Diehl employee said they could not remember who the mail contractor was or how many mailings were made. In discovery, until ordered to produce documents by the court, they also hid all paperwork which related in any way to the mail contractor.

It was found through discovery that on behalf of the HOA Defendant Diehl's employee Julie Case sent 577 emails with defamatory material about Plaintiff to Plaintiff's neighbors and 624 custom mail packages to Plaintiff's neighbors and fellow homeowners with defamatory material about him.

The defamation campaign was meant to change the focus from the acts of the board to one of reputations. The immediate effect was that Jarmuth received threatening emails and phone threats – which were reported to the Horry County Police which made a record of same. One homeowner threatened to come to Jarmuth's house with a mob.

To remove the distraction Jarmuth withdrew as a candidate, which meant that the HOA should have ceased it's campaign of defamation if it was in furtherance of it's defense of it's office. It never did. ARB member Templeton, among others, was still telling homeowners to socially isolate Jarmuth, among other things he said. What Toth said is unavailable as the HOA Defendant has stonewalled on disclosing it's emails.

Defendant's employee Julie Case, in an admission against interest, admitted the campaign. The KA Diehl / HOA web site with the information about Jarmuth, supposedly about the case, doesn't have the complaints or answers or any of the pleadings – or any other information about the case despite the HOA's numerous statements to homeowners that it desired to give the homeowners information about the lawsuit.

The campaign against Plaintiff went on, and in 2010 Jarmuth filed a separate suit in

Magistrate Court regarding its refusal to allow erection of a fence and its levying a "fine" for a non-existent fence or wall. The HOA also selectively and capriciously and without covenant authority also refused permission to erect a children's swing set. In Jarmuth's applications, Jarmuth consistently preserved his objections to the authority of the HOA and asserted the lack of covenant authority for the HOA's actions. The HOA had the case transferred to the Court of Common Pleas from the Magistrate.

From 2009 through the end of 2011 the Court ignored Jarmuth's requests for the Court to intervene on his behalf to secure him the discovery which he holds by right. Subpoenas against Sunbelt, KA Diehl, and Horton went un-enforced. While Jarmuth produced thousands of pages of documents, the HOA did not even cooperate in discovery until October 3, 2011 when it allowed Jarmuth only 5 hours, with no assistants, to go through approximately 80,000 pages of documents, much of it trash accounting records, in random order. The KA Diehl defendant has never produced a single document and has ignored the subpoena against it. All deponents admitted the existence of a lot of documents when they objected to the subpoenas. Sunbelt admitted in October 2011 that it did not place a litigation hold on documents and destroyed all documents. Sunbelt's attorney is the HOA's attorney.

In April 2010 Defendants Toth and the HOA allowed the Central Electric Power Company to destroy landscaping at the main entrance owned by the HOA and to erect above ground power towers there. This was agreed to by the Board under threat of eminent domain. Many homeowners demanded an independent appraisal, which was not obtained by the Board. Despite bylaws and statute to the contrary, the sale was made without vote of the homeowners. Despite bylaws and statutes to the contrary, Defendants HOA and Toth distributed approximately \$ 75,000 to individual homeowners. Additional funds were placed into a reserve for unexpected restoration costs. In May, 2012, it was learned that Toth personally secretly (not in the minutes of any board meeting) authorized using ten thousand dollars (\$ 10,000) of the restricted funds to pay off an unrelated HOA debt which came from the settlement of yet another lawsuit by homeowners against the same Defendant HOA. This distribution violated bylaws and statutes.

In December 2011 after over two years, KA Diehl's Rule 12(b)(6) objection was called for hearing – which it abandoned at the hearing, making Diehl a defendant only days before the case was sent to trial. Likewise, an order was entered AFTER the case was sent to trial allowing a counter – claim and changed answers. Many other discovery matters are unsettled. In all, Plaintiff only had approximately 60 days for discovery on some issues against some defendants and no discovery at all against others (Diehl). Defendants have filed a Motion to Strike in each case against Plaintiff's mandatory counter – claim implicated by the Amended Answer of Defendants from December, 2011.

After filing the original complaint the case was appealed to the Court of Appeals because the trial court dismissed Henrietta Golding as a defendant. Because the Defendant refused to participate in discovery during the appeal and the Court refused to force discovery during the appeal, the case sat idle for approximately 30 months.

During that period Plaintiff desired to add a swing set for foster children and grand children and applied, reserving objections as to the requirement to do so, to the HOA's Architectural Review Board ("ARB") for a swing set which was refused even though there are scores of them around the neighborhood – including right across the street. One of the HOA's ARB members lives next door to Plaintiff and commenced to destroy Plaintiff's sprinkler system by driving stakes into the control wires and water line on Plaintiff's property near where it adjoins said ARB member. Said ARB individual also scattered hypodermic needles on Plaintiff's lawn. Police Reports were filed and the Horry County Police collected the needles as evidence. Pictures were taken. Plaintiff was advised to build a fence along the property line. A surveyor was employed and the lot line marked. The ARB refused to approve the fence despite no covenant controlling fences and the omnipresence of fences throughout the neighborhood. It commenced to "fine" Plaintiff for a non-existent "wall".

Plaintiff also sought to expand existing Palm Tree beds, including planting palm trees directly across the street from similar palm trees in neighbor yards (one of which is owned by a homeowner who is the "financial advisor" to the HOA board). It was refused, not because it violated an ARB Guideline, but because the ARB / HOA demanded Plaintiff drop his lawsuit and pay several thousand dollars to the HOA – extortion and exaction.

To avoid the effect of Res Judicata and Collateral Estoppel, Plaintiff filed another lawsuit against the HOA involving ARB issues. This was later merged with the original suit for purposes of findings of common facts and law.

On March 2, 2012 the IHOA sued the Golf Course 2012-CP-26-1740 but grossly understated the amount owed. Re-examining the ledgers to ascertain the basis for the under-claim, a close reading of the documents revealed that as far back as 2004 the Golf Course was in breach of the alleged "agreement" and the golf course debt reverted back to that computed on the basis of the covenants. This was brought to the attention of the HOA's board by a homeowner, Michael Butryn, a named plaintiff witness, but the IHOA Board declined to explain or revise their complaint against the golf course. A homeowner has intervened in that case out of concern that a repugnant "deal" is in the works between the Board and the Golf Course – since the HOA sued for approximately \$ 43,000 and the golf course debt is approximately \$ 383,000.

Much turns on whether the Covenants apply to the Pebble Creek area of the development where Plaintiff lives and whether the Defendant HOA is the legitimate HOA for the development. Another controlling issue is whether any of the boards were legitimate (their acts being ultra-vires) after March 2002, when per statute an election with voting by homeowners (actually used to select directors) was supposed to take place but didn't – until September, 2008. These are controlling issues.

PLEADINGS

The Court is requested to consult with the Docket as these are so numerous. There is an original and amended complaint with respective answers, and an Amended Answer as of

December 2011 with a new Counter – Complaint implicating a Plaintiff answer to the counter claim and a mandatory claim related to the counter claim. Defendants have not answered the implicated Plaintiff claim (required to avoid Res Judicata). There is also the Amended Complaint and Amended Answer in the associated case (joined for trial) 2010-CP-26-11320 with the identical (to the 2009 case) counter-claim. In both cases Defendant has asserted that Plaintiff is in violation of the covenants for having built an unauthorized wall, as it is asserted in the Counter-Claim. Plaintiff responded with a cause of action that this violates the South Carolina Frivolous Proceedings Act, because there is no wall; because the covenant provisions at issue were deleted years before; and because the (inbuilt) “walls” and actual flower bed edger are in widespread approved use through Plaintiff’s own lot and elsewhere – making this selective, capricious, and malicious enforcement.

There are no open Procedural Motions before the Court:

The Court will be asked to take note of the mistreatment by Defense Counsel Henrietta Golding of Louis Astorino in particular and plaintiff’s witnesses in general at the deposition held March 27, 2012.

Prior to the beginning of the March 27, 2012 deposition -- outside the deposition room – Defense Counsel Golding shoved Plaintiff’s wife so hard she almost fell down, shoved into Plaintiff, and proceeded to yell at Plaintiff in the outside hallway while Plaintiff was attempting to talk with his witness Astorino about Astorino’s pending deposition. This conduct could be considered assaults. This was perpetuated in the later sworn testimony of Mr. Astorino.

Instead of taking the usual seat a dozen or more feet from the witnesses, Golding positioned herself 18 inches or so from the deponents’ faces and also interfered with their handling of evidence presented to them – which shared table space with her papers. Mr. Astorino, in particular, had medical issues immediately after the deposition, which Plaintiff tried to halt before Plaintiff was finished because of Astorino’s medical condition. Mr. Astorino has a life – threatening situation for which he is receiving medical attention at this time and for which the Court granted him a protective order substituting his deposition testimony for trial and staying a separate proceeding against this same defendant in which he is the represented Plaintiff.

UNDISPUTED FACTS AND LAW

The only thing agreed to are the jurisdictional issues. All other matters are subject to dispute. At a hearing held on December 7, 2011 the Court held that there are no undisputed issues of law or fact.

Parking Lot: However, at the time the suit was filed Defendant Toth was asserting that the Amenity Center Parking lots belonged to the golf course – and she had the “parking only for homeowners” signs taken down. Her successor as HOA President has asserted that the parking lots are HOA property and re-erected the signs.

Roads: At a meeting between Mr. Astorino and Defendant Toth in her capacity as HOA Board President on August 11, 2010, Ms. Toth admitted that the roads belong to the county. Previously she had asserted that the public has a limited easement through the development and that the HOA owned the roads.

ISSUES

Federal, State and County Laws

Determine the rights and obligations of the HOA Board and the developers given various laws and regulations. Determine if violation of certain renders the acts of the Board "Ultra Vires".

Covenant Amendments.

What portions of the Covenants have been deleted by the impact of successive Amendments? What is the effect of these deletions on what the HOA and homeowners may and may not do? Can the HOA control conduct on property not owned by any homeowner nor by the HOA? Can the HOA force homeowners to pay assessments to maintain property outside the Planned Unit Development limits / outside the land subjected to the covenants / land which is not common property nor HOA owned property within the area subjected to the covenants?

Which is the HOA?

Is the HOA which has rights and obligations under the covenants the "Murrells Inlet Golf Plantation Association", as is named in the Covenants, the "International Club Association" which is the name reached by applying a phrase in Covenant Amendment 1, or the defendant "International Club Home Owners Association"? All three were organized as non-profit corporations in South Carolina.

Highway 17 Connector Association

Does the HOA have an obligation or right to collect the Highway 17 Connector Association assessments, and whether any related contracts / covenants are voidable due to changed circumstances?

Roads

Are the roads owned by Horry County, to whom they were dedicated and which maintains them, or are they owned or subject to the HOA's control, even though the HOA never actually owned the roads? Can the HOA control parking on those roads and the selection of mail boxes on said county property?

ARB

Is the ARB a committee of the HOA or an independent entity?

What are the rights and obligations of the ARB?

What is the validity of various ARB Guidelines.

Do ARB "Guidelines" actually have any regulatory effect?

What is the liability of ARB members for their actions?

Fences and Palm Trees

Are there any remaining controls on fences, walls and palm trees?

Does the extensive and permeating presence of fences and plant beds of wide variety render fence and tree controls void?

Was the ARB / HOA conduct towards Plaintiff malicious, selective, or capricious?

Did it violate the implied covenant of good faith and fair dealing?

Did the HOA commit the torts of Exaction and / or Extortion when it refused to either approve or disapprove Plaintiff's March, 2012 Palm Tree Application?

What controls, if any, does the Covenants apply to uses of property un-named in the Covenants, such as the playing of particular games on a homeowner's lot, riding bicycles on one's lot or in the streets, use of helmets by riders, the color and shape of one's doors, or walking on the streets after certain hours?

Swing Sets

What controls and limitations do the Covenants impose?

Given the variety and presence of swing sets, are further limitations void?

Was the ARB / HOA conduct towards Plaintiff malicious, selective, or capricious?

Did it violate the implied covenant of good faith and fair dealing?

Parking

Have street and driveway parking controls been deleted in the covenants

Amenity Center Parking Lots

Who owns the parking lots?

What towing can be imposed on those lots?

Grounds Watering

Does the HOA own the water in the retention ponds, despite private ownership of the pond bottoms, through the operation of a provision in the covenants?

Is it improper for the HOA to pay the Golf Course to use the retention pond water?

Is it improper for the HOA to construct decorative fountains in Golf Course owned ponds, and to maintain and operate same at HOA expense?

Retention Ponds

What is the HOA's rights and obligations regarding retention ponds which are privately owned? Can the HOA force homeowners to pay assessments for fountains and other beautification of privately owned ponds?

Planned Unit Development

Which subcommunities are within the PUD and or are subject to the covenants and or must be involuntary members of the Homeowners' Association, whichever one that it is?

Are The Enclaves and The Fairways inside the PUD and subject to the Covenants?

Did the exercise of architectural control over The Fairways and The Enclaves demonstrate their membership in the HOA and subordination to the Covenants?

What is the fiduciary responsibility of the HOA Board to collect the arrears from "The Enclaves" and "The Fairways" – two developments within the PUD?

If Amendments #2 through #5 are invalid, are the housing areas added to the HOA through those amendments members of the HOA?

Amenity Center

Interpret the covenants to determine who must involuntarily pay assessments to support the Amenity Center – if anyone must.

Interpret the covenants to determine who may use the Amenity Center.

Who was required to pay for the construction of the Amenity Center and for acquisition of the Amenity Center parking lots?

Were homeowners required to pay assessments to support the Amenity Center before builder claims to the building and pool were transferred to the HOA?

What are the boundaries of the Amenity Center and it's parking lots.

Did Rosemary Toth breach her fiduciary duty or act to the detriment of the HOA when, as President, she declared the lots owned by the golf course and ordered the removal of the parking lot warning signs. Did she willfully transfer value to the golf course and Joe Bernat Golf Academy when she transferred control of the parking lots to the golf course?

Golf Course Assessments

What is legally required to change the rate of assessments for the Golf Course from that mandated in the covenants?

Is the "Golf Course Agreement" to change the rate of assessments for the Golf Course invalid for any of various reasons?

Did the signers of the Agreement commit a breach of fiduciary duty by entering into such an agreement? Did they in effect steal money from the HOA?

Did the HOA board in 2009 and Rosemary Toth in particular commit a breach of fiduciary duty by failing to get a legal opinion on this and by disregarding the prior legal opinion referred to in prior Board Minutes which advised against this? Who is liable for the money which the golf course was permitted to "not pay".

Did the Developer DR Horton have the authority to unilaterally, without the vote of the Board on the minutes, enter into the agreement which benefitted everyone except the HOA and which gave Horton many free or reduced price golf memberships and other compensation in exchange for the deal? Did Horton's employee, the "HOA President" R Doug Brown, commit a breach of fiduciary duty by obtaining a free golf course membership for himself?

Grounds Maintenance

What is the obligation of homeowners to THEMSELVES to maintain areas outside their deeded lots? (e.g., from their lot lines to the curb?)

Can the HOA force homeowners to pay assessments to maintain property not owned by the HOA ? (e.g., Golf Course tract, county owned property, areas deeded to homeowners, areas deeded to sub-HOA associations (The Glens), areas owned by the Developer (who did not pay assessments on his lots)?

Actions of Board of Directors Prior to September, 2007 Election of Board

As a matter of law, was the HOA required to hold an election in (March) 2002 at which the members of the HOA would elect the Board – and in each year thereafter?

As a matter of law, Given that no election was held until September, 2007, were the acts of the unelected board appointed by the Developer "Ultra – Vires" and unenforceable?

As a matter of law, When a vacancy on the unelected board occurred, was the Developer entitled to make the selection of the replacement, or was that choice only available to the remaining board in a vote by them, or by open election by homeowners?

HOA Bylaws

Are the Bylaws of the "Murrells Inlet Golf Plantation Association", "MIGPA", legally the bylaws of the International Club Homeowners Association, Inc?

As a matter of law, who can declare the bylaws of a new non-profit corporation and under what circumstances?

Are the acts of the HOA which are taken under the purported authority of the putative bylaws ultra-vires as a matter of law?

In the absence of legally effective bylaws, what controls what the HOA can and can't do beyond those acts explicitly specified in the covenants?

Cable TV Contract

Is the cable tv contract unenforceable?

Is the cable tv contract unenforceable as a matter of lack of privity?

Is the cable tv contract unenforceable as a matter of federal pre-emption?

Is the cable tv contract unenforceable because neither the IHOA nor the homeowners are parties to it?

Is the cable tv contract unenforceable because the IHOA board never authorized the

contract?

Is the cable tv contract unenforceable because the acts of the board at that time are ultra – vires?

Capital Contributions per Covenants

- "A RESTRAINT ON ALIENATION OF REAL PROPERTY"

Could DR Horton by Amendment get rid of his obligation to pay a capital contribution assessment to the HOA at original sale of a unit and replace it with a new obligation for homeowners to pay a capital contribution assessment to the HOA on every sale or resale – without the agreement of the existing homeowners?

Could Sunbelt and DR Horton divert the capital contribution assessment on original sale of any unit from payment to the HOA to payment to Horton to build the Amenity Complex used for single family home owners only?

Can the later developer Horton limit the operation of covenant on capital contributions through a private contract between developers / builders?

Is a covenant valid which imposes a new KIND OF assessment obligation on existing homeowners?

Can a developer amend the covenants years after purchase of property by homeowners years after they made their original purchase, requiring them to pay the HOA a capital contribution assessment on resale (without a consent vote by the homeowners) and which requires payment of

- an uncertain sum (payment is tied to the varying and unknowable future monthly assessment);

- an uneven sum (payment is different for condo and single family home owners);

- requirement lacks privity and is in the nature of a personal services contract between the HOA and homeowners (imposed by Amendment #3 to Covenants);

What is the liability effect on board members when they ignore the advice of attorneys regarding the advisability of such an amendment (board minutes)

Central Electric – Sale of Right of Way and Use of Proceeds

Was the sale of the Right of Way to Central Electric without an approving vote of the homeowners contrary to law?

Does the HOA Board Members (at the time) owe the HOA the value of the right of way as determined by the amount paid by Central Electric for selling the right of way in violation of the law and the Bylaws?

Did the HOA Board Members at the time violate the law and bylaws by distributing part of the proceeds to some of the homeowners in violation of the Bylaws instead of retaining it in the HOA – without a vote of the members?

Does the HOA Board at the time owe the HOA the amount of money they distributed in violation of the Bylaws? And how much do they owe?

The HOA Counter – Claim (It's a WALL !) And Jarmuth's Responsive claim for Sanctions framing the HOA's action a Frivolous Proceeding

Is Jarmuth or anyone else required to seek the PRIOR permission of the HOA Architectural Review Board for anything?

If so, did Jarmuth substantially comply?

Is there an explicit and enforceable covenant controlling plant edgers or flower beds?

If so, has the widespread and varied installation resulted in changed circumstances such that there is no longer a "standard"?

Is there an explicit and enforceable covenant controlling fences and walls?

If so, has the widespread and varied installation of fences resulted in changed circumstances such that there is no longer a fence or wall "standard"?

Did Jarmuth actually build a fence or wall?

Is the power to impose a fine limited to the HOA Board or can the ARB or the contractor manager do so prior to a hearing?

Does the imposition of a fine require a hearing on notice? Did the HOA Board offer one? Did Jarmuth request same? Was the request ignored?

Was the enforcement selective and capricious?

Was the enforcement of non-existing covenants and refusal to conduct an appeal hearing malicious and an abuse of HOA process?

Was suing out non-existent covenants (ARB and fence) alleging something that wasn't even done (building a wall) a frivolous proceeding under the law and how much of a sanction is merited?

Covenant Amendments

Are Amendments #2 through #5 invalid because of failure to notify homeowners of intent to Amend PRIOR to amending and that the amendments were made AFTER amending?

Are Amendments #2 through #5 invalid as to the addition of more houses sharing the amenity facilities because of dilution of interest without the consent of the existing homeowners?

What covenant provisions have been deleted or otherwise made ineffective and unenforceable and what is the effect of those deletions?

What are the consequences of the HOA Board acting knowingly and willfully contrary to the dicta of the amendments in force at the time of a particular act?

Can a covenant that runs with the land control behavior on property which neither the HOA nor the homeowners actually still own – PRIVACY?

Is a covenant lawful which requires a homeowner to accept goods or services, which does not go directly to the actual use of the actual land? Is a covenant lawful that requires a homeowner to join a club?

Breach of fiduciary duty

What is the obligation of a member of the Board to the HOA if said member breaches his fiduciary duty to the HOA?

Has any particular HOA Board Member so breached his fiduciary duty causing financial loss to the HOA and what is his / her consequential obligation to the HOA?

Has any particular HOA Board Member used his position to cause financial gain to himself or his employer contrary to the Non-Profit Corporation Act and to the Covenants and By-Laws and what is the consequential legal effect on the particular act or decision of the HOA Board?

What is the financial consequence on the HOA Board Member or his employer of such an act?

Did Toth and the Board breach their fiduciary duty by illegally distributing Central Electric payments to homeowners and by using some of it to pay an unrelated debt arising from settling another lawsuit?

Did the Board(s) in July 2012 breach their fiduciary duty by failing to disclose or by not making appropriate inquiry into the either theft or misappropriation of Capital Contribution funds contributed by developers?

Did the Board breach it's fiduciary duty by paying The Glens "subassociation" over \$10,000 on July 13, 2012 to accept back The Glens parking lot (dedicated to the exclusive use of The Glens residents)

- which the developer had deeded to the Defendant IHOA December 4, 2007
- which deeding the Board had never authorized accepting nor authorized (in the minutes of any Board Meeting) anyone to accept on behalf of the HOA?
- which parking lot The Glens residents were liable for the cost of repairs under the common law theory that repairs to damage to an easement road is paid by the users on the basis of proportion of use – meaning 100% The Glens expense no matter who owned the parking lot?

- which \$ 10,000 was not repair of damage to pavement but an aesthetic overpaving with asphalt?

Was the payment of \$ 10,000 to the Glens a breach of fiduciary duty by the Board?

Related Declaratory Question: who is responsible for the repair costs for wear and tear to private roads by easement holders?

Defamation

Have the defendants defamed Plaintiff?

How many defamations were there?

Were the defamations willful and maliciously intended?

Have they caused statutory damages to Plaintiff's reputation?

What is the extent of the damages Plaintiff is entitled to recover?

From whom and in what amount are damages payable?

Fences and Walls and Other Landscaping

By reason of lack of a consistent standard, widespread erection, deletion of

provisions in covenants, or absence of a specific restriction in covenants, are there any enforceable provisions on

- fences or walls
- flower or other landscape beds
- edgers
- landscape decorations
- vegetable beds
- or other landscape items not explicitly prohibited?

Homeowner Association Committees and Fines

By virtue of the South Carolina Non-Profit Corporation Act, do all HOA committees have to have TWO members of the board on them for committee acts to be valid?

Can HOA committees impose fines independent of an action of the Board?

Can the HOA board impose any fine without an explicit vote by the Board on the minutes of the Board?

Can the power to impose fines be delegated to a contractor?

Contracting

Is the homeowner association entitled to any rebates, refunds, or other considerations a contracting agent gets relateable to the purchase by the agent of goods or services on behalf of the HOA? (e.g., after purchase credit card rebates, discounts, or manufacturer rebates)

The Glens

Is The Glens a "multi-family" area per the Covenants?

As a consequence, are residents of The Glens entitled to use the Amenity Center or are they restricted in the same manner as owners of Townhouses in The Cambridge area or The Villas condominiums?

Are The Glens "Townhouses" – the court may not need to reach this conclusion if the question of whether The Glens is a Multi-Family is sufficient to address eligibility to use the Amenity Center.

Roads

Do the roads for which the Horry County Council passed resolutions accepting them into the County Maintenance System belong to Horry County or to someone else?

Does the HOA own the roads and (except for the southern end of International Club Drive), did the HOA EVER own any road?

Who is responsible to maintain the roads?

Who is responsible to maintain the area from the curb of roads to the property lines of the adjacent lots? Can the HOA "fine" said homeowner for ignoring such areas outside his property?

Do South Carolina state and Horry County Ordinances pertaining to parking on streets pre-empt HOA parking rules?

Are provisions of covenants invalid which relate to activities such as parking, or mail boxes on land NOT owned by the HOA or by individual homeowners due to lack of privity?

Are there any covenants effective as to activities on "roads"

Can the HOA enact "rules" which have restrictions on roads not reflected in the Covenants?

Is it legally permissible to compel homeowners to pay for the maintenance of areas not owned by themselves or the HOA – i.e., road shoulders?

Jarmuth Children's Swing Set

Is Jarmuth entitled to set up the swing set as demanded because of –

- selective and capricious enforcement of existing rules?
- no actual prohibition on swing sets or specific requirements as to placement
- approval by HOA board of another swing set located in a side yard

Did the applicable ARB "Guidelines" at the time of disapproval have

- any explicit location requirements?
- only a requirement to "storm wind proof" the swing set?

Are the Horry County "set backs" stated in the PUD Planning Commission approval documents the only controlling limits on swing set placement?

Was the ARB denial based on a non-existent restriction?

Was the statement made by Toth to the South Carolina Human Rights Commission on November 19, 2009 that the HOA "never" approves swing sets in any location other than a backyard true?

Did the admitted approval by the HOA of at least 17 swingsets including one visible on a lot across the street from Jarmuth

- constitute "changed circumstances" or selective and capricious enforcement mandating approval of Jarmuth's swing set?

Is Jarmuth required to obtain the prior approval of the HOA's ARB to erect a swing set?

EXHIBITS

See attached Exhibit List

SC Rule 32(b) Witness List

1. Jamison Martin
(843) 237-0429
195 Kings River Rd Hagley
Pawleys Island, SC 29585

Mr. Martin will testify about the use of irrigation systems in the PUD by the HOA, and the landscaping practices.

No deposition or other statement has been taken.

2. Rosemary Toth
238 Seville Dr
Murrells Inlet, SC 29576-7585
843-651-1392

Ms. Toth will testify about her decisions while a member of the board of directors; the elections which brought and kept her in office; the appointment of board members and their failure to be replaced at the first following election; her distribution of Central Electric Money; her assertions that the parking lots all belonged to the Golf Course; her failure to try to collect capital contributions from the developers; the administration of the cable contract; enforcement policies and practices regarding covenants; and contracting practices.

Email, a deposition, and other recordings have been taken and provided to the Defendant.

3. Julie Case
c/o KA Diehl
11822 Highway 17S Bypass
Murrells Inlet, SC 29576-9337
843-357-9888

Ms. Case will testify about the operations of the Architectural Review Board, the operations of Defendant Diehl, the circumstances surrounding issuing material relating to Plaintiff's past, elections, and other matters stated in the Rule 16 description of issues.

Email, a deposition, and a recording have been taken and provided to the Defendant.

4. William Freiboth
208 Wicklow Dr
Murrells Inlet, SC 29576
843-256-4260

Mr. Freiboth will be questioned about Policies and Procedures of the HOA, particularly it's control of the ARB; also, about the practices concerning appointment of resigned HOA Board members.

A deposition has been taken and provided to defendants.

5. Michael Butryn
1008 Ennis Dr
Murrells Inlet SC 29576
843-357-1276

He will testify about landscaping issues; elections; contracting; and circumstances

surrounding the distribution of material about Plaintiff by the defendants.

A deposition and statement have been taken and provided to defendants.
The defendants are known to be in possession of recordings of meetings where he spoke.

6. Rebecca "Beckie" Abel
c/o KA Diehl
11822 Highway 17S Bypass
Murrells Inlet, SC 29576-9337
843-357-9888

Ms. Abel will testify about the same issues as Ms. Case.
She particularly will be questioned about the record keeping practices and procedures of Diehl and the distribution of work within Diehl.

No statement has been taken.

7. Peter Pizzi
843-651-1158
193 Pickering Dr
Murrells Inlet SC 29576

Mr. Pizzi will testify about the buildings and grounds issues, ARB covenant / rule enforcement issues, the circumstances surround the distribution by Defendants of material about Plaintiff, and about golf course issues.

A deposition has been taken and provided to Defendants. It is believed that a recording exists of a buildings and grounds presentation – which is not in Plaintiff's possession.

8. Jane Pizzi
843-651-1158
193 Pickering Dr
Murrells Inlet SC 29576

Ms. Pizzi will testify about conversations she had with Diehl employees and HOA officials, particularly about one with Julie Case, and about circumstances surrounding the distribution of material about Plaintiff by the defendants.

A deposition and statement has been taken and provided to Defendants

9. Louis Astorino
862 Castlebridge Drive
Murrells Inlet, SC 29576-7534
843-357-9311

Mr. Astorino's depositions will be used in place of his testimony because of his medical situation. Mr. Astorino has testified about material distributed by the defendants regarding plaintiff, a statement by an official of the HOA relating to plaintiff, and enforcement procedures by the HOA / ARB relating to covenant provisions.

A recording made by Mr. Astorino which included him has been provided to defendants.

10. Charles Ferrera
843-314-4340
901 KNOLL SHORES CT 205
MURRELLS INLET, SC 29576

Mr. Ferrera will testify about landscaping practices of the HOA involving him, discussions between himself, Ms. Toth, and other HOA officials and county officials; HOA elections; ARB enforcement issues involving him; the distribution by the defendants of material relating to Plaintiff; billing and budgeting practices of the HOA; cable tv and waste management issues, irrigation, and HOA notification practices.

A deposition has been taken and provided to the defendants.

11. Michael "Mike" Templeton
826 Castlebridge Dr
Murrells Inlet, SC 29576
843-65- 6066

Mr. Templeton will testify about his use of his home for business purposes; about his appointment to and service on the HOA in various capacities; about elections; about HOA decision making outside of regularly scheduled meetings; and about the HOA's distribution of material relating to Plaintiff.

No statement has been taken.

12. Ronald Jarmuth, Plaintiff
249 Pickering Dr
Murrells Inlet, SC 29576
843-314-4355

The Plaintiff may choose to testify about all issues before the court.

Various recordings exist which include speech by Plaintiff which have been provided to Defendants. It is believed that Defendants have additional such recordings.

Submitted by Plaintiff:

By:

Ronald Jarmuth, Plaintiff
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
July 16, 2012

PLAINTIFF JARMUTH 'S

RULE 16

EXHIBIT LIST

(July 31, 2012)

PHOTOS AND MISC DOCUMENTS		
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map international club	1	
16 Ft Fence 0033	2	
8 Foot Hi Fence Prop Line	3	
112 Worchester Court	4	
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1120 Seville GSWA Lot 6	6	
160 Madrid Drive	7	
165 170 174 Seville Fences 0029	8	
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PLAINTIFF JARMUTH 'S

RULE 16

EXHIBIT LIST

(August 8, 2012)

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