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THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Steven H. John, Presiding Judge

Case No. 2009-CP-26-10523

Appellate Case No. 2012-213287

Unpublished Opinion No. 2015-UP-249

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 WRIT OF CERTIORARI

Per Rule 242 *pro se* Appellants Elizabeth A. Crotty and James K. Orzech, Ph.D., hereby, submit a PETITION FOR WRIT OF CERTIORARI to the Supreme Court for the Court of Appeals ORDER dated May 13, 2015, for Appellate Case No. 2012-213287. Per Rule 242(d)(1) *pro se* Appellants certify that we submitted a PETITION FOR REHEARING to the Court of Appeals per Rule 221(a) on May 26, 2015, which the Court finally ruled upon on June 18, 2015.

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Questions Presented for Review

The **primary question** presented to the Supreme Court for review of the Court of Appeals Unpublished Opinion No. 2015-UP-249 involves their only finding:

> "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."

Considerations Governing Review

(1) The above statement is not anchored to **reality.**

(2) Judge Curitan of the Court of Appeals had already **denied** two of Respondent's MOTIONS TO DISMISS, challenging this very same point of timeliness in filing what became a Rule 60(b) MOTION, indicating that there is **dissent** within the Court of Appeals. Please see pages 2 through 8 of Appellants' REPLY BRIEF in the APPENDIX for a detailed discussion.

(3) The OPINION filed on May 13, 2015, is so poorly crafted, even misspelling Appellant Orzech's name ("Orzbech"), that it could not have been rigorously researched, authored and/or reviewed by Judges on the Court of Appeals, rendering it **invalid.**

The author of this OPINION held a fundamental **misapprehension** of how our letter to the Circuit Court Judge became a Rule 60(b) Motion in the first place. This

misunderstanding led directly to **(A)** the Court's **incorrect conclusion** that the FINAL ORDER should be affirmed under the two-issue rule per Rule 220(b) and *Jones v. Lott* (2010) and **(B)** the Court's **failure to consider** any further argument that we as *pro se* Appellants developed over nearly three years and hundreds of pages of briefs, motions and returns, involving the **real issues** in dispute in this case.

Direct & Concise Statement and Argument of the Primary Question

In Respondent's MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS addressed to the Court of Appeals and dated Nov. 18, 2012, Respondent's own attorney Moss wrote the following:

> "The above case came before the Honorable Steven H. John for hearing on August 30, 2012, at which time a hearing upon the Defendant's Motion seeking an Order and Rule to Show Cause was scheduled (hereinafter "Defendant's Motion"). The Plaintiffs, Elizabeth A. Crotty and James K. Orzech were present, representing themselves *pro se;* counsel for the Defendant, Kenneth R. Moss, Esquire was present, along with the Defendant's representative, Cindy Dassoulas.
>
> In response to the Defendant's Motion, the Plaintiffs' prepared and caused to be forwarded to the presiding Judge a document dated August 23, 2012 and entitled "Re: August 30th Rule to Show Cause Hearing: Plaintiffs' Memorandum Requesting That the Court Re-visit the Final Order in the Name of Justice" (hereinafter "Plaintiffs' Memorandum"). The Plaintiffs'

Memorandum was not styled as a motion, was never filed with the Clerk of Court, nor accompanied by a Motion Cover Sheet or the requisite motion-filing fee.

After reviewing the Plaintiffs' Memorandum, the Trial Court was persuaded that the Plaintiffs' Memorandum essentially set forth a Rule 60(b), *SCRCP* motion that the Trial Court should reconsider its Final Order in the above-captioned case, although no motion had actually been filed. Judge John permitted the Plaintiffs to present arguments in support of Plaintiffs' Memorandum, which the Court accepted as a Rule 60(b), *SCRCP* motion. ..."

Appellants **assert** that by accepting "Plaintiffs' Memorandum" as a Rule 60(b) Motion at the August 30, 2012, Hearing, Judge John spontaneously **waived** all of its identified deficiencies, including timeliness. So there never was any need for "Crotty and Orzech to appeal the Circuit Courts' finding that the Rule 60(b) motion was not timely filed within one year of the FINAL ORDER," since the court had already **waived** that requirement. Consequently, the Court of Appeals' sole declared rationale for affirming the Circuit Court's FINAL ORDER fails the test of logic since it **violates causality.**

In his MEMORANDUM OF LAW Respondent's attorney Moss went on to state:

"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."

Judge John used his discretion to deny Plaintiffs'/Appellants' Rule 60(b) Motion, but only after first declaring that "Plaintiffs' Memorandum" qualified as a Rule 60(b) Motion, as was his prerogative to do as a member of the South Carolina Judiciary. **That involved the Court affirmatively waiving the one-year time limit right then.** According to *Coleman v. Dunlap*, the Court of Appeals could only determine whether or not Judge John abused his discretion in **denying** Appellants' Rule 60(b) Motion – not on his discretion in **waiving** procedural requirements, such as timeliness, before doing so.

Appellants are not challenging the Judge's discretion in denying our motion. Rather, Rule 60(b) of the *South Carolina Rules of Civil Procedure* concerns relief from a judgment. That rule is an integral and necessary step in the appeals process. The fact that the Circuit Court Judge denied Appellants' Rule 60(b) Motion, after first qualifying "Plaintiffs' Memorandum" as a Rule 60(b) Motion, means that Appellants then could refer it, along with its underlying FINAL ORDER, to the Court of Appeals for review, which is precisely what we did under the rules and under the law. Therefore, the Supreme Court now must adjudicate it on its merit and substance, not on procedure alone.

Direct & Concise Statements and Arguments of the Subsidiary Questions

Apparently the Court of Appeals failed to look beyond its narrow procedural objection. The questions now presented to the Supreme Court per Rule 242(d)(2) are **"deemed to include every subsidiary question fairly comprised therein."** These

subsidiary questions, therefore, encompass every issue brought up in our four Propositions on page #1 of the FINAL BREIF OF APPELLANTS, which the Court of Appeals wrongfully neglected even to consider. Arguments for all four Propositions appear in pages 28 through 48 of our FINAL BRIEF linked to our RECORD ON APPEAL, both of which are provided in the attached APPENDIX.

However, for the sake of simplicity, Appellants present in this PETITION to the Supreme Court just the arguments for the **subsidiary question** brought out in our **Proposition #1,** as argued in detail on pages 28 through 32 in our FINAL BRIEF.

> "Contracts made in South Carolina must be interpreted and enforced according to the true meanings of the words actually in the Contract in the English language, and not by the decrees of Board Members in some Property Owners' Association."

Remarkably, this entire case revolves around whether or not we as property owners can benignly **park** our **vehicles** near the front door of our home – the magnificently remodeled former bathhouse. It hinges on the **unambiguous plain-language text and meaning** of the verb **"to access,"** which does appear in the Sales Contract (R. pp. 93-95), versus that of **"to enter,"** which does not.

In May 2002 … Plaintiff/Appellant Elizabeth A. Crotty… signed a Sales Contract (R. pp. 93-95) to purchase the old bathhouse property from Respondent Windjammer Village POA, which included the statement:

'... It is further agreed that access to this property shall be from Gamecock Circle. This paragraph shall survive the closing. ...'

According to the *Merriam-Webster Dictionary* (1996 Ed.) (R. p. 102), the definitions of the word **"access"** include, **"permission, liberty, or ability to enter, approach, communicate with, or pass to and from."** The preposition **"from"** is used as a function word to indicate **a starting point.** On the contrary, **"entrance"** is defined only as **"a means or 'place' of entry."**

When Appellant Crotty signed that Sales Contract (R. pp. 93-95), she fully expected that as the new owner, she could **park** in front of the old bathhouse, ... as long as she **accessed** her property **from** Gamecock Circle along the 'Paved Driveway' **access road**, since:

- That was the long-established **parking scheme** for the old bathhouse...
- There was no other way **to access** the old bathhouse property **from** Gamecock Circle, other than along the **access road** known on the Plat as the 'Paved Driveway,' which by then had permitted two-way traffic (for residents) for over thirty years.
- The front door to the old bathhouse, as well as the remodeled home, are just off the 'Paved Driveway,' more than fifty yards from the closest point of Gamecock Circle, and Ms. Crotty is a 100% Disabled Veteran.

- There was no way at all **to enter** the old bathhouse property **directly from** Gamecock Circle, since that part of its lot actually abutting Gamecock Circle was then a dense forest on a steep slope.
- No one representing Windjammer Village ever mentioned anything to the contrary to her prior to the 2002 sale, or required her to sign any agreement other than the Sales Contract (R. pp. 93-95).

There is no way that Appellant Crotty reasonably could have extrapolated from the statement in the Sales Contract (R. pp. 93-95) that Respondent WJV POA intended to abolish her right to **park** her **vehicle** in front of her (new) home or to deny her the **free usage** of the common 'Paved Driveway' **access road,** as enjoyed by all other Windjammer POA members, residents and visitors. The words "park," or "vehicle" or "automobile" do not appear anywhere in the Sales Contract (R. pp. 93-95).

In fact we (Crotty and Orzech) did park our vehicles in those spots without any problem from the WJV POA from May 2002 through June 2007. It then became an issue with certain Board members, but only after Appellant Crotty became an opposition candidate for the Board of Directors.

At the time of the sale in May 2002, as now, Windjammer Village Restrictions-Rules-Regulations ('Roadways' Section II, paragraph 4) (R. p. 174) states,

'No vehicle shall park on, or have access to or from Little River Drive, (exceptions include specific deeded RV sites having a 'drive-through' from Little River Drive to the circle road),'

By utilizing the word **"access"** rather than **"entrance"** in the Sales Contract (R. pp. 93-95), the POA kept its wording and meaning in line with its own Restrictions-Rules-Regulations (R. p. 174). The 'drive-through' exception would have allowed the buyer (Appellant Crotty) to have **access** to the old bathhouse property along the 'Paved Driveway' both **from** the Little River Drive and **from** the Gamecock Circle direction.

Respondent POA's only **intent** in the 2002 Sales Contract (R. pp. 93-95), as expressed in the phrase **"... It is further agreed that access to this property shall be from Gamecock Circle ..."** was to permit the buyer **access** to the property only from the Gamecock Circle direction, but not from the Little River Drive direction. Denying Crotty and Orzech **parking** rights, as now enforced, was not Respondent POA's initial **intent.**

If Respondent POA had **intended** to limit buyers reasonably expected **access, parking or easement rights** to the old bathhouse property, there are words in the English language that could have been in the Sales Contract (R. pp. 93-95), as a published restriction, to make that point clear without ambiguity, but those words were not chosen.

The Titles to Real Estate issued to Crotty in 2002 (R. pp. 42-47) and to Crotty and Orzech in 2005 (R. pp. 48-52) made no reference to the clause in the Sales Contract (R. pp. 93-95), regarding **access,** nor to any deed restriction limiting **parking** anywhere on said property, nor to any future denial of easement rights along the common **access road**

identified as the "Paved Driveway' on the Plat (R. p. 52 and p. 100). If Respondent POA had **intended** to restrict the buyer's usage of the bathhouse property in any such ways, there are procedures under SC law that the POA could have employed to attach 'deed restrictions' prior to the sale, but no such actions were taken.

The wording of the 2002 Sales Contract (R. pp. 93-95) permits us (Crotty and Orzech) as owners **to access** our property **from** Gamecock Circle via the 'Paved Driveway' **access road.** Therefore, we expect to be able to **park** in our own front yard, as all other Windjammer's 360-plus residents do, without the POA's chronic, unwarranted, incessant and annoying harassment. **We pray that the Supreme Court will rescind the Circuit Court's decision to the contrary.**

The Trial Court's Fundamental Error

Case No. 2009-CP-26-10523 in the Court of Common Pleas, Fifteenth Judicial Circuit, (Crotty and Orzech vs. the Windjammer Village Property Owners' Association) began when we as Plaintiffs attempted to obtain an Injunction to stop Defendant WJV POA from tearing out the common 'Paved Driveway' in front of our home, if the Board of Directors' Mail-In Referendum (R. pp. 55-57) passed, which it ultimately did. The Circuit Court Judge approved that Injunction (R. p. 18), declaring that the removal of an **access road** shown on the Plat (R. p. 52 and p. 100) would violate SC Law.

However, in May 2010, Defendant WJV POA filed DEFENDANT'S ANSWER AND COUNTERCLAIM (R. pp. 58-61) through their then-attorney Roger Roy. As discussed in detail in our INITIAL BRIEF (in APPENDIX), we as Plaintiffs never

understood that these COUNTERCLAIMS were anything other than arguments against the TEMPORARY INJUNCTION (R. pp. 71-72) becoming final, until we found ourselves in a non-jury Trial on June 22-23, 2011, for which neither we nor our then-attorney, Richard M. Lovelace, Jr., were prepared.

We won on the PERMANENT INJUNCTION (R. p. 18), but lost nearly everything else by default -- the consequences of which we now are Appealing.

DEFENDANT'S ANSWER AND COUNTERCLAIM for the first cause of Action (Breach of Contract) (R. pp. 58-59) in Paragraph 5 (R. p. 59) states:

> **"5. That pursuant to the terms of the contract, Plaintiffs agreed to enter their property off of Gamecock Circle, thereby breaching the terms of the contract."**

However, the actual Sales Contract (R. pp. 93-95) that Crotty signed in May 2002 does not, repeat not, contain the word '**entrance**' or anything similar. It says:

> **"... It is further agreed that access to this property shall be from Gamecock Circle. This paragraph shall survive the closing. ..."**

Consequently, Paragraph 5 of Defendant's COUNTERCLAIM (R. p. 59) is **unambiguously** at variance with the **clear wording and intent** of the original Sales Contract (R. p. 94).

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Per Respondent's MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS addressed to the Court of Appeals and dated Nov. 18, 2012,

> "When a contract or agreement is clear and capable of legal construction, the court's only function is to interpret its lawful meaning and the intent of the parties as found **within the agreement.** Smith-Cooper v. Cooper, 344 S.C. 289, 295, 543 S.E.2d 271, 274 (Ct. App. 2001)."

Conclusion

Remember Proposition #1: "Contracts made in South Carolina must be interpreted and enforced according to the true meanings of the words actually in the Contract in the English language, and not by the decrees of Board Members in some Property Owners' Association."

The Trial Judge **erred** by hearing arguments based on **the wrong word: "enter,"** that does not appear anywhere in the Sales Contract (R. pp. 93-95), while failing to interpret or to enforce the contract according to the meaning of **the right word: "access"** that actually does, rendering the FINAL ORDER (R. pp. 12-19) **null and void.**

Had the Judge taken a more careful look at the wording in the COUNTERCLAIM (R. p. 59) and compared it to that of the SALES CONTRACT (R. p. 94), he would have thrown out the COUNTERCLAIM (R. pp. 58-61) right then and there.

Consequently, we as *pro se* Appellants pray that the Supreme Court now will rectify this matter, once and for all. If so, per page #50 in our FINAL BRIEF (in APPENDIX), Appellants respectfully request that the South Carolina Supreme Court:

(1) Strike down the FINAL ORDER (Ending Action) (R. pp. 12-19) by The Honorable Steven John, except for the PERMANENT INJUNCTION against the removal of the 'Paved Driveway,' recorded August 5, 2011, in the Court of Common Pleas, Fifteenth Judicial Circuit, (Civil Action #2009-CP-26-10523); and instead,

(2) Grant PERMANENT STATUS to the ORDER FOR TEMPORARY INJUNCTION by The Honorable Larry B. Hyman, Jr. (R. pp. 6-8), dated October 28, 2009; and,

(3) Cause the RECORDING MEMORANDUM (R. pp. 35-36), dated May 15, 2012 and filed with the Office of the Registrar of Deeds for Horry County, to be removed; and,

(4) Order that the COSTS, amounting to $1,933.24 that we paid to Respondent's attorney in Nov. 2012 (R. pp. 32-34), be returned to us.

Respectfully submitted,

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

Pro Se Appellants

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July 18, 2015

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Clerk of Court, South Carolina Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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PROOF OF SERVICE

I certify that I have served a copy of Appellant's PETITION FOR WRIT OF CERTIORARI 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:

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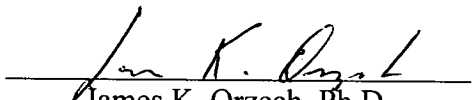
Respectfully submitted,



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