

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Circuit Court Judge

Case No. 2009-CP-10-003577

Charles Griggs,

Petitioner,

v.

Ashleytowne Village Horizontal Property Regime, Inc.

Respondent.

APPENDIX

Charles Griggs
5108 Cantrell Point
Acworth, Ga. 30101
(770) 853-8122
Appellant, Pro se

Derek F. Dean, Esquire
Simons & Dean Law Firm
147 Wappoo Creek Drive, Suite 604
Charleston, S.C. 29412
Counsel of the Respondent
843-763-9132

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Charles Griggs,

Appellant,

v.

Ashley Towne Village
Horizontal Property Owners
Assoc.,

Respondent.

Appeal From Charleston County
J.C. Nicholson, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-565
Submitted December 1, 2011 – Filed December 20, 2011

AFFIRMED

Charles Griggs, pro se, of Acworth, Georgia.

Derek F. Dean, of Charleston, for Respondent.

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S.C. SUPREME COURT

PER CURIAM: Charles Griggs appeals the circuit court's order dismissing his appeal from the magistrate's court. He argues the circuit court erred in finding his service of the notice of intention to appeal was untimely. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); Rule 74, SCRCR ("[T]he notice of intention to appeal shall be filed . . . with the [magistrate] within the time provided by the statute . . .").²

AFFIRMED.

HUFF, PIEPER, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

² Because we find this issue dispositive, we decline to address any remaining issues. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999).

**Motion for Rehearing, Supplement Case, Rehearing En Banc,
File Reply Out of Time, and Stay the Case**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Circuit Court Judge

Case No. 2009-CP-10-003577

Charles Griggs,

Appellant, Pro se,

v.

Ashleytowne Village
Horizontal Property Regime, Inc.

Respondent.

MOTION FOR REHEARING, SUPPLEMENT CASE, REHEARING EN BANC,
FILE REPLY OUT OF TIME, AND STAY THE CASE

Charles Griggs
5108 Cantrell Point
Acworth, Ga. 30101
(770) 853-8122
Appellant, Pro se

Restatement of Case

The Appellant owned a Condo in Ashleytowne Village Horizontal Property Regime (HPR), Inc. dating back to the mid 90's. During this time, the Appellant witnessed an escalating level of fraud and defraud of ATV HPR, Inc. by the Board, their friends, and the property managers. The Appellant as a co-owner tried repeatedly to bring accountability to ATV HPR, Inc. by trying to force the corporation to comply with the S.C. Non-Profit Corporation Act. For some odd reason, the idea that an incorporated HOA/HPR must follow the state code relating to their corporation is a novel issue in Charleston and thinking of members of incorporated HOA/HPR as co-owners of the corporation was difficult for lawyers to comprehend. When the Appellant first referred to himself as a co-owner of the Respondent (before he sold the Condo), the Counsel of the Respondent (Derek F. Dean) demanded to see his "shares in the company" before he would even acknowledge the Appellant as being a co-owner of the Respondent.

In retaliation for the Appellant trying to stop the fraud within the corporation he co-owned at the time, a common element AC drain line used by more than one unit was repeatedly buried causing continual flooding of the Appellant's bottom floor condo unit (commonly called a "flat") by condo units from above. At the time, the Appellant was renting his condo. The ATV HPR, Inc. Board made a shift in policy saying that nonresident shareholders (i.e. co-owners) should pay more in regime fees than resident shareholders plus only resident shareholders had access to certain corporation documents. The Board began changing the size of the Board at will not in compliance with corporation documents and the Appellant refused to pay the increased fees demanded by the Corporation for non-resident owners that was not justified under the law. The leadership of the corporation took on a gang mentality with anyone opposing the gang becoming the target of harassment driven out of their homes. About this time, long time law firm of the corporation that has seen many generations of the same family represent ATV HPR, Inc discontinued their representation when Adam Barr, Esquire refused to help conceal corporation documents from co-owners and engage in other unethical/illegal activity for the Respondent. Adam Barr, Esquire personally told the

Appellant he had to scream and yell at his own client (i.e. the Respondent) to try to get them to comprehend that they cannot intentionally break the law.

Shortly thereafter an immediate family member of Charleston County Chief Magistrate David Coker took an active role in the leadership of the corporation. With the help of this immediate family member of a Judge, the Appellant and the Respondent became deadlocked with the Appellant being deprived the use of his property (through what would be called constructive eviction in landlord tenant law). The Respondent told the Appellant that if he gave them the money they demanded the Board "might" let him use his home as long as he stops complaining about the fraud. The Appellant continued to complain about the fraud and the defrauding of the corporation which got worse with the support of the immediate family member of judge on the Board. Kickbacks for Board members (including the immediate family member of Chief Magistrate David Coker) are prevalent with some co-owners paying less than legally appropriate while others are supposed to pay more to support the freeloading Board members and their friends. Corruption is widespread and the Respondent has developed into a Pyramid scheme with the top of the Pyramid after to bring in fresh blood to quench their thirst for more money as part of the fraud scam.

The Board hired a new management company called Odessa Companies which was run by a father/daughter team (Jim Wilson/Jorgia Hazelwood) that had a lawyer that specialized in HOA / HPR by the name of David J. Parrish, Esquire of the Nexsen-Pruit law firm. However, Mr. Parrish did not get involved until after several failed attempts to hire other lawyers (Robert Hadden, Esquire and Collin McConnell, Esquire) to attempt legal action against the Appellant. The Appellant would explain the situation using the South Carolina Nonprofit Corporation Act with these lawyers including the widespread corruption and would ask the lawyers to validate the alleged debt they are trying to collect using the federal debt collection law. After talking to the Appellant, the lawyers discontinued representing ATV HPR, Inc. The property manager family with the support of David Parrish, Esquire told the Appellant it was legal for the Board of HOA/HPR to deprive co-owners of their property rights for cause to include use of the property and voting rights. The property manager

family with the support of David J. Parish said it was legal for the Board of an HOA/HPR to forgive debt and allow shareholders to by less in fees or regimes in exchange for services being rendered to the corporation. David Parrish, Esquire confirmed these statements. The Nexsen-Pruitt lawyer that specialized in HOA/HPR (David J. Parish, Esquire) also told the Appellant that he advises his many clients not to complete audits of financial records for the mutual benefit nonprofit corporation. The Respondent has not audited its financial records for over a decade.

David J. Parish, Esquire did ask the Appellant to explain the problem with the buried common element AC drain line causing flooding of the Appellant home and preventing him from using the property. Many emails and phone calls were exchanged with David Parrish, Esquire trying to address the problem between the Respondent and the Appellant, but the attorney was steady fast in his desire to help the alleged leadership of his client (including an immediate family member of a sitting Judge) conceal the defrauding of his client from his client as an organization.

In the end, the continual flooding of the Appellant's property did not stop and David Parrish provided no information to the Appellant as requested under the S.C. Nonprofit Corporation Act. As a matter of fact, David Parrish told the Appellant (which is supported in writing) that he would have to potentially pay thousands of dollars to rent a conference room at his office and have someone on his staff supervise the Appellant in order to look through ATV HPR corporation documents and what the Appellant was looking for concerning financial records might not even be in those records.

The Appellant pointed out that under S.C. Code Ann. § 33-31-1620 concerning financial statements of a non-profit that it was the obligation of the Respondent to send the Appellant this information to the Appellant as a co-owner and agreed to send a check to cover the cost for getting the financial statements for how ever far he could produce. David Parrish, Esquire refused to produce these documents.

The last communications with David Parrish as an alleged expert in HOA and HPR law dealt with two amendments to the ATV HPR, Inc. documents that increased late fees and deprived owners of all property/civil rights. These amendments are on record at the Charleston County R.M.C.

(Register of Deeds) and both if they really were written by Mr. Parrish demonstrate incompetency in the area of law. Using the state law and corporation documents, the Appellant can prove these are fraudulent documents and with a subpoena he can prove they were intentionally filed fraudulent documents. The Appellant explained to David Parish in detail about how he was involved in unethical, illegal, and/or criminal conduct. David Parrish, Esquire never refuted the Appellant's position verbally and discontinued his representation of the Respondent in matters involving the Appellant. The Appellant as a co-owner of the Respondent stated in very clear terms that he thought that David Parrish, Esquire of the Nexsen-Pruit law firm was helping to conceal criminal conduct to detriment of his client as an organization specifically involving certain corporation documents he allegedly wrote and filed at the Charleston Register of Deeds to help the family member of a Judge defraud the Corporation and steal money from the Appellant. The Appellant can very easily prove that David Parrish, Esquire of the Nexsen-Pruit law firm was involved in a conspiracy or a conspiracy *after the fact* to use intentionally filed fraudulent documents to steal money from the Appellant through garnishment of profits from the sale of personal property without a court order.

The Appellant will connect the dots for the intellectually impaired. A major multistate law firm as in the Nexsen-Pruit law firm which David Parrish, Esquire is a member has said it is legal for some co-owners to pay less in regime/fees and provide alleged "services" in exchange for paying regime/fees as long as the Board of the HOA/HPR regime approves it. This approval of such action need not be shared with all shareholders in the corporation. The Nexsen-Pruit law firm has assisted in the concealment of information from co-owners of their client as organization concerning the defrauding of the corporation for the economic gain of the immediate family of a sitting judge and given the scope of his clients at the time that were HOA/HPR this might very well be a concern for many more Judges and public officials inside and outside the state of South Carolina. Specifically, David Parish, Esquire advocated on behalf of the Respondent that was his client at the time that it would not be cost effective for his client not to follow the S.C. Non-profit Corporation Act and that other incorporated HPR/HOA nonprofits in South Carolina that he represents were not following the

law. Specifically, HOA/HPR not audit corporation records or even providing financial documents to co-owners as required by law concerning where money was spent in a given fiscal year.

The Nexsen-Pruit law firm concealed the defrauding of a client as organization by an immediate family member of a Judge so that the immediate family member of a Judge along with this persons family which includes the Judge would obtain rights or privileges free or for reduced amounts than what was legally appropriate. In order for this immediate family member of a Judge to have reduced regime dues, the Appellant was expected to pay a larger share. The Appellant can prove this in court and Charleston County Magistrate Guerard knew it based on the Appellant's statements in court. The Appellant used to have access to the inter-coastal waterway through his ownership of his condo. Many HOA/HPR in Charleston come with use of golf courses and actual docks with ocean access. This probably was not the Nexsen-Pruit law firm's intent, but even lawyers in their own firm would have to agree this type of situation would be a way for a law firm or a 3rd party to conceal payoffs to public officials, elected officials, and Judges (or judicrats) in more than one state.

With the support of the Nexsen-Pruit law firm, the Board members of ATV HPR, Inc. were using what the Appellant calls the "Trifecta of Historical Election Fraud" through the steps of *deprivation, manipulation, and then individualization* in order to maintain control of the HPR Corporation. *Deprivation*: The Respondent has 110 co-owners and at any given time 1/3 of the co-owners is illegally being deprived of their right to vote in the corporation they co-own with numbers sometimes as over 40%. *Manipulation*: The alleged Board for the Respondent would use gerrymandering tactics to manipulate voting, manipulated the size of the board at will through a "court-packing plan" (i.e. with the Board of the corporation instead of the court), and manipulated meetings by not circulating notification of meetings to all owners plus holding improper meetings. *Individualization*: The alleged Board of the Respondent still could not get enough votes to plausibly support most of their actions like increasing late fees to \$50 a month with the Board being able to waive those fees for people they like without engaging in individual voter fraud like through the misuse/falsification of proxies, falsifying number of votes to get approval for a corporation action

and other types of voter fraud dealing with individual votes. All types of fraud are being used by the alleged Board of Directors to fraudulently control the Respondent.

The Respondent refused to even communicate to the Appellant unless he submitted to their demands for extortion and protection money. The Respondent was actively depriving the Appellant of all his rights associated with his property to include even using it and would make sure the Common Element AC Drain line remained unburied only if the Appellant paid them whatever amount they demanded from him. The Appellant's mortgage company Countrywide was more than willing to reduce the Appellant's monthly mortgage payments which he had been paying for years through a loan modification, but the Respondent refused to cooperate in any way.

To be perfectly clear, the Appellant paid a mortgage on a property he could not even use for years because of the Respondents extortion scam through the use of fraud. The Appellant was told by the Respondent that they would only make sure they Common Element AC Drain line was unburied if he gave them money first. The Appellant was also told he might be able to use his condo when he paid all the fraudulent late fees, fines without due process, legal fees from lawyers that refused to assist in the fraud, increased regime payments to compensate freeloading Board members, special fees, and agreed to stop trying to expose the kickbacks being given to other co-owners dealing with fraud. It was made perfectly clear that the Appellant would only be able to use and enjoy his property if he kept his mouth shut about unethical, illegal, and/or criminal conduct while submitting to the demands of the petulant "Capos of the Regime".

The alleged Board of the Corporation/Respondent appointed themselves "Captains" of the Neighborhood watch and granted themselves the power to fine other co-owners at will for any alleged offense. This same power was given to their "lieutenants" who are appointed to a covenants committee. No due process and co-owners loses all their rights in the corporation they co-own until they pay their fine. The Boss of the Capos or President of the Respondent has defrauded large sums of money from the Respondent to include not paying the regime/fees to secretly redecorating her inside of her condo at Corporation expense and concealing that fact from corporation records. This

alleged President repeatedly yelled and screamed at the Appellant telling him to move out and that he is not welcome in ATV HPR, Inc.

Derek F. Dean, Counsel of the Respondent represented the Respondent in the Countrywide foreclosure case that would have been resolved if he simply worked with the Appellant to resolve the fraudulent fees. The Counsel of the Respondent had actual knowledge that his client was preventing the Respondent from resolving a foreclosure case with his lender and should have had actual knowledge that he was doing this through the use of fraudulent documents. Derek F. Dean, Esquire did not want to resolve the foreclosure case because he and his two unlicensed co-counsel (Jorgia Hazelwood and Karen Colie) devised a plan to take all profits from the sale of condo rather than asking for a specific amount so he could divide the loot stolen from a foreclosure sale to multiple parties of his choosing and adjust his attorney fees as necessary.

The Appellant found a buyer for his condo which would allow for some profit from the sale, but Derek F. Dean with the assistance of his unlicensed co-counsels continued with their extortion plan to try to prevent the sale of the condo by demanding outlandish fees without legal justification. The Respondent wanted to prevent the sale because another co-owner with the support of the alleged Board of the Respondent had tried to buy the property for significantly less and wanted to get the property at a bargain price in foreclosure.

Immediately prior to the sale, the Appellant had mystery vandalism problems with his property which Appellant thinks was intended to diminish the value of the property so it would make it less desirable to anyone other than the other co-owners of the Respondent that wanted to buy the property. The Appellant had already pulled out of the sale of the condo to these other co-owners of the Respondent because the Respondent refused to discuss the fraudulent demands for extortion money. The Respondent or their attorney Derek F. Dean refused to discuss the matter with the Appellant and the Appellant eventually told the closing attorney Jay Brown, Esquire that he was not going to sell unless he could resolve the matter with the Respondent.

The Appellant has always given an accurate address to the Respondent and their lawyers so he

could be served using the US mail under the SCRMC. David Parrish, Esquire has sent certified mail to the Appellant which he signed for, the Respondent has sent certified letters, and Jay Brown had an accurate address for the Appellant to be served with a lawsuit. Derek F. Dean, his unlicensed co-counsels, and the Respondent were finally able to complete their extortion scam when C.J. Manos, Esquire as a closing attorney having to send the Respondent a check as part of a fraudulent garnishment scam of the profits from the sale of the property without court order. Derek F. Dean, Esquire was involved in stealing money from the Appellant in garnishment extortion scam without court order when his timeline of legal representation of the Respondent for the foreclosure case shows he had more than enough time to try to obtain a court order giving the Appellant due process. Derek F. Dean conspired with his client and unlicensed co-counsels to deprive the Appellant of his Civil Rights and Property Rights for the financial gain of his law firm (Simons & Dean Law Firm).

The Appellant filed a Small Claims lawsuit the same day he closed on the property even though the Respondent had taken more money that was in the jurisdiction of Magistrate Court because he had read the SCRMC and realized they favored the Plaintiff. The Appellant also realized that the judge was lawyer in Charleston and he had an unethical obligation to look out for the rights of the unrepresented litigant.

The first hearing seemed positive with Magistrate Guerard stating that he was familiar with the Respondent and believed from him looking through his “peephole” from the bench that widespread mismanagement is going on with the Respondent. The Magistrate encourages the parties to resolve this matter outside the courtroom. Derek F. Dean refused to even discuss the case with the Appellant even though the Appellant wanted to even show him his evidence. The Appellant has always been open to resolving this matter outside of court, but Counsel of the Respondent repeatedly refused to even discuss the matter.

After the first hearing, Magistrate Guerard become aware this case dealt with the illegal conduct of an immediate family member of Chief Charleston County Magistrate David Coker and serious misconduct of David J. Parish, Esquire. The Appellant actions in advocating his cause in Magistrate

Court would not be considered shy. Magistrate Guerard and Derek F. Dean as lawyers were fully aware of the seriousness of the positions being presented to the court.

Magistrate Guerard held multiple hearings forcing the Appellant to travel from Atlanta, Georgia to Charleston, SC in order to try to get a default judgment in favor of the Respondent. Magistrate Guerard intentionally confused the final judgment date to make it impossible to appeal his decision. Magistrate Guerard repeatedly refused to look at any evidence from the Appellant and was told subpoena were not appropriate in Small Claims Court. Magistrate Guerard and Derek F. Dean told the Appellant he had to get the people he was suing to volunteer to come into court or get affidavits to support his case in order to prove his case. The Appellant showed up in one hearing with an Affidavit signed by him and notarized in Georgia prior to the hearing because Magistrate Guerard said if the Appellant did not have affidavit the case would be dismissed by him.

The Respondent won a dismissal with no evidence in any form. According to Magistrate Guerard, The Appellant as the Plaintiff needed Affidavit evidence to support his case in court while the attorney needed no evidence to get a dismissal. *The Appellant had his case dismissed because he could not present affidavit evidence from the people he was suing in court.* The dismissal date in the presence of the Appellant with a counterclaim pending in the case only became the final judgment date after the 30 days for appeal had expired for appeal plus the Respondent filed his counterclaims as a SC Frivolous Civil Proceedings Sanctions Act Motion/Counterclaim which decision is being held in “Abeyance”. The Appellant will address this in greater detail in the Rehearing discussion, but the Appellant wanted to make perfectly clear to the S.C. Court of Appeals the possible motives of the attorneys of Derek F. Dean, David J. Parrish, and Henry W. Guerard relating to deprivation of Civil Rights while reminding this court that people of all walks of life sometimes engage in illegal or criminal conduct when think they can get away with it.

Motion for Rehearing

The S.C. Court of Appeals affirmed the inferior Circuit Appellate Court dismissal using Rule 220(c), SCACR using Rule 74, SCRCF. Ironically, the Respondent’s Final Brief should give this

court actual knowledge that Magistrate Guerard was not only well where of this appeal in a legally appropriate manner, but exceeded his jurisdiction in the deprivation of the Appellant's Civil Rights under the Color of Law.

Rule 208(b)(2), SCACR states in part: "If a respondent does include his own statement of the case, he shall be bound by the matters stated or alleged in his statement of the case."

Counsel of the Respondent Derek F. Dean's own words: "On August 3, 2009, Judge Guerard held a hearing on Respondent's motion for recovery of attorney's fees and cost pursuant to the S.C. Frivolous Civil Proceeding Sanctions Act. At the time, indicated that the Respondent was entitled to attorneys' fees and cost in the amount of \$2,088.75 as requested; however, Judge Guerard indicated the Respondent was entitled to attorneys' fees and costs in the amount of \$2,088.75 as requested; however, Judge Guerard held this issue in abeyance pending the outcome of the appeal filed in the circuit court." (Respondent's Brief, Page 2).

Derek F. Dean, Esquire clearly acknowledges that Magistrate Guerard conducted a hearing on this case while an appeal was pending in circuit court (i.e. Magistrate Guerard exceeded his jurisdiction). The appeal was filed on June 8th, 2009 which means Magistrate irrefutably no longer had jurisdiction (Record on Appeal, Page 4).

Magistrate Guerard even conducted a "mock appeal hearing" on August 3rd, 2009 where he forced the Pro se Appellant to plead his case on appeal for him base on the Appeal which the Appellant sent him in a timely fashion. Derek F. Dean, Esquire has actual knowledge which was witnessed by the Appellant that the Appellant complied with Rule 74, SCRCF because Magistrate Guerard acknowledged in our presence that he was served with the appeal in a timely fashion.

As a matter of fact, Magistrate Guerard was extremely upset with the Appellant for the contents of the appeal in the inferior court. So much so, the Appellant feared at the time Magistrate Guerard would throw him in jail for the written statements in his appeal during the inappropriate hearing.

Magistrate Guerard made extremely clear to the Appellant and Counsel of the Respondent this case has no judgment only a dismissal order with a counterclaim pending. The Appellant at the time believed this was an attempt by Magistrate Guerard, Esquire and Derek F. Dean, Esquire to persuade the Appellant not to show up for the hearing with Judge Nicholson because they feared that as a fellow Citadel graduate (the Appellant also graduated from the Citadel) that he would cause problems for the Respondent. The fact that the judge and the Appellant graduated from the same college was brought up in the "mock appeal hearing" where the Appellant was forced to state and defend his case so Derek F. Dean would not be surprised in the hearing with Judge Nicholson if the Appellant ignored the recommendation of Mr. Dean and Magistrate Guerard not continue the appeal process or waste the money traveling from Georgia to show up.

Counsel of the Respondent, Derek F. Dean, Esquire has actual knowledge the Magistrate was served with the appeal before the hearing because he participated in a hearing with the Magistrate which was outside the jurisdiction of the Magistrate after the appeal was filed in the Circuit Appellate Court, but before the appeal hearing in the Circuit Appellate Court for the purpose of conspiring with the Magistrate to intimidate the Appellant from not engaging in his free exercise of his Civil Rights as guaranteed by the South Carolina and United States Constitution.

Derek F. Dean, Esquire during the hearing in Circuit Appellate Court thought he might have to use the statements from Magistrate Guerard in the improper hearing without jurisdiction to get the appeal remanded back to Magistrate Guerard if Judge Nicholson asked too many questions despite what he wrote in his motion to dismiss the appeal in the Circuit Appellate Court (Record on Appeal, Page 20). However, the Appellant got to the hearing early with him sticking his head in the courtroom to hear what he thought was another case so he went to the bathroom and came back. When the Appellant was not in the court and Derek F. Dean, Esquire thought he would not show up, the attorney decided to lie to Judge Nicholson in order to obtain a dismissal of the case based on

what he knew was false information (Record on Appeal, Page 27-32 or Transcript, Page 3-8). The Counsel of the Respondent Derek F. Dean intentionally made false statements that he had actual knowledge were false that Magistrate Guerard never got the Appeal in order to win a dismissal.

When the Appellant did show up, Counsel of the Respondent had already said enough to make it impossible for him to be truthful without Judge Nicholson having actual knowledge of his unethical conduct in the hearing. Derek F. Dean had to stick with his lie. The Appellant repeatedly tried to bring this fact to the attention of Judge Nicholson, but refused to hear anything concerning the “perversions of law” by Counsel of the Respondent and the Magistrate. The Appellant walked into a hearing where Magistrate Guerard and Counsel of the Respondent made it extremely clear in a hearing where the Magistrate lacked jurisdiction the case would be dismissed because the Magistrate had not heard the counterclaim (i.e. Counsel of the Respondent filed the S.C. Frivolous Civil Proceeding Sanctions Act as a Motion/Counterclaim) in order to set the dollar amount for the final judgment only to be told by Judge Nicholson the appeal was dismissed for being untimely because the Appellant screwed up and missed the 30 day deadline from the alleged final judgment.

The Appellant at the time wanted to accuse Derek F. Dean of engaging in criminal conduct possibly along the line of sham legal process because he was alleging the case had a final judgment to obtain a dismissal when in fact it did not at the time have a final judgment, but etiquette of law compelled the Appellant from not making this allegation at the time.

The Counsel of the Respondent goes on to mention in his Respondent Brief another hearing in the case my Magistrate Guerard where he lacked jurisdiction, but fails to mention the purpose of the hearing was to rule on many motions filed by the Appellant in Magistrate Court. “On February 24, 2010, Judge Guerard held a hearing on Respondent’s request for attorney’s fees and costs in the amount of \$2, 088.75 pursuant to the S.C. Frivolous Proceeding Sanctions Act. At said hearing, Judge Guerard agreed that Respondent was entitled to an award of attorney fees and cost in the amount of \$2,088.75 but held any ruling in *abeyance* [emphasis added] pending the outcome of the appeal to this court.” (Respondent’s Brief Pg.2-3). Appellant received written notification of entry of

dismissal from Judge Nicholson on December 31st, 2009 and served the Notice of Appeal on January 28th, 2010. As required by SCACR, the Appellant notified the Clerk of Court in Charleston of the Appeal. Magistrate Guerard with Derek F. Dean present conducted another hearing in the case when Magistrate Guerard did not have jurisdiction to undermine the mechanisms of justice involving the S.C. Court of Appeals.

The Appellant will remind the court that Rule 208(b)(2), SCACR states in part: “If a respondent does include his own statement of the case, he shall be bound by the matters stated or alleged in his statement of the case.”

The S.C. Court of Appeals should have actual knowledge from the Respondent’s Brief that Magistrate Guerard was conducting hearings in this case while two different appeals were pending with the Circuit Appellant Court and the S.C. Court of Appeals without leave from either court. During these hearings, the Appellant was deprived of the use of subpoena as required by state law and SCRMC which was not refuted in this case by the Respondent. In other words, the Judges of the S.C. Court of Appeals should have actual knowledge through *prima facie* evidence that Magistrate Henry W. Guerard, Esquire engaged in the Deprivation of Civil Rights under the Color of Law (i.e. a federal felony under 18 USC 242). Rule 18, SCRMC makes it extremely clear that only final judgments may be appealed from Small Claims Magistrate Court not dismissal orders. Rule 2, SCRMC makes Rule 18, SCRMC superior to Rule 72, SCRCP in Small Claims Magistrate Court. Hence, the dismissal order is not significant in determining the timeliness of an appeal rather the date of the actual final judgment. This case has no final judgment or at least a final judgment that allowed the Appellant to have appropriate judicial review. “Procedural due process requires notice, the opportunity to be heard in a meaningful way, and judicial review.” Grannis v. Ordean, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363 (1914); Cameron & Barkley Co. v. South Carolina Procurement Review Panel, 317 S.C. 437, 454 S.E.2d 892 (1995); Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002).

The Magistrate was sent a copy of the appeal and simply refuses to send the Return as required

by state law. It has come to the Appellant attention that failure to send the Return by Magistrate Guerard is not an isolated event rather a pattern of judicial incompetence. Furthermore, the Appellant has also become aware that Magistrate Guerard when forced to send a Return was simply writing a statement as testimony and calling it a Return rather than sending documents from the inferior court in violation of state law. In order for the Respondent to successfully refute this motion, he must clearly state at the bare minimum the following:

1. Derek F. Dean, Esquire as Counsel of the Respondent has no actual knowledge that the Magistrate received the notice of appeal, affidavit of appeal, or simply the appeal filed with the Circuit Appellate Court prior to the appeal hearing with Judge Nicholson.
2. Derek F. Dean has actual evidence in his possession that the Appellant did not serve the Magistrate with the notice of appeal, affidavit of appeal, or simply the appeal in accordance with the rules of the court.

Failure to specifically state this information inherently means the Respondent agrees with the Appellant thus concedes that the Magistrate was properly served with the appeal in accordance with state law and the rules of the court regardless of his actions in an inferior court.

It is for the reasons stated above that the Appellant requests the case be remanded to the trial court, a rehearing of the appeal in the S.C. Court of Appeals, or remand to the Circuit Appellate Court for a rehearing of the Appeal.

On a final note, the Appellant respectfully request that the S.C. Court of Appeals address the Subject Matter Jurisdiction stated in the case. No man can find his cause of action in a fraud. “[i]ssues relating to subject matter jurisdiction may be raised at any time ... and should be taken notice of by this court on our own motion.” Bunkum v. Manor Props., 321 S.C. 95, 99-100, 467 S.E.2d 758, 761 (Ct.App.1996). Heins v. Heins, 344 S.C. 146, 543 S.E.2d 224 (Ct.App.2001). The Appellant has raised the issue of Subject Matter Jurisdiction so it is inherently separate from the issue raised by the S.C. Court of Appeals in affirming the inferior court’s decision. The actions or inactions of the litigants has nothing to do with subject matter jurisdiction so any reason for contending the litigant’s

actions or inactions in the court proceedings in an inferior court as being “dispositive” is the ramblings of over worked judicrats trying to avoid an intellectual mess.

Motion to Supplement Case

The Appellant fully realizes that by a thin majority this S.C. Court of Appeals decided that it is the responsibility of the Appellant to make sure the Magistrate sends the Return. Joyner v. Glimcher, 356 S.C. 460, 589 S.E.2d 762 (Ct. App. 2002). The Appellant disagrees with this position which contradicts most jurisdictions in America. This position in case law completely ignores the obligation of the judiciary to regulate itself. Magistrate Guerard has probably gone years engaging in a pattern of judicial incompetence undetected by simply only sending Returns when forced by a Circuit Court judge rather than every time he gets a notice of appeal. Not to mention, the Returns from magistrate court were probably fraudulent written statements from the Magistrate rather than really legal Returns. Regardless, the Appellant would fully support in the interest of justice and correcting a judicial wrong if this court was to contradict the position placing the obligation to send the Return back on the judiciary as in obligation to regulate itself. However, the Appellant is not directly trying to attack this specific case law in this motion at this time unless the S.C. Court of Appeals takes on the task only carve out an exception specific to this situation dealing with Joyner v. Glimcher, 356 S.C. 460, 589 S.E.2d 762 (Ct. App. 2002).

The S.C. Court of Appeals has established that it has a judicial obligation to keep inferior courts in line with state laws and court procedures which includes using a writ if necessary Grier v Taylor, 4 McCord 206, 15 S.C.L. 206, (1827). This court has also established an inherent obligation to protect the rights of litigants from the abuse of an opposing party. “The adjudicative power of the Court carries with it the inherent power to control the order of its business to safeguard the rights of litigants.” Williams v. Bordon's Inc., 274 S.C. 275, 262 S.E.2d 881 (1980). It would inherently mean this court must supplement this case with the actual Return from the Magistrate Court when it irrefutably has any evidence of judicial misconduct along with misconduct of the opposing party that

undermines or intends to undermine the judicial mechanism S.C. Uniform Judicial System that could have prevented legally appropriate judicial review infringing upon a litigants due process rights (i.e. Civil Rights).

Derek F. Dean, Esquire as Counsel of the Respondent obtained a dismissal in the inferior Circuit Appellate Court by lying to Judge Nicholson about the Magistrate not getting the Appeal when Derek F. Dean had first hand actual knowledge the Magistrate had the appeal because he conspired with the Magistrate to infringe upon the Appellant's free exercise of his Civil Rights in a hearing in Magistrate court where the Magistrate lacked jurisdiction.

The initial impulse of a lazy intellect riding the bench of judicial mediocrity would be to declare something dispositive while ignoring the issues before the court. The Appellant contends a more appropriate doctrine would be a concept of "Judicial Adulteration". The S.C. Court of Appeals regardless of the actions or the inactions of a litigant would still have a case that was judicially adulterated by the misconduct of the judiciary and the Respondent. Magistrate Guerard conducted hearings *during the appeal process* with the Circuit Appellate Court and the S.C. Court of Appeals which Respondent agrees with in his own Statement of Case. Rule 208(b)(2), SCACR states in part: "If a respondent does include his own statement of the case, he shall be bound by the matters stated or alleged in his statement of the case."

The Respondent could contend that the Appellant (if a Return was filed in the court) could have filed a Motion for Rehearing of the Circuit Appellate Court dismissal to amend the Return to include information from the improper hearing (August 3rd 2009) during the pendency of the appeal in Magistrate Court, but no procedures in place to allow for S.C. Court of Appeals to order an Amendment of the Record on Appeal to include information from the improper hearing (February 24th, 2010) conducted when this case was on Appeal to this court. Rule 212, SCACR is the only way to include information from these hearings conducted when the Magistrate Court lacked jurisdiction (especially February 24th, 2010 motion hearing), but Rule 212, SCACR does not allow for an Inferior Circuit Appellate Court to "amend" anything. Furthermore, any attempt to include

information just from these two illegal hearings or either hearing without the complete Return would be incomplete in that they would not be in context with the entire trial courts actions including the illegal conduct outside the jurisdiction of the Magistrate Court.

In order for the Respondent to refute this request to supplement the Appeal with the entire Return that shows all actions by the Magistrate, Mr. Dean must inherently show that the Appellant would have been able to properly provide all evidence of the inferior trial court magistrate had he just requested Judge Nicholson to compel the Magistrate to forward the Return in the case. This court should already know this is impossible in that any Return in this case at the time of the Circuit Appellate Court's hearing as part of the Record of Appeal would have been inherently incomplete for the trial court as part of "judicial adulteration".

Adulteration in law is one of the few thing were something is proven in the negative. All procedures and regulations have been followed so therefore it is highly unlikely that it is adulterated in any way. Hence, the product is safe and has no adulteration. A mistake or error on the part of one individual might result in a product being adulterated but that mistake or error becomes moot when it is discovered that even if that individual had not made the mistake or error the product would have still been adulterated through intentional tampering with the product. Hence, Magistrate Guerard and Counsel of the Respondent are intentionally tampering with the judicial mechanisms throughout the appeal process that undermines the integrity of the judicial procedures through "judicial adulteration" thus makes the failure of the Appellant to request a writ to compel the Magistrate to forward a Return a moot issue. Unfortunately, the S.C. Court of Appeals only has *prima facie* knowledge of this misconduct from the Respondent's own Statement of Case. The Motion to Supplement the Case is needed to give irrefutable actual knowledge of serious misconduct that undermines the mechanisms of justice in SC. The Appellant respectfully request that this court order Magistrate Guerard as the trial court judge to send the complete Return so that this court will have actual knowledge that the Magistrate (along with Counsel of the Respondent) infringed upon the Appellant's free exercise of his Civil Rights in hearings where the Magistrate lacked jurisdiction.

Motion for Rehearing & Hearing En Banc

Rule 219, SCACR states two grounds for allowing a Rehearing & Hearing En Banc: “(1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.” The Appellant thinks all the concepts in the Appellant’s Initial Brief are of exceptional importance or necessary to maintain uniformity of the courts like subject matter jurisdiction for Magistrate Court, the appropriate use of subpoenas in Magistrate Court, the S.C. Preemption Doctrine, Uniform Jurisdiction Principles application in Magistrate Court, and others. However, all these issue could probably be addressed by three S.C. Court Appeals Court Judges or even one Circuit Court Judge except two issues. The Appellant contends two issues one from the case and one in this motion for rehearing demands the attention of the full S.C. Court of Appeals.

Issue One from the case deals with S.C. Code Ann. § 33-31-621 when used by mandatory HOA/HPR that is mandatory because it is appurtenant to the title of land is an irrefutable attempt by the state legislature to circumvent the S.C. Unified Judicial System with a private judicial system to decide property rights issues without proper due process to include judicial review. The Appellant thinks this is a Marbury v. Madison type issue with the Respondent advocating that it is legal for non-lawyers to adjudicate property rights issues relating to title of land in a private judicial system with no judicial review under this law. The Appellant also brings up this issue in Case #2010-CP-10-01420 currently working its way through the S.C. Court of Appeals process.

S.C. Code Ann. § 33-31-621 is being improperly used to destroy lives in South Carolina by incorporated HOA/HPR in a private judicial system. This is clearly an issue of exceptional importance and inherently necessary to bring uniformity throughout the state. “It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights”. Murdock, 338 S.C. at 334, 526

Issue two from this motion; the Appellant thinks would be a paradigm shift for the S.C. Court of Appeals to bring it in line with federal appeals court. The Respondent would probably contend that to remand the Appellant must prove an error on the part of Judge Nicholson because he already allegedly decided errors of law and mistakes of fact in this case. Others might say the S.C. Court of Appeals can only remand cases to the Circuit Court as the trial court because most forget that Circuit Court can be an Appellate Court with Magistrate Court being the trial court.

This case can be remanded to the inferior Appellate Court Judge just like in federal courts, but the Appellant cannot find an example of this fact. Using evidence from the Respondent's Brief, this court has actual knowledge the trial court Magistrate exceeded his jurisdiction by conducting hearing and making rulings that are being held in "abeyance" twice during the appeal to this court and the inferior Appellate Court. "The Due Process Clause demands notice reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections". Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950); Murdock, 338 S.C. at 334, 526 S.E.2d at 248.

The S.C. Court of Appeals has enough information to justify a remand to a trial court and a new trial, but this issue concerning remanding to the Circuit Appellate Court decided in En Banc would be major a step in the furtherance of Civil Rights in South Carolina relating to the handling of appeals from Magistrate Court. Circuit Appellate Court Judges need to fear and/or comprehend that once they rule on a Magistrate Court appeal it might not be over for them because SC Court of Appeals could kick the case back to the Circuit Appellate Court for another rehearing with testimony due to problems in the Circuit Appellate Court Hearing.

Motion to Stay the Case

The Appellant respectfully request a stay of the case until such time as the S.C. Supreme Court can render a decision on all of the Appellant's Writ of Mandamus in Original Jurisdiction which the Appellant intends to serve no later 18 January 2011. The delay in serving the Writ(s) is being done in the interest of judicial economy in an attempt to correspond the serving of a Reply to this Motion to the serving of the Writ(s). The Appellant would also like to read the Respondent's response in this case motions prior to serving the Writ in Original Jurisdiction. The Writ(s) deal with (among other things) unauthorized practice of law and the S.C. 9th Circuit Courts interpretation of "proceedings" as it relates to electronic communications, *ex parte* communications, and chronological list of hearings in the Return and the Record on Appeal.

Conclusion

A sadist for a lawyer is probably a divorce attorney, but some judges do not age like fine wine rather lose their moral compass becoming jaded tyrants willing to undermine the very integrity of the judicial process in order to satisfy their sadist needs. The Respondent's Statement of the Case in his brief should be read with trepidation from the realization it is a chronological list of events written by a co-conspirator in the deprivation of the Appellant Civil Rights.

The Appellant hereby requests a rehearing of the case in En Banc and hearing of this motion in En Banc along with a Motion to Supplement Case in the interest of justice because the S.C. Court of Appeals has reason to believe the Magistrate has undermined the mechanisms of justice in the S.C. Unified Judicial System. Furthermore, the Appellant requests a Stay of the Case so the S.C. Supreme Court can hear Writ of Mandamus in Original Jurisdiction that is relevant to the case.

03 January 2012
Columbia, SC

Charles Griggs, pro se
5108 Cantrell Point
Acworth, Ga. 30101
770 – 853 – 8122

**PROOF OF SERVICE FOR MOTION FOR REHEARING,
SUPPLEMENT CASE, REHEARING EN BANC,
FILE REPLY OUT OF TIME, AND STAY THE CASE**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Circuit Court Judge

Case No. 2009-CP-10-003577

Charles Griggs,

Appellant, Pro se

v.

Ashleytowne Village Horizontal Property Regime, Inc.

Respondent.

**PROOF OF SERVICE FOR MOTION FOR REHEARING,
SUPPLEMENT CASE, REHEARING EN BANC,
FILE REPLY OUT OF TIME, AND STAY THE CASE**

I certify that I have served the Motion for Rehearing, Supplement Case, Rehearing En Banc, File Reply Out of Time, and Stay the Case for Ashleytowne Village Horizontal Property Regime, Inc. by depositing a copy of it in the United States Mail, postage prepaid on January 3rd, 2012 addressed to the Mutual Benefit Non-profit Corporation's attorney of record, Derek Dean, Esquire; 147 Wappoo Creek Drive, Suite 604; Charleston, South Carolina 29412.

03 January 2012

Charles Griggs
5108 Cantrell Point
Acworth, Ga. 30101
(770) 853-8122
Appellant, pro se

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Circuit Court Judge

Case No. 2009-CP-10-3577

Charles Griggs

Appellant,

v.

Ashleytowne Village Horizontal Property Owners Assoc.

Respondent.

RESPONDENT'S REPLY TO APPELLANT'S MOTION FOR REHEARING,
SUPPLEMENT CASE, REHEARING EN BANC, FILE REPLY OUT OF TIME AND
STAY THE CASE

Respondent hereby objects to Appellant's Motion for Rehearing, Supplement Case, Rehearing En Banc, File Reply Out of Time and Stay the Case. Respondent contends there is no valid legal basis for said motion and/or that some or all portions of said Motion are either moot or not ripe.

By way of reminder, Appellant has previously filed a Motion to Supplement the Record on Appeal (Writ of Mandamus) and File a Reply Out of Time With A Clarification of Caption and a Motion to Supplement Court Record and Exceed Page Limit. The Court has dealt with both of these prior motions in due course. Appellant now seeks to circumvent prior

rulings without proper legal justification.

By way of further objection, Respondent notes that Appellant spends nearly one-half of his current Motion setting forth a Restatement of the Case. This matter has been fully briefed prior to this Court's issuance of its Order filed December 20, 2011 affirming the decision of the court below. Respondent now addresses the Motions set forth therein.

1) Motion for Rehearing

Respondent is mindful of Rule 240(e), SCACR, which directs that a return to a motion for rehearing under Rule 221, SCACR, need not be filed unless requested by the court. Respondent would point out that the Appellant apparently makes absolutely no reference to Rule 221, SCACR, and fails to "...state with particularity the points supposed to have been overlooked or misapprehended by the court." Setting aside several baseless and false accusations, the Appellant presents a rambling reiteration of "arguments" previously made and refuted which, as noted in Respondent's Final Brief, are not part of the Record on Appeal, were not raised to and ruled on by the lower court and are not properly before this Court.

2) Motion to Supplement Case

Appellant seeks again to supplement the case. This appears to be the third such motion filed by Appellant. Respondent contends that the Record on Appeal submitted to this Court was proper and more than sufficient to render a ruling. Therefore, Respondent hereby objects to said Motion to Supplement Case and respectfully requests that same be denied.

3) Motion for Rehearing and Hearing En Banc

Respondent is mindful of the admonition in Rule 219(b), SCACR, that "No response shall be filed by other parties unless the Court shall so order." However, not being sure of the strict applicability of said rule to this particular situation, Respondent would merely note its position that consideration by the full court is not necessary to secure or maintain uniformity

of its decisions and that this proceeding does not involve any questions of exceptional importance.

4) Motion to Stay Case

Respondent hereby objects to Appellant's Motion to Stay the Case until the South Carolina Supreme Court can render a decision on Appellant's Writ of Mandamus in Original Jurisdiction which has not yet been filed or served. Said motion is not ripe.

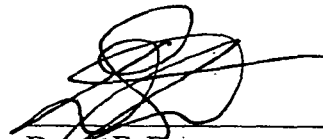
Appellant notes his intent to serve a Writ of Mandamus in Original Jurisdiction "no later 18 January 2011." No such Writ of Mandamus having yet been filed or served Appellant's Motion to Stay the Case is not ripe and should therefore be denied.

CONCLUSION

Therefore, having voiced its objections, Respondent respectfully requests that Appellant's Motion for Rehearing, Supplement Case, Rehearing En Banc, File Reply Out of Time and Stay the Case be denied and that Appellant be appropriately admonished.

Respectfully submitted,

January 11, 2012



Derek F. Dean
SIMONS & DEAN
147 Wappoo Creek Drive
Suite 604
Charleston, South Carolina 29412
843-762-9132

ATTORNEY FOR RESPONDENT

Pro Se Appellant:

Charles Griggs
5108 Cantrell Point
Acworth, GA 30101

Appellant enters the Court

The Court: Okay Mr. Griggs. Uh - - You were late and I proceeded with the, uh, Hearing. And the Attorney was informing me that, uh, according to the Magistrate the action was - - you withdrew the appeal in front of the Magistrate and it was granted. (Record on Appeal, Page 32 Line 10-14).

When did the Appellant allegedly withdraw the appeal in front of the Magistrate? Mr. Dean and Magistrate Guerard had done such a good job *to intimidate the Appellant from not engaging in his free exercise of his Civil Rights as guaranteed by the South Carolina and United States Constitution* that Mr. Dean was 100% sure the Appellant would not show up for the appeal. More importantly, the Record on Appeal has the entire transcript. This communication does not appear in the transcript nor does a comment relating to an *ex parte* communication between the Judge and Mr. Dean appear in the transcript. This means Judge Nicholson made a mistake of fact, improper communication with the Magistrate relating to the case, Mr. Dean lied to the Judge, and/or *the transcript is fraudulent*.

Mr. Dean acknowledges in his own statements concerning Mr. Michel that the Return could not be filed because Mr. Guerard did not know what was being appealed by Mr. Griggs. S.C. Code Ann. § 18-7-60 and a Judicial Advisor Opinion 08-2010 makes it clear what is being appealed is irrelevant since the Return consist of only documents from the inferior court and witness statements reduced to writing (This case has no witness statements because the Magistrate and Counsel of the Respondent conspired to violate the Appellant's Civil Rights by not allowing subpoenas). It is important to note that Mr. Dean had actual knowledge Magistrate Guerard had the physical appeal from the Appellant in his possession in the civil magistrate's courtroom on August 3rd, 2009 so at this point Derek F. Dean, Esquire was clearly involved in perpetuating a fraud on Judge Nicholson as Circuit Appellate Court Judge on behalf of his client.

This much seems clear to the Appellant in that Chief 9th Circuit Court Judge that heard this appeal (Judge Pieper) should have actual knowledge of Mr. Guerard's pattern of unethical conduct in this regard.

When the Appellant talks about additional appeals, Mr. Dean was faced with a dilemma and states: "There was never a judgment" (Record on Appeal, Page 41 Line 18). Mr. Dean knew the case was dismissed with a counterclaim pending at which he knew the Magistrate would announce the final judgment with a dollar amount at a later date. Judge Nicholson also assumed throughout the transcript that the Appellant did not file the Appeal in Magistrate Court and even concluded that the Appellant admitted that fact, but the transcript does not reflect that fact. How do you tell Judge Nicholson in court that he is lying and that he needs to let the Appellant talk about the "perversion of law"? The politically correct term is probably mistake of fact, but it does not change the meaning behind the thought. Judge Nicholson based on the transcript made several very clear mistakes of fact. Regardless, Judge Nicholson repeatedly throughout the hearing deprived the Appellant of the ability to present his cause and defend against the dismissal motion by fully explaining the "Perversion of laws" that is ongoing in the inferior Magistrate Court.

Counsel of the Respondent, Derek F. Dean, Esquire has actual knowledge the Magistrate was served with the appeal before the hearing because he participated in a hearing with the Magistrate which was outside the jurisdiction of the Magistrate after the appeal was filed in the Circuit Appellate Court. The parties discussed the appeal which was served and filed in the Magistrate Court in a timely fashion. However, the real purpose of the Magistrate hearing before the actual appeal hearing in the Circuit Appellate Court was to conspire with the Magistrate to intimidate the Appellant from not engaging in his free exercise of his Civil Rights as guaranteed by the South Carolina and United States Constitution.

Motion to Supplement Case

The Court has nothing to support the inferior court's judgment with Judge Nicholson making false statements about the Appellant telling him he did not file the Appeal with the Magistrate Court. Judge Nicholson assumed what the Respondent was telling him was truthful and the S.C. Court of Appeals has information that the Counsel of the Respondent gave contradictory information to Judge Nicholson from the Record on Appeal concerning the case even having a "Final Judgment". "The

adjudicative power of the Court carries with it the inherent power to control the order of its business to safeguard the rights of litigants.” *Williams v. Bordon's Inc.*, 274 S.C. 275, 262 S.E.2d 881 (1980).

Derek F. Dean, Esquire as Counsel of the Respondent obtained a dismissal in the inferior Circuit Appellate Court by lying to Judge Nicholson about the Magistrate not getting the Appeal when Derek F. Dean had first hand actual knowledge the Magistrate had the appeal because he conspired with the Magistrate to infringe upon the Appellant's free exercise of his Civil Rights in a hearing in Magistrate court where the Magistrate lacked jurisdiction. The Respondent did not directly refute this position.

The Appellant contends the S.C. Court of Appeals has more than enough information concerning ordering a Supplemental of the Case with the complete “Return” with the Respondent’s Statement of the Case in his Brief under Rule 212(a), SCACR to include even hearing this appeal in *de novo* (if necessary). However, the Court could under Rule 212(a), SCACR make it real simple by asking a direct question for Magistrate Guerard to cut through the semantic bull crap:

On what date did you (Magistrate Guerard) use the phrase “Final Judgment” or even the word “Judgment” with a dollar amount as required under S.C. Code Ann. § 18-7-20 / 18-7-30 for the purpose of notifying the Appellant that he had 30 days to file an appeal keeping Rule 13(a), SCRMC in mind?

Rule 13(a), SCRMC last sentence: “In the trial of a civil action, in which one or both parties are unrepresented by legal counsel, the court shall question the parties and witnesses in order to assure that all claims and defenses are fully presented.”

Subject Matter Jurisdiction

Rule 2, SCRMC dictates that Rule 18, SCRMC supersedes Rule 72, SCRCP meaning that only “Judgments” or “Final Judgments” are appealable to the S.C. Court of Appeals so unless the court can establish a date prior to filing the Appeal in the Circuit Appellate Court that the Appellant was informed in writing of a “Judgment” or the word “Judgment” came out of the Magistrate’s mouth in presence of the Appellant in regard to this case it must be remanded to the trial court for lack of

subject matter jurisdiction because this court can only hear final judgments from Magistrate trial courts on Appeal. The Appellant thinks everyone knows the Court is not going to get this information because the Magistrate announced in the Appellant's presence the dismissal or an interlocutory dismissal order with a counter-claim pending, but not the Judgment until later. As a matter of fact and for the record:

The final judgment in this case was first announced in the Appellant's presence using the word "Judgment" on August 3rd, 2009 in a hearing where the Magistrate lacked jurisdiction because the appeal was pending in the Circuit Appellate Court.

Dismissal does not inherently equal final judgment. State law and court procedures require the specific use of the word "judgment" by the Magistrate and Counsel of the Respondent has openly lied about the Appellant being in court prior to filing the inferior Circuit Appellate Court appeal for the announcement of "the judgment". The Appellant was in court when the Magistrate announced the interlocutory dismissal order with a counterclaim pending which was scheduled and actual heard on August 3rd, 2009. On that date, Magistrate made the interlocutory dismissal order the final judgment thus depriving the Appellant of the ability to appeal the case.

Motion for Rehearing & Hearing En Banc

"The Due Process Clause demands notice reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections". Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950); Murdock, 338 S.C. at 334, 526 S.E.2d at 248. A Machiavellian Sadist Magistrate with God Complex is perverting the rules of the court to undermine the integrity of the S.C. Unified Judicial System by preventing appropriate judicial review. The S.C. Court of Appeals while reflecting on Rule 13(a), SCRMC has an ideal opportunity to use this case as a small step forward in Civil Rights by making it extremely clear the Magistrate must use the word "Judgment" not dismissal (or in this case dismissal with counterclaim pending) in court along with explaining to each self represented party their right to appeal within 30 days. Using probably a bad analogy, the

Magistrate must provide as part of due process something similar in concept to the Miranda warning where the Small Claims Magistrate clearly uses the word “Judgment” setting a dollar amount and informs a party of their right to appeal as part of protecting a person’s Civil Rights.

The question of uniformity throughout the State of South Carolina deals with manipulating jurisdiction to prevent judicial review by making an interlocutory order of dismissal with a counter-claim pending a final judgment after the 30 days for appeal has expired for the non-prevailing party then sticking the non-prevailing party with a final judgment amount in a hearing with no ability to have judicial review. Uniformity of the court is inherently necessary in establishing the Magistrate responsibility concerning making clear the date of the “Judgment” with the actual use of the word “Judgment”. The Appellant thinks this Civil Rights issue is of exceptional importance for the court given the fact the Civil Magistrate Court cases involve a large number of self represented parties.

Conflict of Interest concerning a S.C. Court of Appeals Judge

The Appellant would probably have picked Judge Daniel F. Pieper to hear his case because he is a co-owner in a Mutual Benefit Non-profit Horizontal Property Regime Corporation according to public records at the Charleston County RMC (i.e. Register of Deeds). Judge Pieper should know firsthand how easy it is for corruption to go unchecked for years in a Mutual Benefit Non-profit Horizontal Property Regime Corporation just by being a co-owner in the same type of corporation as the Respondent. The Appellant understands the faulty reason for affirming the decision by the inferior court, but was surprised by Judge Pieper concurring with the dispositive issue with regard to the subject matter jurisdiction issues (especially considering he was a Circuit Court Judge in the 9th Circuit where he presided over mostly Civil Cases). Judge Pieper has also held the position of Chief Judge for the 9th Circuit. All this seemed odd and the Appellant did some areas of concern.

First area deals with Judge Pieper holding the position of Chief Judge for Administrative Purposes in the 9th Circuit during Magistrate Henry W. Guerard, Esquire tenure. Magistrate Guerard has stated that subpoenas have always been inappropriate for civil magistrate court and was

apparently calling written statements from him as “The Return” in violation of state law. Magistrate Guerard violations of Civil Rights happened during Judge Pieper’s “watch” or right under his nose. An older court case Grier v. Taylor cited by the Appellant in his brief places responsibility and possibly culpability on any former 9th Circuit Court Judge for the misconduct of a Magistrate in that Judicial Circuit. At some point, it was Judge Pieper’s responsibility to make sure Magistrate Guerard was following the law.

A pattern of failure on the part of the Civil Magistrate Court judges to send Returns with no excuse that they are dead, insane, or out of the state (S.C. Code Ann. § 18-7-90) inherently means that many Chief Judges for Administrative Purposes of the Court of Common Pleas in the 9th Circuit have culpability for this judicial misconduct since those Chief Judges have a clear responsibility to track all disposition of cases (S.C. Sup. Ct. Order 2010-01-13-01) to include the transmittal of cases between Magistrate and Circuit Court (Transfer of Civil Cases from Circuit Court to the Magistrate Court (L. Edmund Atwater, III, Esquire, Memo, Sept. 8, 1980)). Simply put, Judge Pieper knew or should have know given his role(s) in the 9th Circuit Court Judge that he could or would be called as material witness in any potential disciplinary action or possible criminal prosecution under 18 USC 242 of Magistrate Guerard concerning his actions in the furtherance of the Deprivation of Civil Rights under the Color of Law.

Secondly, the Appellant was looking to see if the Counsel of the Respondent ever represented the corporation that Judge Pieper co-owns in Charleston. Shockingly, the Appellant could find no attorney for Otranto Club Villas Horizontal Property Regime (HPR) III, Inc. (the corporation Mr. Pieper co-owns) over many years of foreclosure cases with mortgage companies. Apparently, an Officer of the Corporation is served at his home and the Register Agent is a Bookkeeper. S.C. Supreme Court has been extremely clear lawyers must represent corporations in all cases except Civil Magistrate Courts. As a former Master-in-Equity, Judge Pieper knows that in almost all cases involving his corporation the Mortgage Company is the Plaintiff, the Mortgagee is the Defendant, and Otranto Club Villas HPR III, Inc. is the other Defendant. It is clear that Otranto Club Villas HPR

III, Inc. obtained money from a foreclosure sale by a Mortgage company without an attorney in the case having to represent the company in the foreclosure case. A document sent to Mortgage Company or their attorney by a non-lawyer to obtain money from the sale from a corporation (like an HPR) through the application of an alleged law would or should constitute the unauthorized practice of law. Judge Pieper should have had actual knowledge that Contention 12 of the Appellant's case dealing with unauthorized practice of law if decided in favor of the Appellant would have a direct negative financial impact on him through the HPR he co-owns in Charleston.

Judge Pieper might be one of the most ethical Judges in the state. However, this does not change the fact that the Appellant thinks Judge Pieper has a conflict of interest. The Appellant suspects that even Judge Pieper will concur that he never thought of himself as a co-owner of any HPR, but he also now realizes the Appellant is correct in his position. This is the underlining issue for the Appellant is that he was a co-owner not a tenant or member. Regardless, The S.C. Court of Appeals should understand just how dramatic the positions advocated by the Appellant could impact Judges in the S.C. Court of Appeals or even the S.C. Supreme Court. How many Judges and Magistrates in South Carolina (or their immediate families) are co-owners in mutual benefit non-profit corporations (incorporated HOA or HPR) that are engaging in illegal activity like depriving other co-owners of their property rights without due process of law or maybe not paying their appropriate fees (i.e. kickbacks)? Could S.C. be facing a "Peons-for-Cash Scandal" (instead of Kids-for-Cash) where kickbacks are laundered through unregulated HPR/HOA property managers and HPR/HOA to sitting Judges throughout the state?

Motion to Stay the Case

The Appellant respectfully request a stay of the case until such time as the S.C. Supreme Court can render a decision on all of the Appellant's Writ of Mandamus in Original Jurisdiction which the Appellant intends to serve the first one no later 18 January 2011. The main (or first) Writ of Mandamus in Original Jurisdiction involves the following Judges and directly relates to this case: Judge Jean H. Toal, Judge John C. Few, Judge Deadra L. Jefferson, and Magistrate Henry W.

Guard. This Writ of Mandamus may result in this case being remand to a Charleston Court for lack of proof of a “Judgment” from the trial court.

Conclusion

The Appellant hereby requests a rehearing of the case in En Banc and hearing of this motion in En Banc along with a Motion to Supplement Case in the interest of justice because the S.C. Court of Appeals should have actual knowledge the Magistrate has undermined the mechanisms of justice in the S.C. Unified Judicial System by preventing appropriate Judicial Review using information in the Record on Appeal along with the Respondent’s Statement’s of Case. The simple fact is that both the Appellant and the Counsel of the Respondent agree through their statements that the Magistrate conducted hearings in this case when he lacked jurisdiction throughout the appeal process in the Circuit Appellate Court and the S.C. Court of Appeals.

The Appellant has made a request this motion be heard in En Banc so the an obvious hidden question will be presented to multiple Judges of the S.C. Court of Appeals sworn to uphold the U.S. Constitution and S.C. Constitution above all else in will they continue to affirm the inferior courts action when the Judges have prima facie evidence that a Magistrate in the case engaged in acts that could/would be considered Deprivation of Civil Rights under the Color of Law (i.e. a federal crime) especially given the fact the Appellant was deprived the use of subpoena in hearings where a Magistrate lacked jurisdiction and the Appellant was deprived the opportunity to have judicial review through fraud.

Furthermore, the Appellant requests a Stay of the Case so the S.C. Supreme Court can hear a Writ of Mandamus in Original Jurisdiction that is relevant to the case. The first Writ will be filed by 18 Jan 2012 on Judge Few as the Administrative Head of the S.C. Court of Appeals along with other members of the Judiciary of various courts.

17 January 2012
Columbia, SC

Charles Griggs, pro se
5108 Cantrell Point
Acworth, Ga. 30101
770 – 853 – 8122

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**PROOF OF SERVICE FOR REPLY FOR THE MOTION FOR
REHEARING, SUPPLEMENT CASE, REHEARING EN BANC,
FILE REPLY OUT OF TIME, AND STAY THE CASE**

I certify that I have served the Reply to the Motion for Rehearing, Supplement Case, Rehearing En Banc, File Reply Out of Time, and Stay the Case for Ashleytowne Village Horizontal Property Regime, Inc. by depositing a copy of it in the United States Mail, postage prepaid on January 17th, 2012 addressed to the Mutual Benefit Non-profit Corporation's attorney of record, Derek Dean, Esquire; 147 Wappoo Creek Drive, Suite 604; Charleston, South Carolina 29412.

17 January 2012

Charles Griggs
5108 Cantrell Point
Acworth, Ga. 30101
(770) 853-8122
Appellant, pro se



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 16, 2012

Charles Griggs
5108 Cantrell Point
Acworth, GA 30101

Re: Griggs, Charles v. Ashley Towne Village

Dear Mr. Griggs:

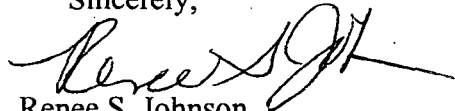
Enclosed is a copy of an Order of the Court denying your Petition for Rehearing, the Motion to Supplement the Record and the Motion to Stay in the above case.

Your Petition for Rehearing En Banc was distributed to the judges, but it has been rejected. See Rule 219, SCACR (amended April 28, 2011).

The Remittitur in this case will be held in this Court only so long as required by Appellate Court Rule 221 (b).

Please notify this office, in writing, within ten (10) days from the date of this letter, whether or not you want any of the remaining Records on Appeal and briefs we may have in this case. Also enclose a check payable to the S. C. Court of Appeals, in the amount of \$7.50, to cover mailing costs. If we have not heard from you within ten (10) days, the Record on Appeal and briefs will be disposed of.

Sincerely,


Renee S. Johnson
Case Specialist II

VAG/rj

cc: Derek Farrell Dean, Esquire

The South Carolina Court of Appeals

Charles Griggs,

Appellant,

v.

Ashley Towne Village Horizontal
Property Regime, Inc.,

Respondent.

The Honorable J.C. Nicholson, Jr.
Charleston County
Trial Court Case No. 2009-CP-10-03577

ORDER

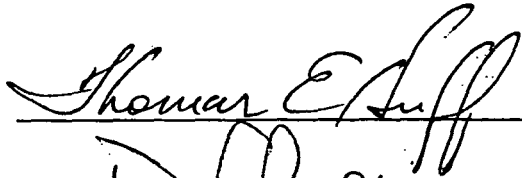
PER CURIAM: Appellant filed a Motion to Supplement the Record on Appeal, asking this court to supplement the record with the return from the magistrate's court. After careful consideration, we deny the motion. "With the written consent of all attorneys of record, a party may supplement the Record on Appeal at any time before argument commences. Without such consent or after argument commences, a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so." Rule 212(b), SCACR. "Appellant has the burden of providing this Court with a sufficient record upon which this Court can make its decision." Germain v. Nichol, 278 S.C. 508, 509, 299 S.E.2d 335, 335 (1983). The record on appeal submitted by the Appellant was proper and sufficient to render a ruling. Based on the foregoing, we deny Appellant's motion.

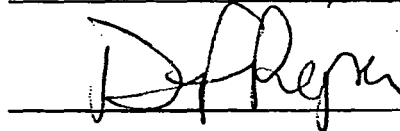
In addition, Appellant filed a Motion to Stay, asking this court to stay the case until the supreme court renders a decision on Appellant's writ of mandamus. After careful consideration,

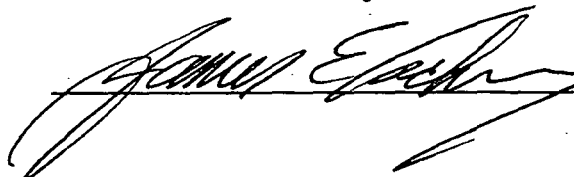
we deny the motion. "An issue that is contingent, hypothetical, or abstract is not ripe for judicial review." Colleton County Taxpayers Ass'n v. Sch. Dist. of Colleton County, 371 S.C. 224, 242, 638 S.E.2d 685, 694 (2006). Appellant has not filed a writ of mandamus with the supreme court; therefore, the basis of his motion to stay the case is not ripe for review. Based on the foregoing, we deny Appellant's motion to stay.

After a careful consideration of Appellant's Petition for Rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded. It is, therefore, ordered that the Petition for Rehearing be denied.

IT IS SO ORDERED.

 Huff, J.

 Pieper, J.

 Lockemy, J.

Columbia, South Carolina

cc: Charles Griggs
Derek Farrell Dean, Esquire

FILED

- 16 Feb 2012 -

RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Circuit Court Judge

Case No. 2009-CP-10-003577

Charles Griggs,

Appellant, Pro se,

v.

Ashleytowne Village Horizontal Property Regime, Inc.

Respondent.

RECORD ON APPEAL

Charles Griggs
5108 Cantrell Point
Acworth, Ga. 30101
(770) 853-8122
Appellant, Pro se

Derek F. Dean, Esquire
Simons & Dean Law Firm
147 Wappoo Creek Drive, Suite 604
Charleston, S.C. 29412
Counsel of the Respondent
843-763-9132

INDEX FOR RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Court of Common Pleas

J.C. Nicholson, Circuit Court Judge

Case No. 2009-CP-10-003577

Charles Griggs,

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v.

Ashleytowne Village Horizontal Property Regime, Inc.

Respondent.

INDEX FOR RECORD ON APPEAL

Judgment of Inferior Circuit Court of Appeal from denying the appeal with no information concerning a possible judgment in Magistrate Court (i.e. Trial Court).	2
Appellant's / Plaintiff's Appeal to the Circuit Court from Small Claims Court (i.e. the Trial Court) with no response from Respondent / Defendant to the Appeal.	3
Respondent's / Defendant's Motion to Dismiss	19
Transcript of Inferior Court Appeal Hearing without the Record on Appeal or any other information from the Magistrate in the Trial Court.	25

RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Circuit Court Judge

Case No. 2009-CP-10-003577

Charles Griggs,

Appellant, Pro se,

v.

Ashleytowne Village Horizontal Property Regime, Inc.

Respondent.

RECORD ON APPEAL

Charles Griggs
5108 Cantrell Point
Acworth, Ga. 30101
(770) 853-8122
Appellant, Pro se

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

Case No.: 2009-CP-10-3577

FILED
DEC 18 PM 2:29
JULIE J. ARISTONG
CLERK OF COURT

Charles Griggs

versus

Ashley Towne Village Horizontal Properties
Owners Assoc.

Plaintiff

Defendant

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ **DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. nonsuit);
☐ Rule 43(k), SCRCP (Settled);
☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order ☐ Statement of Judgment by Court
the court denied the appeal

Dated at Charleston, South Carolina,

12/17/09
Date Judge

This judgment was entered on the _____ Day of _____, 20____, and a copy mailed first class this _____ Day
of _____, 20____, to attorneys of record or to parties (when appearing pro-se) as follows:

Attorney(s) for Plaintiff(s)

Attorney(s) for Defendant(s)

JP Form 4 (Rev. 2/96)

Clerk of Court

COUNTY OF

Charles Griggs

CIVIL ACTION COVERSHEET

Plaintiff(s)

09-CP-10-3577

vs.

Ashley Towne Village
Horizontal Property Regime Inc

(Please Print)

Submitted By:

Charles Griggs

Address:

770-853-8122

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☒ Arbitration (900)
☒ Magistrate-Civil (910)
☒ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | | | |
| ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Sexual Predator (510) | | | |

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Charles Griggs

Plaintiff,

vs.

Ashley Towne Village Horizontal
Property Regime(B), Inc.
Defendants.

) IN THE COURT OF COMMON PLEA
) CIVIL ACTION NO.:

) 2009 - CP - 10 - 3517

) 2008 - SC - 86 - 2190

) APPEAL

FILED
2009 JUN -8 PM 4:54
JULIE J. ARMSTRONG
CLERK OF COURT

I, Charles Griggs, Defendant in this civil action make the following claim.

1. I believe that the plaintiff resides in Charleston County and is within the jurisdiction of this court.

2. I make this appeal based on the following errors committed by the lower court:

- 09-9513
- a. When a Defendant seeks a reward of attorney fees and costs at the hearing of a motion of dismissal, the Defendant is making a defacto counterclaim. Any counterclaim constitutes a reversal of roles in this suit where the Plaintiff becomes the Defendant in the counterclaim. The Plaintiff was not given the opportunity to file a Motion for a More Definitive Statement concerning the Defendant's defacto counterclaim that was part of Defendant's "Motion for more Definitive Statement or Alternatively a Motion to Dismiss". The pro

se Plaintiff realizes that the Motion may have lacked proper form in that the full title of the motion was "Plaintiff's Response to Motion for More Definitive Statement or Alternatively Motion to Compel Proper Identification of the Defendant and Counsel in the Form of a Motion for a More Definitive Statement" and that the Plaintiff's motion might be considered discovery which is not allowed in Small Claims Court. However, the Plaintiff would contend that any Motion for a More Definitive Statement is a pseudo discovery motion by either party and that discovery in small claims court is discretionary (if not encouraged) involving parties in a suit. The Judge may not have granted the motion in full because he never heard the motion that was only referenced in the motion hearing, but the Plaintiff realizes that judge made an error by not hearing a motion that could have given the counsel for the Defendant actual knowledge that he was assisting in fraud. The error was not in the denial of the motion due to the lack of proper form by the Pro se Plaintiff in small claims court rather the failure to hear the motion in Small Claims Court.

- b. A strict interpretation of Rule 21 for South Carolina Rules for Magistrate Court reads in part: "The Court shall require a written authorization from the entity's president, chairperson, general partner,

owner, or chief executive officer, or in the case if a person possessing a Limited Certificate, a copy of that certificate, before permitting representation.” As strange as it might seem, the Rule in its current form would require a member of the South Carolina Bar representing a client that is a business entity in small claims court to provide the court with written documentation authorizing such representation. The Judge made an error under a strict interpretation of the Rule by not requiring the alleged President of the Corporation as the named Defendant to provide written document to the court authorizing representation by a member of the South Carolina Bar in good standing. The Plaintiff contends that had the Judge required the providing of such a written letter by the Defendant’s counsel that such an act would constitute the submission of fraudulent documents to the small claims court.

- c. The judge made an error in his strict interpretation of Rule 15 of the South Carolina Rules for Magistrate Court. Rule 15 should not be considered in exclusivity rather in the context of the professional norm of the judicial establishment in America and using a common sense doctrine. A strict interpretation of the rule would literally dictate that a judge cannot make a plaintiff or defendant to produce his or her

driver license to prove their identity or address because it would violate the no discovery rule in Small Claims Court. The Plaintiff is confident that the Court of Common Pleas would not grant a new trial solely because a Magistrate forced discovery in violation of Rule 15 by requiring someone to show their driver's license or other form of identification. As a matter of fact, this case was dismissed and the counsel for the defendant is well within his legal rights to never disclose the alleged Board members for his client that he is supposedly acting on the behalf of in this matter. However, the Plaintiff and the court are expected to take the attorney for the Defendant's word on this matter because of this non discovery rule in Small Claims Court. Since the attorney for the Defendant as an organization in this matter is not a government attorney, it is completely appropriate for counsel of the Defendant to not "investigate" his client to even determine if his actions are authorized by a vote of the alleged Board of Directors rather than on rogue alleged Board President for the Defendant. In the State of South Carolina, a corporation is considered a "person" in legal context. Hence, the judge made an error in interpretation of Rule 15 in the context of the judicial establishment of America and the common

sense doctrine to avoid a “fraud upon the court” and/or to allow the plaintiff using prima facie evidence to prove that the Defendant through their counsel is engaged in an intrinsic fraud by submitting any written documentation alleging that anyone has legal authority to act on behalf of the Corporation (including but not limited the Defendant’s actual Motions to Dismiss the case).

- d. The Plaintiff repeatedly tried to settle the disagreement with the Defendant for years and the Defendant became increasingly hostile towards the Plaintiff. As a shareholder, the Plaintiff had rights to all documents of the Corporation, an annual financial statement, and all conflicts of interests involving the alleged Board of Directors. The Plaintiff was repeatedly denied access to all information because the Defendant said “Their attorney said they did not have to give information to me because I might use the info against them.” The alleged registered agent/President of the Corporation and all the alleged Board member repeatedly refused to accept certified letter from the Plaintiff because the Plaintiff was told the attorney said they did not have to accept them. In April of 2008, the Plaintiff made his first attempt to sell his condo to another shareholder using Jay Brown, Esquire in the matter. However, the attorney (Jay Brown) for the

buyer, his client (another shareholder in the Corporation), and the Plaintiff could not get a proper accounting of the alleged bills that is part of a fraudulent lien along with additional documentation required under the law. The first sale of the property was unsuccessful. Over the years, the Defendant hired numerous lawyers (including Collen McConnell, David Parrish, Adam Barr, and Robert Hadden) to recover alleged money owed from a lien. All lawyers refused to take additional legal action against the Plaintiff and/or discontinue representing the Corporation in all legal matters after the Plaintiff made a request to validate the debt under the law. The Pro se Plaintiff did not allege "fraud on the court" specifically in the lower court or address the sub terms of intrinsic or extrinsic fraud in the case. However, the judge as a lawyer in SC regardless of the wishes of the Plaintiff or the Defendant should have recognized that refusal of the Defendant to provide documents to a shareholder when he or she legally had a right to the documents under the law prevented the Plaintiff from fully presenting his case under the guidelines of Chewning vs. Ford Motor Company. In this case, the matter was in the Court of Appeals having been appealed from the Kershaw County Circuit Court so a greater standard was used than an appeal from

Magistrate to Court of Common Pleas. The Judge's error was not recognizing that the Plaintiff's pro se position dealt with extrinsic fraud potentially to the level of Chewning that should be addressed by a higher court. The Plaintiff contends that the mere possibility of extrinsic fraud involving a fraud upon the Court using the Chewning standard should be sufficient to grant a request for appeal.

- e. The Judge had an inherent conflict of interest due to the actions of the Plaintiff. The Plaintiff's final amendment to the case added the causes of action Abuse of Process and the civil tort of Barratry. Neither of these torts is typical for small claims court and takes on a greater meaning when looking at the massive number of fraudulent liens filed by this corporation and the large number of fraudulent cases filed in this judge's court to obtain money from shareholders through the use of fraud. The Plaintiff articulated that he believed the judge's court was being used to commit fraud. With this position along with the unique amendments to the civil case, the Plaintiff contends an environment of disciplinary coercion indicative of *Spellens v. Spellens* existed involving the Judge by the Defendant that would rise to the level of abuse of process.

The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the

proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or a club.

Another specific definition for Abuse of Process was also noted by South Carolina Court of Appeals Judge Stilwell:

To cause process to issue without justification is an essential element of malicious prosecution, but not of abuse of process. In the latter, the issuance of the process may be justified in itself[;] it is the malicious misuse or perversion of the process for an end not lawfully warranted by it that constitutes the tort known as abuse of process.

The Judge's error was by not recognizing he had a conflict of interest through an environment of judicial coercion under the implied threat of disciplinary action by a peer if he did not follow established Court Rules even if he thought that in doing so he was assisting the Defendant in fraud and/or abuse of process by legitimizing the collecting of money through the fraudulent use of liens against the Plaintiff as a former shareholder and other shareholders that may rise to the level of criminal. It should also be noted that the Judge never gave a reason for the dismissal of the case at the Magistrate level so a determination if the case would survive a Rule 12(b) assault is indeterminate at this point and the Plaintiff is confident that it would not be justified in the Court of Common Pleas given the additional

legal options available to the Plaintiff and the significance of the fraudulent conduct by the alleged Board of Directors for the Defendant. Regardless, the Plaintiff would contend the organizational structure of the Defendant is so corrupt and oozing of fraud that any Rule 12(b) action on behalf of the Defendant is fraudulent per se in that “No man can find his cause of action in a fraud” so inversely “No man can dismiss a cause of action based on a fraud.”

- f. As noted by the defense counsel and the judge, the Plaintiff's case had aspects of a derivative suit and both parties misled the Plaintiff into thinking he could not bring a derivative suit since the Plaintiff was no longer a shareholder. However, Rule 23(b) (1) clearly allows someone that was a shareholder to bring a derivative suit if he can prove “at the time of the transaction of which he complains” that he was a shareholder. Without a doubt, the Plaintiff's case dealt with matters when the Plaintiff was a shareholder and had aspects of a Derivative Suit that was noted by the Judge and the Defendant's counsel. By law, the case should have been forced to the Court of Common Pleas since a derivative suit is outside the jurisdiction of Small Claims court. The Judge and defense counsel made an error in interpretation of the law that misled and deprived a Pro se Plaintiff into having the option to

amend the case to make it into a derivative suit as a former shareholder that had money stolen at the closing sale of the property without legal cause that is fighting for his rights and the rights of other current shareholders not to be victimized by the blatantly deceptive practices of a fraudulent Board of Directors for the Defendant.

3. I believe, because of the above information, that I am entitled to and request:

Your guess is as good as mine because the fraud is of such a large magnitude involving a Defendant of such a small corporation that ANY attorney that tries to represent the Defendant in the Court of Common Pleas at this time without action by the Court of Common Pleas will be involved in fraud. It is extremely hard to articulate a remedy or course of action in this case because of the numerous issues of misconduct alleged by the Plaintiff as noted by the Magistrate Judge and the Defendant's attorney in Magistrate Court of the fraudulent Board of Directors for the Defendant. The governance structure and those holding fraudulent positions of authority for the Defendant has gone on for so long it is difficult to resolve this case and recover damages on the behalf of the Plaintiff without defrauding shareholders of the Corporation. The Plaintiff does not want to engage in fraud even if done with the support of the judicial system to recover money fraudulently stolen from him.

- a. The Plaintiff is filing an appeal in this case and has filed an appeal in another case where he is the Defendant (2008-SC-86-002119). The Plaintiff would request an opportunity to amend both cases with one being a Class Action Derivative Suit on behalf of disenfranchised shareholders that have had their rights violated by a fraudulent Board of Directors and the other case to be a suit for specific damages against the Plaintiff that is not a derivative suit in nature.
- b. An opportunity to file a complaint under the frivolous proceedings sanctions act against the Defendant for pursuing a frivolous proceeding sanctions act counter claim in the lower court clearly based on a fraud.
- c. An opportunity to file a derivative suit as a former shareholder against the Defendant.
- d. A trial de novo because of the errors of the lower court ONLY after the Defendant has a legal governance structure with a Board of Directors not elected through fraud and that does not deprive any shareholders of the rights as guaranteed under the Master Deed and State Law so decisions on a course of action by the defendant can be legally justified as valid. No need compound the fraud with this case.

- e. An opportunity to amend the Defendant's in this case to possibly include individuals, corporation(s), and/or lawyer(s) to reflect prior actions and misconduct along with actions and misconduct arising from magistrate court.

I state under penalty of perjury that the above is correct and truthful.

Date: 06 June 2009

Signature: Charles Griggs

Address of Plaintiff:
Charles Griggs
5108 Cantrell Point
Acworth, Ga. 30101
770 - 853 - 8122

Address of Counsel for Defendant:
Derek Dean, Esq.
147 Wappoo Creek Drive
Suite 604
Charleston, SC 29412
843 - 762 - 9132

CHARLESTON COUNTY

SMALL CLAIMS

CIVIL ACTION DOCKET AS OF 06/06/2009

PLAINTIFF(S): GRIGGS, CHARLES

-VS-

DEFENDANT(S): ASHLEYTOWNE VILLAGE HOA

CASE ID: 2008-SC-86-002190

FILING: 12/11/2008

ACTION: SMALL CLAIM COURT CASE-NON LIQ

JUDGE: HENRY W. GUERARD

GROUP	TYPE	PARTY NAME	PHONE
001	PL	GRIGGS, CHARLES	
002	DF	ASHLEYTOWNE VILLAGE HOA	

DATE	***** EVENTS IN CASE *****
FEB 03 2009	DEFAULT HEARING
FEB 24 2009	MOTION HEARING/MOTION DOCKET
MAY 06 2009	MOTION HEARING/MOTION DOCKET

DATE	**** PROPERTY IN CASE ****
------	----------------------------

DATE	***** PROGRESS IN CASE *****	FEEs
MAY 12 2009	ORDER FOR CLOSED CASES ISSUED RET:INSTANTER RE:	
APR 08 2009	MOTION HEARING LETTER ISSUED RET:INSTANTER RE:	
APR 08 2009	AS TO MC>RP	
	ANSWER & COUNTERCLAIM TO AMENDED	
JAN 15 2009	MOTION HEARING LETTER ISSUED RET:INSTANTER RE:	
JAN 13 2009	MEMO	
	01-13-09 REC'D MOTION TO DISMISS OR ALTERNATIVELY MOTION FOR MORE	
	DEFINITE STATEMENT. MC	
	2/24/09 DIA UNTIL 3/6/09 SEE JUDGES NOTES. RP	
	04-08-09 REC'D DEF ANSWER AND COUNTERCLAIM TO PLAINTIFF AMENDED	
	COMPLAINT WITH A MOTION TO DIMISS. MC	
DEC 18 2008	SERVICE LETTER ISSUED RET:INSTANTER RE:	
DEC 16 2008	AS TO CHARLIE LOW	
	SERVICE	
DEC 11 2008	SUMMARY COURT PROVISIO FEE FOR S&C (\$25)	
DEC 11 2008	SERVICE FEE	
DEC 11 2008	SUMMONS AND COMPLAINT	

DOCKET TOTAL: .00

RULE 15
EXCHANGE OF INFORMATION BETWEEN PARTIES; SETTLEMENT

(a) Recognizing the unique nature of the court's jurisdiction and the need for a speedy determination of actions filed in the court, the prompt voluntary exchange of information and documents by parties prior to trial is encouraged, but in no event shall the court require such exchange.

(b) The court, with both parties present, shall confer with the parties before any trial whenever it appears that a conference might simplify the issues, shorten the trial, or lead to a voluntary exchange of information which might promote settlement. The court in its discretion may order that a list of exhibits a party intends to offer into evidence at the trial be furnished to the opposing party and/or that the opposing party be given a reasonable opportunity to copy or examine the exhibits.

RULE 21
BUSINESS REPRESENTATION

A business, as defined by S.C. Code Ann. § 33-1-103, may be represented in a civil magistrates court proceeding by a non-lawyer officer, agent, or employee, including attorneys licensed in other jurisdictions and those possessing Limited Certificates of Admission pursuant to Rule 405, SCACR. The representation may be compensated and shall be undertaken at the business's option and with the understanding that the business assumes the risk of any problems incurred as the result of the representation. The court shall require a written authorization from the entity's president, chairperson, general partner, owner, or chief executive officer, or in the case of a person possessing a Limited Certificate, a copy of that certificate, before permitting the representation.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMONS PLEAS

Charles Griggs,

Case No.:

☐ Plaintiffs

~~2008-CP-86-2190~~

v.

09-CP-10-3577

Asleytowne Village I Horizontal Property Regime
(B), Inc.,

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

☒ Defendant.

check box above indicating submitting party

Plaintiffs' attorney:

Defendants' attorney:

Derek F. Dean, Esq. Bar No. 65279
SIMONS & DEAN
147 Wappoo Creek Drive Ste. 604
Charleston, SC 29412
telephone: (843) 762-9132 fax: (843) 406-9913
e-mail: dfdean@charlestonattorneys.net

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Notice of Motion and Motion to Dismiss Appeal

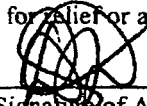
Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES ☐ NO

SECTION II: Motion/Order Type

☒ Written Motion Attached

☐ Form Motion--

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for ☒ Plaintiffs

6/16/09

Date Submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause ill Child or Spousal Support

(Check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☒ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE

CODE: _____ DATE: _____

CLERK'S VERIFICATION

DATE FILED:

Collected by: _____

(Print name)

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED-AMOUNT DUE: _____

SCCA/233

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Charles Griggs,

Plaintiff,

vs.

Ashleytowne Village 1 Horizontal
Property Regime (B), Inc.,

Defendant.

IN THE SMALL CLAIMS COURT
CIVIL ACTION NO.: 2008-SC-86-2190

09-CP-10-3577

NOTICE OF MOTION AND
MOTION TO DISMISS
APPEAL

FILED
2009 JUN 18 PM 3:45
JULIE J. ARMSTRONG
CLERK OF COURT

TO: DEFENDANT ABOVE NAMED:

PLEASE TAKE NOTICE that the Defendant, by and through its undersigned attorney, will move before the presiding judge of the Court of Common Pleas for Charleston County, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order dismissing the appeal filed by Plaintiff on the grounds that the appeal is not timely under the South Carolina Rules of Procedure or South Carolina statutory law for the following reasons: Plaintiff's Motion to Dismiss this action was heard before Judge Guerard on May 6, 2009. At the conclusion of the hearing, and in the presence of the Plaintiff, the Court granted Defendant's Motion to Dismiss. S.C. Code Ann. §18-7-20 states in pertinent part as follows: "The appellant, within thirty days after written notice of judgment has been given him...by the magistrate..., except when the judgment is announced at the trial in the presence of the appellant...then no written notice is necessary, shall serve a notice of appeal, stating the grounds upon which the appeal is founded." Thus, Plaintiff has thirty (30) days from May 6, 2009 to serve his notice of appeal. He failed to do so. Plaintiff's appeal is dated June 6, 2009, but was not served via United States Postal Service Priority Mail until June 9, 2009. See

Exhibit "A." The thirtieth day to serve the appeal was June 5, 2009. Thus, Plaintiff's appeal is untimely.

Further, S.C. Code Ann. §18-7-30 requires the appellant in the notice of appeal to state in what particulars he claims the judgment should have been more favorable to him. At paragraph 3, page 10 of 12, of Plaintiff's appeal, Plaintiff states: "I believe, because of the above information, that I am entitled to and request: Your guess is a good as mine...." Clearly, this is insufficient grounds upon which to sustain Plaintiff's appeal.

Finally, upon information and belief, Defendant's appeal has not yet been filed with the Charleston County Clerk of Court as required by Rule 74, SCRCF.

Plaintiff reserves the right to present additional grounds for the dismissal of Defendant's Appeal and the claims asserted therein and for the other relief sought herein at the hearing of this motion.

These motions will be further based on the pleadings, applicable statutory and/or case law, the record in this matter, and any memoranda which may be submitted hereinafter. Plaintiff will further seek an award of attorneys fees and costs at the hearing of these motions. The undersigned certifies in accordance with Rule 11, SCRCF, that there is no duty of consultation regarding motions to dismiss and/or that consultation would serve no useful purpose.



Derek F. Dean
Law Offices of Simons & Dean
147 Wappoo Creek Drive, Suite 604
Charleston, SC 29412
843-762-9132

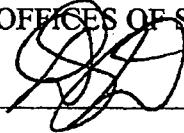
ATTORNEY FOR DEFENDANT
Ashley Towne Village Horizontal
Property Regime B, Inc.

June 16, 2009
Charleston, SC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon Defendant by mailing a copy properly addressed with sufficient postage affixed thereto this 16th day of June, 2009.

LAW OFFICES OF SIMONS & DEAN

BY: 

Charles Griggs
5108 Cantrell Point
Acworth, Ga. 30101
770 - 853 - 8122

The Honorable Henry W. Guerard
Charleston County Small Claims Court
905 Morrison Drive Unit 60b
PO Box 941
Charleston, SC 29402

RE: Charles Griggs v. Ashleytowne Village I Horizontal Property Regime (B), Inc.

Case #: 2008 - SC - 86 - 2190

RE: Charles Griggs v. Ashleytowne Recreational Development, Inc.

Case #: 2008 - SC - 86 - 2191

CERTIFIED MAIL

09 June 2009

Dear Judge Guerard:

As a High School Science Teacher, I had to take an oath in Georgia to uphold the United States Constitution and the Georgia Constitution. I know that every lawyer's oath to the United State Constitution and the South Carolina Constitution should come before everything else. Mr. Dean on behalf of the alleged board of Directors for his client has requested a hearing under the SC Frivolous Proceedings Sanction Act which is very clearly articulated in 15 - 36 - 10 in the form of a counterclaim. I can completely understand that the alleged Board of Directors for Mr. Dean's client believes that they are entitled to damages in this case since it was dismissed by you, but for reason that I cannot understand Mr. Dean did not file a counterclaim based on a tort rather used a procedure that could result in an attorney for the Plaintiff being disbarred in SC. The rules, regulations, and guidelines clearly indicate that you have to grant Mr. Dean's Motion in this matter because of the seriousness of his complaint against me that I am sure he would have never have filed such a serious complaint simply to gain leverage in a civil suit or to try to intimidate and compel a Pro se Plaintiff to drop the matter out fear. I am also sure as a member of South Carolina bar acting in a judicial capacity that your actions will follows those rules, regulations, and guidelines that is part of the judicial establishment in America.

I have appealed two cases to the Charleston County Court of Appeals, but a request for a hearing was not totally unexpected in this matter. I am sure that in your judicial capacity you will hold the hearing even if it is under duress. I contend this is a request for a hearing by the Defendant's counsel when he



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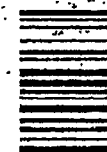
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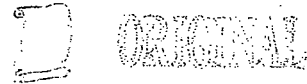


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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS
2009-CP-10-3577
2009-CP-10-3578

 ORIGINAL

CHARLES GRIGGS,)
)
PLAINTIFF,)

-v-

ASHLEY TOWNE VILLAGE)
)
HORIZONTAL, ETC.)

DEFENDANT.)

ASHLEY TOWNE VILLAGE HOA,)
)
PLAINTIFF,)

vs.)

CHARLES GRIGGS,)
)
DEFENDANT.)

TRANSCRIPT OF RECORD
DECEMBER 16, 2009
CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. C. NICHOLSON, JUDGE.

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

CHARLES GRIGGS,
Appearing Pro Se.

DEREK F. DEAN, ESQ.,
Attorney for Ashley Towne

VIVIAN H. CROSS
OFFICIAL COURT REPORTER

-N-D-E-X
DECEMBER 16, 2009
(MOTIONS HEARING)
(09-CP-10-3577; 09-CP-10-3578)

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REPORTER'S CERTIFICATE	22

E X H I B I T S

IDENTIFICATION

ENTERED

*****NO EXHIBITS OFFERED*****

P R O C E E D I N G S

(DECEMBER 16, 2009 - 9:40 A.M.)

(CASE NUMBERS: 09-CP-10-3577; 09-CP-10-3578)

THE COURT: UH -- ALL RIGHT, UH, ON THE APPEAL, ASHLEY TOWNE VILLAGE, LET ME -- THE MAGISTRATE SAYS HE -- LET ME SEE WHAT'S IN THE FILE, OKAY?

(WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR FILE REVIEW, OFF THE RECORD.)

(WHEREUPON, COURT RESUMED.)

THE COURT: APPARENTLY WHAT HAS HAPPENED, MR. GRIGGS FILED THE APPEAL WITH THE CLERK HERE AND NEVER SENT IT TO THE MAGISTRATE---

MR. DEAN: THAT'S MY UNDERSTANDING, YOUR HONOR.

THE COURT: ---'CAUSE THE MAGISTRATE HAS NO RECORD OF IT.

MR. DEAN: THAT'S MY UNDERSTANDING ALSO, YOUR HONOR. AND I---

THE COURT: AND THERE'S NO RETURN.

MR. DEAN: ---AND I SPOKE WITH MR. MICHEL THIS MORNING, AND APPARENTLY HE HAD COMMUNICATED WITH JUDGE GERRARD AND SAYS THAT -- WELL, THERE'S TWO CASES.

THERE'S ONE THAT HE -- THE CASE WAS DISMISSED FOR LACK OF PROSECUTION, SO HE DIDN'T HAVE ANYTHING TO FILE A RETURN ON.

AND ON THE OTHER, UH -- I KNOW THIS IS HEARSAY -- BUT,

1 THAT HE DIDN'T KNOW WHAT MR. GRIGGS WAS APPEALING SO HE
2 COULDN'T FILE A RETURN.

3 THE COURT: I UNDERSTAND. WELL, HE FILED THE APPEAL AND
4 APPARENTLY HE CLOCKED IT IN AND FILED IT WITH THE CLERK OF
5 COURT. WAS IT EVER SERVED ON -- WAS IT EVER SERVED ON YOUR
6 PART -- YOUR CLIENTS?

7 MR. DEAN: WE -- WE DID RECEIVE A COPY OF THE APPEAL
8 IN BOTH -- IN BOTH THE CASES.

9 THE COURT: I MEAN, HE SHOULD HAVE FILED IT IN
10 MAGISTRATE'S COURT.

11 MR. DEAN: THAT'S CORRECT, YOUR HONOR.

12 THE COURT: BUT HE DIDN'T. UH -- HE -- HOW DO YOU WANT
13 TO PROCEED? DO YOU WANT TO, UH, GO AHEAD AND HEAR THE APPEAL
14 AND RULE ON THE MERITS SINCE THERE IS A FILED APPEAL?

15 MR. DEAN: YES, SIR; I WOULD LIKE TO---

16 THE COURT: AND SINCE HE HAD NOTICE?

17 MR. DEAN: ---I WOULD LIKE TO PROCEED GIVEN THE FACT
18 THAT WE'VE ESTABLISHED THAT MR. GRIGGS DOES HAVE NOTICE.

19 THE COURT: OKAY; ALL RIGHT. ALL RIGHT, SO, UH, WELL,
20 MR. -- ACCORDING TO THE CLERK OF COURT, MR. GRIGGS HAD NOTICE
21 TO BE HERE FOR THE APPEAL, AND HE HAS NOT APPEARED. IT IS --
22 IT WAS SCHEDULED FOR NINE-THIRTY; IT'S NOW QUARTER-'TIL-TEN.

23 THE ATTORNEY REPRESENTING, UH, ASHLEY TOWNE VILLAGE IS
24 PRESENT, AND HE IS THE RESPONDENT.

25 I'LL BE GLAD TO HEAR YOU. AND, THERE'S TWO CASES FOR

1 APPEAL.

2 MR. DEAN: YES, SIR, YOUR HONOR. IF IT PLEASE THE
3 COURT, MY NAME IS DEREK DEAN. I REPRESENT THE DEFENDANT IN
4 CASE 09-3577, WHICH IS ASHLEY TOWNE VILLAGE ONE HORIZONTAL
5 PROPERTY REGIME 'B', INC.

6 UH -- THIS CASE ARISES OUT OF A -- A CLAIM FILED BY A
7 FORMER HOMEOWNER AT THE H-O-A, MR. GRIGGS. UH -- THAT WAS A
8 SMALL CLAIMS CASE, 2008-2190.

9 THAT APPEAL -- OR, THAT, UH, ACTION, UH, WAS BROUGHT,
10 UH, AND WE FILED A MOTION TO DISMISS IN THE LOWER COURT.

11 THAT MOTION TO DISMISS WAS HEARD BY JUDGE GERRARD ON MAY
12 THE 6TH OF 2009, AND AT THE HEARING JUDGE GERRARD GRANTED THE
13 MOTION TO DISMISS IN MR. GRIGGS' PRESENCE. SOUTH CAROLINA---

14 THE COURT: THE MOTION TO DISMISS WHAT NOW?

15 MR. DEAN: THE -- THE -- THAT THERE WERE -- THE MOTION
16 TO DISMISS THE UNDERLYING CASE---

17 THE COURT: OKAY, THE UNDERLYING CASE.

18 MR. DEAN: ---WAS HEARD BEFORE---

19 THE COURT: OKAY, FINE.

20 MR. DEAN: ---WAS HEARD BEFORE JUDGE GERRARD---

21 THE COURT: ALL RIGHT.

22 MR. DEAN: ---IN MR. GRIGGS' PRESENCE. THE MOTION WAS
23 GRANTED; AT THAT TIME, THE CASE WAS DISMISSED IN TOTO.

24 THE COURT: OKAY.

25 MR. DEAN: UH---

1 THE COURT: AND HE FILED A SUBSEQUENT APPEAL WITH THE
2 CLERK OF COURT---

3 MR. DEAN: CORRECT, YOUR HONOR---

4 THE COURT: ---OF COMMON PLEAS.

5 MR. DEAN: ---AND OUR POSITION IS THAT THE APPEAL IS --
6 IS MERITLESS, NUMBER ONE.

7 IT'S UNTIMELY, NUMBER TWO. SOUTH CAROLINA CODE SECTION
8 18-7-20 SAYS THE APPELLANT FROM THE LOWER COURT HAS THIRTY
9 DAYS, UH, AFTER WRITTEN NOTICE OF JUDGMENT TO FILE THE
10 APPEAL.

11 IT ALSO SAYS THE -- THAT AN APPEAL CAN BE MADE EXCEPT
12 WHEN THE JUDGMENT IS ANNOUNCED AT THE TRIAL, IN THE PRESENCE
13 OF THE APPELLANT, UH, WHICH OCCURRED IN THIS CASE.

14 THEREFORE, MR. GRIGGS HAD THIRTY DAYS FROM THE DATE OF
15 THE HEARING TO THE LOWER COURT TO PERFECT---

16 THE COURT: I DIDN'T LOOK AND SEE WHEN HE FILED IT. DO
17 YOU HAVE THAT HEARING -- THAT DATE?

18 MR. DEAN: THE FILING DATE IS JUNE THE 8TH.

19 THE COURT: AND YOU HAD THE HEARING WHEN?

20 MR. DEAN: THE -- THE HEARING WAS MAY THE 6TH.

21 THE COURT: SO IT WAS TWO DAYS PAST THE THIRTY DAYS?

22 MR. DEAN: RIGHT. THE -- HE -- HE -- THE APPEAL WAS
23 ACTUALLY DATED JUNE THE 6TH AND EVEN -- ALTHOUGH IT'S FILED
24 JUNE THE 8TH, WE WERE NOT SERVED UNTIL JUNE THE 9TH.

25 THE COURT: OKAY---

1 MR. DEAN: I'M NOT---

2 THE COURT: ---ALL RIGHT.

3 MR. DEAN: ---EXACTLY SURE HOW THAT OCCURRED. BUT IN
4 ANY EVENT, IT -- IT'S UNTIMELY.

5 AND I WOULD ALSO NOTE, YOUR HONOR, THAT IN THE APPEAL
6 ITSELF, UH, THE -- THE RELIEF THAT IS SOUGHT IS NEVER CLEARLY
7 STATED.

8 AND THE CODE SECTION -- 18-7-30 -- REQUIRES AN APPELLANT
9 TO STATE -- QUOTE -- WHAT PARTICULARS HE CLAIMS THE JUDGMENT
10 SHOULD HAVE BEEN FAVORABLE TO HIM.

11 AND IF YOU LOOK AT PARAGRAPH THREE ON PAGE TEN OF THE
12 APPEAL, MR. GRIGGS STATES, I BELIEVE, BECAUSE OF THE ABOVE
13 INFORMATION, I AM ENTITLED TO AND REQUEST -- COLON -- YOUR
14 GUESS IS AS GOOD AS MINE.

15 UH -- SO WE BELIEVE THAT THIS SUIT, UH, IS -- IS
16 MERITLESS AND WAS MERITLESS FROM THE BEGINNING.

17 I WOULD INFORM THE COURT, AS A MATTER OF INFORMATION,
18 THAT THE COMPANION SUIT, UH, AGAINST ANOTHER ASHLEY TOWNE
19 VILLAGE ENTITY WAS ALSO DISMISSED BY JUDGE GERRARD.

20 AND IN THAT CASE WE BROUGHT A MOTION FOR---

21 (WHEREUPON, MR. CHARLES GRIGGS ENTERED THE COURTROOM.)

22 MR. DEAN: ---SANCTIONS UNDER THE FRIVOLOUS PROCEEDINGS
23 SANCTIONS ACT.

24 THAT MOTION WAS GRANTED AND THAT WAS---

25 COURT REPORTER: I'M SORRY, WHAT ACT PLEASE?

1 MR. DEAN: UNDER THE FRIVOLOUS PROCEEDINGS SANCTIONS
2 ACT. JUDGE GERRARD GAVE US AN AWARD OF ATTORNEY'S FEES AND
3 OTHER COSTS IN THAT CASE.

4 JUDGE GERRARD'S WAITING TO RULE ON THE SAME MOTION IN
5 THIS CASE, PENDING THE OUTCOME OF THE APPEAL FOR THIS MOTION
6 TO DISMISS.

7 UH -- THIS IS MR. GRIGGS, YOUR HONOR.

8 THE COURT: ALL RIGHT, THAT'S MR. GRIGGS?

9 MR. GRIGGS: YES, SIR; I APOLOGIZE FOR BEING LATE.

10 THE COURT: OKAY, MR. GRIGGS. UH -- YOU WERE LATE AND I
11 PROCEEDED WITH THE, UH, HEARING.

12 AND THE ATTORNEY WAS INFORMING ME THAT, UH, ACCORDING TO
13 THE MAGISTRATE THE ACTION WAS -- YOU WITHDREW THE APPEAL IN
14 FRONT OF THE MAGISTRATE AND IT WAS GRANTED.

15 HOWEVER, IRRESPECTIVE OF THAT, UH, THE APPEAL WAS NOT
16 TIMELY; YOU HAD THIRTY DAYS TO FILE IT, AND IT WAS NOT FILED,
17 IT WAS NOT SERVED WITHIN THE THIRTY DAYS.

18 MR. GRIGGS: I WAS A LITTLE BAFFLED BY IT A LITTLE BIT,
19 SIR.

20 UH -- FROM WHAT I UNDERSTOOD, IS THE MAGISTRATE COURT,
21 JUST LIKE THE CIRCUIT COURT AT THIS LEVEL, IS THAT -- ONE OF
22 THE CASES I'VE READ WAS AFTER TEN DAYS THEY LOSE JURISDICTION
23 IN THE CASE.

24 AND MY -- SMALL CLAIMS COURT, THEY LOSE JURISDICTION IN
25 FIVE DAYS.

1 MR. DEAN FILED HIS MOTION OR REQUEST FOR FRIVOLOUS
2 PROCEEDINGS -- ACTUALLY, I THINK IT WAS THE 28TH OF APRIL---

3 THE COURT: WELL, WE'RE NOT HERE ON THE FRIVOLOUS
4 PROCEEDINGS---

5 MR. GRIGGS: YES, YOUR HONOR.

6 THE COURT: ---WE'RE HERE ON THE APPEAL FROM THE MERITS
7 OF THE LAWSUIT THAT WAS FILED IN THE MAGISTRATE'S COURT;
8 OKAY?

9 MR. GRIGGS: YES, SIR.

10 THE COURT: THAT'S WHAT WE'RE HERE ON---

11 MR. GRIGGS: THEN---

12 THE COURT: ---AND I UNDERSTAND THAT YOU HAD THIRTY DAYS
13 TO APPEAL THAT, AND YOU DID NOT---

14 MR. GRIGGS: HE AMENDED -- THE JUDGE---

15 THE COURT: ---COMPLY---

16 MR. GRIGGS: ---YES, SIR.

17 THE COURT: QUIT INTERRUPTING ME.

18 MR. GRIGGS: UM -- I APOLOGIZE.

19 THE COURT: I'LL GIVE YOU A CHANCE TO TALK; QUIT
20 INTERRUPTING ME, OKAY?

21 TWO REASONS. SHE'S GOT TO TAKE DOWN EVERYTHING THAT'S
22 SAID.

23 AND, I'M TALKING TO YOU, AND I WANT YOU TO LISTEN. AND
24 YOU CAN RESPOND, AND I WILL LISTEN TO WHAT YOU HAVE TO SAY.
25 DO YOU UNDERSTAND?

1 MR. GRIGGS: YES, SIR.

2 THE COURT: ALL RIGHT. THE ATTORNEY, BEFORE YOU CAME
3 IN, REPRESENTING ASHLEY TOWNE VILLAGE HORIZON (SIC), UH,
4 STATED -- WELL, I'LL JUST LET HIM STATE IT AGAIN IN YOUR
5 PRESENCE; OKAY? YOU CAN LISTEN TO HIM, THEN I'LL LISTEN TO
6 YOU; OKAY?

7 MR. GRIGGS: OKAY.

8 THE COURT: MR. DEAN, WOULD YOU, UH, RESTATE WHAT YOU
9 WERE STATING AND GIVE ME THE DATES AS TO THE APPEAL, PLEASE,
10 SIR?

11 MR. DEAN: I -- I'D BE HAPPY TO, YOUR HONOR. THE, UH,
12 ORIGINAL MOTION TO DISMISS IN THE LOWER COURT WAS HEARD ON
13 MAY THE 6TH OF 2009.

14 SOUTH CAROLINA CODE SECTION 18-7-20 REQUIRES THE APPEAL
15 TO BE MADE WITHIN THIRTY DAYS AFTER WRITTEN NOTICE OF
16 JUDGMENT HAS BEEN GIVEN TO THE RESPONDENT; EXCEPT WHEN THE
17 JUDGMENT IS ANNOUNCED AT THE TRIAL, IN THE PRESENCE OF THE
18 APPELLANT, WHICH IT WAS IN THIS CASE.

19 THEREFORE, MR. GRIGGS HAD THIRTY DAYS FROM MAY THE 6TH TO
20 SERVE HIS NOTICE OF APPEAL. RULE 74, UH, SPEAKS TO THE
21 SERVICE RATHER THAN THE ACTUAL FILING DATE.

22 THE APPEAL ITSELF, YOUR HONOR, IS DATED JUNE THE 6TH, BUT
23 IT WAS NOT SERVED -- THERE IS NO CERTIFICATE OF SERVICE --
24 BUT IT WAS NOT SERVED UNTIL JUNE THE 9TH.

25 THE FILING DATE AS REFLECTED, UH, ON THE APPEAL IS JUNE

1 THE 8TH 2009; HOWEVER, IT WAS NOT SERVED ON MY CLIENT UNTIL
2 JUNE THE 9TH.

3 SO, THE -- THE THIRTIETH DAY TO SERVE THE APPEAL WAS
4 JUNE THE 5TH. UH -- SO EITHER -- EITHER WAY HE'S OUT OF TIME.

5 UM -- AND AS I ALSO NOTED IN MY OPENING PRESENTATION,
6 THE -- THERE IS NO APPLICABLE RELIEF PRAYED FOR, PURSUANT TO
7 SOUTH CAROLINA CODE SECTION 18-7-30, WHICH REQUIRES THE
8 APPELLANT TO STATE THE PARTICULARS WHICH HE CLAIMS THE
9 JUDGMENT SHOULD HAVE BEEN MORE FAVORABLE TO HIM.

10 UH -- HE JUST SAYS, YOUR GUESS IS AS GOOD AS MINE.
11 DOESN'T PRAY FOR ANY PARTICULAR RELIEF.

12 THE COURT: AND THAT'S ON BOTH CASES, 3577 AND 3578; IS
13 THAT CORRECT? AS FAR AS THE TIMEFRAME'S CONCERNED?

14 MR. DEAN: THAT'S CORRECT, YOUR HONOR. ON 30- -- 3578,
15 THE SAME ANALYSIS.

16 UH -- AND IN ADDITION, THE -- ON -- ON 3578, THE PARTIES
17 ARE REVERSED. THE COURT WILL NOTE THAT MY CLIENT, ASHLEY
18 TOWNE VILLAGE, WAS THE PLAINTIFF IN THAT CASE---

19 THE COURT: RIGHT.

20 MR. DEAN: ---MR. GRIGGS WAS THE DEFENDANT.

21 THE COURT: I UNDERSTAND.

22 MR. DEAN: THAT WAS A SMALL CLAIMS ACTION WHERE WE
23 BROUGHT THE ACTION TO---

24 THE COURT: RIGHT.

25 MR. DEAN: ---TO GET H-O-A FEES. WE -- BE- -- BECAUSE

1 THE PROPERTY WAS SOLD TO MR. GRIGGS WHEN HE WAS LIVING IN
2 ATLANTA, SERVICE WAS NEVER PERFECTED AND JUDGE GERRARD SAID,
3 YOU GUYS NEED TO SERVE HIM BY JANUARY 22ND. IF YOU DON'T I'M
4 GONNA DISMISS IT. WE NEVER SERVED HIM; HE GOT DISMISSED.

5 AND -- AND SO, WITH REGARD TO THAT PARTICULAR APPEAL,
6 THERE -- THERE'S NO ADVERSE RULING AGAINST MR. GRIGGS FOR HIM
7 TO APPEAL FROM. THE -- THE CASE NEVER WENT FORWARD FOR LACK
8 OF PROSECUTION.

9 THE COURT: SO IT WAS DISMISSED.

10 MR. DEAN: IT WAS DISMISSED---

11 THE COURT: OKAY.

12 MR. DEAN: ---BY THE LOWER COURT.

13 THE COURT: OKAY. ALL RIGHT, MR. GRIGGS, I'LL BE GLAD
14 TO HEAR YOU.

15 MR. GRIGGS: ON THE FIRST ONE, HE HAS, UM, OMITTED A
16 PART HERE.

17 IT SAYS -- I DID PUT THAT IN -- YOUR GUESS IS AS GOOD AS
18 MINE, BECAUSE THE FRAUD IS OF SUCH A LARGE MAGNITUDE
19 INVOLVING A DEFENDANT OF SUCH A SMALL CORPORATION THAT ANY
20 ATTORNEY THAT TRIES TO REPRESENT THE DEFENDANT IN THE COURT
21 OF COMMON PLEAS AT THIS TIME WITHOUT ACTION BY THE COURT OF
22 COMMON PLEAS WILL BE INVOLVED IN A FRAUD. THAT WAS THE WHOLE
23 SENTENCE.

24 AS -- MY BASIS FOR THAT IS THE ENTIRE ORGANIZATIONAL
25 STRUCTURE IS THAT A SMALL GROUP OF SHAREHOLDERS HAS SEIZED

1 CONTROL OF IT AND HAS DECIDED TO OPERATE THE OPERATIONS
2 THROUGH PERSONAL PROFIT. THEY HAVE FILED SOME DOCUMENTS AT
3 THE R-M-C THAT I HAVE TRIED TO PRESENT TO THE LOWER COURT
4 WHERE THEY FILED THEM TO OBTAIN LATE FEES AND THEY KNEW THAT
5 THEY WERE FALSE.

6 AND THEY WERE SOMEHOW TOLD OR UNDER THE IMPRESSION THAT
7 IF THEY FILE THE DOCUMENTS AT THE R-M-C THAT THEY MAGICALLY
8 BECOME VALID AFTER -- YOU HAVE SO MANY YEARS TO CHALLENGE IT
9 AND THEY BECOME VALID AFTER THE -- THOSE YEARS OF
10 ACCUMULATING.

11 SO, THAT WAS THE BASIS FOR THAT SENTENCE. BUT -- AND I
12 KNOW YOU'RE NOT TRYING THAT IN THIS LEVEL.

13 AND THEN THE SECOND ONE OVER HERE WITH THE APPEAL, FROM
14 WHAT I UNDERSTOOD, AND IT WAS -- AND THE AMENDED -- THE CASE
15 HE FILED WERE A REQUEST TO A- -- BASICALLY, FROM WHAT I
16 UNDERSTAND, TO AMEND THE JUDGMENT, WAS MADE TWENTY-EIGHT DAYS
17 OR TWENTY-SEVEN DAYS AFTER THE INITIAL JUDGMENT WHERE HE
18 AMENDED THE JUDGMENT AND HE GOT FEES. AND WE -- WE WORDED IT
19 TWENTY-EIGHT DAYS.

20 SO, I WAS RUSHED TO FILE AN APPEAL AND I WENT AHEAD AND
21 WENT -- FILED THE APPEAL AND I MADE IT THIRTY-FOUR DAYS
22 INSTEAD OF -- UH, INSTEAD OF THIRTY DAYS.

23 BUT THAT WAS ONLY AFTER THE ACTIONS OF -- OF HIM
24 REQUESTING FOR BASICALLY AMENDMENT OF---

25 THE COURT: WELL---

1 MR. GRIGGS: ---THE JUDGMENT PAST WHEN THE JUDGE LOST
2 JURISDICTION FROM WHAT I UNDERSTOOD.

3 THE COURT: ---THE PROBLEM, MR. GRIGGS, IS THIS. NUMBER
4 ONE, IT WAS NEVER FILED IN THE MAGISTRATE'S COURT. YOU
5 SHOULD HAVE FILED THE APPEAL IN MAGISTRATE'S COURT. OKAY?
6 THAT WAS NEVER DONE. ALL RIGHT? BUT YOU DID FILE IT WITH
7 THE CLERK OF COURT OF COMMON PLEAS.

8 AND NUMBER TWO, YOU'RE OUTSIDE THE TIMEFRAME. AND
9 THERE'S NO WAIVING OF THAT TIMEFRAME. IT'S A DROP DEAD DATE.
10 DO YOU UNDERSTAND?

11 MR. GRIGGS: AND I UNDERSTAND -- AND FROM WHAT I
12 UNDERSTAND, SIR, UNLESS I GO BACK AND FILE ANOTHER APPEAL
13 UNDER RULE 60(B).

14 THE COURT: NO, YOU CAN'T FILE ANOTHER APPEAL, OKAY?

15 MR. GRIGGS: I CAN'T, SIR?

16 THE COURT: NO, NOT -- NOT OUT OF MAGISTRATE'S COURT.
17 YOU CAN APPEAL THIS -- MY RULING TO THE COURT OF APPEALS IF
18 YOU WANT TO.

19 BUT, THE PROBLEM IS, YOU'RE OUTSIDE THE THIRTY DAYS BY
20 YOUR OWN ACKNOWLEDGEMENT AND BY THE DOCUMENTS THAT HAVE BEEN
21 FILED IN THE CLERK'S OFFICE. DO YOU UNDERSTAND? AND THAT --
22 THAT IS A DROP DEAD DATE.

23 MR. GRIGGS: OKAY.

24 THE COURT: I MEAN, YOU GO PAST IT AND YOU'RE OUT OF
25 COURT.

1 MR. GRIGGS: SO I HAVE EXHAUSTED ALL APPEALS EVEN IF I
2 CAN PROVE -- IF I HAVE DOCUMENTATION AND I CAN PROVE FRAUD ON
3 THE COURT?

4 THE COURT: I'M NOT EVEN LISTENING TO THAT, BECAUSE
5 THAT'S NOT BEFORE ME.

6 MR. GRIGGS: OKAY.

7 THE COURT: THE APPEAL IS BEFORE ME, OKAY? AND YOU
8 DIDN'T FILE THE APPEAL TIMELY. SO THIS COURT DOESN'T HAVE
9 ANY CHOICE EXCEPT TO DISMISS YOUR A- -- APPEAL. OR, DENY
10 YOUR APPEAL. DO YOU UNDERSTAND?

11 IT DOESN'T HAVE ANYTHING TO DO WITH THE MERITS OF THE
12 CASE. UH -- THEY GOT CERTAIN DEADLINES BY THE RULES OF
13 COURT, AND ONCE THOSE DEADLINES ARE NOT MET, THEN THE
14 COURT---

15 MR. GRIGGS: I UNDERSTAND.

16 THE COURT: ---HAS TO, UH, RULE AGAINST YOU. DO YOU
17 UNDERSTAND?

18 MR. GRIGGS: YES, SIR; I UNDERSTAND. I WAS -- THE
19 THIRTY DAYS I WAS DEADLINED. AND EVEN THOUGH, I CANNOT
20 UNDERSTAND WHY -- WHY THEY WOULD ALLOW THE MANIPULATION OF
21 RULES IN THAT WAY WHERE HE WAITS UNTIL THE LAST---

22 THE COURT: I -- I -- THERE'S NOBODY MANIPULATING THE
23 RULES.

24 MR. GRIGGS: OKAY.

25 THE COURT: THERE'S NOBODY MANIPULATING ANYTHING.

1 UH -- I MEAN, YOU HAVE THIRTY DAYS, PERIOD. AND YOU DID IT
2 THIRTY-TWO, THIRTY-THREE, OR THIRTY-FOUR DAYS, WHATEVER IT
3 WAS. SO YOU WERE OUTSIDE THE THIRTY DAYS. SO NOBODY'S
4 MANIPULATING AT ALL. YOU DID IT TO YOURSELF. YOU SHOULD
5 HAVE FILED IT WITHIN THE THIRTY DAYS AND YOU WOULD HAVE YOUR
6 APPEAL. DO YOU UNDERSTAND?

7 MR. GRIGGS: YES, SIR.

8 THE COURT: BUT NOBODY'S MANIPULATED ANYTHING. IT IS
9 YOUR FAULT---

10 MR. GRIGGS: YES, SIR.

11 THE COURT: ---FOR NOT FILING IT WITHIN THE THIRTY DAYS.
12 YOU UNDERSTAND?

13 MR. GRIGGS: SO THE ACTIONS -- THE WAY I UNDERSTOOD IT,
14 THAT WOULD NOT BE CONSIDERED -- REVISING THE FEES OR CHANGING
15 THE FEES CANNOT BE CONSIDERED AN AMENDMENT OF THE JUDGMENT?

16 THE COURT: I THINK THAT WAS -- THAT WAS STILL UNDER --
17 HAVE YOU APPEALED THE -- THE -- YOU'RE TALKING ABOUT THE
18 ATTORNEY FEES ISSUE? THE FRIVOLOUS---

19 MR. GRIGGS: WELL---

20 THE COURT: ---THE MOTION FOR FRIVOLOUS ACTION?

21 MR. GRIGGS: ---WHAT HAPPENED WAS---

22 THE COURT: IS THAT WHAT YOU'RE TALKING ABOUT? IS THAT
23 WHAT YOU'RE TALKING ABOUT?

24 MR. GRIGGS: NOT JUST THAT, BUT ABOUT ALL FEES. THERE
25 WAS NO -- THERE WAS -- IT WAS BASICALLY---

1 THE COURT: WELL, THE LAWSUIT WAS ABOUT REGIME FEES I
2 ASSUME; IS THAT CORRECT?

3 MR. DEAN: THE -- THE LAWSUIT THAT MR. GRIGGS BROUGHT,
4 I -- I -- I THINK WE NEVER REALLY ASCERTAINED WHAT IT WAS
5 ABOUT.

6 THE -- THE JUDGE FOUND THAT THERE WAS -- JUDGE GERRARD
7 FOUND THAT -- THAT HE FAILED TO STATE A CLAIM WITHIN THE
8 JURISDICTION OF THE MAGISTRATE'S COURT.

9 THE COURT: OKAY; ALL RIGHT.

10 MR. DEAN: AND YOU'VE HEARD MENTION SHAREHOLDERS AND
11 DERIVATIVE ACTIONS. THAT MAKES THAT -- AND THEY CLEARLY
12 AREN'T WITHIN THE MAGISTRATE COURT'S JURISDICTION.

13 UH -- THAT -- WE MOVED TO DISMISS MR. GRIGGS' SUIT.
14 THAT MOTION WAS GRANTED.

15 THEN WE FILED OUR MOTION FOR SANCTIONS UNDER THE
16 FRIVOLOUS PROCEEDINGS SANCTION ACT.

17 THE COURT: WHEN DID---

18 MR. DEAN: THERE WAS NEVER A JUDGMENT.

19 THE COURT: ---ALL RIGHT, WHEN WAS THAT DONE?

20 MR. DEAN: UH---

21 THE COURT: AND HAS HE APPEALED FROM THAT MOTION?

22 MR. DEAN: NO, SIR.

23 THE COURT: PARDON?

24 MR. DEAN: NOT -- NOT TO MY KNOWLEDGE.

25 THE COURT: ALL RIGHT; WHEN WAS THAT DONE?

1 MR. GRIGGS: AUGUST THE 3RD WAS THE HEARING, SIR.

2 THE COURT: WERE YOU PRESENT?

3 MR. GRIGGS: YES, I WAS PRESENT. FROM WHAT I UNDERSTOOD
4 FROM A -- A CASE I PULLED -- PULLED, FROM MR. PITTMAN VERSUS
5 PUBLIC LEASING, THAT WAS WAY WITHOUT THE -- AFTER THE JUDGE
6 HAD LOST HIS JURISDICTION IN THE CASE. THAT HE ALSO -- HE
7 ALSO HEARD A FRIVOLOUS MOTION HEARING.

8 IN THIS CASE IT WAS TWO MONTHS AFTER IT, AND MR. -- IN
9 OUR CASE, IT'S THREE MONTHS.

10 MR. DEAN: YOUR HONOR, JUST SO THE -- THE COURT
11 UNDERSTANDS, THERE HAS NOT BEEN AN AWARD OF ATTORNEY'S FEES
12 AND COSTS UNDER THE ACT IN EITHER OF THE CASES BEFORE THE
13 COURT TODAY. THE AWARD WAS IN A COMPANION CASE.

14 THE COURT: ALL RIGHT, WHERE -- IN A -- A SEPARATE CASE
15 THAN THESE TWO?

16 MR. DEAN: RIGHT; MR. GRIGGS BROUGHT A CASE AGAINST --
17 THIS CASE -- THE -- THE CASE THAT'S BEFORE THE COURT,
18 09-3577, IS AGAINST ASHLEY TOWNE VILLAGE H-P-R.

19 HE ALSO BROUGHT A CASE AGAINST WHAT'S CALLED ASHLEY
20 TOWNE RECREATIONAL AND DEVELOPMENT.

21 THE COURT: OKAY.

22 MR. DEAN: IT'S ANOTHER H-O-A WITHIN THE---

23 THE COURT: AND THAT'S THE -- THAT'S THE CASE THAT --
24 WHERE THE FRIVOLOUS---

25 MR. DEAN: THAT'S CORRECT.

1 THE COURT: ---THE FRIVOLOUS -- EXCUSE ME, THE MOTION
2 FOR A FRIVOLOUS ACTION WAS FILED AND ATTORNEY'S FEES WERE
3 AWARDED?

4 MR. DEAN: THAT'S CORRECT.

5 THE COURT: THAT'S NOT ONE OF THESE TWO CASES?

6 MR. DEAN: NO, SIR; IT'S NOT.

7 THE COURT: ALL RIGHT, DO YOU UNDERSTAND? THERE'S A
8 THIRD CASE OUT THERE APPARENTLY---

9 MR. GRIGGS: YES, BUT IT WAS---

10 THE COURT: ---AND THAT'S THE CASE INVOLVING THE
11 FRIVOLOUS ACTION.

12 MR. GRIGGS: ---IT WAS MADE -- THE IMPRESSION WAS MADE
13 BY JUDGE GERRARD THAT HE HAD AWARDED FEES IN OTHER ONES AND
14 THAT THIS APPEAL WOULD JUST BE DISMISSED.

15 THE COURT: WELL, THE ATTORNEY SAYS THAT'S NOT CORRECT.

16 MR. GRIGGS: I UNDERSTAND; I -- YEAH, I UNDERSTAND WHAT
17 HE'S SAYING.

18 THE COURT: NOW, WHETHER YOU'VE APPEALED THAT OR NOT, I
19 DON'T KNOW. BUT, THE TWO CASES BEFORE ME THIS MORNING,
20 YOU'RE OUTSIDE THE THIRTY DAYS---

21 MR. GRIGGS: OKAY.

22 THE COURT: ---AND THE FRIVOLOUS MOTION DOESN'T HAVE
23 ANYTHING TO DO WITH IT 'CAUSE THEY HAVEN'T BEEN FILED IN THIS
24 CASE. IS THAT CORRECT?

25 MR. DEAN: THAT'S CORRECT, YOUR HONOR.

1 THE COURT: DO YOU UNDERSTAND?

2 MR. GRIGGS: YES, SIR.

3 THE COURT: ALL RIGHT; ANYTHING ELSE YOU WANT TO TELL
4 THE COURT?

5 MR. GRIGGS: NO, I JUST -- I JUST CAN'T BELIEVE THAT IT
6 WAS DISMISSED IN THE MAGISTRATE LEVEL WITHOUT -- BECAUSE, I
7 MEAN, I HAVE THE INFORMATION RIGHT WITH ME NOW.

8 THE COURT: WELL, THE -- THE -- THE PROBLEM, MR. GRIGGS,
9 IS THIS. IF YOU HAD FILED YOUR APPEAL TIMELY, THEN I COULD
10 LISTEN TO THAT. AND IF YOU ARE CORRECT, I COULD TAKE
11 CORRECTIVE ACTION.

12 BUT, YOU DIDN'T FILE IT TIMELY. DO YOU UNDERSTAND?
13 THAT'S YOUR FAULT; NOBODY ELSE BUT YOU.

14 MR. GRIGGS: YES, SIR.

15 THE COURT: ALL RIGHT, THANK YOU-ALL VERY MUCH. BOTH
16 APPEALS ARE DENIED.

17 MR. DEAN: THANK YOU, YOUR HONOR.

18 THE COURT: UH -- MR. DEAN, DO YOU WANT TO DO A PROPOSED
19 ORDER, PLEASE, SIR.

20 MR. DEAN: IF YOU REQUEST ONE, YOUR HONOR.

21 THE COURT: OR I CAN DO A FORM FOUR.

22 MR. DEAN: A FORM FOUR WOULD BE FINE, YOUR HONOR.

23 THE COURT: ALL RIGHT, I'LL DO A FORM FOUR. MR. GRIGGS,
24 I'M NOT TRYING TO CUT YOU SHORT, BUT DO YOU UNDERSTAND WHAT
25 I'VE TOLD YOU THIS MORNING?

1 MR. GRIGGS: YES, SIR.

2 THE COURT: OKAY. I JUST WANTED -- I'M NOT ASKING YOU
3 TO AGREE WITH IT, I'M JUST ASKING DO YOU UNDERSTAND IT?

4 MR. GRIGGS: YES, SIR.

5 THE COURT: OKAY; THANK YOU SO VERY MUCH FOR BEING HERE.

6 MR. DEAN: THANK YOU, YOUR HONOR.

7 (WHEREUPON, HEARING ENDED AT 9:58 A.M.)

8 *****END OF REQUESTED TRANSCRIPT*****
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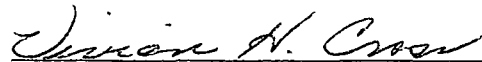
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT
REPORTER FOR THE NINTH JUDICIAL CIRCUIT OF THE STATE OF
SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE PROCEEDINGS
REQUESTED AND EVIDENCE INTRODUCED IN THE TRIAL OF THE
CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
COMMON PLEAS FOR CHARLESTON COUNTY, SOUTH CAROLINA,
ON THE 16th DAY OF DECEMBER 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL
NOR INTEREST TO ANY PARTY HERETO.

AUGUST 1, 2010


VIVIAN H. CROSS
CIRCUIT COURT REPORTER

FINAL BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Circuit Court Judge

Case No. 2009-CP-10-003577

RECEIVED

MAR 19 2012

S.B. SUPREME COURT

Charles Griggs,

Appellant, Pro se,

v.

Ashleytowne Village
Horizontal Property Regime, Inc.

Respondent.

FINAL BRIEF OF APPELLANT

Charles Griggs
5108 Cantrell Point
Acworth, Ga. 30101
(770) 853-8122
Appellant, Pro se

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S.C. CONSTITUTION & STATUTES & OTHER AUTHORITIES

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STATEMENT OF ISSUES ON APPEAL

1. Does the use in reality or practicality of subpoenas in South Carolina have to be equal for all parties regardless of representation?
2. Does the inability to use on a limited basis subpoena *duces tectum* in Small Claims court violate the rights of both parties when the state requires certain cases to be tried in Small Claims court?
3. Does the South Carolina Frivolous Civil Proceeding Sanctions (FCPS) Act violate the South Carolina Constitution, state law, and court procedures when used in various circumstances in different courts?
4. Does the South Carolina Frivolous Civil Proceeding Sanctions Act (SC FCPS) require a separate motion?
5. Is the deprivation of voting rights of a co-owner in a mandatory mutual benefit nonprofit horizontal property regime corporation a perversion of law since ownership of real estate property is legally appurtenant to ownership in the mandatory mutual benefit nonprofit corporation horizontal property regime?
6. Is the South Carolina Non Profit Corporation Act provision under S.C. Code Ann. § 33-31-621 a clear pervasion of law by violating a co-owners due process rights so any act of a mutual benefit nonprofit horizontal property regime corporation to deprive a co-owner of property rights in the aforementioned Corporation is inherently unconstitutional?
7. Does a Magistrates in South Carolina have subject matter jurisdiction over matters involving regime fees or alleged regime fees in a mandatory mutual benefit nonprofit horizontal property regime corporation in view of S.C. Code Ann. § 27-31-210?

8. Is the entire Charleston County Magistrate Court system (especially Small Claims Court) a fraudulent application of the uniform jurisdiction principle as it relates to an improper restriction of subject matter jurisdiction within a county by geographic area?
9. Does the South Carolina Constitution preempt the 30 day “drop dead date” in South Carolina for appeals under S.C. Code Ann. § 18-7-20?
10. Does the Chief Administrative Judge of Charleston Judicial Circuit have an obligation to determine if the reason a Magistrate did not send a record on appeal is because he is dead, insane, or out of the state?
11. Does a Circuit Court Judge have the ability to make a determination of fact relating to the record on appeal from Magistrate Court without the record of appeal?
12. Do certain acts on behalf of mutual benefit nonprofit corporation horizontal property regime corporations in this case constitute the unauthorized practice of law?
13. Does any provision in law that treats a South Carolinian differently in any respect because he may temporarily reside out of the state violate the South Carolina Constitution?

STATEMENT OF THE CASE

The Pro se Appellant was deprived the use and enjoyment of his condo for years because he held certain political beliefs that had been ingrained in him in his youth then in college. This political belief is that American Constitution is one of the greatest documents in the history of the world with its protection of civil liberties and civil rights. Unfortunately, many citizens' think civil rights have something to do with the color of your skin or your gender when in reality a fundamental concept of civil rights is due process. The Pro se Appellant was one of the few people in Ashleytowne Village concerned about the growing trend of deprivation of civil rights within a mutual benefit nonprofit corporation by a few co-owners that seized control of the Corporation through fraud against other “lesser” co-owners for financial gain. The more vocal the Pro se Appellant became with his concerns about the deprivation of civil rights of co-owners the more the “ruling class” increased their

campaign of harassment against him to include repeatedly burying a Common Element AC drain line used by multiple units that was causing continual flooding of the Pro se Appellant's property. This repeated flooding of the Pro se Appellant's property by the alleged Board of Directors along with the threats of criminal charges for trying to vocalize his beliefs in the United States and South Carolina Constitution forced him to flee the state. Ashleytowne Village HPR was condo association built over several years in the early 80's by a developer that specialized in building condos in the Charleston area. The original attorney involved in this property was one of the elder Mr. Capers Barr, Esquire who was also involved in setting up other HPR's in the Charleston area. As explained to the Pro se Appellant by a younger Mr. Capers Barr, Esquire, the Developer in this HPR wanted to make it very clear that no shareholder should ever be deprived of their right to vote in Corporation matters if that shareholder could be held libel for the conduct of the Corporation. This is a rather simple and logical legal principle that makes for good policy in a Mutual Benefit Non-profit Corporation. Pro se Appellant has come to realize that a big problem with lawyers representing Ashleytowne Village (ATV) HPR is they do not even bother reading the Master Deed and By-Laws of the Corporation with some even claiming to specialize in Corporate Law without basic knowledge about Mutual Benefit Non-Profit Corporations found in the South Carolina State Code. Furthermore, the Pro se Appellant strongly believes that no person in America should EVER be deprive of their property rights without due process of law. This is a simple idea with drastic implications when applied to S.C. mutual benefit nonprofit corporations.

The problems really started when Kathleen John and Florence Sagarino secretly worked for the property manager at the time (Charleston Property Management) that adopted an "Animal Farm" mindset. In a nutshell the Corporation documents say "No amendment by the Owners shall ... alter the percentage of the interest in the Common Elements ... and votes in the Unit Owner's Association." A small group of co-owners led by Dawn Morton, Flo Sagarino, and Renee Weil along with their friends and the Property Managers intentionally filed fraudulent documents at the Register of Deeds to solidify control of the corporation. The alleged Board of Directors began to actively

conceal repairs to the inside of condos owned by Board members without shareholder approval and even changed the size of the board at will in order to solidify their hijacking of the Corporation. Without going into specifics, a 110 co-owner/shareholder mutual benefit Non-Profit Corporation has gone from about \$100,000 to over \$250,000 annual budget in a short period of time with the alleged Board of Directors being able to deprive co-owners of the property rights in the mutual benefit nonprofit corporation without due process and in violation of the Master Deed. The alleged Board of Directors has openly admitted that they have secretly “employed” board members, friends, co-owners, and relatives along with secretly granting some co-owners reduced regimes than what was mandated by the Master Deed. No financial records were ever given or sent to shareholders as required under S.C. Code Ann. § 33-31-1620 for the Corporation for a decade and they refuse to provide shareholders with this information. Bluntly put, co-owners only knew where the alleged Board of Directors allegedly was intending to spend money not where they actually spent the money or if the alleged Board of Directors were even paying their regime. The budget has increased in order for Jim Wilson’s family to allegedly do open ended no bid projects (like “moisture control”) on the property of a vague nature not approved by all the co-owners. As a matter of fact, Jim Wilson’s company has filed for bankruptcy and he along with his daughter have advised the alleged Board of Director’s not to do an annual audit as required by Corporation governing documents and the law. Derek F. Dean, Esquire also happens to own property managed by Jim Wilson which seems like a conflict of interest. David J. Parrish, Esquire for years had out right refused to produce even a signed annual statement on behalf of his client as required by S.C. Code Ann. §33-31-1620 including the years the Pro se Appellant allegedly owed the corporation fees. The current Counsel of the Respondent Derek F. Dean, Esquire is working more to protect the family of the property managers (Jim Wilson, his daughter Jorgia Hazelwood, and her husband Bill Hazelwood) of his personal property than his client in this case when considering the fact that Jorgia Hazelwood has engaged in the unauthorized practice of law that has harmed his client as an organization. David J. Parrish, Esquire either/and/or was involved in violating his oath to the Constitution, involved in the

unauthorized practice of law; either/and/or concealed the unauthorized practice of law from his client as an organization relating to Charleston RMC Bk B614 Pg 740, Charleston RMC Bk P663 Pg 076, and other legal documents including liens. After the fact, Derek F. Dean, Esquire has concealed from co-owners of his client as an organization the use of fraudulent documents by a fraudulent Board of Directors. The alleged Board of Director's for Ashleytowne Village that also includes an immediately family member of the Charleston County judiciary have found ways to reduce their liability for regime fees to the corporation while increasing the regime fees of "lesser" co-owners that they deem undesirable or express objectionable ideas (like support of the U.S. and S.C. Constitution). The Pro se Appellant was made aware of several insurance claims that were concealed from shareholders, because they were "secret private matters". Every shareholder should have the right and the Board should have the obligation to inform every co-owner in great detail about any claim that may or does cause an increase in insurance premiums. The alleged Board of Directors helped others evade taxes within the corporation by forgiving regime fees for alleged work instead of paying them actual wages. At one point, the Pro se Appellant suspected the Corporation in which he was a co-owner was engaged in money laundering due to odd cash flow in and out of the corporation. However, Ashleytowne Village alleged Board of Directors works on the theory that it should conceal everything of substance relating to the corporation from other shareholders. The problem goes even much deeper with Ashleytowne Village HPR Board refusing to even follow S.C. Code Ann. §33-31-831 relating to conflicts of interest so they can conceal income from 3rd parties. A "ruling class" has developed in Ashleytowne Village HPR where some co-owners that are "resident owners" pay less than what they are required to pay because their debt is allegedly forgiven by the Board and/or a family member allegedly provides a "service" to the Corporation. The Pro se Appellant was not a "resident shareholder" so he was required to pay more than his legal share in order to support the freeloading alleged Board of Directors and their friends that are using Corporation funds for personal gain.

In other words, Derek Dean has actual knowledge the alleged Board of Directors along with

their property manager has engaged in the unauthorized practice of law and deprivation of civil rights of co-owners of his client as an organization thus have obtained over a dozen fraudulent judgments against his own client in Magistrate Henry W. Guerard, Esquire's court. Derek F. Dean, Esquire as Counsel for the Respondent is helping the family of the property manager for his own property engage in fraud against his own client on a huge scale in this case. The Pro se Appellant clearly has the law on his side in at least S.C. Code Ann. §33-31-621 regardless of Corporation By-Laws or Master Deed. The crazy thing is that some people in Charleston actually contended that HOA or HPR property managers that are not even required to be licensed in S.C. can adjudicate property interest issues in corporations as part of due process which is clearly the unauthorized practice of law, but that is compounded when you realize S.C. Code Ann. §33-31-621 has no judicial review. This is bad with it being a very simple interpretation of the law and the S.C. Constitution, but it gets worse. The R.M.C. or Register of Deeds in Charleston County is recording liens from Ashleytowne Village as a corporation without a lawyer being involved in the matter.

Pro se Appellant tried arguing all this in front of Magistrate Henry W. Guerard, Esquire in the numerous hearing's in his court relating to his ownership of property in Charleston County only to have him deprive the Pro se Appellant use of subpoena and the Judge openly refused to look at a single document in the form of evidence from the Pro se Appellant. Magistrate Guerard based on the Pro se Appellant's statements in court knew the Pro se Appellant wanted to give him evidence that the immediate family member of a close friend of his on the Charleston County Judiciary was involved in the intentional filing of fraudulent documents at the R.M.C. (i.e. Register of Deeds) along with David J. Parrish, Esquire's inappropriate, illegal, unethical, and/or criminal conduct in legal matters directly or as accessory after the fact involving his client at the time.

The apparent theory was that as long as the Pro se Appellant never gave Magistrate Henry W. Guerard, Esquire evidence that he could contend he did not have actual knowledge of unethical or illegal conduct without thinking that as a Magistrate he was engaging in deprivation of civil rights under the color of law. This entire case deals with nothing more than many people trying deprive the

Pro se Appellant of his civil rights and property rights because they knew that Pro se Appellant might expose a fraud scam involving multiple lawyers in a hearing in Charleston County along with a member of the “family” of the Charleston judiciary. Magistrate Guerard was very direct in his repeated refusal to allow the self represented party to subpoena anyone and submit evidence to him for review. The Pro se Appellant was confident in that Magistrate Guerard was turning the recording off and on in court so that his more harsh statements relating to deprivation of civil rights of the Pro se Appellant were apparently off the record. After a couple hearings, the Pro se Appellant knew that he had to interrupt the Magistrate or Judge sometimes to make completely sure the audio recording would clearly show that the judge was depriving him of his civil rights under the color of law. The Pro se Appellant was given a one page form allegedly approved by the court that the Pro se Appellant was told he had to fit everything on the one page for the appeal. The Appellant was also told he could NOT include exhibits on appeal because the presiding judge has to approve all evidence. Magistrate Guerard and Derek F. Dean, Esquire in Small Claims Court hearings did everything they could to convince the Pro se Appellant that an appeal was a waste of time because the Pro se Appellant did not understand the law.

Judge Nicholson took everything Derek F. Dean, Esquire said as fact and the Pro se Appellant came across as not very knowledge about the law because the “fraud on the court” and “perversion of law” was so shocking in this case. The Respondent argued the appeal was untimely to Judge Nicholson and that the Magistrate was not sent a copy of the appeal, but Derek F. Dean wrote a letter saying a counterclaim was still pending in the case and said in the transcript (Page 18) “There was never a judgment” for this case. Derek F. Dean, Esquire also signed a statement that acknowledges that Magistrate Henry W. Guerard, Esquire had copies of the appeal to Judge Nicholson’s court even though his testimony in that court says something different. Derek F. Dean, Esquire had actual knowledge according to his own written statement that Magistrate Guerard had the Pro se Appellants appeal to Judge Nicholson court and Magistrate Guerard had not sent the Record on Appeal to Judge Nicholson’s court. In a later hearing after the appeal to Judge Nicholson

court, Magistrate Guerard was hearing the counterclaim and setting the final judgment with a dollar figure. The Counsel for the Respondent NEVER made a motion to separate the counterclaim in this case. In August of 2009, Magistrate Guerard made it clear that the case had no final judgment since the counterclaim was not heard in the case. Magistrate Geurard and Derek F. Dean in what could only be termed as a “pervasion of law” had set up 3 different possible final judgments knowing that the Pro se Appellant would have to appeal them all to create a flimflam of judicial injustice. The dismissal date is May 6th, 2009 NOT the final judgment and the case still had a counterclaim pending. May 6th, 2009 is now a Final Judgment *after the fact* when the 30 days had expired for appeal. To better understand this fact, the S.C. Court of Appeals just needs to determine when Magistrate Guerard ruled on the Respondents counterclaim in Magistrate Court and look at the Motions handled in Magistrate Court to include timeline dates.

The alleged Board of Directors that includes a family member of the Charleston County judiciary intentionally filed fraudulent documents at the Register of Deed’s to hijack Ashleytowne Village HPR, Inc. and change the governance structure of the Corporation so the Pro se Appellant has taken the position that everything Derek F. Dean, Esquire is doing in this case is based on perjured documents in the furtherance of a fraud against his own client to conceal in part the inappropriate conduct of David J. Parrish, Esquire of the Nexsen-Pruit law firm. Magistrate Guerard has violated his oath as a Judge by assisting in concealing this information so as not to expose that he has rendered many fraudulent judgments concerning co-owners in mutual benefit nonprofit corporation’s dealing with Home Owner Associations (HOA’s) and Horizontal Property Regimes (HPR’s). This might be especially true if this court determines Small Claims Court did not even have subject matter jurisdiction.

CONTENTION ONE & TWO ~ SUBPOENAS

1. Because the inferior court judge(s) erred in his involvement as a government attorney in hearing(s) where a self represented party was not given equal access to the use of subpoena.

2. Because the inferior court judges erred in their involvement as government attorney's in hearings where a self represented party was deprived of due process through the use of subpoena *duces tectum* on appeal and in Small Claims court.

S.C. Const. Art. I § 3 & 14 clearly dictates that all subpoenas regardless of the person issuing them or the type of subpoena are created equal and all courts should allow all individuals the ability to equally defend themselves from civil and criminal charges. Rule 23(a), SCRMC makes it very clear to this Pro se Appellant that an attorney or officer of the court representing a party can issue a subpoena and give evidence for any matter before any court. Rule 13, SCRMC goes on to make it even more specific concerning the use of subpoenas in magistrate court and an attorney's ability to use the subpoena process on behalf of the court without oversight from the Judge or Magistrate. An interesting part of this rule is the last sentence of Rule 13(a), SCRMC. "... In the trial of a civil action, in which one or both parties are unrepresented by legal counsel, the court shall question the parties and witnesses in order to assure that all claims and defenses are fully presented."

The S.C. Supreme Court cannot be any more clear with this specific rule when one party is unrepresented in a case. Furthermore, Rule 614, SCRE allows any magistrate or judge to call and interrogate witnesses by the mere suggestion of either party in the interest of justice. With that thought in mind under S.C. Code Ann. §19-5-510, it should be noted that the Pro se Appellant needs by law an alleged Corporation representative in order to use as evidence any corporation documents. The Magistrate refusal to allow the Pro se Appellant to subpoena an alleged Corporation officer to admit this evidence and the use of subpoena under SCRMC Rule 13(e) was clearly a perversion of the Rules. If the SCRMC are not clear enough concerning this issue then it can also be found at S.C. Code Ann. §22-3-930. The Charleston County judiciary made it perfectly clear that the Pro se Appellant could not use subpoena in defense of his cause in ANY hearing in Charleston County because it is JUST a hearing not a trial. The counsel for the respondent had actual knowledge that Pro se Appellant had been fraudulently advised by the Charleston County judiciary about his civil rights in regard to due process and assisted in the illegal conduct. Derek F. Dean, Esquire also used

the deprivation of civil rights of the Pro se Appellant to his advantage in order to obtain a dismissal in small claims cases in two different courts. Rule 45, SCRCF is even listed under “VI Trials” section of the SCRCF which would tend to support this fraudulent legal position that individuals can only use a subpoena in a trial. Everyone should always have the ability to use subpoena and the SCRE in defense or support of his cause in any court. Judge Nicholson in the Court of Common Pleas never specifically refused the Pro se Appellant the use of a subpoena, but circumstances were created where the use of subpoena for the hearing by a self represented party was impossible.

Even if the Magistrate and Counsel for Respondent had not intentionally lied about the ability of the self represented party to use subpoenas, the Pro se Appellant contends that a Court of Common Pleas judge (especially an at-large judge in another circuit) has an obligation to ensure that a self represented party is aware of the right to use subpoena so that both parties in the spirit of S.C. Const. Art. I § 3 can fully present their case. The Pro se Appellant / Plaintiff has the responsibility to present or prosecute his cause in court, but all judges have an obligation to make sure the parties have equal access to mechanisms of justice necessary for both parties to present their cause. “The adjudicative power of the Court carries with it the inherent power to control the order of its business to safeguard the rights of litigants.” Williams v. Bordon's Inc., 274 S.C. 275, 262 S.E.2d 881 (1980). However, this might be a moot point in this case because the inferior court judge also has an obligation to let someone call a witness for a hearing which the self represented party was also told is illegal.

Regardless, all subpoenas are created equal and failure to comply with a subpoena has the same consequences. South Carolina already has a 14 day notice for subpoena *duces tectum* to allow for parties to object in Rule 45, SCRCF, but not for a regular subpoena. *Duces tectum* means “bring with you” (Black’s Law 8th Edition) which logically dictates the Latin phrase is a descriptor that does not change the meaning of the word subpoena. Rule 45, SCRCF discusses ways to quash subpoena *duces tectum*, but not other subpoenas even though *duces tectum* is nothing more than a descriptor. An attorney can secretly issue a subpoena for a hearing without notifying the opposing

party or the court. The Pro se Appellant has learned after the fact that he could go through the Clerk of Court to get a subpoena or a subpoena *duces tectum* for a trial, but the Clerk of Court's office if involved in serving subpoena has no obligation to conceal that information from the opposing party or the judge. This creates a situation where attorney's can issue a subpoena or a subpoena *duces tectum* in secret as an officer of the court while self represented parties cannot issue subpoena or a subpoena *duces tectum* in secrecy. The Pro se Appellant position is that the only way to make sure both parties are treated equal regardless of representation in court is to require a notification of intent to subpoena for subpoenas or subpoena *duces tectum*'s by both parties with sufficient time for all parties to respond to issues concerning either type of subpoena and prepare for testimony.

As a matter of fact, the time between notification of an appeal hearing and the actual hearing in Court of Common Pleas on an appeal of a Magistrate Court is not even sufficient time for a self represented party to subpoena someone (much less obtain a subpoena *duces tectum*). Both parties did not even know the hearing date for the appeal in Judge Nicholson's court until less than two weeks before the hearing and mailing time makes it about 10 days. In other words, it would have been extremely difficult for the Pro se Appellant to serve a party with a subpoena or allowed enough time for that party to collect material for a subpoena *duces tectum*. A hearing on appeal must have sufficient time for both parties' to serve subpoena *duces tectum*'s for the case by county process servers and this appeal (if it had not been for the extrinsic fraud relating to the Pro se Appellant being told he could not use a subpoena or a subpoena *duces tectum*) did not have sufficient time.

Subpoena *duces tectum* is also required in order to have meaningful due process in South Carolina Small Claims Court as recognized in other states like Georgia. OCGA §§ 9-11-26 through OCGA §§ 9-11-37 that set out the specific requirements of pre-trial discovery of small claims court and GA UNIF MAG CT, Rule 40 & 41 outlines how BOTH regardless if they are represented by an attorney must get permission from the court to use Subpoena *duces tectum*. Since due process and the use of subpoenas is a legal concept recognized in every jurisdiction in the United States, how can South Carolina even remotely justify that meaningful due process is possible in Small Claims court

without Subpoena *duces tectum* on a limited basis when other jurisdiction have determined that opportunity is essential part of due process. S.C. Const. Art. I § 14 in the context of this contention needs a review of the definition of “Charge” outside its obvious use in criminal court. Charge means “to impose a lien or claim; to demand a fee, to bill” (Black’s Law 8th Edition). South Carolina recognizes the right to jury trial and the other rights in small claims court, but criminal magistrate court allows for the use of evidence. The S.C. Constitution does not make the distinction between civil and criminal charges concerning the use of evidence and obtaining evidence in defense or support of their cause so the Magistrate court failure to allow for the use of Subpoena *duces tectum* would violate the S.C. Constitution on these grounds. If the distinction was not made in the S.C. Constitution (unless it were to be amended for the thousandth time), the state legislature and even the S.C. Supreme Court cannot make the distinction by granting different rights through their own actions to different Magistrates under among other things the uniformed jurisdiction principle. S.C. Const. Art. I § 14 should be interpreted and applied to all courts the same.

The Pro se Appellant’s position is that the equal protection clause of S.C. Const. Art. I Sect 3 require all subpoenas to be equal for both parties and to argue otherwise would be a “pervasion of law” and manipulation of the Rules of the Court (Trans. Pg 15&16, 18-12 & 1-9) to commit “fraud on the Court” (Trans. Pg. 15, 1-5) which Judge Nicholson refused to hear on appeal. The Pro se Appellant goes on to contend that when one party is self represented that a Notice of Intent to Subpoena is required by both parties so an Officer of the Court does not have an unfair advantage in the hearing process of a case against a self represented party. The Pro se Appellant also contends that Subpoena *duces tectum* is an essential element of due process in all courts to include Small Claims Court especially when certain cases are required by law to be tried in that court.

CONTENTION THREE & FOUR ~ S.C. F.C.P.S. ACT

3. Because the South Carolina Frivolous Civil Proceeding Sanctions (FCPS) Act violate the South Carolina Constitution, state law, and court procedures when used in various circumstances in different courts.

4. Because the inferior court judges erred in their participation in a fraudulent use of the South Carolina Frivolous Civil Proceeding Act (SC FCPS) that was filed as a counterclaim / motion that allowed the change in judgment date after the fact.

Some laws might seem legal in a specific situation and many bills get changed so much in the legislature that the final law does not make sense or procedures do not match the stated intent of the law. This law has some problems that should have been corrected for in the legislature so now the judicial system is forced to deal with these issues in interpretation of the law while trying not to rewrite the law. In the simplest terms, S.C. Code Ann. § 15-36-10 violates S.C. Const. Art. I § 3 & 22. "The cardinal rule of statutory construction is that the court must ascertain and effectuate the intent of the legislature." State v. Prince, 335 S.C. 466, 472, 517 S.E.2d 229, 232 (Ct. App. 1999). Statutes "should be construed with reference to the whole system of law of which they form a part," and "must receive [a] practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." Father v. S.C. Dep't of Soc. Servs., 345 S.C. 57, 65, 545 S.E.2d 523, 527 (Ct. App. 2001) (citations omitted). The intent of the legislature in S.C. Code Ann. § 15-36-10 South Carolina Frivolous Civil Proceeding Act (SC FCPS Act) is very direct in the desire to stop ALL frivolous documents, motions, and pleadings in court by both parties. The Pro se Appellant doubts any lawyer or member of the legislature in the state would disagree this is the intent of the law to try to stop frivolous activity much like Fed. R. Civ. P. Rule 11. Unlike Fed. R. Civ. P. Rule 11, the S.C. state legislature has forced a Machiavellian judicial standard of review in the S.C. F.C.P.S. Act by only allowing a judge to punish the non-prevailing party for frivolous activity in a case. Now, a case that survives summary judgment and proceeds to trial, an award for sanction is gone. Hanahan v. Simpson, 326 S.C. 140, 157-58, 485 S.E.2d 903, 912-13 (1997); Whitfield Constr. v. Bank of Tokyo Trust Co., 338 S.C. 207, 221, 525 S.E.2d 888, 896 (Ct. App. 1999). This is not the intent of the legislature by any stretch of the imagination because a judge needs to be able to decide based on the "preponderance of the evidence" in S.C. Code Ann. §15-36-10(C) (2) that a motion, document, or pleading is frivolous used at any point by either party in a trial regardless of the party

winning the case. The procedures of the law obviously do not address the intent of the law, but it gets more complicated in Magistrate Court.

In order to understand the need for discovery in Small Claims court (especially for the Plaintiff) when dealing with a S.C. Code Ann. § 15-36-10 South Carolina Frivolous Civil Proceeding Sanction Act (SC FCPS Act) motion, it is necessary to review the grounds for a SC FCPS Act Motion. The grounds under S.C. Code Ann. §15-36-10(A) in simple terms require 1) you read it before you sign it, 2) the case is based on facts, 3) the case is not meant just to harass, and 4) the case does not have an illegal hidden agenda. In this case, the counsel of the Respondent / Defendant contended the Pro se Appellant brought this case for no other reason than to harass his client. Harass is a claim of libel and the parties are entitled to equal protection (S.C. Const. Article I § 3 & 16). However, the Counsel for Defendant / Respondent provided absolutely no evidence, affidavit, or witnesses and the Plaintiff / Pro se Appellant was deprived of the use of subpoena along with the ability to submit evidence.

Regardless of the fact the Magistrate never required the moving party under the SC FCPS Act to provide any type of evidence, the Pro Se Appellant still contends that discovery is necessary when the sanctions of the SC FCPS Act may include injunctive relief. An injunction without discovery for defense under the SCRCP would inherently violate the rights of the person that is the target of the injunction. The SC FCPS Act even implies the use of discovery (and barring it's use in Magistrate Court) when stating that "This act shall not alter the South Carolina Rules of Civil Procedure or the South Carolina Appellate Court Rules" (SC Code Ann. § 15-36-10) with no specific mention of the SCRMC. The Pro se Appellant contends the SC FCPS has to be used with SCRCP or the SCACR. This means the SC FCPS Act use in SCRMC because of the non-discovery rule in that court inappropriate given that SCRMC are superior to the SCRCP in Small Claims Court under Rule 2, SCRMC. In an interesting note, the "hearing" concerning the SC FCPS Act where the Pro se Appellant was deprived the use of subpoena was filed as a counterclaim and heard after the appeal was sent to the Court of Common Pleas with the decision on the SC FCPS counterclaim

being held in “abeyance” by Judge Guerard with no additional hearing needed according to him. Regardless, the grounds for the SC FCPS need the party filing it to have supporting evidence and opposing party needs to be able to obtain evidence to defend against the charge of filing a frivolous case that essentially deals with libel not to mention the need for judicial review (S.C. Const. Art. I § 16 & 22).

As far as evidence, the Pro se Appellant also contends that the SC FCPS Act requires expert testimony under the rules of evidence and the equal protection clause of the S.C. Const. Art. I § 22 using common sense that directly relates to the “reasonable attorney” concept in SC FCPS Act in that “No person shall be....subject to the same person for both prosecution and adjudication”. This basically means the judge of a case cannot be a witness for the plaintiff or defendant in a civil trial. If a judge is a lawyer, he cannot be the reasonable attorney to support a SC FCPS act motion. This then means that the reasonable attorney as an expert witness to support the SC FCPS Act motion is the attorney making the motion which does not make sense because this would then mean the Pro se Appellant should have the right to cross-exam him and does not have the right to even file a SC FCPS Act Motion. The counsel for the Defendant used a mythical “reasonable attorney” to justify his improperly filed SC FCPS Act motion/counterclaim. Derek F. Dean, Esquire contended the Pro se Appellant case was meant only to harass his client then provided no testimony in person or even through affidavit. Since Mr. Dean would be the only person in the court room that could have been plausibly considered a “reasonable attorney”, the Pro se Appellant should have had the opportunity to subpoena him as a witness. The Pro se Appellant decided to go with the idea that all lawyers are reasonable attorney’s when shown the light of morality so he requested that the Magistrate allow him to subpoena David J. Parrish, Esquire so he could at least be required to sit in the pews of the courtroom, and even notified Mr. Parrish (with copies sent to two other members of his firm) of his intent to subpoena him. Magistrate Henry W. Gueard, Esquire refused the Pro se Appellant the opportunity to subpoena a “reasonable attorney”. Mr. Parrish used to represent the Respondent and the Pro se Appellant wanted to subpoena Mr. Parrish as an expert on the SC FCPS Act where as an

expert he would either refuse to answer questions that would implicate himself in criminal conduct OR implicate his former client (the Respondent) in criminal conduct dealing with unauthorized practice of law along with the use of perjured documents (at the very least). The Pro se Appellant will acknowledge that the law attempts to use the term “reasonable person” as a hypothetical person to determine *mens rea* along the line of criminal negligence and in torts. The underlining idea behind “reasonable person” in law is that either party could pull an impartial person from the gallery of a trial to answer questions as a “reasonable person” with no professional training. Hence, an affidavit or testimony from a reasonable person is not necessary. A jury is full of reasonable people with no specialized training relating to the case and Rule 701, SCRE relates to testimony from lay persons. However, the judiciary should not allow the legislature to interpret that by putting “reasonable” in front a licensed expert individual that it can be used to circumvent expert testimony under Rule 702, SCRE.

As noted earlier in this contention, S.C. Code Ann. §15-36-10 (C) (1) of the SC FCPS Act seems to clearly dictate a need for a motion rather than a party making the SC FCPS Act as a tort in a counterclaim like Counsel for the Defendant / Respondent did with this case. The Pro se Appellant is extremely bothered by the “perversion of law” (Trans. Pg 15&16, 18-12 & 1-9) in the furtherance of the fraud on the court (Trans. Pg. 15, 1-5) using the SC FCPS Act as a counterclaim (Defendant’s Trial Court Answer and Counterclaim to Plaintiff’s Amended Complaint with Motion to Dismiss; Page 6, Bottom) to try to give the case multiple final judgments, but the Pro se Appellant thinks the court should address specifically the consequences of not properly filing a SC FCPS Act motion as a separate motion. The Pro se Appellant could not find a case law citation that addressed this concern in South Carolina so it seems to be a novel issue for the court, but did find a federal case that addresses the same substantive issue. The federal case Miller v. Dogwood Valley Citizens Assoc., Inc., C.A. No. 3:06cv00020, U.S. Dist. Ct., W.D. Va., Aug. 28, 2008 addresses the problems with an improperly filed Fed. R. Civ. P. Rule 11 in regard to sanctions for frivolous activity in federal court. In that case and in quoting federal rules, the party seeking sanctions must file a motion “separately

from any other motion and must describe the specific conduct that allegedly violates Rule 11(b).” Fed. R. Civ. P. 11(c) (2).

Counsel for the Defendant intentionally filed the SC FCPS Act claim as a motion/counterclaim (Defendant’s Trial Court Answer and Counterclaim to Plaintiff’s Amended Compliant with Motion to Dismiss; Page 6, Bottom) to allow for multiple final judgments making it more difficult for the Pro se Appellant to appeal the lower court’s decision. This is not only fraud on the court which Judge Nicholson would not hear in the appeal , but under case law should also prevent the counsel of the Respondent from recovery of any damages alleged in the SC FCPS Act. However, this does not change the amount of the judgment in a case since the SC FCPS act is a post judgment decision. Failure of the moving party to comply with these procedural requirements bars recovery under Rule 11. Brickwood Contractors, Inc. v. Datanet Engineering, Inc., 369 F.3d 385. 393 (4th Cir. 2004). This means that in any case where an attorney improperly files a SC FCPS Act as a counterclaim or part of a counterclaim should be barred from recovering damages in the case that he associated with the SC FCPS Act motion that he improperly filed with the court in this case, but Judge Nicholson refused to hear the matter (Trans. Page 16; 13-25).

Counsel for Defendant / Respondent decided to gamble and using a trick play to win the case by putting all damages associated with his attorney fees with the SC FCPS Act (Trial Court Affidavit of Attorney Fees, Page 1 &2) rather than properly in a compulsory counterclaim in small claims court. Regardless of the Pro se Appellant’s position on this matter, the counsel for the defendant should be forever barred from recovery of any fees associated SC FCPS act because he did not comply with the procedural requirements of the law that SC FCPS Act is a separate motion to be heard after the case. The judgment (if the court were to contend the magistrate court has even really made a judgment in this case since this issue is in doubt) would have to be zero in order to support the dismissal as untimely for appeal. Finally, the right to counterclaim is part of the South Carolina Constitution and holds true in every civil court jurisdiction in America as a right to the opposing party. A counterclaim is either compulsory or permissive. Where is the right to a compulsory

counterclaim to a Frivolous Civil Proceeding Sanction Motion (FCPS) (S.C. Code Ann. § 15-36-10) with a *Frivolous* Frivolous Civil Proceeding Sanction Motion by the Plaintiff against the Defendant? A SC FCPS Act Counterclaim / Motion alleging the case was intended for the Plaintiff / Pro se Appellant to harass the Defendant / Respondent in this case is in and of itself a form of harassment by trying to intimidate and silence the Plaintiff / Pro Se Appellant with additional cost associated with the defense of a SC FCPS Act Motion. Assuming a Defendant was to win the case and lose a SC FCPS Act Motion, the Plaintiff has no ability to recover damages from having to defend against the frivolous SC FCPS Motion. A successful defender of frivolous SC FCPS Act motion has rights under the S.C. Constitution to receive damages for something like libel using the principle of the equal protection clause with the additional right of judicial review for either party. (S.C. Const. Art. I § 3, 16, & 22). Fed. R. Civ. P. Rule 11 allows for a party to file a motion for sanctions against a party making a frivolous motion for sanctions, but S.C. version deprives a party of that right by statute thus the court should nullify the law because it is at least an attempt of the legislature to preempt the S.C. Constitution.

CONTENTION FIVE & SIX ~ PROPERTY RIGHTS

5. Because the inferior court judges erred in their involvement as government attorney's in hearings where a self represented party was deprived of their civil rights (with intent or knowledge being indeterminate at this point) relating to ownership of real estate property that is legally appurtenant to ownership in a mandatory mutual benefit nonprofit corporation horizontal property regime.
6. Because the inferior court judges erred in their involvement as government attorney's in hearings where a self represented party was deprived of their civil rights relating to failure to apply the preemption doctrine of the S.C. Constitution and U.S. Constitution as justification to S.C. Code Ann. § 33-31-621 to determine that any acts of a mutual benefit nonprofit corporation horizontal

property regime to deprive a co-owner of property rights in the aforementioned Corporation is inherently unconstitutional.

“A free man is not to be deprived of his property but by the judgment of his peers or the law of the land; that is to say, by the judgment of some competent judicial tribunal known to the law.” (Coleman vs. Maxy, 1 McM., 501). Mr. Justice Evans says: “The clause of the Constitution, as well as Magna Charta, intended to guard the property of the citizen against the exercise of any new or arbitrary power.” Some might actually be stupid enough to think the answer is simply outlined in S.C. Code Ann. § 33-31-621 as long as the Corporation governing documents allow suspension of a co-owners voting rights in a mutual benefit non-profit corporation. However in practicality, it is far from adequate. Procedural due process requires notice, the opportunity to be heard in a meaningful way, and judicial review. Grannis v. Ordean, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363 (1914); Cameron & Barkley Co. v. South Carolina Procurement Review Panel, 317 S.C. 437, 454 S.E.2d 892 (1995); Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002). Procedural due process contemplates notice, a reasonable opportunity to be heard, and a fair hearing before a legally constituted impartial tribunal. S.C. D.E.H.C. v. Armstrong, 293 S.C. 209, 359 S.E.2d 302 (Ct. App. 1987). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. S.C. D.S.S. v. Holden, 319 S.C. 72, 459 S.E.2d 846 (1995). “Where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.” Brown v. S.C. B.O.E. 301 S.C. 326, 391 S.E.2d 866 (1990). “The Due Process Clause demands notice reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950); Murdock, 338 S.C. at 334, 526 S.E.2d at 248.

The part of due process that is obviously left off in S.C. Code Ann. § 33-31-621 is judicial review, the ability to subpoena witnesses, and an impartial judge making the law a great example of a fallacy of due process meant to deceive the masses in support of a governing bodies tyranny within

a corporation in the name of state sanctioned legal coercion thus creating a debt bondage situation in a *de facto* peonage system. Since the co-owner had property interest in the mutual benefit nonprofit horizontal property regime corporation in South Carolina, this means he had a property interest in the corporation which cannot be deprived without due process of law in a lawful tribunal. "It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights". Murdock, 338 S.C. at 334, 526 S.E.2d at 248. "A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on". Id. The sad thing is that you would have to be a seriously intellectually challenged lawyer that can only memorize the Constitution and state laws, but lacks the ability to comprehend the Constitution and the legislative intent of the laws not to see the problems with trying to claim that due process rights of a co-owner with property interest in a S.C. mutual benefit nonprofit horizontal property regime corporation could be guaranteed by using just S.C. Code Ann. § 33-31-621. "Procedural due process mandates that a litigant be placed on notice of the issues which the court is to consider". Murdock v. Murdock, 338 S.C. 322, 526 S.E.2d 241 (Ct.App.1999). "The Due Process Clause demands notice reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections". Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950); Murdock, 338 S.C. at 334, 526 S.E.2d at 248. It's a junk law that needs to be recycled by the court through judicial nullification. To make matters worse, property managers actually think they can adjudicate property rights in a mutual benefit nonprofit corporation like a judge or lawyer which would be a clear "perversion of law" (Trans. Pg 15&16, 18-12 & 1-9). Regardless of the legality of S.C. Code Ann. § 33-31-621, a key concept that the Respondent and other Horizontal Property Regime's (HPR's) like to fraudulently conceal involving the law and even some Home Owner Associations (HOA's) is the legal concept of "appurtenance" or the fact that

ownership of property is directly connected to ownership in the corporation. “Appurtenance” as defined in Black’s Law 8th Edition is “something that belongs or is attached to something else” and goes to explain the history and how it relates to deeds. Many HOA’s and HPR’s are mandatory based on ownership of property hence property rights and interest in the HOA/HPR mutual benefit corporation is directly appurtenant to the actual property. The appurtenance concept in this regard means voting rights can only be deprived upon completion of a foreclosure case on property or voluntary change in ownership of property. Property Managers and greedy co-owners along with self serving lawyers that represent them actual think it is legal to deprive other co-owners of their voting rights in the corporation that they co-own only to raise fees against those co-owners being illegally deprived of their rights without any ability to legally challenge the action. That would be “a result so plainly absurd that it could not possibly have been intended by the Legislature....” Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994).

The reality of the law is that NO co-owner in a S.C. mutual benefit nonprofit corporation should EVER be deprived of their voting rights in that corporation if property rights in the corporation are appurtenant to ownership of real property so any due process procedure that deprives a person of voting rights in a HPR or HOA mutual benefit nonprofit corporation that is mandatory with home ownership is illegal per se as long as that individual owns the property. The only court case or court that has subject matter jurisdiction over the property rights of co-owner in a mutual benefit non-profit corporation where co-ownership in the Corporation is appurtenant to ownership of real estate property is a foreclosure case thus to argue otherwise would violate the equal protection clause (S.C. Const. Art. I § 3) and uniform jurisdiction concept throughout South Carolina. The subject-matter jurisdiction of the Court of Appeals, within the area of its judicial authority, just as with the Supreme Court and Circuit Court, is the same throughout the State. Since the subject-matter jurisdiction is the same throughout the State, it is a Court of “uniform jurisdiction” within the meaning of Article 5, § 1(S.C. Constitution). Riley v. Martin, 274 S.C. 106, 262 S.E.2d 404 (1980). “The acts of a court without subject matter jurisdiction are void.” Cox v. Lunsford, 272 S.C. 527,

CONTENTION SEVEN & EIGHT ~ SUBJECT MATTER JURIS. MAG. COURT

7. Because all the inferior court judges hearing matters relating to Magistrate Court over matters involving regime fees or alleged regime fees in a mandatory mutual benefit nonprofit horizontal property regime corporations have erred by participating in a fraudulent exercising of subject matter jurisdiction.
8. Because all inferior court judges in Charleston that heard any cases involving magistrate courts in Charleston County have erred through their participation in a fraudulent application of the uniform jurisdiction principle as it relates to an improper restriction of subject matter jurisdiction within a county by geographic area.

“Besides real property mortgages and liens, there are about eight other types of liens which are beyond the jurisdiction of magistrates” (South Carolina Bench Book, Article O, Section 2, Paragraph 2). The same source goes on to list the 4 specific liens that the Magistrate Court does have jurisdiction over and that is Mechanics’ liens, Agricultural liens, Repair or Storage liens, and certain Animal Owner’s liens. At first glance, it would appear as a possible defense that Horizontal Property Regimes and Homeowner Associations are simply filing liens with the Register of Deeds and Small Claims case is a collection on an account. However, Horizontal Property Regimes (HPR) can foreclose on property in South Carolina because of a lien on real property. HPR’s and HOA’s seem to be putting forth a two faced position in two different courts. In small claims court, HPR and HOA fee’s is a collection on an account that has nothing to do with real property (when in reality that is not true). In circuit court, those same fees for HPR’s or HOA’s are a lien dealing with co-ownership as part of real property. The jurisdiction of magistrate court is also listed in S.C. Code Ann. 22-3-10 with no mention of HPR’s or HOA’s. In reality, HPR’s and HOA’s like to bring up that S.C. Code Ann. § 27-31-210 under the South Carolina Horizontal Property Regime Act as justification that these organizations can have a lien similar to mortgages on homes. It specifically

allows horizontal property regimes only to foreclose on real property of co-owners. The specific phrase of interest in the law is: “Such lien may be foreclosed by suit by the administrator, or the board of administration, or other form of administration specified in the bylaws, acting on behalf of the council of co-owners, in like manner as a mortgage of real property.” This should be a catch-22 in the counsel of the Respondent’s defense which the Pro se Appellant contends makes it impossible for him to win this appeal relating to the relationships necessary for an HOA or HPR to record a lien at the Register of Deeds. The counsel of the Respondent should contend “Such lien may be foreclosed by suit by the administrator, or the board of administration, or other form of administration specified in the bylaws, acting on behalf of the council of co-owners, in like manner as a mortgage of real property” (S.C. Code Ann. § 27-31-210) that says the Register of Deed should treat the relationship between co-owner and HPR the same as mortgage companies even though no contract exists between a co-owner and an HPR.

The Pro se Appellant obviously would not agree with that position because the legislature cannot create a *defacto* contract between two parties with one party having no contractual rights in court while the other party has all the benefits (i.e. right to foreclose) of a contractual relationship of a mortgage company. However, the counsel of the Respondent has used small claims court to collect liens that should be treated similar to mortgages which is outside the jurisdiction of magistrate court (S.C. Code Ann. § 22-3-10). The courts must stop allowing this “pervasion of law” by allowing HOA or HPR to flip positions concerning liens and fees for various courts. It is simple in that small claims court does NOT have subject matter jurisdiction over fees or liens associated with Horizontal Property Regimes and Home Owner Association in accordance with the laws. “[i]ssues relating to subject matter jurisdiction may be raised at any time ... and should be taken notice of by this court on our own motion.” Bunkum v. Manor Props., 321 S.C. 95, 99-100, 467 S.E.2d 758, 761 (Ct.App.1996). Heins v. Heins, 344 S.C. 146, 543 S.E.2d 224 (Ct.App.2001). The Pro se Appellant and everyone in the same mutual benefit nonprofit horizontal property regime corporation are also forced to have all cases heard by the same Magistrate in a county court that has multiple magistrates

which is the illegal exercising of authority restricted to the S.C. Supreme Court and violates the uniform jurisdiction principle.

“Therefore, the power of the General Assembly to create “other courts” is limited by Article 5, Section 1 to the extent that any “other courts” created by statute (1) must be a part of a unified judicial system; (2) must have uniform jurisdiction, and (3) must be created by general law. It is contended that the Act in question is unconstitutional in that the Court of Appeals is not a court of “uniform jurisdiction” within the meaning of Article 5, Section 1. It is argued that the phrase “Courts of uniform jurisdiction”, as used in Section 1 of Article 5, “does not include a single, one-of-a-kind type of court but, instead, contemplates multiple courts which exercise like jurisdiction.” We find nothing in the language of the Constitution to sustain the foregoing conclusion. It provides for “a Supreme Court, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law.” The argument is soundly made that the clear sense of the phrase is that the Supreme Court and the Circuit Court are themselves courts of uniform jurisdiction. If this was not so, the phrase “such other” would be unnecessary and meaningless. Uniform jurisdiction, therefore, clearly means that Other courts may be created by the General Assembly, if they possess the jurisdictional characteristics of either the Supreme Court or the Circuit Court. The Court of Appeals possesses the same uniform jurisdictional characteristics as held by the Supreme Court and Circuit Court. The Act gives to the Court of Appeals exclusive appellate jurisdiction over all criminal proceedings in the circuit court, and all post conviction proceedings in any court, with the exception of death penalty cases which are appealable directly to the Supreme Court. Decisions of the Court of Appeals are reviewable in the Supreme Court by means of judicial writ. The subject-matter jurisdiction of the Court of Appeals, within the area of its judicial authority, just as with the Supreme Court and Circuit Court, is the same Throughout the State. Since the subject-matter jurisdiction is the same throughout the State, it is a Court of “uniform jurisdiction” within the meaning of Article 5, Section 1. We find no language in our prior decisions, when taken in context, that would justify a contrary conclusion.” Riley v. Martin, 274 S.C. 106, 262 S.E.2d 404 (1980).

The very case Riley v. Martin that solidifies the authority of the S.C. Court of Appeals also outlines the relationship between uniform jurisdiction and subject matter jurisdiction. The respective Magistrate's in Charleston has become *defacto* "King's" of their land having divided up the county into their own territories. The S.C. Supreme Court is just now experimenting with the concept of Business Courts which alters the concept of uniform jurisdiction within a circuit court. Uniform Jurisdiction in a county should dictate that ever Judge in the county can hear every case with no subdividing of territory within the county. This concept also holds true for Small Claims Magistrate Court in that only the S.C. Supreme Court can specify jurisdiction and absent any specification of Jurisdiction within a county the county must develop a fair and impartial method of randomizing assignment of cases with judges. The Charleston County Magistrate has improperly and illegal self regulated subject matter jurisdiction based on territory in violation of the uniform jurisdiction principle without authority from the S.C. Supreme Court. In simplistic terms, no court can exceed its jurisdiction nor restricted its jurisdiction in any way contrary to state law or in some specific situations authority of the S.C. Supreme Court. *Ex dolo malo non oritur actio* or more importantly *Fraus omnia vitiate*. If the magistrate court never really had subject matter jurisdiction in this case then all appeals from that case are derived from the same fraud. "As such, the trial judge lacked subject matter jurisdiction to enter judgment against COCC. Lack of subject matter jurisdiction may not be waived and should be taken notice of by this Court." Anderson v. Anderson, 299 S.C. 110, 382 S.E.2d 897 (1989). Accordingly, we find that Reichlyn's judgment against COCC is void. Reichlyn v. Columbia Organic Chemical Co., Inc., 310 S.C. 495, 427 S.E.2d 661 (1993). The case Anderson v. Anderson is of interest in that if this position is carried to a logic conclusion in this case. Every case heard in Charleston County should be randomly assigned to different judges with prosecutor, plaintiff, and/or defendant having to wait to see which judge is assigned a case in Magistrate court. This sounds simple, easy, and logical, but Charleston never does anything simple, easy, or logical. Parties have had their rights concerning their magistrate case fraudulently waived by a court system without subject matter jurisdiction under a true uniform jurisdiction principle to

waive a parties opportunity to have his case possibly assigned to another judge in the county, but outside a Judge's geographic territory.

"The acts of a court without subject matter jurisdiction are void." Cox v. Lunsford, 272 S.C. 527, 252 S.E.2d 918 (1979). The Pro se Appellant contends that Charleston County Magistrate Court has violated the uniformed jurisdiction principle which has allowed the Magistrate to violate citizen rights without fear of exposure from another Magistrate due to inconsistency of rulings involving one party in more than one case. The Uniformed Jurisdiction principle is a method of "checks and balances" (for lack of a better description) within a judicial circuit that can only be eliminate by the S.C. Supreme Court. Charleston County has subdivided the county thus setting up "King's" of Magistrate Court. The irony of this position concerning the subdividing of Charleston County is that it has essentially already been addressed in federal court as illegal except with the school system instead of the court system. The Pro se Appellant contends that not only does magistrates not have subject matter jurisdiction and the Charleston magistrate courts have misapplied subject matter jurisdiction, but every attorney involved in an action in small claims case against a co-owner of his client has an obligation to tell that co-owner of his client as organization that magistrate lacked subject matter jurisdiction to hear the case which should be extrinsic fraud worthy of a reversal of the judgment regardless of the time of occurrence. Let the lawsuits begin....

CONTENTION NINE, TEN, & ELEVEN ~ APPEALS

9. Because the judge erred in ignoring the fact that the S.C. Constitution preempts the 30 day "drop dead date" for appeals under S.C. Code Ann. § 18-7-20.
10. Because the inferior court judges erred in the participation in a judicial circuit where the Chief Administrative Judge of Charleston Judicial Circuit has failed to perform his judicial obligation to determine if the reason a Magistrate did not send a record of appeal is because he is dead, insane, or out of the state.

11. Because the Circuit Court Judge erred in making a determination of fact relating to the Record on Appeal from Magistrate Court without the Record on Appeal.

“In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.” (S.C. Const. Art. I § 8). One of the prime reasons for separation of powers is the desirability of spreading out the authority for the operation of the government to prevent the concentration of power in the hands of too few and provide a system of checks and balances. State ex rel. McLeod v. McInnis, 278 S.C. 307, 312, 295 S.E.2d 633, 636 (1982). Under our system, the legislative department makes the laws, the executive department carries the laws into effect, and the judicial department interprets and declares the laws. Id. at 312, 295 S.E.2d at 636.

This concept is basic High School Government, but this concept can be found in the United States Constitution and any thorough understanding of the check and balances of the Constitution mandates an understanding of the Supremacy clause as it relates to the judiciary along with individual state Constitutions. The preemption doctrine is rooted in the Supremacy Clause of the United States Constitution and provides that any state law that conflicts with federal law is "without effect." Cipollone v. Liggett Group, Inc., 505 U.S. 504, 516 (1992). A federal law may either expressly preempt a state law through specific language clearly stating its intent or it may impliedly preempt a state law through field preemption or conflict preemption. Hillsborough County, Fla. v. Automated Medical Laboratories, Inc., 471 U.S. 707, 713 (1985). Field preemption occurs when the scheme of federal regulation is so pervasive that it is reasonable to infer that Congress left no room for the states to regulate. Id. On the other hand, conflict preemption occurs where compliance with both federal and state regulations is physically impossible or where the state regulation "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Hines v. Davidowitz, 312 U.S. 52, 67 (1941). This same concept of preemption on the federal level carries over to the state level with dealing with state laws being preempted by the State Constitution.

The Pro Appellant is simply contending that the 30 day limit in S.C. Code Ann. § 18-7-20 use as a “drop dead deadline” is preempted by the South Carolina Constitution most strongly through “conflict preemption” and to argue otherwise would be a clear “pervasion of law” to manipulate the rules of the court in violation of the State Constitution (Trans. Pg 15&16, 18-12 & 1-9). The enforcement of a 30 day limit as written by the state legislature and signed into law conflicts with a Judge’s oath to the South Carolina and United States Constitution unless the law would allow for judicial discretion for Constitutional issues. The magistrate refused to allow the Pro se Appellant / Plaintiff to submit any evidence and subpoena any witnesses while the Respondent / Defendant were able to obtain a summary judgment without any witnesses or submitting any evidence. On appeal, the Pro se Appellant was led to believe by the court that he could still submit no evidence and subpoena no one because it was “just a hearing”. All judges should know that the United States Constitution then the State Constitution comes before all else which actually can be inferred (if not stated) in the infamous South Carolina Court of Appeals case M’Cready v. Hunt (S. C. 1834). Ironically, the current Judge’s Oath in South Carolina puts the South Carolina Constitution and the United States Constitution on semantically equal footing as an almost slap in the face defiance of the Supremacy Clause of the United States Constitution.

The reality is that Judge Nicholson specifically stated that he did not have the ability to decide any other way than a dismissal (Trans. 15; 7-14) because he thought the Pro se Appellant missed a 30 day limit which is a “Drop Dead Date” (Trans. Page 14: 9) when in reality the preemption doctrine of the Supremacy Clause and the South Carolina version of the same concept dictates that no state law can force him or any other Judge to violate his oath to the South Carolina and/or United States Constitution (Trans. Page 20; 8-14). The South Carolina Court of Appeals has already addressed this concern with its court, but this concern probably needs to be addressed concerning the inferior courts because some Judges did not get the message.

In answering a certified question raising a novel question of law, this Court is free to decide the question based on its assessment of which answer and reasoning would best comport with the

law and public policies of this state and the Court's sense of law, justice, and right. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 411, 526 S.E.2d 716, 719 (2000) (citing S.C. Const. art. V, §§ 5 and 9, S.C. Code Ann. § 14-3-320 and -330 (1976 & Supp. 2004), and S.C. Code Ann § 14-8-200 (Supp. 2004)); Osprey, Inc. v. Cabana Ltd. Partnership, 340 S.C. 367, 372, 532 S.E.2d 269, 272 (2000) (same); Clark v. Cantrell, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000) (same); Antley v. New York Life Ins. Co., 139 S.C. 23, 30, 137 S.E. 199, 201 (1927) ("In [a] state of conflict between the decisions, it is up to the court to 'choose ye this day whom ye will serve'; and, in the duty of this decision, the court has the right to determine which doctrine best appeals to its sense of law, justice, and right."). Even if a state law is not in direct conflict with a Federal law, the State law could still be found unconstitutional under the Supremacy Clause if the "state law is an obstacle to the accomplishment and execution of Congress's full purposes and objectives." Crosby v. National Foreign Trade Council, 530 U.S. 363, 372-374."Congress need not expressly assert any preemption over State laws either, because (the Supreme Court said) Congress may implicitly assume this preemption under the Constitution." (Id., 386-388). The Pro se Appellant holds that S.C. Code Ann. § 18-7-20 use as a "drop dead date" (Trans. Page 14: 9) with complete disregard of parties rights under the United States Constitution and the South Carolina Constitution has a self evident inherency in a violation of the Supremacy Clause / Preemption Doctrine concept indicative of both Constitutions.

On a specific note, preemption as part of the Supremacy Clause of the United States Constitution implies a state law is violating a federal law thus preempts it and the court realizes the same concept applies to the South Carolina Constitution and state law. Judge Nicholson was clearly erroneous when he railroaded the Pro se Appellant with his interpretation of S.C. Code Ann. § 18-7-20 as a "drop dead date" (Trans. Page 14: 9) when in fact his oaths to the Constitution should dictate that he at least explained the possibility and/or allowed the opportunity for the Pro se Appellant to give evidence about violations of his Constitutional rights in the inferior court. Otherwise, the court would be forced to adopt a constitutionally repugnant position that the expiration of 30 day time

limit by a party making an appeal would force the Judge to be an accomplice in a Magistrates deprivation of civil rights under the color of law in the furtherance of a fraud. Judge Nicholson's used the phrase "Drop Dead Date" (Trans. Page 14: 9) concerning the Appeal while erroneously insisting that the Appellant was to blame for the case being dismissed by the court without the Record on Appeal (Trans. 15; 7-14). Appeals either have to deal with "errors of fact" (S.C. Code Ann. §18-7-180) and "issue of law" (S.C. Code Ann. §18-7-190). In a nutshell, Judge Nicholson had before him a lawyer and a self represented party and he assumed the lawyer was right (Trans. Page 19; 12-15) about everything and the Pro se Appellant was wrong when he or his law clerk could have called Magistrate Henry W. Guerard, Esquire for clarification or requested the Record on Appeal. To paraphrase the short appeal, Judge Nicholson asked the Pro se Appellant two basic concepts: 1. Do you (Pro se Appellant) understand that you need to shut up? (Trans. Page 9&10; 3-25&1) 2. Do you (Pro se Appellant) understand that you might as well drop dead because you screwed up? (Trans. Page 20; 13) Not exactly the lines of questions that would be expected in a meaningful impartial hearing before a Judge on appeal. The Judge had no facts from the Record on Appeal and took the Counsel of Defendants / Respondents statements about the Record on Appeal as factual. "The circuit court's review, as well as this Court's, is limited to determining whether the findings were supported by substantial evidence or were controlled by an error of law." Responsible Econ. Dev. v. S.C. D.H.E.C., 371 S.C. 547, 641 S.E.2d 425 (2007); Jones v. S.C. D.H.E.C., 384 S.C. 295, 682 S.E.2d 282 (Ct.App.2009). No evidence means that Judge Nicholson did not have any ability to determine errors of law or fact. "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." Bohlen v. Allen, 228 S.C. 135, 89 S.E.2d 99 (1955). "However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention." Stackhouse v. Rowland, 86 S.C. 419, 68 S.E. 561 (1910). "If possible,

the court will construe the statute so as to escape the absurdity and carry the intention into effect. Id.” The plain and simple legislative intent in “errors of fact” (S.C. Code Ann. §18-7-180) and “issue of law” (S.C. Code Ann. §18-7-190) on appeal is to make sure that no appeal is dismissed based on an error of fact or issue of law. The transcript of the appeal shows disagreement concerning very basic “errors of fact” and “issue of law” relating to the case even having a final judgment, but the judge repeatedly and on numerous occasions in the transcript refused to hear them because he thought and assumed facts without the slightest care for the rights of the self represented party. The Pro se Appellant cannot possibly imagine any Judge would contend that it was not the legislative intent that the Circuit Court judge only hears final judgments and the Counsel of the Defendant even let it slip in court that this case had NO FINAL JUDGMENT (Transcript Page 17; 18). No one could possibly contend either that it was legislative intent for Circuit Court Judges to grant dismissals of appeals without evidence or at least affidavit’s from the moving party. “This Court cannot question findings of fact in a magistrate's court approved by a circuit judge on appeal when there is any evidence, however slight, tending to prove issues involved. Ward v. Atlantic Coast Line R. Co., 155 S.C. 54, 151 S.E. 904 (1930); see also Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976) (“In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed on appeal unless found to be without evidence which reasonably supports the judge's findings.”). No affidavit’s or witnesses by either party in the circuit court appeal or in magistrate so absolutely nothing to support dismissal in either court

On the most basic level, the Pro se Appellant contended in his Appeal under 2(b), Page 2&3, dated 06 June 2009 that the lower court error was not in requiring that the alleged Board of Director’s under Rule 21, SCRMC provide written authorization to have Mr. Derek F. Dean, Esquire represent them in court. The Pro se Appellant was challenging the authority of the alleged Board of Directors or the Corporation to even hire Mr. Dean to represent them in court. “Unrefuted arguments are deemed admitted.” State v. Peterson, 222 Wis.2d 449, 459, 588 N.W.2d 84 (Ct.App.1998). The Counsel of the Defendant / Respondent has admitted through his failure to refute that at the time of

the hearing he did not have the legal authority from a legal Board of Directors to represent his client so his entire defense of his client is based on a fraud. Judge Nicholson made a determination of an issue of fact and law relating to a lower court alleged judgment in the furtherance of the deprivation of civil rights under the color of law that had occurred in the Magistrate Court.

The South Carolina legislature has written an unconstitutional law in S.C. Code Ann. § 18-7-20 if read at face value and as interpreted in absurdity by Judge Nicholson, but in its inconsistency of wisdom the legislature has recognized that a Magistrate can be insane or has gone insane in the 30 days after rendering a judgment. All judges that have handled appeals from magistrate court know the law and even read it as being sort of humorous without thinking of the practical interpretation of S.C. Code Ann. § 18-7-90 with the title of the law being “Return; effect of dead, insane, or absent magistrate”. The legislative intent seems clear in that the only reasons it is excusable for a Magistrate not send to send a Return on Appeal from the lower court is because he is dead, became insane, or removed from the state. This position is further supported indirectly in Joyner v. Glimcher Properties, Op. No. 3526 (S.C. Ct. App. Filed June 27, 2002) with the concurring and dissenting judges agreeing that the Writ of Mandamus is an extraordinary writ that can be used by either party to compel the magistrate to forward the record of appeal, but the opinion draws no conclusions about the role of the judiciary to regulate itself which is an essential aspect of the legal profession in every jurisdiction in the country and possibly the world. Pursuant to the provisions of S.C. Const. Art. 5 § 4, the Chief Justice of the S.C. Supreme Court has set forth the authority of the Chief Circuit Court Judges for administrative purposes. Specifically, number 6 reads in part: “To direct the clerks of court and presiding judges to keep and maintain such records as he or she shall direct, upon the approval of the Chief Justice, of the disposition of cases during each term of the circuit court, both civil and criminal.” (S.C. Sup. Ct. Order 2010-01-13-01). It is noteworthy that the word “disposition” does not have the word “final” with Black’s Law Dictionary (8th Edition) defining “disposition” as “the act of transferring something to another’s care or possession”.

The chief judge for administrative purposes in each judicial circuit has direct responsibility

over making sure all cases on appeal are properly transferred from Magistrate to the Court of Common Pleas. This is even clarified in Transfer of Civil Cases from Circuit Court to the Magistrate's Court (L. Edmund Atwater, III, Esquire, Memo, Sept. 8, 1980) that seems to directly place some (if not all) responsibility concerning transferring of cases (as in disposition of cases) on the Chief Judge for Administrative Purposes in the Judicial Circuit. Using common sense rather than case citations, all government agencies and entities should have "internal controls" to prevent fraud or the defrauding of the state. As a matter of fact, the S.C. Supreme Court already has in place as a government agency several "internal controls" to make sure the defrauding of the state in Magistrate Court will not go undetected for any length of time. However, sometimes government agencies overlook "internal controls" that would show up relating to a performance audit. The Appellant thinks the state legislature has already mandated an "internal control" in the wording of S.C. Code Ann. § 18-7-90. Basically, someone in the judiciary has to determine if a Record on Appeal was not sent because the Magistrate is dead, insane, or removed from the state. The only logical person in the judiciary to perform this function is the Chief Judge for Administrative Purposes in each circuit.

The real bigger question is does the South Carolina Unified Judicial System have a hierarchal organizational structure for the judiciary of any type. Is each judge or magistrate the "King" of their respective court room that only answers to the Supreme Court OR does the hierarchal structure that applies to cases carry over in any way to the actual judges and magistrates of the judiciary. The S.C. Court of Appeals has already said in the past that the judiciary has a hierarchal structure for South Carolina Governor Taylor (Grier v Taylor, 4 McCord 206, 15 S.C.L. 206, (1827)). The Pro se Appellant found the case of interest in that it spoke of the importance of writs being used within the judiciary (presumably against Magistrates, Ordinaries, and similar officials) rather than using them on the executive and legislative branch. 183 years later and the courts seem to have flipped with apparently writs with judge being the moving part against a judge in an inferior court unheard of in modern times. Honorable Bays comments spoke directly of the importance of writs being used within the judiciary in Grier v Taylor: "It is admitted that the judges of the superior courts of law in

the exercise of their judicial powers, have a right by the common law of the land which is recognised by the constitution to send out this high prerogative writ to restrain all the inferior courts and jurisdictions, or bodies of men appointed for special purposes from doing illegal or unauthorized acts.” Grier v Taylor, 4 McCord 206, 15 S.C.L. 206, (1827).

The Pro se Appellant position is simple in that any judge with knowledge of illegal activity of another judge can always use a writ (without a party in a case) to compel an inferior court to follow the law within his jurisdiction. The question becomes is it discretionary authority rather than an obligation on the part of the Judge as a government attorney having taken an oath to the S.C. and the U.S. Constitution to take such action with an inferior court on his own with the judge being the moving party. The line between discretion and obligation concerning judiciary responsibility is like so many things in life unclear, but the Pro se Appellant can see an irrefutable point for all concerned exist where a writ to an inferior court becomes an obligation for a Judge. The Pro se Appellant contends the Chief Judge for Administrative Purposes (and possibly all circuit court judges) has an obligation to track disposition of all appeals from Magistrate court and to file a writ of Mandamus (without a party requesting the writ) to compel an inferior court judge or magistrate to follow the law when he has actual knowledge of a pattern of failure to follow the law. A pattern in science is 3 or more events while in law it is 2 or more events. Judge Nicholson had actual knowledge of a pattern of failure to send the Record on Appeal because he was hearing two appeals from the same Magistrate with no Record on Appeals (Trans Page 1; 3). When the Chief Judge for Administrative Purpose (or any circuit court judge) has had 2 or more failures to send the Record on Appeal with no excuse that the Magistrate is dead, insane, or out of the state, the Pro se Appellant contends he has an obligation under the law as a government attorney to file a writ of Mandamus to compel that magistrate to follow the law without a motion from any party in any case. “The adjudicative power of the Court carries with it the inherent power to control the order of its business to safeguard the rights of litigants.” Williams v. Bordon's Inc., 274 S.C. 275, 262 S.E.2d 881 (1980).

Thanks to the technology in place by the Charleston County Clerk of Court, the Pro se

Appellant does not think the failure to send the Record on Appeal from magistrate court in this case is an isolated situation since those returns should legally be filed with the Clerk of Court. The Pro se Appellant has realized a common mistake with lawyers is to always defining the concept of “fraud” as a tort. Fraud does NOT require damages as a basis for reversal. Specially, “fraud on the court” does not require damages as grounds for reversal. “Fraud on the Court” (Black’s Law 8th Edition) is defined as “In a judicial proceeding, a lawyer’s or party’s misconduct so serious it undermines or intends to undermine the integrity of the proceeding”, but Judge Nicholson refused to even hear this issue (Trans. Pg. 15, 1-5) in violation of the Pro se Appellant’s due process rights. Based on the Pro se Appellant research, he thinks Charleston County judges hearing appeals from Magistrate Court have demonstrated a pattern of conduct that undermines the integrity of the proceeding relating to the appeals from magistrate court.

If this case is part of a pattern of not sending the Record on Appeal in Charleston County rather than an isolated incident with Judge Dennis (Chief Judge for Administrative Purpose) being obligated to have actual knowledge of Judge Guerard’s failure to send the Record of Appeal in many cases, it means that the government lawyers as Judge and Magistrate conspired to undermine the integrity of the judicial proceedings of the South Carolina Unified Judicial System making Judge Dennis culpable through his failure in his judicial obligations of his administrative position as assigned by the S.C. Supreme Court to file a writ on his own to compel an inferior court (i.e. Magistrate / Lawyer) to follow the law and Judge Nicholson assisted in this misconduct after the fact by refusing to hear the issue (Trans. Pg. 15, 1-5). “Fraud on the Court” is unique in that it does not have anything to do with the actions or failures to act of the moving party. “The adjudicative power of the Court carries with it the inherent power to control the order of its business to safeguard the rights of litigants.” Williams v. Bordon's Inc., 274 S.C. 275, 262 S.E.2d 881 (1980). Judge Nicholson failed as a government attorney to protect the rights of litigants through his reckless disregard to his judicial oath (Trans. Pg. 15, 1-5). The Pro se Appellant has been victimized by the Charleston County judiciary in ways that is difficult to imagine, but what is even more difficult to

comprehend is that the Charleston County judiciary has victimized many more people in the deprivation of civil rights under the color of law. The State Code has become a club of injustice used by judicial despots as the weapon of choice to beat away American's civil rights. If the Judiciary is not going to regulate itself on this issue, should that duty fall upon the Governor or the legislature to regulate the illegal acts of the judiciary?

CONTENTION TWELVE ~ UNAUTHORIZED PRACTICE OF LAW

12. Because certain acts on behalf of mutual benefit nonprofit horizontal property regime corporations in this case constitute the unauthorized practice of law.

As recognized in every jurisdiction in America, the practice of law should be closely regulated to prevent others from engaging in the unauthorized practice of law and from lawyers assisting others in the unauthorized practice of law. The problem of unauthorized practice of law commonly comes up concerning issues of property and attorney's not properly supervising non-lawyers doing work for them. However, nothing in the law should ever prevent a person for fighting for their own property rights or to recover damages when their property rights have been violated by someone else. Property managers are not lawyers and lawyers have an obligation to their client as a whole organization when representing mutual benefit nonprofit horizontal property regime corporations rather than just a Board of Director's looking out for their own self serving interest. Unfortunately, a growing trend in Charleston seems to deal with lawyers not actually signing documents that only lawyers should be filing on behalf of a client thus assisting in the unauthorized practice of law and/or ignoring the unauthorized practice of law by others that harms his client as an organization. These documents might have return addresses to law offices, but nowhere in the context of the document does it have a signature from a lawyer or even a name of the lawyer. It might sometimes have the name of a law office, but no actual attorney. A court case requires a signature from an attorney and it is the Pro se Appellants understanding that some jurisdictions require lawyers to include license identification numbers of the lawyer on everything with that

lawyers signature. Rule 11, SCRCP relates to matters dealing with a court case, but this rule implies that this is a rule for all documents prepared by the attorney. The courts have long held that forging of any signature by a lawyer is a very serious matter In re T. Aladdin Mozingo, Op. No. 24769 (S.C. Sup. Ct. filed Feb. 23, 1998)(Davis Adv. Sh. No. 8 at 30)(Court accepted disbarment of attorney whose misconduct included tracing of a Supreme Court justice's signature on a purported family court order); In the Matter of Walker, 305 S.C. 482, 409 S.E.2d 412 (1991) (attorney who forged circuit court judge's name to expungement order was indefinitely suspended); State ex rel McLeod v. Belcher, 249 S.C. 301, 153 S.E.2d 921(1967) (attorney disbarred after forging the signature of a special referee and a circuit court judge to reports and decrees in a divorce case); Cate v. Rivers, 246 S.C. 35, 142 S.E.2d 869 (1965) (attorney who forged judge's signature to adoption decrees was disbarred). State v. Belcher, 249 S.C. 301, 153 S.E.2d 921 (1967) (attorney disbarred for forging special referee and circuit judge's names); In re Timothy Walker, 305 S.C. 482, 409 S.E.2d 412 (1991) (attorney indefinitely suspended for forging circuit judge's signature); In re Marlene Sipes, 297 S.C. 531, 377 S.E.2d 574 (1989) (attorney suspended for one year where she signed her husband's name to checks, without his permission, and used Girl Scout funds for her personal purposes); In re George Lyall, 328 S.C. 121, 492 S.E.2d 99 (1997) (attorney suspended for nine months where his misconduct included forging wife's signature on a check for a trust and using funds for personal purposes).

This will sound simplistic by stating the obvious that a forged signature is inherently a fraudulent signature thus the court must consider that as a part of the definition of fraud on the most basic level includes the omission of a material fact. A non-lawyer that prepares a legal document making it appear as if it came from a lawyer would irrefutably be involved in the unauthorized practice of law, but the same concept should apply to a lawyer regardless of him being a lawyer. This is a difficult concept to articulate so an example might work better. Lawyer X from law firm X, Y, and Z prepares a legal document to record at the Register of Deeds, but his signature nor name appears nowhere on the document only the name of X, Y, and Z law firm. X, Y, and Z law firm as a

corporation has become a *defacto* lawyer practicing law in South Carolina in place of an attorney's name. Any document prepared by a lawyer for his firm recorded by government entity (like the Register of Deeds) or used in his professional capacity as a lawyer without his name and signature should be treated no differently than a forged signature in that it is a legal document without a signature making it a fraudulent legal document through the omission of material fact even if it was actually prepared by an attorney. An almost ... duh statement ... related to this contention that has to be pointed out by a Pro se Appellant of all people on appeal of all places would be that - - - *Lawyers are licensed to practice law not law firms.* The truly interesting part is that most (if not all) S.C. law firms are incorporated in the state which is a "person" under the 14th Amend. of the U.S. Const. meaning a lawyer in S.C. that prepares a legal document without his name or signature, but includes the name of his law firm as a corporation could be consider engaging in the unauthorized practice of law by a 3rd person (i.e. his law firm) not licensed by the state to practice law.

This is without a doubt truly a novel issue of law and actually is one of the more substantive issues in the original case. Amendments to the Master Deed and By-Laws that substantially change co-owner rights in the Corporation at the R.M.C. (i.e. Register of Deeds) has "DJP" initials in type and Nexsen-Pruit law firm return address, but not David J. Parrish, Esquire name or signature. He allegedly is the author of the legal document which if true means he assisted the Nexsen-Pruit law firm (as a person in the eyes of the law) in the unauthorized practice of law through the use of fraudulent documents which in fact illegally deprive South Carolina citizen of their civil rights which would probably be deprivation of civil rights under the color of law since it involves a magistrate. The irony is that the Pro se Appellant has found another example of similar conduct in another corporation with another law firm which would make a pattern. Judge Nicholson refused to hear the matter relating to fraud that would show that Derek F. Dean, Esquire was assisting in fraud thus fraud on the court (Trans. Pg.15, 1-5) through the use of perjured documents at the Register of Deeds (Trans. Pg.12; 15-25 & Pg.13; 1-25).

To further complicate things, S.C. Ann §33-31-621 (b) (ii) simply states an authorized person

or persons without taking into consideration that this person needs to be impartial and that this person will be adjudicating property rights of a co-owner in a mutual benefit non-profit corporation hence he would have to be a lawyer. “Procedural due process contemplates notice, a reasonable opportunity to be heard, and a fair hearing before a legally constituted impartial tribunal” S.C. D.E.H.C. v. Armstrong, 293 S.C. 209, 359 S.E.2d 302 (Ct. App. 1987). This person or persons authorized under the law also does not have the power to subpoena people which is inherently necessary for meaningful due process while as stated before the law (i.e. S.C. Code Ann. §33-21-621) has no judicial review or appeal process. It is well settled that a paralegal may not give legal advice, consult, offer legal explanations, or make legal recommendations South Carolina v. Despain, 319 S.C. 317, 460 S.E.2d 576 (S.C. 1995) so non-lawyer Property Managers and others on behalf of Corporations are engaging in unauthorized practice of law if they are deciding legal issues like property rights or using legal document “templates” to prepare legal documents for a Corporation.

The misguided idea being that the Charleston R.M.C. or Register of Deeds is just a recording agency in Charleston County with people not realizing that the Charleston R.M.C. or Register of Deeds is performing functions of the Clerk of Court in most counties in South Carolina. As noted in South Carolina courts, In re Unauthorized Practice of Law, 309 S.C. 304, 422 S.E.2d 123 (1992), the Court held a non-lawyer, officer, agent, or employee may represent a business entity pursuant to S.C. Code Ann. § 40-5-80 (1986) in civil magistrate’s court proceedings. Court procedures dictate that this can only occur after the case is filed by a party in the case in small claims court and the Register of Deeds or Clerk of Court does not deal with Small Claims Court. However, the South Carolina Supreme court has made it clear that 3rd party representation of corporations is ONLY in a magistrate court hearing and not in any other legal matters. Recently, it has been held by the courts that non-lawyer (i.e. paralegals) notarization for records relating to deeds and property without lawyers is dishonest, fraud, deceit, and misrepresentation. In re Schoer, 387 S.C. 604, 693 S.E.2d 927 (June 1st, 2010). Unauthorized practice of law is occurring in Charleston County by 3rd parties instigating legal proceedings in Charleston County Magistrate court and the filing of liens by 3rd

parties on behalf of Corporations without lawyers. The Register of Deeds or in Charleston the R.M.C. has to follow Title 30 Chapter 5 of the S.C. State Code when recording liens and other documents. S.C. Code Ann. § 30-5-30 lists the prerequisites to recording which includes the Uniform Recognition Acknowledgments Act under S.C. Code Ann. § 30-5-30(B) that basically means that “all deeds or other instruments must be signed by the grantor, mortgagor, vendor, or lessor...” A S.C. Horizontal Property Regime does not typically have a grantor, mortgagor, vendor, or lessor relationship with co-owners and this is not the case with the Respondent. However, S.C. Horizontal Property Regimes and Home Owners Association like to think that S.C. Code Ann. § 27-31-210 gives HPR and HOA the right to file liens without due process with the support of a law like S.C. Code Ann. § 30-5-130. The Register of Deeds should not ignore S.C. Code Ann. § 30-5-30 regardless of any other delusional interpretations of the state laws. S.C. Horizontal Property Regimes and Home Owners Associations have learned that in Charleston County they can apparently file liens without an attorney without a contractual relationship of any type to circumvent the Federal Fair Debt Collection Practices Act (15 U.S.C. §§ 1692-1692) in order to violate a citizen’s due process under the S.C. Constitution. The Board of Director’s is not a 3rd party collector, but a lawyer would be considered a 3rd party collector and supposedly has an ethical obligation to his client as an organization. As noted by the Counsel of Respondent, the Pro se Appellant had no contractual relationship (i.e. grantor, mortgagor, vendor, or lessor relationship) with his client so his client should not have been allowed to file a lien especially without an attorney and without a judgment (thus it would be a judgment lien which in theory should have meaningful due process, but that’s not the case in Magistrate Henry W. Guerard, Esquire’s Court).

CONTENTION THIRTEEN ~ CITIZENSHIP RIGHTS

13. Because provisions in the law that treat South Carolinian’s differently in any respect because he may temporarily reside out of the state violate the South Carolina Constitution.

S.C. Const. Art. I § 6 simply states: “Temporary absence from the State shall not forfeit a

residence once obtained.” In layman terms and to borrow from a military motto, this part of the state Constitution is saying “Once a South Carolinian, Always a South Carolinian!” and everyone in the state needs to get behind this concept. Like many things a legal concept is one thing, but practical implication is a different story especially when also looking at the equal protection clause of S.C. Const. Art. I § 3. The Pro se Appellant simply contends that once a South Carolinian establishes residence in the state that every rule, regulation, or law in the state must treat him or her equally regardless of where they might live at any time in the future. From a historical perspective, it is important to note this part of the S.C. Constitution was part of many revisions of the document towards the end of the Vietnam War era. It is a logical inference that the legislative intent at the time was to make sure that anyone who established residence in South Carolina at one time will always have a part of South Carolina with them regardless of how many years that person might have been away from the state for any reason.

“Temporary” has no specific meaning in the context of the State Constitution other than in the mindset of the individual that had once obtained residence in the State of South Carolina, but the court still must look at word “temporary” to determine meaning in context. “Where a statute uses a word having a well-recognized meaning in law, the presumption is that the Legislature intended to use the word in that sense.” Coakley v. Tidewater Construction Corp., 194 S.C. 284, 9 S.E.2d 724 (1940) “Moreover, where the same word is used more than once in a statute it is presumed to have the same meaning throughout unless a different meaning is necessary to avoid an absurd result.” Busby v. State Farm Mutual Automobile Insurance Co., 280 S.C. 330, 312 S.E.2d 716 (Ct.App.1984). As recently used by the South Carolina Governor in his defense of a “hiking” trip on a plane, temporary absence from the state places emergency power with the Lt. Governor (S.C. Const. Art IV § 11). The judiciary can appoint temporary judges to replace other judges (S.C. Const. Art. V § 19). Continuity of government provision allows for temporary replacements (S.C. Const. Art. XVII § 12). All of these contexts allows for the word “temporary” to be as long as necessary unless acted upon by either the party holding the temporary position or the higher official /

government body granting the person a temporary post. To paraphrase one of Newton's Law's: A person holding temporary position in government will stay in that temporary position in government until acted upon by an outside force.

As a matter of fact, case law supports this position by placing greater significance on the phrase "resides in" for offices of authority within government State vs. Allen, 21 Ind. 516; State vs. Buttz, 9 S.C. 156. If it was the Constitutional intent of S.C. Const. Art. I § 6 for a citizen to prove ongoing residence in the state in any way, the constitution would specify such intent like has been done with other contexts. The Governor must reside in the state Capitol (S.C. Const. Art. IV § 20). Circuit Court judges assigned to a specific circuit court must reside in that circuit (S.C. Const. Art. V § 13). In short, "temporary absence" does not require any proof of continual residency after a residency in the state has been obtained in the state.

Normally, this is no big deal unless someone looks at rules, regulations, and laws with time limits (especially time limits dealing with service through mail rather than receipt). With current technology, it is not impossible to make sure all South Carolinian's are treated equal regardless of where they might live at the time thus have equal amount of time to respond to a legal document or motion. The court's has already recognized the need for due process to be flexible and thus the Pro se Appellant contends the Courts should do the same in the context of S.C. Const. Art. I § 3 & 6. Due process is flexible and calls for such procedural protections as the particular situation demands. Stono River Envtl. Protection Ass'n v. South Carolina Dep't of Health and Envtl. Control, 305 S.C. 90, 406 S.E.2d 340 (1991); Brown v. Malloy, 345 S.C. 113, 546 S.E.2d 195 (Ct. App. 2001).

A possible position contrary to the Pro se Appellant on this contention is residence in another state or country surrenders residence in South Carolina which has already been established by the court as faulty logic. "This much may be said on the subject with entire confidence-that it is not in the power of Congress to give privileges to citizens of one State over those of another, by any measure which it can constitutionally adopt; nor can it give to a State a power to do a thing which it could not do itself." (Perry v. Miller, 29 S.C.L. 769 (1844)) (It is discrimination by the state to not

allow coasters and steamboats of other states the same rights in every respect similarly situated South Carolina coasters and steamboats). Any attempt by one state to declare a citizenship in that state to be “revoked” when establishing residency in another state would also be preempted by the Commerce Clause of the United States Constitution (Gibbons v. Ogden, 22 U.S. 1, 9 Wheat. 1, 6 L. Ed. 23 (1824)). Not to mention, the absurdity in trying to establish due process procedures to “revoke” a person’s citizenship in one state when he temporarily moves to another state.

The Pro se Appellant fully realizes this is a novel if not simple interpretation of the S.C. Constitution that has been overlooked, but is in fact one of those things that makes the S.C. Constitution so unique. The S.C. Constitution dictates the Governor has to believe in a Supreme Being; the Adjutant General is an elected position; grounds for divorce is a Constitutional issue; the power to amend the Constitution does not finally rest with the citizens; AND it should be that the Court recognizes the legal principle unique to the state that “Once a South Carolinian, Always a South Carolinian” hence all laws should treat all South Carolinian’s equal regardless of where they might temporarily live at any given time.

The Pro se Appellant was not treated equally as other South Carolinians in the ability to present evidence and obtain subpoenas in Judge Nicholson’s court or in Magistrate Court for that matter. The Pro se Appellant was told he could not submit evidence or use a subpoena for Judge Nicholson hearing by the judiciary. However (after the fact), the Pro se Appellant has come to realize that procedures for obtaining a subpoena for an appeal from magistrate court by a self represented South Carolinian that temporarily resides outside the state are inherently not equal for all South Carolinian’s. The Clerk of Court sends out notices about two weeks before the hearing which is not sufficient time or equal time under S.C. Const. Art. I § 3&6 for a self represented South Carolinian temporarily residing out of state to present his case with a subpoena or more importantly a subpoena *duces tectum*. As a matter of fact, this court’s rules has a time limit as short as 5 days after service in the mail which is not even sufficient time for receipt for large portions of the United States thus clearly a violation of the S.C. Constitution. The sad fact is the Pro se Appellant cannot be

the first person to have pointed this problem out in the interpretation of the state Constitution, but he thinks the court ignores the issue due to it being problematic to implement this interpretation by the government. Sir Edward Coke, referring to the emphatic words of Magna Charta, says in 2d Inst., 55: "Every subject, for injury done to him in bonis, in terris, vel persona, by any other subject, be he either ecclesiastical or temporal, without any exception, may take his remedy by the course of the law, and have justice and right for the injury done to him, freely without sale, fully without any denial, and speedily without delay." "It is a delicate duty to declare an Act of the Legislature void. If, however, in the judgment of the Court, the enactment is without constitutional right, there is no alternative but to do so. As was most appropriately said by Judge Waties, in Lindsay et al. vs. Commissioners, 2 Bay., 61: "In exercising this high authority, the Judges claim no judicial supremacy; they are only the administrators of public will. If an Act of the Legislature is held void, it is not because the Judges have any control over the legislative power, but because the Act is forbidden by the Constitution, and because the will of the people, which is therein declared, is paramount to that of their Representatives, expressed in any law." State v. County Treasurer, 4 S.C. 520 (1873). The Pro se Appellant contends the S.C. Constitution preempts ALL laws, rules, and regulations that do not treat all South Carolinians equal regardless of where they might happen to live due to "temporary absence" from the state and to argue otherwise would be a clear perversion of the law (Trans. Pg 15&16, 18-12 & 1-9) to treat South Carolinians differently based on where they might temporarily live at any given time.

CONCLUSION

The funding of an artist's defecation on the United States Constitution might be defensible by the National Endowment of the Arts, but the reality is that this imagery is not that far off when thinking of the artistic acts of lawyers in matters relating to this self represented party in Charleston County Courts. Anyone that has read this case thus far would have to be wondering how things got so bad in Ashleytowne Village HPR for so long, why the lower courts seem to want to openly

engage in inappropriate conduct, and why the Pro se Appellant does not have counsel. Some answers might be obvious will some might be disturbing, but it should become disturbingly obvious to all that something is legally not right in Charleston County concerning this case. The obvious fact is that I doubt any attorney in the state would take on a case where in order to win the case he would have to implicate a prominent well liked attorney that is a member of a multi-state law firm like Nexsen-Pruit in a fraud either directly or after the fact and/or concealing his involvement in the unauthorized practice of law dealing with a property manager. Another factor is that Derek F. Dean, Esquire has labeled the Defendant in all legal matters as filing frivolous legal documents while at the same time being involved in his capacity as an Officer of the Court as an accessory in a conspiracy to deprive this self represented party of his civil rights under the color of law. The third factor is a member of the alleged Board of Directors for Ashleytowne Village HPR that is directly involved in the intentional filing of fraudulent documents at the RMC (i.e. Register of Deeds) is an immediate family member of sitting judge in the Charleston County Judicial Circuit that is best friends of Magistrate Henry W. Guerard, Esquire in Small Claims Court and this immediate family member of a Judge is directly responsible for approving the filing of a multitude of fraudulent cases in Small Claims Court.

Bluntly put, the vast majority of shareholders have wanted for years to cut back cost to the bare minimum and have strongly voiced this position. However, the bare minimum would eliminate the kickbacks and force all shareholders to pay their fair share of the cost which is unacceptable for the small number of shareholders in the ruling class. The property managers and their family allegedly do extra maintenance work with the alleged Board of Directors needing the additional income from the extra projects not approved by shareholders. Things in this Corporation have gotten really bad with the alleged Board of Director hostile strong arming of shareholders diminishing property values for all owners. The alleged Board members have even declared the right to enter property without notice or consent of Owner's and then conceals their unlawful entry from the Owners since they think condo owners should have fewer rights than tenants. The alleged Board of

Directors conceals Corporation documents or hires lawyers like David Parrish, Esquire to help them obstruct access to the documents by charging outlandish fees for Corporation documents so the alleged Board of Directors can continue with their fraud. Criminal charges have been threatened against shareholders with the support of local police for the co-owners trying to exercise their rights (to include criminal defamation) with the implication that a conviction would be guaranteed due to the family connection of a Board member to a Judge. Anyone that gets out of line or does not pay whatever the “Capos in the Regime” demand in fees or protection money is targeted with hostility and harassment with them refusing to even listen to the co-owner that they demean unworthy to be in “their” Corporation. Shareholders do not even feel safe in their own homes and many have fled from their property in despair from being forced into state supported legal coercion used to continue a debt bondage situation as part of a peonage system.

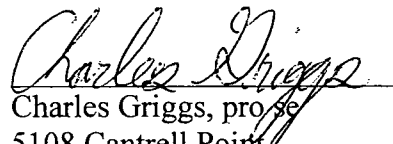
Abraham Lincoln spoke of the greatest threat to democracy is our judicial system. The idea being that our forefathers were creating a system of Judicial Despotism with Judges and their families along with their friends becoming the ruling class of America making everyone else peons to judicial tyranny. The Pro se Party and others in Charleston have been told by many people part of the ruling class of the judiciary in Charleston County that they have NO RIGHTS whatsoever relating to their property interest as a co-owner in the Corporation. The best way to think of this case is as a modern rendition of George Orwell’s “Animal Farm” with a small group of co-owners forming a monopoly on power within the corporation forcing the rest of shareholders into a permanent debt bondage scheme with the property manager along with the ruling class finding continuous ways to defraud the Corporation thus justifying ever increasing regime fees. Educated people understand the author’s intent in Orwell’s “Animal Farm”, but this is a new version of the same tale. Things are so bad concerning the successful delusions of law using state supported legal coercion in the furtherance of a fraud being accomplished by a select few co-owners with a monopoly on power against others that this case may very well be the first time the higher courts have had to deal with certain issues in over a century. The irony of this case is it is rather simple in

that a group of co-owners deprived the Pro se Appellant of the use of his property by intentionally keeping a Common Element AC drain line buried resulting in ongoing flooding of his property in retaliation for his constant complaints about fraud through the deprivation of civil rights by the alleged Board of Directors. The alleged Board refuse to even discuss the matter without submitting to their fraudulent extortion demands for money and created even more fraudulent fees, but cannot get an attorney to assist in their fraud in debt collection so they figuratively stick a gun to the Pro se Appellant head saying give us whatever we want if you want to sell your property. After the Pro se Appellant submitted to the extortion, he immediately filed a small claims court cases knowing or thinking that the Magistrate/Lawyer in Charleston would make Ashleytowne Village (HPR), Inc. at the very least prove they did not fraudulently obtain the money. Magistrate Henry W. Guerard, Esquire literally laughed at the Pro se Appellants "frivolous" attempts to get a fair hearing in the Charleston County courts. The Appellant was looking for a magistrate that would be an edification of Atticus Finch as a judge in a Zane Grey novel, but quickly came to the realization that mad men can be lawyers in Charleston and anyone trying to seek truth and justice in law will inevitably find himself on the court house steps having been labeled as being out of order.

WHEREFORE, the Pro se Appellant simply takes the position that the case should be remanded back to the lower court because of the errors committed in the inferior courts and that all the money stolen from him for any reason to include the violation of the Pro se Appellant's civil rights be returned to him plus interest and court cost in accordance with state law.

FURTHERMORE, the Pro se Appellant would request that this court nullify and void all Judicial action against any party derived upon fraud in Charleston County involving the Respondent and Ashleytowne Recreational Development, Inc. that has used fraudulent documents of the Respondent.

18
17 May 2011
Columbia, SC


Charles Griggs, pro se
5108 Cantrell Point
Acworth, Ga. 30101
770 - 853 - 8122

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Circuit Court Judge

Case No. 2009-CP-10-3577

Charles Griggs

Appellant,

v.

Ashleytowne Village Horizontal Property Owners Assoc.

Respondent.

RESPONDENT'S FINAL BRIEF

May 26, 2011

Derek F. Dean
SIMONS & DEAN
147 Wappoo Creek Drive
Suite 604
Charleston, South Carolina 29412
843-762-9132

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the lower court erred in dismissing the appeal filed by Appellant in the circuit court after dismissal of Appellant's case in the magistrate's court? Is the lower court's ruling the law of the case?
- II. Whether the appellate court should affirm the lower court's ruling upon any grounds appearing in the Record on Appeal in accordance with Rule 220c, SCACR?
- III. Whether Appellant's contentions regarding the S.C. Frivolous Proceedings Sanctions Act are preserved for or subject to appeal?
- IV. Whether Appellant's remaining contentions are before this Court on appeal as they were not presented to the lower court?

STATEMENT OF THE CASE

On December 11, 2008, Appellant filed a one page, form complaint with the Small Claims Court asserting causes of action for tort interference, meddling, breach of contract and breach of fiduciary responsibility. On January 13, 2009, Respondent filed its Motion to Dismiss or Alternatively Motion for More Definite Statement. On February, 24, 2009, Judge Henry Guerard, Magistrate, held a hearing on Respondent's motion. Thereafter, Appellant was afforded an opportunity to file an amended complaint.

Appellant served his amended complaint on or about March 3, 2009. This amended complaint asserted causes of action for fraud, breach of duty, tort interference, negligence, abuse of process and barratry. On April 8, 2009, Respondent filed its Answer and Counterclaim to Plaintiff's Amended Complaint with Motion to Dismiss. The basis for Respondent's motion to dismiss was that Appellant had failed to state facts sufficient to constitute a cause or causes of action pursuant to Rule 12(b)(6), SCRCP.

The magistrate held a hearing on Respondent's motion to dismiss on May 6, 2009. At the hearing, and in Appellant's presence, the magistrate granted Respondent's motion dismissing the case.

On June 1, 2009, Respondent's counsel requested a hearing on Respondent's claim for recovery of attorneys' fees and costs pursuant to the S.C. Frivolous Proceedings Sanctions Act.

On June 8, 2009, Appellant filed an Appeal of the magistrate's dismissal of his case in the Charleston County circuit court. R. pp. 3-15. On June 18, 2009, Respondent filed it Notice of Motion and Motion to Dismiss Appeal. R. pp. 19-24.

On August 3, 2009, Judge Guerard held a hearing on Respondent's motion for recovery of attorneys' fees and costs pursuant to the S.C. Frivolous Proceedings Sanctions Act. At that time, Judge Guerard indicated that Respondent was entitled to attorneys' fees and costs in the amount of \$2,088.75 as requested; however, Judge Guerard held this issue in abeyance pending the outcome of the appeal filed in the circuit court.

On December 16, 2009, Judge Nicholson held a hearing on Respondent's motion to dismiss and denied the appeal as untimely. A order to that effect was signed by Judge Nicholson on December 17, 2009 and filed with the Charleston County Clerk of Court on December 18, 2009. R. p. 2. Thereafter, Respondent's counsel sent Judge Guerard a letter on December 30, 2009, requesting issuance of a ruling on Respondent's request for attorneys' fees and costs in the amount of \$2,088.75. On January 5, 2010, Respondent's counsel sent Judge Guerard a follow up letter regarding the same issue.

On or about January 29, 2010, Appellant served his Notice of Appeal on Respondent's counsel.

On February 24, 2010, Judge Guerard held a hearing on Respondent's request for

attorneys' fees and costs in the amount of \$2,088.75 pursuant to the S.C. Frivolous Proceedings Sanctions Act. At said hearing, Judge Guerard agreed that Respondent was entitled to an award of attorneys' fees and costs in the amount of \$2,088.75 but held any ruling in abeyance pending the outcome of the appeal to this Court.

ARGUMENT

I) Whether the lower court erred in dismissing the appeal filed by Appellant in the circuit court after dismissal of Appellant's case in the magistrate's court? Is the lower court's ruling the law of the case?

As previously noted, Judge Nicholson heard Respondent's motion to dismiss Appellant's appeal to the circuit court on December 16, 2009. At that time, Judge Nicholson granted Respondent's motion to dismiss Appellant's appeal. Based upon Respondent's review of the Brief of Appellant, Judge Nicholson's ruling has not been challenged on appeal and is thus the law of the case. This should end any further inquiry. The law of the case doctrine should apply in this instance. Under the law of the case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court. *C.J.S. Appeal & Error* §991 (2008).

The basis for Respondent's motion to dismiss Appellant's appeal in the circuit court was that said appeal was untimely. Respondent's initial motion to dismiss this action was heard before Judge Guerard on May 6, 2009 in the small claims court. At the conclusion of the hearing, and in the presence of the Appellant, Judge Guerard granted the motion to dismiss. S.C. Code Ann. §18-7-20 states in pertinent part as follows: "The appellant, within thirty days after written notice of judgment has been given him...by the magistrate...except

when the judgment is announced at the trial in the presence of the appellant...then no written notice is necessary, shall serve a notice of appeal, stating the grounds upon which the appeal is founded.” (Emphasis added.) Thus, Appellant had thirty (30) days from May 6, 2009 to serve his notice of appeal. He failed to do so. Appellant’s appeal in the lower court was dated June 6, 2009, but was not served via United States Postal Service Priority Mail until June 9, 2009, which is thirty-four days after the ruling was made. R. pp. 20-24. The thirtieth day to serve the appeal was June 5, 2009. Thus, Appellant’s appeal to the circuit court was untimely.

Further, pursuant to Rule 74, SCRCP, Appellant had thirty (30) days from May 6, 2009 to file his appeal with the clerk of court and with the inferior court. The appeal was not filed with the Charleston County Clerk of Court until June 8, 2009. R. p. 4. The appeal was not filed with the small claims court. R. pp. 27-28, 38.

Judge Nicholson concluded that the appeal from small claims court was untimely. R. p. 32. He indicated, “You’re outside the time frame. And there’s no waiving of that time frame. It’s a drop dead date.” R. p. 38. He further indicated, “And you didn’t file the appeal timely. So this court doesn’t have any choice except to dismiss you appeal. Or, deny our appeal.” R. p. 39. Also of note is Appellant’s affirmation on the record that he served the appeal thirty-four days after the ruling in small claims court rather than thirty days. R. p. 37.

Nowhere in Appellant’s Brief does he challenge Judge Nicholson’s ruling at the circuit court level. Thus, the dismissal of the appeal is the law of the case. *Buckner v. Preferred Mut. Ins. Co.*, 225 S.C. 159, 160, 177 S.E.2d 544, 544 (1970) (stating that an issue which is not challenged on appeal, whether right or wrong, becomes the law of the case); *Resolution Trust Corp. v. Eagle Lake and Golf Condominiums*, 310 S.C. 473, 427 S.E.2d 646 (1993) (the failure to appeal a ruling renders the ruling the law of the case); *Hall v.*

Clarendon Outdoor Advertising, Inc., 311 S.C. 185, 428 S.E.2d 1 (Ct.App.1993) (the failure to argue against the basis for a trial court's ruling renders it the law of the case); *In re Morrison*, 321 S.C. 370 n. 2, 468 S.E.2d 651 n. 2 (1966) (noting that an unappealed ruling becomes the law of the case and precludes further consideration of the issue on appeal); *Cooper Tire & Rubber Co. v. Perry et al*, 261 S.C. 538, 201 S.E.2d 245 (1973) (holding that where a ruling on a demurrer to complaint is not appealed from, it becomes the law of the case); *Watkins v. Hodge*, 232 S.C. 245, 247-48, 101 S.E.2d 657, 658 (1958) (refusing to consider jurisdictional matter of underlying case where issue had been ruled upon and not challenged on appeal); *Charleston Lumber Co. v. Miller Housing Corp.*, 338 S.C. 171, 525 S.E.2d 869 (2000) (stating an unappealed ruling is the law of the case); *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 489 S.E.2d 470 (1997) (an unchallenged ruling, right or wrong, is the law of the case); *Continental Ins. Co. v. Shives*, 328 S.C. 470, 492 S.E.2d 808 (Ct.App.1997) (a lower court's unappealed ruling becomes the law of the case, and the appellate court must assume the ruling was correct).

In order to preserve this appeal, Appellant must set forth specific reasons why the ruling in the court below dismissing the appeal was error. He has not done so. Thus, the instant appeal should be dismissed.

II) **Whether the appellate court should affirm the lower court's ruling upon any grounds appearing in the Record on Appeal in accordance with Rule 220c, SCACR?**

This Court should affirm the lower court's ruling upon the grounds appearing in the Record on Appeal, and specifically the Transcript of Record, in accordance with Rule 220c, SCACR. As noted above, at the circuit court's hearing of Respondent's motion to dismiss appeal, Judge Nicholson concluded that the appeal was untimely, and Appellant

acknowledged that he failed to serve Respondent with the appeal within the thirty day time frame.

Further, Appellant does not dispute that Judge Guerard's ruling dismissing Appellant's complaint was announced in his presence on May 6, 2009. The Record on Appeal confirms that Appellant's appeal to the circuit court was not filed with the Charleston County Clerk of Court until June 8, 2009. The documentation on file with the court confirms that the appeal was thus untimely. Therefore, this appeal should be dismissed.

III) Whether Appellant's contentions regarding the S.C. Frivolous Proceedings Sanctions Act are preserved for or subject to appeal?

Appellant sets forth various contentions regarding the S.C. Frivolous Proceedings Sanctions Act in his brief. Respondent contends that these contentions are not subject to this appeal.

First, there has been no ruling in the lower court at this time awarding Respondent its attorneys' fees and costs in this matter. While two hearings were held on August 3, 2009 and February 24, 2010 regarding Respondent's motion for an award of attorneys' fees and costs pursuant to the S.C. Frivolous Proceedings Sanctions Act, the small claims court has never actually entered an award due to the pendency of the appeal in the circuit court and now this appeal.

On August 3, 2009, Judge Guerard held a hearing on Respondent's motion for recovery of attorneys' fees and costs pursuant to the S.C. Frivolous Proceedings Sanctions Act. At that time, Judge Guerard indicated that Respondent was entitled to attorneys' fees and costs in the amount of \$2,088.75 as requested; however, Judge Guerard held this issue in abeyance pending the outcome of the appeal filed in the circuit court.

On February 24, 2010, Judge Guerard held another hearing (after the dismissal of

Appellant's appeal in the lower court) on Respondent's request for attorneys' fees and costs in the amount of \$2,088.75 pursuant to the S.C. Frivolous Proceedings Sanctions Act. At said hearing, Judge Guerard agreed that Respondent was entitled to an award of attorneys' fees and costs in the amount of \$2,088.75 but held any ruling in abeyance pending the outcome of the appeal to this Court.

Second, on or about January 29, 2010, Appellant served his Notice of Appeal on Respondent's counsel, which was obviously prior to the February 24, 2010 hearing in the small claims court. The Notice of Appeal states that Charles Griggs appeals the judgment of the Honorable J.C. Nicholson dated December 18, 2010. Judge Nicholson's ruling had nothing to do with the attorneys' fees and costs the Respondent sought pursuant to the S.C. Frivolous Proceedings Sanctions Act.

The Transcript of Record bears out that this issue was never before the circuit court, R. pp. 41-44, as no award has ever been issued by the small claims court, and thus, any issues regarding potential sanctions under the S.C. Frivolous Proceedings Sanctions Act are not subject to this appeal.

IV) Whether Appellant's remaining contentions are before this Court on appeal as they were not presented to the lower court?

Respondent asserts that the remaining contentions asserted by Appellant in his brief were not presented to the lower court, are not part of the Record on Appeal and are thus not properly before this Court for review. The Notice of Appeal states that Charles Griggs appeals the judgment of the Honorable J.C. Nicholson dated December 18, 2010. Judge Nicholson's ruling only had to do with the issue of whether or not Appellant's appeal from small claims court to circuit court was timely. Judge Nicholson concluded that it was not and so held. The only issue properly before this Court is whether or not Judge Nicholson erred

in dismissing Appellant's appeal in the lower court. As noted above, this ruling has not been challenged and is the law of the case.

The purpose of an appeal is to determine whether the trial judge erroneously acted or failed to act and when appellant's contentions are not presented or passed on by the trial judge, such contentions will not be considered on appeal. *Roche v. South Carolina Alcoholic Beverage Control Comm'n*, 263 S.C. 451, 211 S.E.2d 243 (1975). Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court. *Elam v. S.C. Dep't of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004). None of the issues presented in Appellant's brief are preserved for appellate review since none of them were raised to and ruled on by the circuit court.

Rule 210c, SCACR, provides that the Record on Appeal shall not include matter which was not presented to the lower court. The only matters presented to the lower court, and part of the record therein, include Appellant's Appeal filed June 8, 2009 and Respondent's Notice of Motion and Motion to Dismiss Appeal filed June 18, 2009. The only other matter properly before this Court for inclusion in the Record on Appeal include Judge Nicholson's Order dismissing Appellant's appeal and the Transcript of Record. Therefore, the numerous additional contentions set forth in Appellant's appeal to this court should be dismissed as not properly before this Court.

Further, a brief must reference the Record on Appeal to support the facts alleged. *State v. White*, 372 S.C. 364, 642 S.E.2d 607 (S.C.App. 2007). Appellant has not done so. This failure is fatal to his appeal.

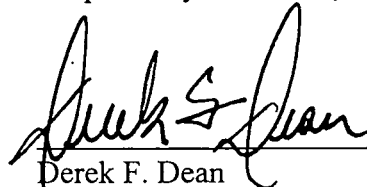
CONCLUSION

Judge Nicholson's order dismissing the appeal has not been challenged by the Appellant and is thus the law of the case. As such, Appellant's appeal should be dismissed.

Appellant's contentions regarding the S.C. Frivolous Proceedings Sanctions Act were not subject to the appeal in the lower court as no award has ever been issued by the small claims court, and thus, any issues regarding potential sanctions under the S.C. Frivolous Proceedings Sanctions Act are not subject to this appeal.

Appellant's remaining contentions are not part of the Record on Appeal, were not raised to and ruled on by the lower court and are not properly before this Court and should be dismissed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Derek F. Dean", is written over a horizontal line.

Derek F. Dean
SIMONS & DEAN
147 Wappoo Creek Drive, Suite 604
Charleston, SC 29412
(843) 762-9132

ATTORNEYS FOR RESPONDENT

Pro Se Appellant:

Charles Griggs
5108 Cantrell Point
Acworth, GA 30101