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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

**RECEIVED**

AUG 25 2015

S.C. Supreme Court

Case No. 2009-CP-26-10523

Appellate Case No. 2012-213287

Unpublished Opinion No. 2015-UP-249

**APPELLATE CASE No. 2015-001557**

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

v.

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

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**PETITIONERS' REPLY TO RESPONDENT'S RETURN  
TO PETITION FOR WRIT OF CERTIORARI**

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Per Rule 242(g), SCACR, *pro se* Petitioners Elizabeth A. Crotty and James K. Orzech, Ph.D., hereby, submit our REPLY TO RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI for **Appellate Case No. 2015-001557**.

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That Which Survives

Despite Respondent’s repeated attempts to confuse the issue, the **primary question** presented to the Supreme Court for review of the Court of Appeals Unpublished Opinion No. 2015-UP-249 remains their **only** finding: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.”**

Respondent’s attorney already **stipulated** that Circuit Court Judge Steven H. John **waived timeliness** and all other procedural matters by accepting our “Memorandum Requesting That the Court Re-visit the Final Order in the Name of Justice” as a proper RULE 60(b) MOTION. The Judge did so entirely on his own, even acknowledging repeatedly in court that he was doing so. He verbally specified more than once that he accepted our Memorandum as a Rule 60(b) MOTION, even causing wording to that effect to appear on the banner of his ORDER, as follows:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF Horry	)	C/A NO. 2009-CP-26-10523
	)	
Elizabeth A. Crotty and James K. Orzech,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	<b>ORDER UPON PLAINTIFFS’</b>
	)	<b>AUGUST 23, 2012 MEMORANDUM</b>
Windjammer Village of Little River,	)	<b>REQUESTING THAT THE COURT</b>
South Carolina, Property Owners’	)	<b>RE-VISIT THE FINAL ORDER IN</b>
Association, a South Carolina	)	<b>THE NAME OF JUSTICE</b>
Eleemosynary Corporation,	)	<i>(Court accepted as a Motion Pursuant</i>
	)	<i>to Rule 60(b), SCRCP)</i>
Defendant.	)	

FILED  
COUNTY  
2012 SEP 18 AM 10:51  
MELANIE HUBBARD  
CLERK OF SUPERIOR COURT

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In his MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS addressed to the Court of Appeals and dated Nov. 18, 2012, Respondent's attorney Moss acknowledged that fact by writing the following:

“... 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. ...” [Emphasis added.]

### Abuse of Discretion

Therefore, the question now before the Honorable Supreme Court is not if Judge John waived the one-year time limit, since it is clear that he did, but rather whether or not there was an **abuse of discretion**:

“Motions for relief under Rule 60(b) are within the trial court's discretion, and this court will not reverse the trial court absent an abuse of discretion.” Coleman v. Dunlap, 303 S.C. 511, 513, 402 S.E.2D 181, 183 (Ct. App. 1991).

- **If** the circuit court judge acted properly within his discretion by waiving the one-year time limit in court that day, the opinion of the Court of Appeals would make no sense, because there never would have been a finding to the contrary for us to appeal.
- However, **if** the circuit court judge did not act within his discretion, as the Court of Appeals seems to imply, it failed to take note of that key point in its opinion.

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In either eventuality, the Court of Appeals decision missed the mark by failing to address directly whether or not the trial court abused its discretion, while ignoring all else.

### Wholly Unsupported by Evidence

The matters of abuse of discretion, as well as all other issues and arguments being appealed, are not settled. Petitioners assert that, given that the Court of Appeals **abdicated** its responsibilities to do so, it now is incumbent upon the Supreme Court under Rules 60(b) and 242: **(1)** to overrule the Appeals Court's illogical and poorly thought out finding as an error of law; and **(2)** to review the **factual findings**, since the circuit court's FINAL ORDER is **wholly unsupported by evidence**.

“On certiorari, this Court will review only errors of law and will not review factual findings unless wholly unsupported by evidence.” *S.C. Bd. OF Examiners in Optometry v. Cohen*, 256 S.C. 13, 180 S.E.2D 650 (1971). [Emphasis added.]

Per our PETITION FOR WRIT OF CERTIORARI (pp. 6-12), as well as throughout our many briefs, motions and returns to the Court of Appeals, we steadfastly asserted that **the Circuit Court's FINAL ORDER is wholly unsupported by evidence**, because:

“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**.”

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:

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“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.” [Emphasis added.]

However, the Sales Contract (R. pp. 93-95) that (Petitioner) Crotty signed in 2002 (and that Petitioner Orzech bought into in 2005) does **not** contain the words ‘**enter**’ or ‘**entrance**’ or anything similar. Rather it states:

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

Petitioners have shown in our PETITION FOR WRIT OF CERTIORARI (pp. 6-12), as well as in our FINAL BRIEF OF APPELLANTS (pp. 19-22, 28-32 in APPENDIX) that Respondent’s original intent in the 2002 Sales Contract (R. pp. 93-95) was to use the word “**access**” with its precise and distinct meaning, rather than the word “**enter**.”

“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).”

The **plain-language wording** of the Sales Contract (R. pp. 93-95) permits us (Petitioners Crotty and Orzech), as owners, **to access** our property **from** Gamecock Circle via the **access road** known as the ‘Paved Driveway,’ and consequently **to park** in our own front yard. It does **not** require us **to enter** our property directly from Gamecock Circle, denying us usage of the **access road** right in front of our home and **parking**.

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**Any claim that Petitioners ever agreed to enter rather than to access our property from Gamecock Circle is wholly unsupported by evidence.**

### **The Significance of this Case**

It appears that there is no way that any reasonable person could possibly look at Unpublished Opinion No. 2015-UP-249 and conclude that this case was given anything but the most superficial treatment. There is no hint that any actual judge on the Court of Appeals read our arguments or any of the underlying documentation, after nearly three years of process and more than a dozen MOTIONS and RETURNS plus multiple ORDERS.

We, as Petitioners, acknowledge that whether or not we can **access parking** on our own property, as do all other POA Members in Windjammer Village, a community of over 360 homes, it is of no consequence to anyone else but us. Nonetheless, we both are elderly Veterans and Ms. Crotty is a 100% Disabled Veteran with PTSD. She needs to be able to see her vehicle readily available near her front door, not 47 yards away and around a corner. We both likely will become more infirm and loose mobility with increasing age. **Parking** near our front door is vital to both of us.

Per our FINAL BRIEF FINAL BRIEF OF APPELLANTS (pp. 16-28 in APPENDIX) to the Court of Appeals, our dispute with Respondent POA began five full years after we purchased the old bathhouse property from Windjammer Village. From 2002 through 2007 we **accessed** that property, upon which we built our new retirement home, without interference. It was only after June 2007 that Respondent began insisting that we were violating the Sales Agreement by **parking** in our own front yard. The POA fined us \$100

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and took away Association privileges, with threats of even larger fines to come. There was no way to appeal. We resisted, arguing then, as we are doing now, that the intent and wording of the Sales Contract (R. pp. 93-95) permits us to do so. So began the **vendetta**.

In the intervening years the Board of Directors changed over many times, while the WJV POA clarified and/or eased its Rules about crossing common ground to reach one's own property, which was central to their case. The principal Board members with whom we had our dispute moved away or died. Very few current residents care one way or another where we **park**. They do, however, object to the high cost of this litigation.

Our plight is emblematic of a cosmic, unresolved legal issue in South Carolina, relating to the vast overreach of POA/HOA Boards in the lives of citizens, beyond the limits of their Covenants and outside the normal reach of the Law, without any reasonable or attainable Checks and Balances. Since the POA/HOA Boards act as the Executive, Legislative and Judicial branches of their quasi-governmental structures, they often become petty, despotic and corrupt, albeit at a micro-local level. Any member challenging their authority soon becomes the target of a **vendetta**, as we have in Windjammer Village. Most subjects complain bitterly and then simply swallow the injustices, praying that the Board simply will not notice them anymore. Few members have the courage, as we do, to stand up to tyranny and to pay the price of carrying on the fight through the Courts (RETURN TO MOTION TO DISMISS dated Nov. 29, 2012. p. 2). Our legislators lack the resolve to address HOA/POA reform. As American citizens and as career Navy veterans, we could never yield to such bullying. So, the **vendetta** against us has lived on. If we loose in the Supreme Court, the POA's tyranny will have prevailed.

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**Our Final Plea**

We as *pro se* Petitioners 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.

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Respectfully submitted,

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

*Pro Se* Petitioners

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Little River, South Carolina

August 24, 2015

Copies to:

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Clerk of Court, South Carolina Court of Appeals

THE STATE OF SOUTH CAROLINA

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Property Owners' Association, a South Carolina  
Eleemosynary Corporation..... Respondent.

PROOF OF SERVICE

I certify that I have served a copy of Petitioners' REPLY TO RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI and Proof of Service of same in the above-captioned Appeal to Respondent's Counsel of Record and to the Clerk of Courts, South Carolina Court of Appeals, 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

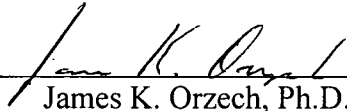
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AUG 25 2015

**SC SUPREME COURT**

Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Respectfully submitted,



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