

5

76099.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

MAY 26 2015

Steven H. John, Presiding Judge

SC Court of Appeals

Case No. 2009-CP-26-10523

**Appellate Case No. 2012-213287**

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

v.

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

**MOTION FOR SANCTIONS AGAINST APPELLANTS  
FOR FRIVOLOUS PROCEEDINGS AND APPEAL**

Respondent Windjammer Village of Little River, South Carolina, Property Owners' Association hereby moves pursuant to Rule 269, *SCACR* for an Order sanctioning the Appellants for filing a frivolous appeal, and awarding Respondent attorney's fees and costs, on the following grounds: (1) Appellants' August 23, 2012 document entitled "Re: August 30th Rule to Show Cause Hearing: Plaintiffs' Memorandum Requesting That the Court Re-Visit the Final Order in the Name of

Justice” (which the lower court treated as a Rule 60(b), *SCRCP* Motion) was not timely filed; and, (2) the arguments asserted by the Appellants in their filings and at the August 30, 2012 hearing were not legally founded. [R. p. 126, line 5 – p. 127, line 22; R. pp. 28–31] In support of its Motion, true and correct copies of the following have been attached for this Court’s review and consideration:

- (1) Attached hereto as Exhibit “A” is the lower court’s “Order Upon Plaintiffs’ Memorandum Requesting That the Court Re-Visit the Final Order in the name of Justice (*Court accepted as a Rule 60(b) Motion*”), signed by the Honorable Steven H. John on September 14, 2012 and filed with the Clerk of Court on September 18, 2012. [R. pp. 25–31] The Appellants’ Notice of Intent to Appeal cited this Order as the basis for their appeal. [R. pp. 106–110]
- (2) Attached hereto as Exhibit “B” is the Affidavit of Kenneth R. Moss dated November 18, 2012. Mr. Moss’ Affidavit was attached to the Respondent’s Motion to Dismiss dated November 18, 2012; and
- (3) Attached hereto as Exhibit “C” is Respondent’s Memorandum of Law in Support of Respondent’s Motion to Dismiss dated November 18, 2012. This Memorandum of Law was attached to the Respondent’s Motion to Dismiss dated November 18, 2012.

The Respondent asserts the Appellants’ appeal was frivolous because Appellants’ were aware at the time they filed their Notice of Appeal that their August 23, 2012 Memorandum entitled “Re: August 30th Rule to Show Cause Hearing: Plaintiffs’ Memorandum Requesting That the Court Re-Visit the Final Order in the Name of Justice” (which the trial court treated as a Rule 60(b), *SCRCP* Motion) was not timely filed; and, (2) the arguments asserted by the Appellants in

their filings and at the August 30, 2012 hearing were not legally founded. [R. p. 126, line 5 – p. 127, line 22.]

Moreover, the Appellants' abused their statutory right to appeal the lower court's Order. Instead of appealing the lower court's Order signed by the Honorable Steven H. John on September 14, 2012 and filed with the Clerk of Court on September 18, 2012, as indicated in their Notice of Intent to Appeal [R. pp. 106–110], the Appellants sought to use an appellate proceeding as a platform to re-assert the merits of the case tried and ruled on by the lower court. The Appellants ignored their failure to appeal the underlying matter within the statutory time limits. The Court of Appeals could not hear the substance of their appeal as filed, but Appellants tied up the resources of the Court and caused significant expense to the Respondent by way of legal fees and costs over and above the normal appellate costs that may be taxed against the Appellants.

Under the South Carolina Frivolous Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 *et seq.* (Supp. 2013, as amended), a *pro se* litigant participating in a civil or administrative action or defense may be sanctioned for filing a frivolous pleading, motion, or document that a reasonable attorney presented with the same circumstances would believe is frivolous, interposed merely for delay, or was merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based; or, “[T]he

case or defense was frivolous as not reasonably founded in fact. . . .” S.C. Code Ann. § 15-36-10(C)(1)(c).

Sanctions should not be imposed if the Court finds by a preponderance of the evidence that the *pro se* litigant, although engaged in advancing a frivolous claim or defense should not be sanctioned. Id. at § 15-36-10(C)(2). “The determination of whether attorney’s fees should be awarded under the Frivolous Proceedings Act is treated as one in equity.” Hanahan v. Simpson, 326 S.C. 140, 156, 485 S.E.2d 903, 912 (1997). In cases arising under the Frivolous Proceedings Sanctions Act, this Honorable Court may exercise its equitable powers to take its own view of the preponderance of the evidence. Id.; see also, Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC, 394 S.C. 97, 104, 713 S.E.2d 650, 653 (Ct. App. 2011).

Therefore and accordingly, the Respondent respectfully requests this Honorable Court to impose sanctions against the Appellants, jointly and individually, under Rule 269, *SCACR* and the South Carolina Frivolous Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 *et seq.* (Supp. 2013, as amended), in the amount of the attorney’s fees and costs incurred by the Respondent to litigate the frivolous proceedings as follows:

- (1) In the Court of Common Pleas (08/29/2012 – 09/18/2012), the sum of \$798.40; plus
- (2) In the Court of Appeals (10/19/2012 – 05/13/2015), the sum of \$40,933.93; less
- (3) The sum of \$1,156.92 that Respondent will seek to recover under Rule 222, *SCACR*.

Pursuant to the calculations stated above, the Respondent incurred legal fees and costs in the total amount of \$40,575.41. These legal fees and costs are evidenced by the attached Affidavit of counsel for the Respondent.

Alternatively, Respondent would respectfully request this Honorable Court to impose sanctions against the Appellants, jointly and individually, under Rule 269, *SCACR* and the South Carolina Frivolous Proceedings Sanctions Act, in an amount which the Court considers to be just, equitable, and proper under the circumstances.

Respectfully submitted,

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



---

Kenneth R. Moss, SC Bar # 15520

628A Sea Mountain Highway

North Myrtle Beach, SC 29582

Tel: (843) 281-9901

Fax: (843) 281-9903

Email: [kennethmoss@wwpemplaw.com](mailto:kennethmoss@wwpemplaw.com)

*Attorney for Respondent*

North Myrtle Beach, South Carolina  
May 21, 2015

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

**RECEIVED**

MAY 26 2015

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

SC Court of Appeals

Steven H. John, Presiding Judge

---

Case No. 2009-CP-26-10523

**Appellate Case No. 2012-213287**

---

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

v.

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

---

**PROOF OF SERVICE**

---

I certify that I have served a copy of the Respondent's Motion for Sanctions Against Appellants for Frivolous Proceedings and Appeal, the Affidavit of Kenneth R. Moss, and Proof of Service of same in the above-captioned appeal on the following individuals by U.S. Mail, with sufficient first-class postage affixed, addressed as follows:

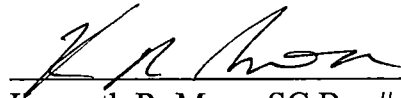
Elizabeth A. Crotty  
2121 Brunswick Circle  
Little River, SC 29566  
*Pro se Appellant*

James K. Orzech  
2148 Gamecock Circle  
Little River, SC 29566  
*Pro se Appellant*

\*\*\* signature page follows \*\*\*

Respectfully submitted,

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



---

Kenneth R. Moss, SC Bar # 15520

628A Sea Mountain Highway

North Myrtle Beach, SC 29582

Tel: (843) 281-9901, ext. 103

Email: [kennethmoss@wwpemlaw.com](mailto:kennethmoss@wwpemlaw.com)

*Attorney for Respondent*

North Myrtle Beach, South Carolina  
May 21, 2015