ORIGINAL

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Steven H. John, Presiding Judge

Case No. 2009-CP-26-10523

Appellate Case No. 2012-213287

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

v.

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

PETITION FOR REHEARING

Per Rule 221(a) *pro se* Appellants Elizabeth A. Crotty and James K. Orzech, Ph.D., hereby, submit a PETITION FOR REHEARING of the decision of the Court dated May 13, 2015, for Appellate Case No. 2012-213287.

The key point **misapprehended** by the Court is the statement that "Crotty and Orzech did not appeal the circuit court's finding that the Rule 60(b) motion was not timely filed within one year of the final order." That led directly to the subsequent **misapprehension** and incorrect conclusion that this case should be affirmed under the two-issue rule per Rule 220(b) and *Jones v. Lott* (2010).

In fact, there was no need for us as Plaintiffs/Appellants to appeal that finding, since we never filed a Rule 60(b) Motion in the first place. Rather Plaintiffs sent the Circuit Court Judge, Steven H. John, a Memorandum for his consideration 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," hereby referred to as "Plaintiffs' 8/23 Memo."

To our surprise the circuit court judge spontaneously and expressly accepted that memo to be a Rule 60(b) Motion.

> **THE COURT:** "... What you have presented to me I am accepting, for won't (*Sic.*) of a better word, even though it may not be in proper form, a Rule 60(b) Motion." (From transcript)

The judge mentioned, but in the same breath waived the timeliness requirement, as well as all other procedural matters, by virtue of the fact that he accepted and then went on to rule upon the various issues raised in Plaintiffs' 8/23 Memo, as though they were part of a valid, timely Rule 60(b) Motion.

Please note that the circuit court judge already had scheduled that Hearing for Case No. 2009-CP-26-10523 on Aug. 30, 2012 -- one year and 25 days after his Final Order was recorded on Aug. 5, 2011 – to rule upon Defendant's (now Respondent's) MOTION TO SHOW CAUSE. By agreeing to hear Defendant's motion more than one year afterwards, the judge had **reopened the door** for Plaintiffs' 8/23 Memo to be submitted

and then to be accepted as a Rule 60(b) Motion at that same time, and subsequently to be ruled upon and now to be appealed, along with his underlying Final Order. Furthermore, Judge John's resultant ORDER stamped Sept. 18, 2012 is entitled:

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

Therefore, the Rule 60(b) requirement for timeliness is now and has always been *moot*, because Plaintiffs' (now Appellants') 8/23 Memo would never have been:

(1) Written without the circuit court judge first scheduling a Hearing in this Case more that a year after the Final Order; and

(2) Raised to the status of a Rule 60(b) Motion without the circuit court judge first accepting it as such, and then ruling upon it as such.

Further, we as Plaintiffs had filed a MOTION FOR RECONSIDERATION PURSUANT TO RULE 59(e), SCRCP dated Aug. 12, 2011. On Feb. 13, 2012, a MOTIONS HEARING was held before Judge John. The Court filed its ORDER UPON PLAINTIFFS' MOTION FOR RECONSIDERATION on **Feb. 27, 2012**, at which time the Final Order was amended and only then finally became enforceable. During the period from Aug. 12, 2011 through Feb. 27, 2012, the Final Order had been stayed. Appellants assert that the Final Order was not fully **"entered or taken"** per Rule 60(b) until after Feb. 27, 2012. If

so, the actual one-year deadline should have expired in February 2013 and not in August 2012, rendering all concerns about timeliness under Rule 60(b) *moot*.

PRIOR ORDERS FROM THE COURT OF APPEALS

The Court of Appeals already considered all procedural issues for Appellate Case No. 2012-213287, including timeliness, in Respondent's two MOTIONS TO DISMISS, which both were decided in favor of Appellants. In his first MOTION TO DISMISS of Nov. 18, 2012, Respondent's attorney stated,

> "Respondent Windjammer Village of Little River, South Carolina, Property Owners' Association hereby moves for an Order dismissing the appeal of Appellants Elizabeth A. Crotty and James K. Orzech on the following grounds: (1) Appellants' 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) Motion pursuant to the *South Carolina Rules of Civil Procedure*) was not timely filed. ..."

Since Appellant Crotty was at sea unavailable to respond throughout the entire ten-day period allowed under Rule 240, Appellant Orzech replied in his RETURN TO MOTION TO DISMISS dated Nov. 29, 2012, as follows:

> "Appellant James K. Orzech, Ph.D., hereby, moves that Respondent's Motion to Dismiss be denied in that, by way of our August 23, 2012, Memorandum/Motion, which is enclosed along with attachments A-F, we, as citizens and not as attorneys, were appealing directly to Circuit Court

Judge Steven H. John for **Justice,** which had been denied us in the June 2011 Trial for the reasons clearly stated in Plaintiffs' 8/23 Memo. ...

Plaintiffs' 8/23 Memo was a forlorn Appeal for **Justice** from beleaguered, aggrieved citizens, who at that time of writing had no knowledge of Rule 60(b). We discovered that Rule just days before the August 30th Hearing – too late to revise our Memorandum into the prescribed format, but nonetheless, according to Judge John, it spoke directly to the same legal concern, namely the ultimate attainment of **Justice** – arguably the very reason that the Laws and the Courts exist in the first place.

We were seizing upon an unexpected opportunity presented to us when Defendant's (now Respondent's) attorney belatedly reopened the case with a MOTION, demanding even more in legal costs from us. When Judge John agreed to hear the Defendant's new MOTION more than a year after his FINAL ORDER, he effectively reopened the door for us, too, to submit our own MOTIONS, effectively overriding the one-year time limit for such appeals and rendering Respondent's objection on time-limit grounds moot.

Judge John went considerably out of his way to find reason to accept Plaintiffs' 8/23 Memo as a 'Motion Pursuant to Rule 60(b), SCRCP.' The Judge did not have to go that far, or even to consider Plaintiffs' petition, for all of the reasons cited by Respondent's attorney in his Motion to Dismiss and in his Memorandum of Law or in his Affidavit. Nonetheless, when Judge John signed that Order, "accepting" our document as a "Motion Pursuant to Rule 60(b), SCRCP," he did, in fact, waive all of Respondent's identified shortcomings, as is his prerogative to do as a member of the South Carolina Judiciary, for which attorney Moss cited *Coleman v. Dunlap*, thereby rendering moot all of Respondent's claims for dismissal, based upon procedure, style or timeliness, prior to or during the August 30th Hearing.

> Appellant James K. Orzech sincerely believes that Judge Steven H. John was conscientiously acting in the interest of **Justice** by declaring that Plaintiffs' 8/23 Memo must be recorded as a 'Motion Pursuant to Rule 60(b),' precisely so that it could be appealed, if we were smart enough and tenacious enough to figure it out. There seems to be no other logical reason. ..."

On February 11, 2013, the Court of Appeals issued an ORDER, under the signature of Associate Judge Jasper M. Curitan, stating:

> "After careful consideration, **Respondents' motion to dismiss is denied**. Furthermore, Appellants' (Crotty's) motion for an extension to serve the (her) return to the motion to dismiss is granted, and Respondents' motions to strike the (Orzech's) return to the motion to dismiss is denied."

In Respondent Attorney's second MOTION TO DISMISS, OR IN THE ALTERNATIVE, TO STRIKE MATTER FROM APPELLANTS' INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL of April 29, 2013, Respondent's attorney Moss made arguments similar to those in his first such motion that the Court of Appeals already denied, stating:

> "... Appellants' appeal is fundamentally misguided from Appellants' mistaken belief that the Respondent's counsel somehow re-opened the underlying case on the merits by filing a motion seeking an Order and Rule to Show Cause ..."

In their RETURN TO MOTIONS of May 9, 2013, Appellants replied,

> "Apparently Respondent's attorney is still in **denial** that he inadvertently re-opened this case for appeal and was not satisfied with the Appeals

> Court's rulings, so rather than applying his energy to producing Respondent's INITIAL BRIEF by the due date, he instead opted to file yet another redundant MOTION TO DISMISS, which, in addition to wasting even more of the Court's time, conveniently stayed his May 13th deadline indefinitely until the Court can decide upon his current MOTION TO DISMISS."

On July 2, 2013, the South Carolina Court of Appeals sent out an ORDER signed by Associate Judge Jasper M. Curitan that again failed to grant Respondent's second MOTION TO DISMISS by omission, while ruling only on other issues.

RULE 260(b)

Rule 260(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. states:

> "On motion and **upon such terms as are just**, the court may relieve a party ... from a final judgment, order, or proceeding for the following reasons:
>
> **(1)** Mistake, inadvertence, surprise, or excusable neglect;
> **(2)** Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
> **(3)** Fraud, misrepresentation, or other misconduct of an adverse party; **...**
>
> The motion shall be made **within a reasonable time**, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding **was entered or taken.** ..."

Appellants read Rule 60(b) as a statement by the South Carolina Courts that **Justice** rather than **Injustice** must prevail; and that timeliness rules must be **Reasonable**

rather than just **Arbitrary**. An **arbitrary** deadline cannot at the same time be **reasonable** in every case. "One size fits all" is neither **just** nor **reasonable**.

In Respondent's MOTION TO DISMISS of Apr. 29, 2013, attorney Moss wrote,

> "The only issue before this Honorable Court is whether the lower court abused its discretion in its Rule 60(b) Order: Whether to grant or deny a motion under Rule 60(b), lies within the sound discretion of the judge. *Coleman v. Dunlap,* 306 S.c. 491, 494, 413 S.E.2d 15, 17 (1992). Our [The appellate Court's] standard of review, therefore, is limited to determining whether there was an abuse of discretion."

We, therefore, submit that the one-year deadline must be a guideline at the sound discretion of the circuit court judge, if **justice** and **reason** are to prevail under Rule 60(b).

The Court of Appeals could have dismissed this case on Rule 60(b) timeliness grounds in response to Respondent's MOTIONS TO DISMISS in 2012 and 2013, but instead it chose not to do so. Appellants assert that by way of those two ruling, the Court of Appeals already acknowledged and accepted that the circuit court judge used sound discretion in correctly waiving the one-year timeliness requirement for a Rule 60(b) Motion. Thereby, Appellants' "appealing the circuit court's finding that the Rule 60(b) motion was not filed within one year of the final order" is a **misapprehension**, since the Court of Appeals already decided the timeliness issue, along with all other procedural objections, in Appellants' favor years ago.

Should the Court of Appeals go ahead and dismiss this case under Rule 60(b) timeliness grounds, it will in effect be reversing itself in mid-stream. That alone may be

grounds for further appeal under Rule 242(b)(2) "Where there is dissent in the decision of the Court of Appeals."

POINTS OVERLOOKED BY THE COURT

Other **points overlooked** by the Court in this case per Rule 221 include every substantive point that we as Appellants brought out in our 50-page Final Brief, our 25-page Reply Brief and in our 100+ page Record on Appeal. To date the entirety of Respondent's MOTIONS TO DISMISS and all other MOTIONS, as well as all Court Rulings over four years (2012-2015) have dealt only with issues of timeliness, procedure and style, all of which by now have been settled. The time has come for the Court of Appeals to dig into the actual substance of this case in the name of **justice** and **reason,** as you proclaim in your own Rules.

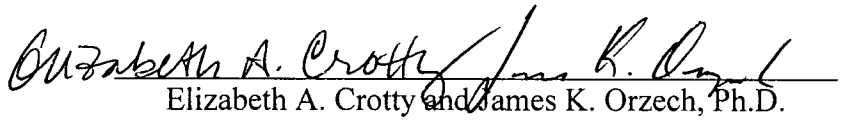
For example, why should Appellants be bound forever by a circuit court decision that mixes up the meanings of the words "access" and "entrance" in a sales contract to our great and enduring detriment? This may seem to be just a trivial matter to Judges on the Court of Appeals, but it has profoundly negative effects on our lives and well beings, especially as we age and become infirm. Further, the cloud on the title of our home, which we have asked you to order removed, makes it nearly impossible for us to sell our home and to move elsewhere. After over sixty years of military service to our country between us, in war and at peace, we now are trapped with no legal way out, if this Appeal is dismissed for reasons that we have shown in this document to be unfounded.

ORIGINAL

CONCLUSIONS

Per Rule 221 and for all of the above misapprehended and/or overlooked points, *pro se* Appellants Elizabeth A. Crotty and James K. Orzech petition the South Carolina Court of Appeals for a REHEARING of Appellate Case No. 2012-213287. We also request that that REHEARING be taken orally in person in Little River or Columbia.

Respectfully submitted,



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

Pro Se Appellants

The B00 House
2148 Gamecock Circle
Little River, SC 29566
Tel: (843) 281-2299

Little River, South Carolina

May 26, 2015

Other Counsel of Record

Kenneth R. Moss, Esq.
Wright, Worley, Pope, Ekster & Moss, PLLC
628A Sea Mountain Highway
North Myrtle Beach, SC 29582

The B00 House
2148 Gamecock Circle
Little River, SC 29566
May 26, 2015

VIA U.S. MAIL
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
Clerk of Court

Re: Elizabeth A. Crotty and James K. Orzech vs. Windjammer Village of Little River, South Carolina, Property Owners' Association

C/A No. 2009-CP-26-10523

Appellate Case No: **2012-213287**

Dear Ms. Kitchings:

Please find enclosed for filing an unbound original and six (6) copies of Appellants' PETITION FOR REHEARING and Proof of Service. Also enclosed is the filing fee in the amount of $25.00.

We have enclosed an additional copy of the Proof of Service and would appreciate you returning a clocked copy to us in the enclosed self-addressed envelope.

Sincerely,

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

Cc: Kenneth R, Moss, Respondent's attorney

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Steven H. John, Presiding Judge

Case No. 2009-CP-26-10523

Appellate Case No. 2012-213287

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

v.

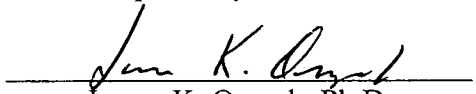
Windjammer Village of Little River, Property Owners' Association, a South Carolina Eleemosynary Corporation, Respondent.

PROOF OF SERVICE

I certify that I have served one copy of Appellant's **PETITION FOR REHEARING** and Proof of Service of same in the above-captioned Appeal to Respondent's Counsel of Record by United States Mail, with sufficient first-class postage affixed, addressed as follows:

Kenneth R. Moss, Esq.
Wright, Worley, Pope, Ekster & Moss, PLLC
628A Sea Mountain Highway
North Myrtle Beach, SC 29582

Respectfully submitted,



James K. Orzech, Ph.D.
Pro Se Appellant

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

May 26, 2015