

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

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APR 12 2016

Ralph P. Stroman, Special Referee SC Court of Appeals

Case No: 2009-CP-26-3596
Consolidated With
Case No: 2010-CP-26-11320
Appellate No: 2013-000714

Ronald Jarmuth, Appellant,

v.

The International Club Homeowners
Association, Inc., Rosemary Toth,
and K. A. Diehl & Associates, Respondents.

APPELLANT'S REPLY TO
RESPONDANTS' RETURN TO APPELLANT'S
MOTION FOR RECONSIDERATION OF
ORDER GRANTING COSTS
ON APPEAL

Ronald Jarmuth
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843-314-4355
Appellant, Pro Se

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843-444-1107
Attorneys for Respondents

1. **Appellant Replies to Respondent's Return to Appellant's Motion for Reconsideration of Order Granting Costs on Appeal.**
2. **Prior to the April 4, 2016 docketing of Appellant's Motion for Reconsideration (presented for filing on March 28, 2016) Appellant filed a Petition for Extraordinary Writ (concerning this matter) with the South Carolina Supreme Court. That filing was precipitated by the case manager "Diane" having told Appellant on March 31, 2016 that Appellant "will be getting a letter" from the South Carolina Court of Appeals when asked why said Motion had not been filed and docketed (did not appear on the on-line case docket). To Appellant this was an unmistakable statement that the Clerk of the South Carolina Court of Appeals had refused to file this Motion and to pass it to the panel for judicial review. Appellant specifically states that replying to Respondent's Return does not retract or void his Petition to the South Carolina Supreme Court.**
3. **The issue revolves around the intent of SCACR Rule 222(b) which states that the Court can only award costs**
"to the extent the party actually incurred these costs"
4. **The facts that the Court misconstrued are whether the International Club Homeowners Association ("IHOA"), not a third party, actually paid for the costs which are claimed. The legal issue is whether a party can be reimbursed for costs that a third party actually paid when there is no obligation on the part of the Respondent to repay that third party. Despite the IHOA's contention in their Return, p.2 to the contrary, Appellant did**
"identify ... facts or legal arguments that the Court overlooked or misapprehended".

5. In the IHOA's Return they claim that (Return, p.3) indemnification does not preclude an award of costs. The problem with that argument is that the IHOA was never "indemnified". The evidence presented by Appellant Jarmuth is that the IHOA's attorneys presented all bills / costs directly to the insurance company for payment to McNair (the IHOA's attorneys) and that the IHOA never wrote a single check in this case at either the trial or appellate levels. Indemnification, by definition, is the process of repaying someone for money laid out by another on behalf of the individual seeking repayment for the outlay.

6. The IHOA also argues, Return p.3, that when the insurance company paid for all the IHOA's costs in this case this is the same as if

"... the party actually incurred these costs:"¹.

This is a novel argument. In the Return p.3 the IHOA asserts that

"The costs and fees sought were actually incurred"

but left ambiguous who actually "incurred" the costs. If paid directly by the insurance company, as the evidence provided by Jarmuth indicates, the IHOA as "the party" never "incurred" the costs. The IHOA is silent on Jarmuth's point that the insurance policy has no provision for reimbursement which is normal in such policies.

7. The questions raised by Jarmuth could easily have been settled by the IHOA. Jarmuth presented evidence that the IHOA never wrote a single check to McNair over all the years of litigation for any cost associated with this case. The IHOA's ledgers, in evidence, show that no check was written by the IHOA to any third party

¹ SCACR Rule 222(b).

of any cost associated with this case. All the IHOA had to do was to attach to their Return copies of checks written by the IHOA to McNair and supporting ledger entries (to prove the checks were for this matter) for the specific costs they claim. Alternatively, if they assert that they owe the insurance company reimbursement for costs laid out by the insurance company, they had the opportunity to quote that aspect of the policy imposing a liability on the IHOA to recover those costs laid out and to repay the insurance company for same. Jarmuth's inspection of the policy fails to identify any such obligation. The IHOA has not done so is clearly because the IHOA never paid any of the costs they claim and has no liability for same to the insurance company.

8. Additionally the IHOA mis - states Jarmuth's arguments regarding the transcript (Return p.2, last paragraph of Section I). The IHOA states that Jarmuth's argument is that

“he paid for his own costs of printing the transcript, the final brief, and the supplemental records”

In their Return the IHOA is still insisting that the IHOA is the party that actually incurred the costs of the transcript. As Jarmuth pointed out in the Motion, the rule clearly refers to the cost of OBTAINING FROM THE COURT REPORTER the transcript that IS FILED WITH THE COURT OF APPEALS and that is ultimately used in the Record on Appeal. Jarmuth's motion never asserted that printing the record on appeal or the briefs had anything to do with the cost of the transcript. This is a complete “strawman argument asserted frivolously by the IHOA.

The record and evidence provided by Jarmuth in his Motion is clear that:

a. Jarmuth ordered the Transcript from the Court Reporter and paid

the Court Reporter for the Original transcript.

b. Jarmuth, and ONLY Jarmuth, filed a Form 11 with the Court of Appeals relating to that transcript.

c. By including the transcript (that Jarmuth paid the Court Reporter for) in the Record on Appeal, Jarmuth was the party that FILED the Transcript with the Court of Appeals.

d. Jarmuth provided the IHOA respondent a copy of the transcript as specified by the Appellate Rules, in time for the IHOA to cite to the pages in their Response Brief.

9. SCACR Rule 267 (Form of Papers (b) Signatures states that

“The signature of a party or attorney constitutes a certificate by him that he has read the document or paper; that to the best of his knowledge, information and belief there is good ground to support it;”

This situation is unique in that the IHOA attorney, who signed the Motion for Costs and the Return to the Motion for Reconsideration, have actual knowledge of the facts and that actual knowledge may not be available to the IHOA client. Specifically, the IHOA attorney clearly knows that said attorney (or her firm) received checks for their time and costs directly from the insurance company and not from the IHOA client. In point of fact the IHOA's General Ledgers show no checks at all made out to McNair in this case. In 2009 the only check to McNair from the IHOA was for McNair to answer questions posed to the IHOA from the South Carolina Human Affairs Commission relating to an accusation of housing discrimination leveled against the IHOA. In 2010 the only checks to McNair from the IHOA were a check for preparation of legal documents related to a sale of an

easement to Central Electric and another check to McNair for representation in the face of Central Electric's threat of condemnation to obtain the easement. As stated by Jarmuth in his Motion for Reconsideration, if the IHOA was paying litigation costs there should have been numerous checks, such as for depositions, pre-trial motions, and for the costs of a three day trial.

The Courts have consistently held that the signature of an attorney requires reasonable inquiry to make sure the facts asserted are true. In this instance no inquiry at all was required since the signing attorney had actual personal knowledge that the IHOA itself never actually incurred any costs AND that Jarmuth paid the Court Reporter for the transcript that was filed with the Court of Appeals as part of the Record on Appeal.

10. CONCLUSION

a. The Court of Appeals misconstrued the facts. The IHOA Respondent itself never incurred any of the costs claimed. The Court of Appeals ignored the evidence submitted by Appellant Jarmuth. The IHOA party never "actually" "incurred" the costs claimed.

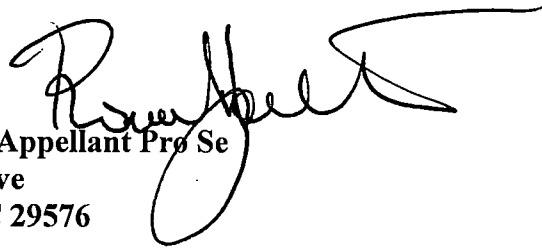
b. The Court of Appeals misconstrued the law. SCACR Rule 222(b) allows costs ONLY when the claiming party themselves actually incurred the costs.

c. The signing attorneys have actual knowledge that what they asserted is untrue.

d. Only Appellant Jarmuth is eligible for an award of costs for the transcript, not the Respondent IHOA.²

² Jarmuth has never applied to this Court for any costs on appeal.

**For the reasons stated, Appellant MOVES THE COURT to vacate it's
Order allowing Costs, and to communicate this with the trial court.**

A handwritten signature in black ink, appearing to read "Ronald Jarmuth", with a long horizontal flourish extending to the right.

**Ronald Jarmuth, Appellant Pro Se
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
April 9, 2016**

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PROOF OF SERVICE

I certify that on April 9, 2016 I served Appellant's REPLY to Respondent's Return to Appellant's Motion for Reconsideration of Order Allowing Costs on Appeal by depositing a copy of same in the United States Mail, postage prepaid, addressed to Respondent's common counsel, Henrietta Golding; McNair Law Firm, P.A.; 2411 Oak Street; Suite 206; Myrtle Beach, SC 29577-3164.

April 9, 2016


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SC Court of Appeals

The Honorable Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: Ronald Jarmuth v. International Club HOA, Inc. et al.
Case Track #: 2013-000714
Civil Action Nos.: 2009-CP-26-3596 and 2010-CP-26-11320

Dear Ms. Kitchings:

Enclosed please find for filing with the Court:

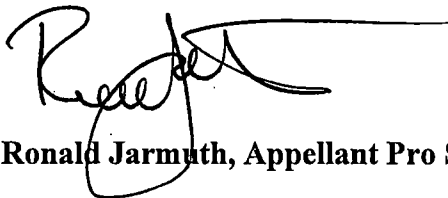
* Original (unbound) and six (6) copies of the Appellant's Reply to Respondent's Return to Appellant's Motion for Reconsideration of Order Awarding Costs on Appeal.

* Proof of Service (attached as the last page of each copy of the Reply).

By copy of this letter to parties of record, and as shown on the Proof of Service, I hereby serve a copy of the aforementioned documents to the parties of record.

Please return to me one clocked copy of the enclosed documents in the enclosed self-addressed envelope.

Sincerely,



Ronald Jarmuth, Appellant Pro Se

Enclosures – as

cc: McNair Law Firm for Respondents

