

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No: 2016-001063

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2009-CP-26-3596

RECEIVED

SEP 12 2016

SC Court of Appeals

Ronald Jarmuth Appellant

v.

The International Club Respondent

APPELLANT'S OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS APPEAL

Appellant Ronald Jarmuth states his Opposition to Respondent's Motion to Dismiss Appeal, and Moves that the Court:

- (1) To deny the motion as one filed without legal grounds and
- (2) To take judicial notice that the Respondent has failed to file its Initial Response Brief and has not -- prior to the time such Initial Response Brief was due -- asked the Court to extend the time in which Respondent must file said Brief; and consequently -
- (3) To proceed in adjudicating this Appeal based solely on Appellant's Brief and the Record on Appeal which Appellant solely designates.

The Authority for this is Rule 260(a), Rule 208(a)(4), and Rule 240(b) SCRAP.

Motions to Dismiss

The Respondent's Motion to Dismiss does not cite any authority for the motion. Motions to Dismiss at the Appellate Court level are governed by Rule 260(a), "Involuntary Dismissal". The Rule is procedural and has no provision to dismiss based on merit; merit arguments are made through the Briefs of the Parties. As the rule points out, Motions to Dismiss are decided by the Clerk, not by a Merits Panel, The grounds for a dismissal pursuant to a Motion to Dismiss are that "a petitioner has failed to comply with the requirements of these Rules". This means that the Appellant has not perfected the appeal or that the appeal is procedurally defective in some way.

The one dispositive motion a party may file is a motion to dismiss the appeal. This motion is used most often to question the appellate court's jurisdiction, including the timeliness of the appeal - Hammerl v. State, 779 So. 2d 410, 411 n.1 (Fla. 2d D.C.A. 2000); applying appellate court rules and dismissing case for failure to serve a notice of intent to appeal in a timely manner - Southbridge Properties, Inc. v. Jones, 292 S.C. 198, 355 S.E.2d 535 (1987); applying appellate court rules and finding lack of jurisdiction for failure to serve a notice of intent to appeal in a timely manner - Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985)

This tribunal recognizes the harsh result of this decision but is constrained by the rules of this tribunal and legal precedent in this State - McClain v. Ingram, 314 S.C. 359, 444 S.E.2d 512; The Motion to Dismiss does not allege that Appellant has "failed to comply with the requirements of these Rules. The Motion to Dismiss says nothing about the Appeal, stating only on page 4 bottom that a final order was issued following a hearing.

The failure of a party to comply with the procedural requirements for perfecting an appeal may deprive the court, of "appellate" jurisdiction over the case - Great Games, 529 S.E.2d at 8 n. 5

The Respondent has thus conceded that (1) Appellant is proceeding on an appealable order; (2) Appellant timely filed and served the Notice of Appeal on Respondent and on the lower court; (3) Appellant has paid the appropriate fee; (4) Appellant has ordered and paid for the Transcript; and (5) Appellant has timely complied with other procedural requirements which, to date, consist of timely filing an Initial Brief and an

Initial Designation of the Record on Appeal. Respondent has thus not alleged nor proven any procedural defect and thus there is no authority to dismiss the appeal at this stage of the proceeding.

Respondent's Failure to File Initial Response Brief

Appellant filed his Initial Brief on August 2, 2016. Per Rule 208(a)(2) SCRAP Respondent's Initial Response Brief was due "within thirty (30) days after service of appellant's brief" which was perfected on August 2, 2016. This has not been disputed by the Respondent. Per the rule, the Initial Response Brief was due Thursday, September 1, 2016, which was not a holiday. Respondent signed, served, and filed the Motion to Dismiss on September 6, 2016, five (5) days after the Initial Response Brief was due. The Motion to Dismiss does not contain a request by Respondent for an extension of time in which to file its initial brief. Instead on the last page of the Motion to Dismiss, page 8, Respondent states an erroneous conclusion of law that "The deadline to file the Association's brief is stayed pursuant to South Carolina Appellate Court Rules, Rule 240(b)." Respondent is asserting that an automatic extension exists applicable to Respondent's brief by filing the Motion to Dismiss, an erroneous conclusion of law.

In point of fact Rule 240(b) SCRAP not only does not offer such an automatic stay, it actually reads to the contrary:

"Unless otherwise provided by these Rules, or ordered by the appellate court the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition. A motion to dismiss an appeal or a motion to relieve counsel shall however, automatically stay the time limit for perfecting the appeal until the motion is decided"

"Perfecting the appeal" is a series of acts that must be timely performed by the appellant.

To recap, this is the filing and service of the notice of appeal, payment of the filing fee, and ordering of a transcript. An appeal is "perfected" long before the initial brief of the

appellant is filed. There is no mention in Rule 240(b) of staying the "time limits imposed by these Rules" relating to the filing of initial briefs. There is no other rule which is implicated relating to delaying filing an initial brief. While the Respondent could hypothetically could have moved for such an extension, Respondent did not do so. Respondents are represented by very experienced attorneys practicing in a large law firm with much experience in appellate practice. There is no excusable neglect here and none has been plead.

Rule 208(a)(4), SCACR, provides in part: "Upon the failure of the respondent to timely file a brief, the appellate court may take such action as it deems proper." This action includes reversing the judgment below. Wierszewski v. Tokarick, 308 S.C. 441, 418 S.E.2d 557 (Ct.App.1992); this court should not be inclined to do what Campbell neglected to do [by failing to file a brief], i.e., "search the record for reasons to affirm." 308 S.C. at 444 n. 2, 418 S.E.2d at 559 n. 2; Smith v South Carolina Dep't of Soc. Servs., 284 S.C. 469, 327 S.E.2d 348 (1985)

Respondent Turner did not file a brief with this Court. Her failure to do so allows this Court to take such action upon the appeal as it deems proper. This failure alone would justify reversal - Turner v Santee Cement Carriers 277 S.C. 91 (1981) 282 S.E.2d 858

The Respondent failure to timely file the Initial Response Brief and likewise the failure to ask for an extension (which must be requested prior to the expiration of the mandated time) must result in this Appeal proceeding using only the Brief of Appellant and the Appellant's Designation of the Record on Appeal. Respondent, represented by competent counsel, has waived its' right to file a brief in this Appeal.

**Respondent's Failure to File
Respondent's Designation of Record on Appeal**

Rule 209(a), SCRAP "Designation of Matter In Record on Appeal; Time to Serve and File" set the deadline for Respondent to file Respondent's Designation of Matter in Record on Appeal" as the same deadline for filing Respondent's Initial Response Brief. Respondent has failed to file the statement of what Respondent designates for inclusion in

the Record on Appeal. Respondent has not sought an extension of this deadline. The same logic which precludes Respondent from filing an Initial Response Brief as some later time precludes Respondent from filing a Designation at some later time.

The Appeal should proceed with Appellant's Designation of the Record on Appeal as the sole and exclusive statement of the Record on Appeal.

Merit Issues Improperly Raised by Respondent

Looking at the inclusion (in Respondent's Motion to Dismiss) of an extensive and irrelevant procedural history and selective pseudo-facts it is apparent that the true purpose of the Motion to Dismiss is to "waive a red flag and slyly" ask the Judges of the Court of Appeals to protect the HOA's attorneys, McNair Law, from being "upended by a Pro Se litigant". The gist of Appellant's Motion to Vacate the Counter-Claim (in the trial court) because of lack of subject matter jurisdiction is that McNair law was extremely careless and negligent in preparing and advocating the HOA's counter – claim, such negligence rising to a level where it rendered the HOA's counter – claim void. There is no merit in the arguments the HOA states.

The entirety of the Motion to Dismiss is stated as arguments of fact and of law which must be stated in a Response Brief, not in a Motion to Dismiss, and be heard before a Merits Panel, not by a clerk. The Appellant, not the Respondent, states the issues under appeal and it is the obligation of the Respondent to respond, point by point, to the issues raised in Appellant's Brief and to the legal authorities cited by Appellant in support of Appellant's argument as stated in Appellant's Brief. Respondent's Motion to Dismiss is a "parallel world" choosing to pick and choose the issues that Respondent raised in the trial ignoring the issues raised in the appeal. The requirement to argue the merits through the

briefs is propounded on a number of considerations, including the length allowed for the pleading and the proper record before the Court. From consideration of the transcript and the case documents presented as exhibits at the hearing from which the appeal is taken, it can plainly be seen that Respondent is seeking to include as Exhibits to the Motion to Dismiss documents which were not presented by Respondent either as Defendant's Exhibits at the hearing or as Defendant's Exhibits to Defendant's Response to (then) Plaintiff's Motion to Dismiss for Lack of Subject Matter Jurisdiction.

Appellant responds to the merits issues not as an admission that they are properly before the Court of Appeals in a Motion to Dismiss but rather as Appellant doing "due diligence".

Merits Considerations

In Respondent's April 8, 2016 Response in the trial court to Appellant's Motion to Vacate the Counter – Claim, and in the arguments stated by the HOA's attorney at the hearing as perpetuated by the transcript of the April 27, 2016 hearing Respondent (through counsel) conceded every single argument and fact stated by Appellant.

The HOA conceded the following points:

- (1) There was no HOA counter – claim for attorney fees related to the housing discrimination matter and Jarmuth never raised the discrimination matter in any complaint.
- (2) The housing discrimination matter and the two checks appeared for the first time through the testimony of the HOA's witness at trial.
- (3) There was no opportunity for "Plaintiff" to file a Rule 12 motion or for discovery relating to the housing discrimination matter.

(4) The "contract" (Declaration, including HOA Bylaws) that the HOA relied on as it's authority to sue out the Counter – Claim prohibited the HOA from suing out the Counter – Claim because the contract required an adversary hearing at a meeting of the HOA's Board of Directors and no such hearing ever took place. They conceded that this is a binding litigation preclusion provision of the contract.

(5) The HOA Board never determined that Jarmuth had violated the usage restriction provisions of the covenants and never imposed a fine.

(6) That recovery of attorney fees related to defending a housing discrimination matter is not permitted by any statute or contract and the attempt to do so constitutes a federal crime and that these statutes constitute issue pre-emption and preclusion as a matter of law.

(7) That the HOA never spent a single cent, both at the trial and appellate levels, in connection with this case because it satisfied it's annual deductible through another case where the HOA was sued (earlier) by "The Villas" Condominium HOA. That specifically the HOA never spent a single cent to enforce covenant provisions against Appellant Jarmuth.

(8) That the Architectural Review Board related to the development is a distinct and independent legal entity separate from the HOA; that the ARB is a non-party to these proceedings, and that the Counter – Claim, to the extent that it made any allegations of covenant violations, stated that such a claim belongs not to the HOA but to the ARB.

(9) That the ARB never transferred any claim it might have, if any, against Jarmuth to the HOA; and that if it did recovery of such claim is barred by federal and state debt transfer statutes requiring notice of such transfer (and that no such notice was

ever given Jarmuth. That the statutory notice requirements for transferred debts are litigation preclusion statutes and they apply to the entire Counter – Claim.

(10) That the Counter – Claim and Answer of the HOA never stated how the HOA had rights under the Declaration, and that the Declaration assigned such rights to the Murrells Inlet Golf Plantation Association, Inc. or perhaps to the International Club Association Inc., both of which are separate and distinct South Carolina Non-Profit Corporations – without any connection to the Respondent HOA.

(11) That the Counter – Claim and Answer of the HOA never stated how Jarmuth's property became subject to the Declaration – that the HOA never stated in the least the formation of a contract between the parties.

(12) That because the Counter – Claim stated a sum certain there is a mandatory requirement that the Counter – Claim be “Verified” not just “authenticated” upon “actual, personal knowledge” and that because the Counter – Claim / Answer was neither verified nor authenticated (certainly not under actual knowledge) the entire Counter – Claim is void.

(13) That the issue of subject matter jurisdiction was never set before any court at any level by any pleading of any sort placing the issue before any court and subject matter jurisdiction was never litigated (which is distinct from blindly saying it exists without a hearing on the merits).

The Bare Bones of Respondent's “Merits” Argument

The HOA's attorney argued – exactly as the attorney does in the Motion to Dismiss -

only, in effect, "we got away with it because (1) the HOA attorney [1] wrote a few words in the final order (September 12, 2012 following the August 2012 trial), (2) because the case was assigned from a "regular" judge to a special referee (order of reference) and (3) because the special referee recused himself (Order of Recusal) when challenged over a final order which reflected some universe other than the trial.

Below is the actually relevant case law:

"A court's subject-matter jurisdiction cannot be expanded to account for the parties' litigation conduct" (2004 Kontrick v. Ryan, 540 U.S. 443 (2004))

"In reviewing a ruling on a motion to dismiss a claim, this Court must base its decision solely on the allegations set forth on the face of the complaint." Flateau v. Harrelson, 632-33, 494 S.E.2d at 433.(Ct. App 2003)

"A judgment of a court without subject matter jurisdiction is void and constitutes grounds for the court to vacate the judgment under Rule 60(b)(4)[, SCRCPP]."
Gainey v. Gainey, 382 S.C. 414, 424, 675 S.E.2d 792, 797 (Ct. App. 2009). "A void judgment is one that, from its inception, is a complete nullity and is without legal effect" Id.

"It is elemental that a ... court cannot create jurisdiction where none exists" citing Wright & Miller # 1350, at 204-05. "For this reason, questions of subject matter jurisdiction are generally exempt from law of the case principles Id. 18 # 4478 at 799 & n. 32.

"The lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court." Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989)

Appellant's Merits Argument

Prior to Jarmuth's March 11, 2016 Motion to Vacate, the objection to Subject Matter Jurisdiction was never raised by motion or pleading at the trial or appellate court

1 Without a word of guidance from the bench following the trial as to conclusions of law or findings of fact, the HOA attorney wrote the final order including anything she chose to state; the Special Referee signed that order but entered an order of recusal when challenged about doing this rather than explain how the HOA's attorney had such insight to be able to write over 40 pages of judicial decision supposedly arising from "inside" the judge's mind, including pages of "facts" and "conclusions" never found in the trial transcript as even being before the trial court.

levels thus res judicata does not apply and there is no "law of the case". The Court of Appeals has never made a finding as to Subject Matter Jurisdiction in this case. As Hon. Justice Scalia has explained "it is a Court's obligation to dismiss a case whenever it becomes convinced that it has no proper jurisdiction, no matter how late that wisdom may arrive" Wyoming v Oklahoma, 502 U.S.437, 462 (1991).

Unlike any procedural issue which disturbs the validity of a Court's order, subject matter jurisdiction arises from the division of powers set out in the federal and state Constitutions because a court can only exercise subject matter jurisdiction to grant any particular form of relief which the legislature by statute explicitly provides. The passage of time does not eradicate that constitutional division of powers and lack of enabling legislation. The trial court crossed that barrier and proceeded without statutory authority.

It is well settled that a Court can not determine (by order or otherwise) its own subject matter jurisdiction and that subject matter jurisdiction to grant any particular relief arises exclusively from within the four corners of the Complaint.

"In reviewing a ruling on a motion to dismiss a claim, this Court must base its decision solely on the allegations set forth on the face of the complaint." Flateau v. Harrelson, 632-33, 494 S.E.2d at 433.(Ct. App. 2003).

"A court's subject-matter jurisdiction cannot be expanded to account for the parties' litigation conduct" (2004 Kontrick v. Ryan, 540 U.S. 443 (2004)

The HOA asserts that the Court has determined its own subject matter jurisdiction (and that this constitutes the "law of the case") because the HOA asserts:

(1) That when the Court by consent assigned the case to a Special Referee for trial this granted the Special Referee powers (subject matter jurisdiction) that the Court itself previously lacked;[2]

2 Including the authority to determine matters and grant relief absent from the Counter –

(2) That when the Court wrote in its Final Order that it had subject matter jurisdiction (without the matter being briefed or contested at trial or previously)[3] this endowed the trial Court with subject matter jurisdiction it previously lacked; and

(3) That when Jarmuth admitted to Paragraph 53 of the HOA's Counter – Claim which asserted Venue and Personal Jurisdiction he conferred subject matter jurisdiction on the Court (over matters not plead in the Counter – Claim).[4]

At the April 27, 2016 Hearing the trial court had the authority to rule on the original lack of subject matter jurisdiction to grant relief for the counter – claim.

A. The Court can address a lack of subject matter jurisdiction at any time.

In Wyoming v Oklahoma, 502 U.S.437, 462 (1991), Hon. Justice Scalia explained "it is Court's obligation to dismiss a case whenever it becomes convinced that it has no proper jurisdiction, no matter how late that wisdom may arrive". In Hammer v Hammer, S.C. Court of Appeals #4980, June 6, 2012. the Court wrote "Subject matter jurisdiction can be raised at any time and by any means." This was reiterated in Hallums v. Bowens, 318 S.C. 1, 3, 428 S.E.2d 894, 895 (Ct. App. 1993). In Hammer the court noted that there had not been an actual contested subject matter jurisdiction motion at the trial level and held the Appellate Court could address subject matter jurisdiction anew even if there had been such a contest.

In Normandy Corp. v. S.C. DOT, 380 S.C. 393, 688 S.E.2d 136 (Ct.App. 2010) the Court wrote "Issues involving subject matter jurisdiction may be raised at any time".

Claim and for which there is no enabling statute nor applicable contract provision.
3 The SCHL matter and HOA Board imposing fines and incurring attorney fees having never been raised in any manner prior to trial and no discovery being had on this.
4 "53. The Property is located in Horry County, South Carolina, and this Court has jurisdiction over both the Property and the parties to this action".

In footnote 2 page 4 of the HOA's April 8, 2016 Response, the HOA wrote:

"Jarmuth has waited almost 4 years to bring his Rule 60(b) motion" The HOA attorney repeated this assertion at the hearing, transcript p19, raising the issues of "the promptness of the relief sought, the reasons for any failure to act in seeking the relief."

The fact is that the case was on appeal less than three (3) years and almost immediately after the trial court regained jurisdiction over the case upon the Remittitur Jarmuth promptly filed his Motion to Dismiss the Counter – Claim. There was no dilatory conduct. Also relevant is that the HOA's Attorneys committed extrinsic fraud by suborning perjury of the HOA's prime witness William Freiboth at trial as to actions of the HOA and ARB, misrepresenting the nature of the two attorney fee checks, and that the attorneys hid evidence. The minutes of the HOA Board where the HOA Board allegedly (per testimony elicited by the HOA Attorneys) held a hearing [5] on the record and supposedly voted that Jarmuth had violated the covenants and voted to impose a fine where uncovered months before Jarmuth's Motion to Vacate -- were introduced into evidence by Jarmuth in the proceedings to vacate; proving that the HOA's attorneys and the HOA lied about everything they said.[6] But whether the Court had subject matter jurisdiction is not dependent on that since the trial court granted relief which was not requested in the Counter – Claim for matters not raised in the Counter Claim without any statutory or contractual authority.

In United States v Houser, 804 F2d 565, 21 Fed.R.Evid.Serv.1370 US Court of Appeals 9th Circuit Nov 17, 1986 the court held that

5 HOA Board Meetings May 5, 2010 and November 10, 2010.

6 A hearing on civil contempt committed by the HOA's attorneys and William Freiboth is on hold pending the return of case jurisdiction to the trial court.

"a belated raising of subject matter jurisdiction is not barred by "the law of the case" ... "Stated succinctly, the doctrine of 'law of the case' is inapplicable to the question of our (subject matter) jurisdiction" citing Green v. Dep't of Commerce, 618 F.2d 836, 839 n. 9 (D.C.Cir.1980) where the court held "the doctrine of 'law of the case' does not apply to the fundamental question of subject matter jurisdiction"

In Potomac Passengers Ass'n v. Chesapeake & Ohio Ry. Co., 520 F.2d 91, 95 n. 22

(D.C.Cir.1975) the Court held that "the doctrine is discretionary, not mandatory."

In Crane C. v American Standard, Inc., 603 F.2d 244, 249 the court held that law of case did not preclude reconsideration of whether a plaintiff had a cause of action when reexamination made good sense.

In Lounar Inc. v. Smith, 698 F.2d 759, 762 it was held that a court will follow a prior ruling unless it was erroneous, is no longer sound, or would work an injustice.

B. There is no "Law of the Case" on the lack of subject matter jurisdiction for the court to grant any relief for the Counter – Claim.

In the HOA's April 8 2016 Response in Opposing to Jarmuth's Motion to Dismiss, para 5, "Argument, I Law of the Case", the HOA wrote:

"both the Final Order and the Order of Reference ... (held) that the Special Referee had jurisdiction to render final judgment with respect to the Counterclaim, is the law of the case"

and at page 22

"both the final order and the order of reference found that there was subject matter jurisdiction and those findings are the law of the case and cannot be disturbed" ... Secondly ... the special referee did have subject matter jurisdiction ... Under Rule 53 the Circuit Court can refer claims to the special referee or master-in-equity to make any findings in the case and to enter into a final judgment. As I explained, the order of reference referred both cases without any limitations and the special referee in that case was -- had the authority to make any findings in that case pursuant to the order of reference"

On page 6 of that Response "II, Order of Reference" the HOA wrote

"the Order of Reference confers jurisdiction on the Special Referee to enter the Final Order"

At the hearing HOA counsel raised these same defenses, stating (transcript p.21)

“the final order and the order of reference specifically found that Judge Stroman, the special referee, had subject matter jurisdiction over the cases and to enter any final order in the case.”

Neither the trial court nor the appellate court was actually presented with a contest as to subject matter jurisdiction. In Christianson v. Colt Indus. Operating Corp.³⁹² F.Supp.2d 1295, 30 NDLR P 181 (Cite as: 392 F.Supp.2d 1295) 486 U.S. 800, 816, 108 S.Ct. 2166, 100 L.Ed.2d 811 (1988) the court held

“the law-of-the-case doctrine's presumption against reconsideration of already decided issues is weaker in the area of a court's subject-matter jurisdiction.” citing Sophocleus v. Ala. Dep't of Transp., 305 F.Supp.2d 1238, 1245 (M.D.Ala.2004). also holding that “The law-of-the-case doctrine holds that “when a court [actually] decides upon a rule of law, that decision should continue to govern the same issues and “It is elemental that a ... court cannot create jurisdiction where none exists” citing Wright & Miller # 1350, at 204-05. “For this reason, questions of subject matter jurisdiction are generally exempt from law of the case principles Id. 18 # 4478 at 799 & n. 32.

In Gould Electronics Inc. et al v United States of America, USDC-ED-PA, No.99-1130 the Court held that

“Rule 12(g) does not prevent the government from asserting a second challenge to subject matter jurisdiction” and that “Rule 12(g). Fed. R. Civ. P. 1966 Amendment advisory committee's note states: ‘It is to be noted that while the defenses specified in subdivision (h)(1) are subject to waiver, ... the more substantial defenses of ...lack of jurisdiction over the subject matter are expressly preserved against waiver by amendment subdivision (h)(2) and (3).’”

In Deep Keel LLC v Atlantic Private Equity Group LLC et al, Appellate Case 2013-002281 Opinion 53220 June 17, 2015 the Court of Appeals interpreted Normandy writing that an Order of Reference does not endow the master with any greater authority than the circuit court held:

“A master's authority to determine issues referred to him by the circuit court is a question of subject matter jurisdiction, which ‘may be raised at any time’ ... When a case is referred to a master, Rule 53(c) gives the master the power to conduct hearings in the same manner as the circuit court”.

In Deep Keel the Court of Appeals ruled that irrespective of the Order of Reference the master "exceeded the scope of the order of reference" and the Court "vacate[d] the finding".

On page 3 of the HOA Response they wrote that

"Jarmuth admitted paragraph 53 (of the Counter-Claim) establishing that this Court has Jurisdiction over the Counter-claim".

This brief has already established supra that paragraph 53 referred to venue and personal jurisdiction. Since Jarmuth brought the suit, there was obvious personal jurisdiction; venue exists because the property lies in Horry County. It has already been noted that a court can not gain subject matter jurisdiction by consent of the parties.

"The lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court." Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989).

In the HOA's April 8 2016 Response Opposing Jarmuth's Motion to Dismiss they wrote:

"both the Final Order and the Order of Reference ... (held) that the Special Referee had jurisdiction to render final judgment with respect to the Counterclaim, is the law of the case"

However, there is not a single word in the trial transcript addressed to the matter nor a single word in either party's briefs (prior to it being raised by Jarmuth on March 11, 2016 dealing with subject matter jurisdiction. Likewise there is not a single word in the briefs in the April 3, 2013 Appeal of the Final Order nor in the March 4, 2015 Appellate Court's Order relating to subject matter jurisdiction.

In Holly Hill Lumber Co. v McCoy 210 S.C. 440, 441, 43 S.E. 2d 143, 143 (1947) the Court held that in issue "becomes 'the law of the case' and prevents the re-raising of the issues appealed" only when it is actually placed before the Court of Appeals and actually

addressed by the Court.

CONCLUSIONS

1. Appellant has perfected his appeal.
2. There is no authority to dismiss an appeal by motion which has been perfected by compliance with the required procedures. The "law of the case" arguments advanced by Respondent do not preclude the Court of Appeals from determining all of the issues presented to it by Appellant.
3. Merits arguments must be made through briefs before a merits panel.
4. Without authority or seeking leave of the Court, Respondent failed to file Respondent's Initial Response Brief and Respondent's Designation of Record on Appeal.
5. By failing to file the above two documents Respondent was waived it's right to do so.
6. Because of the failure of Respondent to file an Initial Response Brief, the Court has the authority to vacate the Counter – Claim as sought by Appellant and should do so.
7. In the alternative the Court will proceed to evaluate and determine the appeal on the merits relying only on Appellant's Brief and Appellant's Designated Record on Appeal.


Ronald Jarmuth, Plaintiff Pro Se
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September 12, 2016

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SC Court of Appeals

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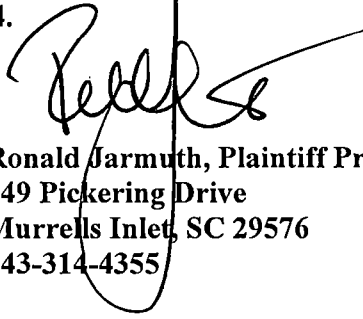
v.

The International Club

.....Respondent

PROOF OF SERVICE

Ronald Jarmuth, Appellant Pro se, certifies that on September 12, 2016 service of the attached "Appellant's Opposition to Respondent's Motion to Dismiss Appeal, together with Appellant's Exhibits, was made upon the Respondent HOA by depositing a copy of same in the United States Mail, first class postage prepaid, addressed to Respondent's counsel, Henrietta U. Golding; McNair Law Firm, P.A.; 2411 Oak Street; Suite 206; Myrtle Beach, SC 29577-3164.


Ronald Jarmuth, Plaintiff Pro Se
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EXHIBITS

FROM THE BYLAWS OF THE INTERNATIONAL CLUB HOMEOWNERS
ASSOCIATION INC

ARTICLE 13, RULE MAKING

13.2 Authority and Enforcement.

... the Board shall have the power: (i) to impose reasonable monetary fines ... upon the Unit, ... which are guilty of such violation; ...

13.3 Procedure.

... the Board shall not impose a fine, ... or infringe upon or suspend any other rights of an Owner ... for violations of the Declaration, By-Laws or any rules and regulations for the Association unless and until the following procedure is followed:

13.3.1 **Written demand to cease and desist** from an alleged violation shall be served upon the Owner responsible for such violation specifying:

13.3.1.1 The alleged violation;

13.3.1.2 The action required to abate the violation; and

13.3.1.3 A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, ...

13.3.2 **Within two (2) months of such demand**, if the violation continues **past the period allowed in the demand for abatement** without penalty, ... the Board may serve such Owner with written notice of a hearing to be held by the Board in executive session. The notice shall contain:

13.3.2.1 **The nature of the alleged violation;**

13.3.2.2 **The time and place of the hearing**, which time shall be not less than ten (10) days from the giving of the notice;

13.3.2.3 **An invitation to attend the hearing** and produce any statement, evidence and witnesses on such Owner's behalf; and

13.3.2.4 **The proposed sanction** to be imposed.

13.3.3

The hearing shall be held in executive session of the Board of Directors pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard.

Prior to the effectiveness of any sanction here under, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. ... **The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO.: 2009-CP-26-3596
Ronald Jarmuth,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANTS' ANSWER AND
	)	COUNTERCLAIM
The International Club Homeowners	)	
Association, Inc. and	)	
Rosemary Toth,	)	
	)	
Defendants.	)	
	)	

The Defendants, The International Club Homeowners Association, Inc. and Rosemary Toth, answering the Complaint would respectfully show and allege unto this Honorable Court as follows:

FIRST DEFENSE

1. Each and every allegation not hereinafter admitted, modified or qualified is denied and strict proof demanded thereof.
2. The allegations of Paragraph 1 are admitted except that Plaintiff's International Club property is subject, without qualification, to the Declaration of Covenants and Restrictions (hereinafter "Declaration") for The International Club, as amended.
3. The allegations of Paragraphs 2, 3 and 4 are denied as stated, but it is admitted that the Defendant, The International Club Homeowners Association (hereinafter referred to as "Defendant HOA") is non-profit corporation, organized under the laws of the State of South Carolina, the Defendant, Rosemary Toth is the elected President of the Defendant HOA and she is a co-owner of International property subject to the Declarations, and that said property is located in Horry County.

4. The allegations of Paragraphs 5, 6, 7, 8 and 9 are denied and strict proof demanded thereof.

5. The allegations of Paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 are denied in that the documents referred to therein speak for themselves.

6. The remaining allegations in the Complaint are denied and strict proof demanded thereof.

SECOND DEFENSE

7. The allegations of the First Defense are incorporated herein and made a part and parcel hereof.

8. The Answering Defendants assert the applicable statutes of limitation as a complete defense to Plaintiff's claims.

THIRD DEFENSE

9. The allegations of the First and Second Defenses are incorporated herein and made a part and parcel hereof.

10. The Answering Defendants assert waiver, estoppel and laches as complete defenses to Plaintiff's claims.

FOURTH DEFENSE

11. The allegations of the First, Second and Third Defenses are incorporated herein and made a part and parcel hereof.

12. Any and all actions undertaken by the Answering Defendants were undertaken in good faith and therefore, subject to the business judgment rule.

FIFTH DEFENSE

13. The allegations of the First, Second, Third and Fourth Defenses are incorporated herein and made a part and parcel hereof.

14. The Answering Defendants assert unclean hands on the part of the Plaintiff as a complete defense to Plaintiff's claims.

SIXTH DEFENSE

15. The allegations of the First, Second, Third, Fourth and Fifth Defenses are incorporated herein and made a part and parcel hereof.

16. The Answering Defendants assert consent and/or novation as a complete defense to Plaintiff's claims.

SEVENTH DEFENSE

17. The allegations of the First, Second, Third, Fourth, Fifth and Sixth Defenses are incorporated herein and made a part and parcel hereof.

18. The Defendant, Rosemary Toth, at all times, has acted and continues to act within the powers and authorities given to her by the governing documents for the Defendant HOA and therefore, is immune from any claims asserted by the Plaintiff.

EIGHTH DEFENSE
AND COUNTERCLAIM

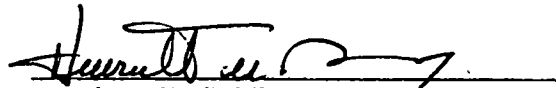
19. The allegations of the First, Second, Third, Fourth, Fifth, Sixth and Seventh Defenses are incorporated herein and made a part and parcel hereof.

20. Upon the dismissal of Plaintiff's claims, the Defendants seek an Order of the Court declaring that the Plaintiff is totally and solely liable for all attorney's fees, costs and expenses associated with the defense of this action and therefore seek a judgment against the

Plaintiff for all attorney's fees, costs and expenses incurred in this action to defend the claims of the Plaintiff.

WHEREFORE, having answered the Complaint, the Defendants pray that the same be dismissed and that the Court issue an Order directing that the Plaintiff be solely and totally responsible and liable for all attorney's fees, costs and expenses in the defense of this action, and for such other and further relief as this Court may deem just and proper.

McNair Law Firm, P.A.



Henrietta U. Golding, SC Bar #2173

Alicia E. Smith, SC Bar #77056

2411 Oak Street, Suite 206 (29577)

Post Office Box 336

Myrtle Beach, SC 29578-0336

Ph: (843) 444-1107

Fax: (843) 443-4137

Email: hgolding@mcnair.net

asmith@mcnair.net

Attorneys for the Defendants

Myrtle Beach, South Carolina

May 12th, 2009



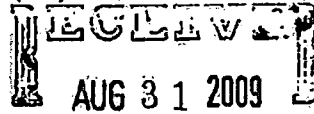
HUMAN AFFAIRS COMMISSION

2611 Forest Drive, Suite 200, Post Office Box 4490
Columbia, South Carolina 29240
(803) 737-7800 FAX (803) 253-4191

Telephone Device for the Deaf
(TDD) (803) 253-4125
To file complaints dial (803) 737-7800
or 1-800-521-0725 (In-State-Only)

Jesse Washington, Jr.
Commissioner

August 27, 2009



BY: _____

Mr. John Bianchi, Chairman
ARB, International Club Homeowners Association, Inc.
c/o KA Diehl & Associates, Inc.
11740 Hwy 17 Bypass
Murrells Inlet, SC 29576

Certified Receipt# 3867 3696

Re: Ronald Jarmuth vs. International Club Homeowners Association, Inc.
SHAC #H-3-09-021

Dear Mr. Bianchi:

The above referenced housing discrimination complaint was filed with the South Carolina Human Affairs Commission (SHAC) on August 27, 2009 pursuant to the South Carolina Fair Housing Law (31-21-120, S.C. Code of Laws of 1976, as amended). A copy of the complaint is enclosed.

You may file with this office an Answer to the complaint not later than ten (10) days after receipt of this letter. You may assert in your Answer any defense which might be available in a court of law. The answer must be signed and affirmed under penalty of perjury and may be reasonably and fairly amended at any time. The affirmation must state: "I declare under penalty of perjury that the foregoing is true and correct."

You are encouraged to read carefully the enclosed Notice. Contained in the Notice is important information regarding Rights under the Fair Housing Law and the processing of the complaint.

You will be contacted after your response has been received. If you have any questions, please contact Ms. Jessica L. White, Investigator in Charge, at (803) 737-7800.

Sincerely,

Jessica L. White
Investigator in Charge

JLW: jm

Enclosures



STATE OF SOUTH CAROLINA

EXHIBITS PAGE 7



614

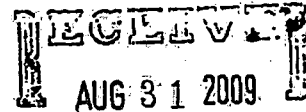
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or 1-800-521-0725 (In-State-Only)

August 27, 2009



BY: _____

Mr. Jay Cartman, ARB Member
International Club Homeowners Association, Inc.
c/o KA Diehl & Association, Inc.
11740 Hwy 17 Bypass
Murrells Inlet, SC 29576

Certified Receipt # 3867 3689

Re: Ronald Jarmuth vs. International Club Homeowners Association, Inc.
SHAC # H-3-09-021

Dear Mr. Cartman:

The above referenced housing discrimination complaint was filed with the South Carolina Human Affairs Commission (SHAC) on August 27, 2009 pursuant to the South Carolina Fair Housing Law (31-21-120, S.C. Code of Laws of 1976, as amended). A copy of the complaint is enclosed.

You may file with this office an Answer to the complaint not later than ten (10) days after receipt of this letter. You may assert in your Answer any defense which might be available in a court of law. The answer must be signed and affirmed under penalty of perjury and may be reasonably and fairly amended at any time. The affirmation must state: "I declare under penalty of perjury that the foregoing is true and correct."

You are encouraged to read carefully the enclosed Notice. Contained in the Notice is important information regarding Rights under the Fair Housing Law and the processing of the complaint.

You will be contacted after your response has been received. If you have any questions, please contact Ms. Jessica L. White, Investigator in Charge, at (803) 737-7800.

Sincerely,

Jessica L. White

Jessica L. White
Investigator in Charge

JLW:jm

Enclosures

NOTICE

During the investigation of a complaint the South Carolina Human Affairs Commission (SHAC) invites and encourages the parties to reach a satisfactory resolution through conciliation efforts. Any conciliation reached will be based upon a mutual agreement by all the parties and be subject to the approval of SHAC.

Investigation of the complaint should be completed within 100 days after the filing of the complaint. If the investigation is not completed within 100 days, both parties will be advised in writing of the reasons for the delay.

The purpose of the investigation is to determine whether reasonable cause exists to believe that discrimination has occurred or is about to occur. Upon completion of the investigation SHAC will issue an order either of dismissal or for a hearing.

If the order is for dismissal, both parties will be so notified and the complainant may bring an action against the respondent in Circuit Court.

If the order is for a hearing, the Commissioner shall attach to it a notice and a copy of the complaint and require the respondent to answer the complaint at a time and place specified in the notice and shall serve upon complainant and respondent a copy of the order, the complaint, and the notice.

Either party may elect to have the claims asserted in the complaint decided in a civil action. The Commissioner's notice must be sent to all parties and inform them of their right to take civil action. An election must be made within twenty days after receipt of the notice. A party making this election shall notify the Commissioner and all other parties. The complainant will be represented by the state of South Carolina at no cost to complainant.

The complainant has the right to file civil action in Circuit Court, which civil action must be commenced not later than one year after occurrence or termination of an alleged discriminatory housing practice. However, it shall not be commenced if SHAC has begun a hearing on the matter. The one year time limitation is exclusive of any time period which may lapse during the pendency of the complaint before SHAC. However, the time period does include the time during which an action arising from a breach of a conciliation agreement reached under Section 31-21-120(D) is pending.

In the absence of an election to have the matter decided in a civil action in Court, a hearing will be conducted before a panel of three Commissioners who will issue findings of fact and conclusions of law. The Panel shall have authority to grant appropriate relief, including actual damages and civil penalties.

Retaliation against any person for participation in any manner in the enforcement of the South Carolina Fair Housing Law is a discriminatory housing practice that is prohibited under Section 31-21-80 of the Law.

August 25, 2009

HOUSING DISCRIMINATION COMPLAINT

CASE NUMBER: H-3-09-021

1. Complainants

Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576

2. Other Aggrieved Persons

Angela Jarmuth, Wife
249 Pickering Drive
Murrells Inlet, SC 29576

Briona Spraker, Daughter
249 Pickering Drive
Murrells Inlet, SC 29576

Anne Spraker, Daughter
249 Pickering Drive
Murrells Inlet, SC 29576

Kyrstan Spraker, Daughter
249 Pickering Drive
Murrells Inlet, SC 29576

3. The following is alleged to have occurred or is about to occur:

Discriminatory terms, conditions, privileges, or services and facilities.

4. The alleged violation occurred because of:

Familial status.

5. Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):

249 Pickering Drive
Murrells Inlet, SC 29576

6. Respondent(s)

Jay Cartman, ARB Member
 International Club Homeowners Association, Inc.
 c/o KA Diehl & Associates, Inc.
 11740 Hwy 17 Bypass
 Murrells Inlet, SC 29576

John Bianchi, Chairman
 ARB, International Club Homeowners Association, Inc.
 c/o KA Diehl & Associates, Inc.
 11740 Hwy 17 Bypass
 Murrells Inlet, SC 29576

7. The following is a brief and concise statement of the facts regarding the alleged violation:

I have children under the age of 18; therefore, I belong to a class of persons whom that act protects from discrimination. I requested approval of a child's swing set to be erected on the right side of my house. On August 5, 2009, the Architectural Review Board denied my request, stating "The installation of a swing set on the side of a home which is visible to the street and infringes on other homeowner's enjoyment of their property is prohibited." I contend that the reason given is pretextual in that other residents have objects erected in their yards that are visible to the street. I believe that my neighbor and Board member, Jay Cartman, acted in his capacity as a Board member and used his influence to sway the Board to reject my request because I believe that he does not want children near his home. I therefore believe that I am being discriminated against on the basis of familial status, in violation of the Fair Housing Act.

8. The most recent date on which the alleged discrimination occurred:

August 5, 2009.

9. Types of Federal Funds Identified:

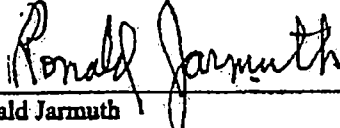
None.

10. The acts alleged in this complaint, if proven, may constitute a violation of the following:

Section 804b or f of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

Please sign and date this form:

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.


 Ronald Jarmuth

(Date)

8-26-2009

NOTE: HUD WILL FURNISH A COPY OF THIS COMPLAINT TO THE PERSON OR ORGANIZATION AGAINST WHOM IT IS FILED.

**BOARD OF DIRECTORS MEETING
MINUTES**

MAY 5, 2010 6:30 PM

The regular meeting of the Board of Directors was held on Wednesday May 5, 2010 at the International Club Amenity Center located at 1551 International Club Blvd. in Murrells Inlet, SC.

- I. Pledge of Allegiance / Opening of Meeting
All members present stood for the pledge of allegiance before the meeting commenced. The meeting was called to order at 6:30 P.M. Board of Directors present were Rosemary Toth, Maureen Sullivan, Bill Freiboth, Camille Noonan and John Bianchi. Also present were Beckie Abel and Julie Case with K.A. Diehl & Associates.
- II. Approval of Meeting Minutes
 - A. Board of Directors Meeting, February 4, 2010
A motion was made to approve the February 4, 2010 Board of Directors Meeting Minutes as written.
Motion made by: Maureen Sullivan
Seconded by: Bill Freiboth
Vote: Passed unanimously
 - B. Central Electric Power Meeting, April 19, 2010
A motion was made to approve the April 19, 2010 Central Electric Power Special Members Meeting Minutes as written.
Motion made by: John Bianchi
Seconded by: Bill Freiboth
Vote: Passed unanimously
- III. Reports
 - A. Treasurer's Report – John Bianchi
Treasurer Bianchi reported on the current financial status of the community. This information can be found on the website under the DOCUMENTS tab, financials, audits, budgets, reserve study / Financial Statements & Budgets / Master Association Statements (and) P.A.C.e Statements.
 - B. Secretary's Report – Camille Noonan
Camille commented on the first quarter reports that were submitted to the various contact forms on the community website. She shared that the contact forms online have been very successful for communication with the homeowners. She encouraged people to continue to use the site for information and to continue to send the Board reports, suggestions and commentary. This quarter statistics are listed below.

Contact the Board/Maintenance Requests 1/1/2010-3/1/2010

Contact the Board Requests:

Amenity Center	34
ARB	4
Web	6
Pool	8
Other	11

65

Total= 87

Maintenance Requests:

Landscaping/Lighting	10
Amenity Center/Fitness	12

22

IV. Committee Reports

A. ARB

Mark Shaffer, Chairman of the ARB reported on the last quarter of ARB requests. In the month of March there were 5 submittals, in April 17 submittals and in May 16 submittals reviewed. He reported that the committee is currently working on revising the guidelines.

B. Building Committee

Dotty Payton shared numerous items that the Building Committee has been working on. Their full report is attached as **EXHIBIT A**.

C. Golf Course Committee

Bob Buller introduced the Golf Course Committee and their roles as well as provided an update on the upcoming Committee events. Their full report is attached as **EXHIBIT B**.

D. Neighborhood Watch

Bill Dear announced that Neighborhood Watch has been inactive but they plan to get it going again during May. He stated that they will be dedicating block captains for the community. They will be reconstructing their committee once the school season ends and threat becomes eminent.

E. Pool Committee

Joan Gray reported that Tom Bielli of the Pool Committee will be training the new pool attendant for the upcoming summer season. The pool attendant will start Memorial Day weekend. The storage box for the chemicals is in place and the door on the storage room can now be taken care of. Ms. Gray thanked everybody for their help and patience as they got everyone registered for the pool season. The Pool Committee previously obtained a bid to install a panic button for the pool gate and they recommended to the Board to accept the proposal.

F. Social Committee

Sandy Bianchi gave the report for the Social Committee and announced the Committees upcoming events. Their full report is attached as **EXHIBIT C**.

G. Welcome Committee

Cheryl Chmielewski reported on the Welcome Committee and their full report is attached as **EXHIBIT D**.

V. Old Business

A. Website update – Bill Freiboth

Bill Freiboth updated the owners on the progress of the website and the full report is attached as **EXHIBIT E**.

VI. New Business

A. Pond Algae & Mowing Resolution

Chairman Toth reported that there were many complaints regarding the algae in the ponds. Unfortunately, some of the ponds that were of issue were not maintained by the Association as they are golf course property. Algae in the ponds that the Association maintains have been treated. Due to the time of year, it will take a while to get them up to standard.

She also shared an action without a meeting on the areas the Board approved to have maintained and is attached as **EXHIBIT F**. The pond banks that are adjacent to owners properties will be maintained, however, the banks that are not, will remain in their natural state.

B. ARB Appointment

Chairman Toth announced that ARB alternate, Jane Bowers, has been appointed to the ARB. There is an available seat as an alternate if anyone is interested in serving on the ARB.

C. New Violation Policy

Vice President Sullivan announced that as of May 1, 2010 a new violation policy was adopted. She shared the progressive steps in detail. The final notice will be a hearing scheduled with a hearing fine of \$75.00.

D. Summer Newsletter

The Summer Newsletter will be sent out by the end of June.

A motion was made to accept the proposal from ADT to install a panic button at a cost of \$495.00.

Motion made by: Maureen Sullivan
Seconded by: Bill Freiboth
Vote: Passed unanimously

A motion was made to have county installed metal post speed limit signs replaced with our community standard wood signs. The damaged curve sign will also be replaced. New signs are not to exceed \$700.00.

Motion made by: Maureen Sullivan
Seconded by: John Bianchi
Vote: Passed unanimously

VII. Open Forum

The owners were given the opportunity to ask the Board of Directors and they were answered accordingly.

VIII. Schedule of Next Meeting

The next scheduled meeting of the Board will be held on Wednesday August 4th at 6:30 P.M.

IX. Adjournment

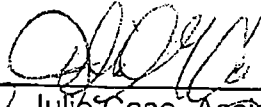
A motion was made to adjourn the meeting at 8:00 P.M.

Motion made by: John Bianchi

Seconded by: Maureen Sullivan

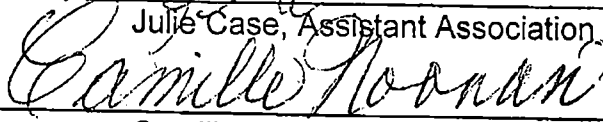
Vote: Passed unanimously

Respectfully submitted by:



Julie Case, Assistant Association Manager

Approved by:



Camille Noonan, Secretary

INTERNATIONAL CLUB PROPERTY OWNERS ASSOCIATION, INC.

**BOARD OF DIRECTORS MEETING
NOVEMBER 10, 2010
6:30 PM**

MINUTES

The regular meeting of the International Club Board of Directors was held on November 10, 2010 at the International Club Amenity Center located at 1551 International Club Drive in Murrells Inlet, SC.

– PLEDGE OF ALLEGIANCE

I. Opening of Meeting

• Call To Order

The meeting was called to order at 6:30 P.M. Board members in attendance were Bill Freiboth, Camille Noonan, Bob German and Roseann Gillie. Unable to attend was John Bianchi. Also present were Community Manager Beckie Abel and Assistant Community Manager Julie Case with K.A. Diehl & Associates.

II. Adopt the Agenda

A motion was made to adopt the meeting agenda as presented.

Motion made by Roseanne Gillie

Seconded by Bob German

Vote passed unanimously

III. Approval of Minutes

A motion to approve the meeting minutes from the Aug 4, 2010 Board of Directors Meeting as written.

Motion by Camille Noonan

Seconded by Roseanne Gillie

Vote passed unanimously

III. Treasurers Report

Management reported on the community's financial status as of September 30, 2010 that reflects nine (9) months activity.

IV. Secretary's Report

Secretary Noonan reported on the community's website reporting forms and there were three (3) reports of maintenance needs and one (1) contact the board submittal. The website continues to be a successful tool for communication and reporting for the community.

V. Committee Reports:

The Board thanked all committee members that have volunteered and shared that their help is appreciated and is essential to operations. The owners were asked to please hold comments until the Member Comment period at the end of the meeting.

A) ARB

Mr. Bill Fletcher reported on behalf of the Architectural Review Board for a Chairman has not yet been established since Roseanne Gillie had to resign when she was elected to the Board of Directors. In addition to his recent appointment to the ARB, Mr. Fletcher announced the additional ARB appointees: Hank Hodges, Pete Warren and Charles Roche. A new chair will be elected at the December meeting of the ARB during its new established time of 10:30 AM on the first Tuesday of each month.

B) Building

The Building Committee shared that an inspection is conducted on a weekly basis and any items in need of repair are submitted to the new Maintenance Committee or the proper vendor.

C) Communications (new)

Mr. Bob Masters reported on the newly developed Communications Committee and the full report is attached to these minutes as EXHIBIT A.

D) Golf Course

In mid November there will be a new program for Sunday golf and reduced rates will be offered.

E) Grounds (new)

Chairman Freiboth reported on the progress of the CEP project. They have installed plantings and irrigation, but there has been a problem with the pressure valve in the new irrigation system that was producing leakage. Since this problem was detected and repaired, a pressure monitoring station was installed. Mr. Freiboth also shared that there was a car accident that damaged this progressing area and had caused additional damage to the irrigation. A police report was filed and the owners insurance will be paying for the damages.

F) Maintenance (new)

Mr. Dave Jones has leaded this new committee and has been working closely with all of the committees for repairs needed around the community. The Maintenance Committee was commended for all of their hard work and ultimately saving the Association funds in contracting these kinds of jobs.

G) Neighborhood Watch

The Neighborhood Watch needs more volunteers. Their patrol hours have been reduced until the Spring time when they will be extended for the season. The committee is hopeful to have more members as of the by that time.

H) Pool – Joan Gray

Ms. Joan Gray reported for the Pool Committee and is attached to these minutes as EXHIBIT B.

I) Social Committee

Ms. Denise Fynmore shared with the membership the recent social events, upcoming events and the active members. The full report of the Social Committee is attached to these minutes as EXHIBIT C.

J) Welcome (re-activated)

Ms. Beth Templeton has taken over as chair for the Welcome Committee. She shared that they are working on a new objective to give a great warm welcome and inform all new owners and residents of the Association. They will be presented a gift with a personal visit to carry out these efforts. The committee has went back six (6) months to collect all new owners and residents in the community and K.A. Diehl will be providing a new owners re-sale report each month to keep them up to date.

IV. Old Business

- There was no old business to discuss at this time.

V. New Business

Budget – Discussion

The Association funds two separate budgets, one for the Master Association and one for the Pool and Amenity Center facility.

Important Factors Contributing to this year's budget:

- The Board increased the rate of contributions to reserves by about 5%.
- Bad Debt allowances were increased substantially: \$10,000 master, \$4,000 P.A.C.e as a number of accounts are in collection past 90 days, there are some foreclosures and the duration of the foreclosure process may increase next year.
- Cable Expenses are expected to go up 5%
- The community now pays a HWY 17 connector fee (tournament blvd) annually
- Insurance is up due to increased coverage amounts, replacement value insurance
- There have some irrigation leaks remaining to repair due to a failed pressure valve
- The Association can expect legal costs to continue to be incurred in 2011 for new suits
- The Board made great progress to paid back last year's master deficit.
- Much of budget cost is hard to reduce: P.A.C.e for example has about 68% its costs due to utilities. Other major costs include: contract vendor services, insurance, bad debt, reserve contributions (still building reserves as a new community)

2011 collection of assessments

2011 Assessments:

- P.A.C.e members (includes master and P.A.C.e fees)
- Master Association Only:

Coupons: The Board intends to return to a single coupon due monthly per member

- P.A.Ce – a single monthly coupon due January 2010
- master only – a single monthly coupon, Due January 2010
- Annual Budget and Coupon books to follow – official mailing of the community.

A motion was made to approve the proposed 2011 Budget.

Motion made by Roseann Gillie

Seconded by Bob German

Vote passed unanimously

Vendor Contracts:

The Board is reviewing existing contracts – to verify they reflect work actually performed. They will be selecting some key contracts to bid with timing dictated by contract expiration.

Lawsuits

- The Board has filled with the court a motion to compel mediation – Villas Suit; Goal, move suit to completion and press for mediation by a 3rd party complying with the Judge's requirements
- The Board recently received three new legal complaints. One we responded to, the other two are being reviewed by our attorney.
- They are awaiting completion of responses and confirmation from our attorney before additional release of information.

Board Direction for 2011

1. Greater Emphasis on Committees, return as much committee work as possible to committees, provided resources are available to take on work. (new volunteers)
2. Build Stronger Committees: involvement, monitoring their areas of responsibility
3. Formed and are building 3 new committees: Grounds, Maintenance, Communication
4. Restarting the Welcome Committee
5. Finish CEP Project landscaping
6. Move legal complaints towards resolution, respond as needed
7. Keep commitments in line with volunteer committees resources. We will continue to build committees and solicit volunteers –part of maturing the association.

VI. Member Comment

The membership was given the opportunity to address any questions or concerns with the Board at this time.

- VII. Schedule of next meeting
The Next Quarterly Board meeting will take place on Wednesday February 2, 2010 at 6:30 p.m. in the Amenity Center meeting room.
- VIII. Adjournment
A motion was made to adjourn the meeting at 7:39 PM.
Motion made by Bob German
Seconded by Camille Noonan
Vote passed unanimously

Respectfully submitted by: _____
Julie Case, Assistant Community Manager

Approved by: _____
Camille Noonan, Secretary

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Ronald Jarmuth,)
Plaintiff,)
vs.)
The International Club Homeowners)
Association, Inc.)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-26-11320

**DEFENDANT'S AMENDED
ANSWER TO COMPLAINT AND
COUNTERCLAIM**

HORRY COUNTY
11 OCT 24 PM 1:13
CLERK OF COURT

The International Club Homeowners Association, Inc. (hereinafter referred to as "Defendant HOA"), answers the Complaint filed by Ronald Jarmuth (hereinafter referred to as "Plaintiff") as follows:

FIRST DEFENSE

1. Each and every allegation not hereinafter admitted, modified, or qualified is denied and strict proof demanded thereof.

2. The Defendant HOA denies any and all allegations contained in the Complaint.

SECOND DEFENSE

3. The allegations of the First Defense are incorporated herein and made a part and parcel hereof.

4. This Court should dismiss the Complaint in its entirety in accordance with Rule 12(b)(8) of the South Carolina Rules of Civil Procedures because there is currently a pending civil action filed by the Plaintiff against the Defendant HOA before the Court of Common Pleas for the County of Horry, State of South Carolina, Civil Action No.: 2009-CP-26-3596.

THIRD DEFENSE

5. The allegations of the First and Second Defenses are incorporated herein and made a part and parcel hereof.

6. The Plaintiff lacks standing to bring the claims asserted in his Complaint, and therefore, his claims should be dismissed.

FOURTH DEFENSE

7. The allegations of the First, Second, and Third Defenses are incorporated herein and made a part and parcel hereof.

8. The Plaintiff's claims should be dismissed because his Complaint and the causes of action asserted therein are barred by the doctrines of Res Judicata and Collateral Estoppel.

FIFTH DEFENSE

9. The allegations of the First, Second, Third, and Fourth Defenses are incorporated herein and made a part and parcel hereof.

10. The answering Defendant HOA assert the Doctrines of Estoppel, Waiver, Consent, and Laches as complete affirmative defenses to the allegations contained in the Complaint.

SIXTH DEFENSE

11. The allegations of the First, Second, Third, Fourth, and Fifth Defenses are incorporated herein and made a part and parcel hereof.

12. The Defendant HOA has immunity as to the claims asserted by the Plaintiff as the Defendant HOA has abided by the Declaration of Covenants and Restrictions for Murrells Inlet Golf Plantation (later amended to the Declaration of Covenants and Restrictions for International Club) (hereinafter "Declaration") filed in the Horry County Register of Deeds Office, Deed Book

2117, Page 1353 on February 8, 1999 and the Defendant HOA's Bylaws, as amended (collectively hereinafter referred to as "Governing Documents") and South Carolina State Law in undertaking the actions complained of.

SEVENTH DEFENSE

13. The allegations of the First, Second, Third, Fourth, Fifth, and Sixth Defenses are incorporated herein and made a part and parcel hereof.

14. All actions of the Defendant HOA were undertaken in good faith and in accordance with the business judgment rule.

EIGHTH DEFENSE

15. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Defenses are incorporated herein and made a part and parcel hereof.

16. The Plaintiff's claims are barred by the doctrine of equitable estoppel.

NINTH DEFENSE

17. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Defenses are incorporated herein and made a part and parcel hereof.

18. The Plaintiff's claims are barred, in whole or in part, by the Plaintiff's payment of assessments and fines to Defendant HOA.

TENTH DEFENSE

19. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Defenses are incorporated herein and made a part and parcel hereof.

20. The Plaintiff's claims are barred by the doctrine of unclean hands.

ELEVENTH DEFENSE
AND FIRST COUNTERCLAIM

21. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Defenses are incorporated herein and made a part and parcel hereof.

22. The Defendant HOA is a non-profit corporation organized under and existing by virtue of the laws of the State of South Carolina.

23. Upon information and belief, the Plaintiff, Ronald Jarmuth, is a citizen and resident of the State of South Carolina.

24. Upon information and belief, the Plaintiff, Ronald Jarmuth, owns Lot 12 of the Pebble Creek at the International Club ("Property").

25. The Property is located in Horry County, South Carolina, and this Court has jurisdiction over both the Property and the parties to this action.

26. As the owner of the Property, the Plaintiff is subject to the Governing Documents.

27. The provisions of the Governing Documents provide that the Defendant HOA governs the International Club subdivision.

28. Section 7.2 of the Declaration provides:

"Prior Review of All Plans. No building, structure, fence, sidewalk, wall, drive, exterior lighting, painting, landscaping, or other improvement...shall be commenced, erected, or maintained upon any portion of the Subdivision, nor shall any exterior addition or change be made until the plans and specifications...showing the grading, filling nature, kind, size, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to the harmony of the exterior design and location in relation to the surrounding structures and topography by the Developer...Provided however, that upon Developer's selling of not less than 3,650 of the Units in the Subdivision, this right of approval shall be transferred to an Architectural Review Board of the Association."

29. The Architectural Review Board for the Defendant HOA holds the architectural review rights pursuant to the Governing Documents. All Owners within the International Club apply to the Architectural Review Board for approval of plans and specifications for improvements constructed within the International Club.

30. The Defendant HOA enacted Architectural Guidelines in 2005 and has amended them from time to time.

31. Upon information and belief, the Plaintiff applied to the Architectural Review Board for approval of improvements on several occasions, and the Plaintiff's plans and specifications were approved.

32. Upon information and belief, the Plaintiff constructed a brick wall on the Property without obtaining the approval of the Defendant HOA or the Architectural Review Board.

33. The Defendant HOA, through its Architectural Review Board, sent notice to the Plaintiff that he violated the Governing Documents and the Architectural Guidelines by constructing improvements on the Property without approval from the Architectural Review Board and that the violation subjected him to fines.

34. Thereafter, the Plaintiff applied to the Architectural Review Board for approval of the brick wall and a fence, as well as a flower bed and edging.

35. Pursuant to Section 7.4 of the Declaration:

"Fences. No fences whatsoever shall be erected or allowed to remain in the Subdivision except privacy patio fences or walls approved by the Developer and the Architectural Review Board in their sole discretion may require...No fences shall be permitted which obstruct the view of any stream or other body of water, golf courses or recreational amenity when viewed from inside any other Unit, or which interfere with the playing of golf on any nearby golf course or with the use of any Recreational Amenity."

36. The Architectural Review Board approved the Plaintiff's request for the flower bed and edging and denied the Plaintiff's request to construct the fence and wall, because the proposed construction violated the Governing Documents and the Architectural Guidelines and did not comply with the general scheme of development for the International Club.

37. The Architectural Review Board also demanded that the brick wall be removed from the Property within fifteen (15) days or he would be subject to monthly fines in the amount of One Hundred and 00/100 (\$100.00) Dollars.

38. Upon information and belief, the Plaintiff paid a fine for constructing the brick wall in the amount of Fifty and 00/100 (\$50.00) Dollars imposed by the Defendant HOA under protest several weeks later and threatened to sue the Defendant HOA.

39. Although the Plaintiff's application for the fence and the brick wall were denied and the Defendant HOA directed the Plaintiff to remove the brick wall, the Plaintiff failed and refused to remove the brick wall constructed.

40. The brick wall is a continuing violation of the Governing Documents and the Defendant HOA's Architectural Guidelines, and the Plaintiff has been fined accordingly.

41. Moreover, the Plaintiff has failed and refused to acknowledge the validity of the Governing Documents, the Architectural Guidelines, and the authority of the Defendant HOA and the Architectural Review Board to enforce the same.

42. Pursuant to the provisions of the Governing Documents, Plaintiff is responsible for paying assessments, fines, late fees, interest and other related charges to the Defendant HOA.

43. Provisions of the Governing Documents further provide that if the Plaintiff does not pay the assessments, fines or other related charges, Plaintiff is responsible for all costs of collection, including reasonable attorney's fees, that are incurred by the Defendant HOA.

44. The Plaintiff, as owner of the Property, was and is assessed regular assessments, fines, late fees, interest and other related charges. As of August 26, 2011, the Plaintiff owes One Thousand One Hundred Thirty Two and 00/100 (\$1,132.00) Dollars plus the costs of collections for his continuing violation of the brick wall, which the Plaintiff has not paid despite due demand being made upon him to pay said assessments and fines.

45. The Plaintiff, as current owner of the Property, continues to incur fines, fees and additional related charges throughout the pendency of this case during his continued ownership of the Property.

46. As a direct and proximate result of the Defendant HOA pursuing collection of these fees and costs, Defendant HOA has and will continue to incur attorney's fees and costs.

47. Plaintiff breached the terms of the Governing Documents and the Architectural Guidelines, and therefore, the Defendant HOA is entitled to a judgment in an amount to be determined by this Court, together with costs and attorney's fees incurred in bringing this action as well as an order requiring the Plaintiff to comply with the Governing Documents and the Architectural Guidelines and to remove the brick wall from the Property.

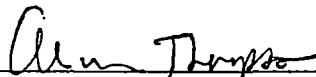
WHEREFORE, having answered the claims of the Plaintiff, the Defendants hereby prays as follows:

- a. that the Complaint be dismissed;
- b. judgment against the Plaintiff in an amount to be determined by the Court;
- c. an order requiring Plaintiff to comply with the Defendant HOA's Governing Documents and Architectural Guidelines and to remove the brick wall from the Property in violation of the Governing Documents and Architectural Guidelines;
- d. this Court award reasonable attorney's fees and costs to the Defendant HOA; and

e. for such other and further relief as this Court deems just and proper.

Respectfully submitted,

McNAIR LAW FIRM, P.A.



Henrietta U. Golding, SC Bar #2173

Alicia E. Thompson, SC Bar #77056

P.O. Box 336

Myrtle Beach, SC 29578-0336

Ph: (843) 444-1107

Fax: (843) 443-4137

Email: hgolding@mcnair.net

athompson@mcnair.net

Attorneys for the Defendant HOA

Myrtle Beach, South Carolina

October 24, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Civil Action No. 2009-CP-26-3596
	)	
Ronald Jarmuth	)	
Plaintiff	)	PLAINTIFF'S ANSWER
	)	TO COUNTER-CLAIM
vs.	)	OF DEFENDANT'S AMENDED
	)	COMPLAINT
The International Club	)	
Homeowners Association, Inc.,	)	AND ASSERTION OF
et al	)	COUNTER – CLAIM BY
Defendants	)	PLAINTIFF
	)	

Plaintiff / Counter-Defendant Ronald Jarmuth (hereafter referred to as "C-Def") answers the Counter – Complaint stated in Defendants' / Counter – Plaintiff's (hereafter referred to as "C-Pl") Amended Answer with Counter-Complaint filed with the Court on or about October 24, 2011, which Counter – Complaint was addressed at a hearing held December 7, 2011 on C-Def's SCRCivP Rule 12(b)(6) Motion – and for which, as of the date of the filing of this pleading, no Order of Court has yet issued. ¹

The Counter – Complaint is set out in paragraphs 50 through 74 of the Amended Answer, thus no response is required to the allegations of the earlier paragraphs which are not part of the Counter – Complaint as stated. To the extent that any earlier paragraphs can be read as being part of the Counter – Complaint, the allegations of the earlier numbered paragraphs are denied.

FIRST DEFENSE

1. Each and every allegation not hereinafter admitted, modified, or qualified is denied and strict proof demanded thereof.

2. Plaintiff admits that "the Defendant HOA is a non-profit corporation organized under and existing by virtue of the laws of the State of South Carolina" as stated in paragraph 50 of the Counter – Complaint. Plaintiff admits the allegation of paragraph 51 that "the Plaintiff, Ronald Jarmuth, is a citizen and resident of the State of South

Carolina". Plaintiff admits the allegation of paragraph 52 that "the Plaintiff, Ronald Jarmuth, owns Lot 12 of the Pebble Creek at the International Club ("Property")" but clarifies that said lot is within the "International Club Planned Unit Development, formerly known as Lantana Planned Unit Development, and formerly known and initially approved as the Murrells Inlet Golf Plantation. Plaintiff admits the jurisdictional allegations of paragraph 53.

3. Plaintiff admits the allegations of paragraph 54 that "as the owner of the Property, the Plaintiff is subject to the Governing Documents" but clarifies that the use of the property, not the person, is subject to the Covenants running with the land, as amended, specifically including those amendments to the Covenants which were properly enacted. C-Def explicitly rejects any allegation that the putative Bylaws of the International Club Homeowners Association have any legal effect, asserting that no Bylaws of C-Pl HOA exist with any legal effect, and further asserting that any acts of C-Pl HOA purporting to rely on any such Bylaws or rules are ultra-vires. C-Def asserts that Amendments two (2) through five (5) were enacted in violation of the South Carolina Non-Profit Corporation Act and of the Covenants, and are thus ultra-vires and ineffective.

4. C-Def denies and rejects the allegation of paragraph 55 that "the provisions of the Governing Documents provide that the Defendant HOA governs the International Club subdivision" asserting instead that the Murrells Inlet Golf Plantation Association, Inc (MIGPA) is the HOA which properly governs the PUD per the legally effective covenants. C-Def demands strict proof.

5. C-Def denies the allegation of paragraph 56 that "Section 7.2 of the Declaration provides" for anything, since said Section was "waived" by the First Amendment to the Covenants (the only legally effective Amendment to the Covenants). Plaintiff states further that, per Black's Legal Dictionary, first and any later editions, "waived" equates to "deleted" and alternatively means that any rights or obligations anyone might suffer per Section 7.2 became ineffective and legally incapable of being raised as of the date of the First Amendment. C-Def demands strict proof.

¹ The Court, from the bench, stated it's intention to deny C-Def's Rule 12(b)(6) motion – and directed that counsel for C-Pl prepare and submit to the Court an Order following the December 7, 2011 hearing. No such order has been served on C-Def to-date (December 20, 2011).

**WHEREFORE, having answered the Counter - Claims of the Counter - Plaintiffs,
the Counter - Defendant hereby prays as follows:**

- a. that the Counter - Complaint be dismissed;**
- b. sanctions as requested per paragraph 36 above.**
- c. for such other and further relief as this Court deems just and proper.**

Respectfully submitted,

**Ronald Jarmuth
Plaintiff / Counter – Defendant Pro Se
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355**

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2009-CP-26-3596

Ronald Jarmuth,

Plaintiff,

vs.

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

Defendants.

CONSENT ORDER OF REFERENCE

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2010-CP-26-1008

Ronald Jarmuth,

Plaintiff,

vs.

The International Club Homeowners
Association, Inc.,

Defendant

FILED
Horry County
12 JUN 15 PM 1:48
MELANIE HARRIS
CLERK OF COURT

This matter came before the Court upon motion of the undersigned Defendants, International Club Homeowners Association, Inc. ("HOA"), Rosemary Toth, and K.A. Diehl & Associates, Inc. to refer the above entitled actions to Ralph Stroman, as Special Referee.

The claims of the Plaintiff, Ronald Jarmuth ("Plaintiff"), include a declaratory judgment action seeking an order as to the validity of provisions contained in the restrictive covenants for the International Club and amendments thereto, the authority of the HOA to govern the International Club, the validity of the HOA's contracts with third parties, and the validity of the

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restrictive covenants regulating parking in light of the Developer's dedication of International Club streets to Horry County, as well as claims for breach of fiduciary duty and defamation.

The undersigned Plaintiff and Special Referee Ralph Stroman consent to the referral of the above entitled actions.

It appearing that pursuant to Rule 53(b) SCRPC the herein actions are appropriate to be referred to Ralph P. Stroman, as a Special Referee, with authority to enter a final judgment in the cases:

IT IS ORDERED that the above entitled actions are referred to Ralph P. Stroman who, pursuant to Rule 53(b) SCRPC, shall exercise all the power and authority that a circuit judge sitting without a jury would have, including but not limited to, hearing pre-trial and post trial motions, making findings of fact and conclusions of law, directing entry of final judgment in these actions under Rule 53(b) SCRPC, and issuing any and all Orders necessary.

Pursuant to Rule 53(b) SCRPC, any appeal from the final judgment entered by the Special Referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Mr. Stroman's hourly charge is \$250.00. By agreement of the parties, the HOA shall pay the hourly charges of the Special Referee for the Special Referee's time expended in trying these actions, together with any additional court costs, such as the cost of the court reporter and court personnel in attendance, if charged by the Court at the trial of these matters. The parties agree that the South Carolina Appellate Court Rules shall determine the party responsible for the costs of any appeal that may be filed.

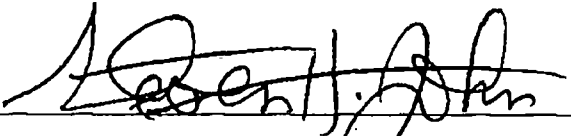
The trial shall commence on Wednesday, August 8, 2012 at 9:00 A.M. at the Horry County Government and Judicial Center and shall continue until concluded.

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IT IS SO ORDERED.

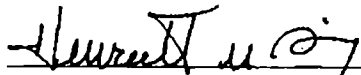
Conway South Carolina

Dated: 6/13/2012


The Honorable Steven H. John
Chief Administrative, Judge Fifteenth Judicial Circuit

386
210

I SO MOVE:



Henrietta Golding, Esq. SC Bar #2173
Alicia E. Thompson, Esq. SC Bar #77056
McNair Law Firm, P.A.
P.O. Box 336
Myrtle Beach, SC 29578-0336
Ph: (843) 444-1107 Fax: (843) 443-9137
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athompson@mcnair.net

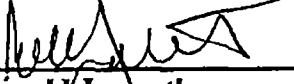
Attorneys for the Defendants

Myrtle Beach, South Carolina

June 12, 2012

4 of 6
2.11.12

I SO CONSENT:



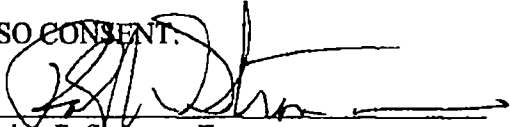
Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576
Ph: (843) 314-4355
Email: ronaldjarmuth@hotmail.com

Pro Se Plaintiff

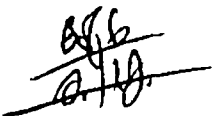
Murrells Inlet, South Carolina

June 6 2012

I SO CONSENT.


Ralph P. Stroman, Esq.
8 Red Squirrel Lane
Pawleys Island, SC 29585
Ph: (843) 237-1030
Email: rstroman@sc.rr.com

Pawleys Island, South Carolina
June 4, 2012



COPY

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 09-CP-26-3596

Ronald Jarmuth,)

Plaintiff,)

vs.)

The International Club HOA, et al,)

Defendants.)

ORDER OF RECUSAL
AND SENDING CASE
BACK TO CIRCUIT COURT

Plaintiff Ronald Jarmuth, a self-represented litigant, has made post-trial motions and has mailed several letters to the Honorable Steven H. John, Chief Administrative Judge for the 15th Judicial Circuit, Civil Court, with copies to defense counsel and the undersigned requesting that Judge John preside over all post trial motions in this matter instead of the undersigned who served as the trial judge. Specifically, Mr. Jarmuth makes what I consider to be unfounded and general accusations that this Court is biased against him and has committed other acts of misconduct in the trial of this matter. While not admitting any bias towards Mr. Jarmuth, and in fact, wholeheartedly denying any such bias and/or misconduct, this Court finds and concludes that it is in the interests of justice and judicial economy that I recuse myself from further involvement in this matter and that the matter be sent back to the Circuit Court for further proceedings.

I, THEREFORE, FIND AND CONCLUDE that this matter be referred back to the Honorable Steven H. John, Chief Administrative Judge for the 15th Judicial Circuit, Civil Court, for further proceedings in this matter.

AND IT IS SO ORDERED.

FILED
HURRY COUNTY
2012 OCT 17 PM 1:28
MELANIE HUGGINS-WARD
CLERK OF COURT

9

Oct 17, 2012



RALPH P. STROMAN
Special Referee for Horry County

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-26-3596

Ronald Jarmuth,)
Plaintiff,)

vs.)

The International Club Homeowners)
Association, Inc.,)
Rosemary Toth,)
And K.A. Diehl & Associates,)
Defendants.)

**DEFENDANTS' MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
RULE 60(b)(2) and (3) MOTION FOR
RELIEF FROM JUDGMENT**

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-26-11320

Ronald Jarmuth,)
Plaintiff,)

vs.)

The International Club Homeowners)
Association, Inc.)
Defendant.)

1 JURY COUNTY
2016 MAR -3 PM 2:27
CLERK OF COURT

Defendants, The International Club Homeowners Association, Inc. (hereinafter "Association"), Rosemary Toth, and K.A. Diehl & Associates (hereinafter "Defendants"), by and through their undersigned counsel, submit this Memorandum in Opposition to the Rule 60(b)(2) and (3) Motion for Relief from Judgment filed on January 22, 2016 and the Amended Addition to Rule 60(b)(2) and (3) Motion for Relief from Judgment filed on February 1, 2016 (collectively hereinafter referred to as "Rule 60(b) Motion") by the *pro se* Plaintiff, Ronald Jarmuth (hereinafter "Jarmuth").

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INTRODUCTION

The Rule 60(b) Motion seeks to alter the Final Order dated and filed September 10, 2012 (hereinafter "Final Order") in the above captioned actions (hereinafter "Consolidated Cases"). The motion asserts that the Association and the undersigned attorneys committed fraud by admitting testimony at trial and mischaracterizing evidence to prove that his International Club property in the Pebble Creek subdivision is subject to the Declaration of Covenants and Restrictions for the International Club (hereinafter "Declaration") and to prove the Association's damages for attorneys' fees and fines. The alleged fraud includes testimony and/or mischaracterizations of the evidence that the payment of an insurance deductible for the undersigned attorneys' fees was in connection with the Consolidated Cases, that the Association affirmed the fines rendered against him, and that the deed for the Pebble Creek tract subjected Jarmuth's lot to the Declaration. Jarmuth also argues that the Association intentionally withheld evidence during the discovery process that affect the findings in the Final Order. As a result of these alleged acts, Jarmuth requests that the judgment against him in favor of the Association for attorneys' fees and fines be set aside. He also requests that "any provision in the final order which holds that Pebble Creek is subject to the Covenants" be vacated. Jarmuth's Rule 60(b) Motion is completely without.

Jarmuth contends that the following alleged "newly discovered" evidence is proof that the Association committed fraud that warrants this Court's alteration of the Final Order: 1) General ledgers produced by the Association in the above captioned action (Rule 60(b) Motion, Exhibits C, E); 2) Minutes of the Association's meetings made available to Jarmuth for review some of which were produced by Association upon request and that were posted to the Association's website (Rule 60(b) Motion, Exhibits I, K, N, O, P); 3) Association Architectural Review Board (hereinafter "ARB") Reports produced by Association (Rule 60(b) Motion, Exhibits L, M); 4)

Trial exhibits (Rule 60(b) Motion, Exhibits B, D, R, S); 5) Excerpts from the trial transcript (Rule 60(b) Motion, Exhibits G, H, J) 6) Correspondence from Association's insurance agent enclosing the insurance declaration made available to Jarmuth for review (Rule 60(b) Motion, Exhibit A); 7) Association 2010 bank statement made available to Jarmuth for review (Rule 60(b) Motion, Exhibit F). His argument is that the minutes of the Association's ARB and Board meetings do not reflect that the Board moved to approve the fines against him.

None of this evidence is "newly discovered" or evidence of "fraud" as asserted by Jarmuth. Most of these documents were produced by the Association as reflected by the bates range numbers on the Jarmuth's Exhibits and were made exhibits at trial. The other documentation was made available for Jarmuth's review and/or was available on the Association's website. Jarmuth's Exhibits are consistent with the evidence that was presented at the trial of the Consolidated Cases and the findings in the Final Order, and accordingly, the Rule 60(b) Motion should be denied.

FACTS

This case has a tortured procedural history as result of Jarmuth's various pleadings, motions, appeals and other filings in the Consolidated Cases, Civil Action No. 2009-CP-26-3596 (hereinafter "2009 Case") and Civil Action No. 2010-CP-26-11320 (hereinafter "2010 Case"). Jarmuth filed the 2009 Case against the Association, as well as related defendants, on April 7, 2009 asserting generally a declaratory judgment action that the Declaration does not apply to his property, that the Declaration and the Bylaws of the Association are invalid, and to the extent that the Association is a party to the Declaration, that the Association violated the Declaration. Several amendments to the Complaint have been filed, asserting additional causes of action, including but not limited to, defamation, violation of the South Carolina frivolous proceedings act, and

misappropriation. The Association filed a counterclaim seeking attorneys' fees and expenses "associated with the defense of the action"¹ on May 13, 2009.

Upon receipt of the 2009 Complaint, the Association filed a claim with its insurance carrier under its director's and officer's insurance policy, which required the payment of a \$2,500.00 deductible. This deductible was paid directly to McNair, the law firm hired to defend the Association and the other defendants in the 2009 Case. (Exhibit 1, Defendants' Trial Exhibit 62, Check to McNair).

Thereafter, on July 21, 2009, Jarmuth filed an application with the ARB for a swing set. (Exhibit 2, Defendants' Trial Exhibit 58, Swing Set Application). The Association sent a Notice of Disapproved Request for the swing set due to its proposed location. (Exhibit 3, Defendants' Trial Exhibit 59, Disapproval of Application). In response, and while the 2009 Case was pending, Jarmuth filed a Complaint with the South Carolina Human Affairs Commission (hereinafter "SCHAC") challenging the Association's denial of his application based on allegedly discriminatory practices. At issue in the SCHAC matter was whether the Association properly denied the application in accordance with the Declaration and Bylaws in an evenhanded and non-discriminatory manner. McNair and the undersigned attorneys were hired to defend the SCHAC Complaint. On January 11, 2010, SCHAC determined that there was no reasonable cause for

¹ The Association is entitled to attorneys' fees pursuant to Section 8.9 of the Declaration, which provides the following: "[s]hould any person employ counsel to enforce any of the foregoing covenants, conditions, reservations, or restrictions, because of a breach of the same, all costs incurred in the enforcement, including a reasonable fee for counsel shall be paid by the Owner of such Unit or Units in breach thereof." Section 13.4 of the Bylaws of the Association also provide for attorneys' fees in enforcing the Declaration: "[s]hould the Developer or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the Owner."

Jarmuth's Complaint as set forth in correspondence to the Association. (Exhibit 4, Defendants' Trial Exhibit 63, SCHAC letter).

The Association filed a second claim with its insurance carrier under its director's and officer's insurance policy related to the SCHAC Complaint. Like the 2009 deductible, the \$2,500.00 deductible for the SCHAC matter was paid directly to McNair. (Exhibit 5, Defendants' Trial Exhibit 79, Check to McNair).

On September 27, 2010, Jarmuth was noticed a violation for a curbing/stone addition along his property line, wherein he was assessed a \$50.00 fine and was asked to submit a modification request to the ARB for the curb/stone addition. (Exhibit 6, Defendants' Trial Exhibit 83, Violation Notice). Thereafter, Jarmuth submitted a modification request for fence with a brick base on September 30, 2010. (Exhibit 7, Defendants' Trial Exhibit 84, Modification Request). The ARB denied his modification request on October 8, 2010, directed that the improvement be removed, and provided notice that he would be fined \$100.00 per month for any continuing violation. (Exhibit 8, Defendants' Trial Exhibit 86, Denial of Modification Request). Jarmuth sent a written reply disputing the authority of the ARB to deny his Modification Request and the validity of any fines and waiving his right to a hearing. (Exhibit 9, Defendants' Trial Exhibit 87, Jarmuth's Objections). The Board of Directors affirmed the decision of the ARB by sending additional letters to Jarmuth on October 14, 2010 and November 15, 2010 indicating that the improvement must be removed and providing notice of fines. (Exhibit 10, Jarmuth's Trial Exhibit 379, 10/14/2010 Letter from the Board; Exhibit 11, Jarmuth's Trial Exhibit 381, 11/15/2010 Letter to Jarmuth). As reflected in the December 10, 2010 ARB meeting minutes, the ARB confirmed that Jarmuth had not removed the improvement on his property line and approved the continued fines for his non-compliance. (Exhibit 12, Defendants' Trial Exhibit 88, 12/7/2010 ARB Minutes).

After Jarmuth was unsuccessful in the proceeding before SCHAC, and on the heels of the denial of his Modification Request for a fence, Jarmuth filed the 2010 Case challenging the Association's authority to enforce the architectural restrictions in the Declaration against his property and the denial of his swing set application on October 12, 2010. The Association filed a counterclaim seeking a declaratory judgment that Jarmuth is subject to the Declaration pursuant to S.C. Code Ann. 15-53-10 *et seq.* and a breach of the Declaration claim seeking damages related to fines incurred, injunctive relief, and attorneys' fees and costs. The breach of the Declaration claim sought fines imposed against Jarmuth for constructing the unapproved addition on his property line.

The Consolidated Cases were tried without a jury before special referee Ralph Stroman from August 8, 2012 through August 12, 2012. At the trial, the Association presented evidence, through Freiboth's direct examination testimony, that it paid two insurance deductibles in the amount of \$2,500.00, for a total of \$5,000.00, to McNair in connection with its enforcement of the Declaration against Jarmuth. (Exhibit 13, Excerpts of Record on Appeal, Freiboth's Trial Testimony, pp. 2761-2774). The Association's checks to McNair were admitted into evidence as Defendants' Exhibits 62 and 79. (Exhibit 1, and Exhibit 5). The Association also admitted the Swing Set Application, the Disapproval of Application, and the SCHAC letter (Exhibit 2, Exhibit 3, and Exhibit 4) into evidence to rebut Jarmuth's testimony that the Association's denial of the application was improper and as proof of the Association's efforts to enforce the Declaration against Jarmuth.

Freiboth explicitly testified to the following regarding the insurance deductible was paid by the Association to defend the SCHAC Complaint:

Q: Exhibit 63 is a decision issued by the South Carolina Human Affairs Commission; is that correct?

A: That's correct.

Q: And did Mr. Jarmuth file a claim against the Homeowners Association?

A: Yes, he did.

Q: And his claim was defended by the Homeowners Association; is that correct?

A: That's correct.

Q: And that defense that the Homeowners Association undertook was to enforce the covenants and the guidelines; is that correct?

A: That is correct.

Q: And did the Association have to pay two thousand, five hundred dollars to an attorney to enforce the covenants as a result of this complaint with the South Carolina Human Affairs Commission?

A: Yes, we did.

(Exhibit 13, pp. 2762-2763).

Freiboth also testified about the fines levied against Jarmuth by improving his lot without approval in breach of the Declaration. Freiboth testified as follows:

Q: And what is Exhibit 87?

A: It's a letter from Mr. Jarmuth to the Homeowners Association through our registered agent related to a putative appeal of the October 8, 2010—it's related to the disapproval of the fence.

Q: And in that letter that Mr. Jarmuth sent, did he exercise his right to appeal? What does he say about appealing the decision?

A: He disputes the necessity to make any appeal.

Q: Now, I want you to take a look at Exhibit 88, and what is Exhibit 88?

A: It's the minutes of a ARB meeting.

Q: And did the ARB meeting discuss the denial of the fences request of Mr. Jarmuth?

A: Yes.

Q: Now to your knowledge, did Mr. Jarmuth appeal the denial of the fencing to the Board of Directors?

A: No. I expected him to, but he never did.

Q: And as a result of Mr. Jarmuth not appealing the denial of the fences, was he entitled to any type of hearing by the Board of Directors?

A: We expected, after his denial, that he would want to have a hearing, and in the denial letter, it literally said "That your fence is denied unless you successfully appeal this denial to the Board of Directors." So I was expecting there, there would be an appeal. Did I, did I answer your question?

Q: Yes. So because he did not appeal, was there a hearing in front of the Board of Directors?

A: We discussed the fence.

Q: And did the Board of Directors affirm the ruling of the ARB?

A: Yes, we did.

Q: Now, as a result of the Board of Directors affirming the disapproval issue by the ARB, was any fines assessed to Mr. Jarmuth?

A: He would have the—as specified in the Architectural Guidelines, he would have a hundred dollar a month fine, which is separate from his original fine, which was install—starting a project without prior review of the plans.

(Emphasis added) (Exhibit 13, pp. 2766-2768). In addition to the testimony provided regarding the fence, the Association admitted into evidence the Association's Notice of Violation regarding the property line improvement (Exhibit 6), Jarmuth's Modification Request for the fence with brick foundation (Exhibit 7), the ARB's Denial of the Modification Request (Exhibit 8), Jarmuth's Objections to the Denial of the Modification Request and Waiver of a hearing (Exhibit 9), and the ARB minutes approving the continued violation for failure to remove the brick foundation (Exhibit 12). Jarmuth admitted as exhibits the Association Board's notices in October and November 2010 affirming the ARB's decision to fine Jarmuth for his violation. (Exhibit 10 & Exhibit 11).

The Final Order held in favor of the Defendants on all counts and awarded the Association attorneys' fees in the amount of \$5,000.00 and the fines levied for the unapproved improvement on his property line in the amount of \$2,326.00. (Exhibit 14, Final Order). The Final Order also specifically found that the Association's disapproval of the fence was proper and that he was not entitled to a hearing. In response, Jarmuth filed a complaint with the Office of Disciplinary Counsel alleging that Judge Stroman conducted the trial in an unfair manner. As a result, Judge Stroman had no other choice but to recuse himself from that matter. Post-Trial Motions were filed by Jarmuth on September 19, 2012 challenging various finding in the Final Order, including the

award of attorneys' fees and the judgment against Jarmuth for the fines, however, Jarmuth did not seek sanctions against Freiboth, the Association, or its attorneys in connection with the testimony presented at trial or allege that any fraud was made upon the Court. (Exhibit 15, Post-Trial Motions (excluding exhibits)). The Honorable Steven H. John denied the Post-Trial Motions (Exhibit 16, Order denying Post-Trial Motions), and Jarmuth filed a Notice of Appeal of the Final Order with the South Carolina Court of Appeals on April 3, 2013. (Exhibit 17, Notice of Appeal).

Jarmuth extensively briefed numerous issues in his appellate brief, including the issue of whether this Court erred in awarding attorneys' fees upon the grounds that one of the insurance deductibles was paid in connection with the SCHAC matter and whether this Court erred in awarding the Association a judgment for the fines rendered. He also argued at length that his International Club property is not subject to the Declaration. The South Carolina Court of Appeals denied Jarmuth's appeal and affirmed the Final Order in the Unpublished Opinion No. 2015-UP-111 (hereinafter "Unpublished Opinion"). (Exhibit 18, Unpublished Opinion). Jarmuth filed a petition for reconsideration on March 12, 2015 and Contempt Motions on March 17, 2015 against Freiboth and the undersigned attorneys, whom represent the Respondents in the appeal. The petition for reconsideration sets forth grounds that the Association and its attorneys' acted fraudulently by admitting evidence that the deductibles were paid in connection with enforcing the Declaration. (Exhibit 19, Motion for Reconsideration; Exhibit 20, Reply to Return of Defendants). Jarmuth's petition for reconsideration was denied by the South Carolina Court of Appeals on April 24, 2015. (Exhibit 21, Order Denying Petition for Reconsideration).

On May 12, 2015, Jarmuth filed a Petition for Writ for Certiorari with the South Carolina Supreme Court appealing the Unpublished Opinion. (Exhibit 22, Petition for Writ of Certiorari). Defendants as Respondents filed a Return to the Petition on June 11, 2015. The Supreme Court

denied Jarmuth's Petition for Writ (Exhibit 23, Denial of Petition for Writ); the remittitur was issued on January 21, 2016. Upon the issuance of the remittitur, Jarmuth filed his Rule 60(b) Motion dated January 22, 2016 and the amended the Rule 60(b) Motion dated February 1, 2016.

STANDARD OF REVIEW

In determining whether to set aside a judgment under Rule 60(b), the trial judge should consider the following relevant factors: 1) the promptness of the relief sought; 2) the reasons for failure to act promptly; 3) the existence of a meritorious defense; and 4) the prejudice to the other parties. McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (Ct. App. 2008). The granting of relief under Rule 60(b) is within the sound discretion of the judge. Coleman v. Dunlap, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992). Although the trial court has wide latitude in granting relief under Rule 60(b), that discretion is limited by the above factors and the deadlines contained in Rule 60(b), S.C.R.C.P. See McClurg, 380 S.C. at 571, 671 S.E.2d 87; Coleman, 306 S.C. at 494, 413 S.E.2d at 17. "Furthermore,...when considering whether to grant relief from final judgments, a court must balance the interest of finality against the need to provide a fair and just resolution of the dispute." Raby Constr., L.L.P. v. Orr, 358 S.C. 10, 20, 594 S.E.2d 478 (2004), citing Chewning v. Ford Motor Co., 345 S.C. 72, 579 S.E.2d 605 (2003). South Carolina courts have "recognized a longstanding policy towards final judgments" and that "important benefits are achieved by the preservation of final judgments". Id.

ARGUMENT

I. The Rule 60(b), S.C.R.C.P., Motion is Untimely.

Jarmuth's Rule 60(b) Motion was filed more than a year from the entry of the Final Order, and therefore, his motion is untimely and must be denied.

A Rule 60(b)(2) motion "shall be made within a reasonable time, and . . . not more than one year after the judgment, order, or proceeding was entered or taken." Southeastern Hous.

Found. Smith, 380 S.C. 621, 670 S.E.2d 680 (Ct. App. 2008), citing S.C.R.C.P., Rule 60(b)(2). Although Rule 60(b)(1) through (3) states that a motion seeking relief from a judgment must be made within a reasonable period of time, the one year deadline is non-discretionary and acts as an absolute bar to any Rule 60(b) motion filed after that date. Coleman v. Dunlap, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992). The trial court has the sound discretion to determine what time period is "reasonable" under Rule 60(b) within one year of the entry of any judgment, however, no relief may be granted after the one year deadline to file a motion has run. Id. The one year deadline is tolled during the pendency of a Rule 59 motion, because the judgment is not "final" due to the court's reconsideration of the judgment, and it begins to run from the entry order denying the Rule 59 motion. Southeastern Hous. Found. Smith, 380 S.C. 621, 641, 670 S.E.2d 680 (Ct. App. 2008). Unlike the tolling period under Rule 59, the deadline is not tolled during the pendency of any appeal. Id.

Jarmuth's Rule 59 motion was ruled upon on April 3, 2013, thereby making the Rule 60(b) Motion due on or before April 3, 2014. Although the appeal was pending and the trial court did not have subject matter jurisdiction to hear the Rule 60(b) motion, the proper procedural vehicle for raising any Rule 60(b) motion during the pendency of an appeal is to seek leave from the court of appeals to pursue the motion at the trial court level. Southeastern Hous. Found. Smith, 380 S.C. 621, 641, 670 S.E.2d 680 (Ct. App. 2008), citing S.C.R.C.P., Rule 60(b). Jarmuth did not move for Rule 60(b) relief or seek leave from the court of appeals within the one year deadline, and therefore, his motion for relief from the judgment is barred.

As a result, Jarmuth's Rule 60(b) Motion must be denied based upon the expiration of the deadline to file the motion on April 3, 2014.

II. No Newly Discovered Evidence Warrants An Alteration to the Final Order.

According to Jarmuth, the general ledgers and the minutes of the Association were not provided to him until March and June 2015. None of this evidence is “newly discovered” under Rule 60(b)(2), and therefore, Jarmuth’s motion for relief from the judgment must be denied.

“A trial court may relieve a party from a final judgment, order, or proceeding if ‘newly discovered evidence which by due diligence could not have been discovered in time to move from a new trial under Rule 59(b)’ is presented to the trial court.” Southeastern Hous. Found. Smith, 380 S.C. 621, 670 S.E.2d 680 (Ct. App. 2008), citing S.C.R.C.P., Rule 60(b)(2). Evidence is “newly discovered” if it was not known to the party or in his possession at the time of the trial. Lanier v. Lanier, 364 S.C. 211, 218, 612 S.E.2d 456, 459 (Ct. App. 2005). To receive a new trial based on newly discovered evidence, the moving party must establish that the newly discovered evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. Id.

First, the evidence is not “newly discovered” under Rule 60(b)(2), SCRPC. Most of the Association’s records attached to Jarmuth’s Rule 60(b) Motion are bates numbered or were admitted as exhibits at the trial of the Consolidated Cases, evidencing that the records were in his possession at the time of 2012 trial of this case. Furthermore, the other Association’s records were made available to Jarmuth for review during the discovery process and were posted on the Association’s website before the date of trial. (See Exhibit 13, pp. 2865-2866; Rule 60(b) Motion, pp. 3-4). Jarmuth has failed to produce any evidence that the documents were discovered since the date of trial.

To the extent that any of these documents were not in Jarmuth’s possession on the date of trial, which is specifically denied, Jarmuth would have discovered this to be the case with “due

diligence". Jarmuth filed motions to compel dated April 30, 2009, August 25, 2009, which were denied by orders dated July 13, 2009 and October 11, 2011, however he never asserted that the documents attached to his Rule 60(b) Motion were not produced. To the extent that any documents were not produced or made available for review during the discovery process, those arguments have now been waived and are not grounds for altering the Final Order.

Furthermore, the documents submitted would not change the result if a new trial was granted, are merely cumulative or duplicative of other evidence presented at trial, and are not material to the issues decided by the trial court. The Association presented evidence to support the judgment against Jarmuth for attorneys' fees and costs and to support the findings in the Final Order that his International Club property is subject to the Declaration. These issues were presented to the South Carolina Court of Appeals and the Supreme Court of South Carolina in Jarmuth's numerous filings with those courts, and Jarmuth's arguments were rejected. Likewise, the alleged "new" records (those not bates numbered or marked as exhibits at trial) include Association minutes and correspondence from the Association's insurance agent, which present absolutely no evidence that is material to the findings in the Final Order.

Because Jarmuth failed to present "new" evidence in the Rule 60(b) Motion that has any bearing on the findings in the Final Order, his request for Rule 60(b) relief must be denied.

III. No Fraud Exists to Justify the Disturbance of the Final Order.

No evidence of extrinsic fraud is present in the Consolidated Cases that justifies the reversal of the Final Order.

In order to obtain equitable relief from a judgment based on fraud, the fraud must be extrinsic. Raby Constr., L.L.P. v. Orr, 358 S.C. 10, 19, 594 S.E.2d 478 (2004). "Generally speaking, in order to secure equitable relief, it must appear that the fraud was extrinsic or collateral to the question examined and determined in the action in which the judgment was rendered;

intrinsic fraud is not sufficient for equitable relief.” *Id.*, citing *Bryan v. Bryan*, 220 S.C. 164, 66 S.E.2d 609 (1951). Extrinsic fraud is fraud that induces a person not to present a case or deprives a person the opportunity to be heard. *Raby Constr., L.L.P.* 358 S.C. at 19; 594 S.E.2d 478. On the other hand, intrinsic fraud misleads the court in determining issues and induces the court to find for the party perpetrating the fraud. *Id.* The classic case of intrinsic fraud is perjured testimony or presenting forged documents at trial. *Id.* Allegations that a party failed to disclose documents also generally amount to intrinsic, rather than extrinsic, fraud. *Chewning v. Ford Motor Co.*, 345 S.C. 72, 579 S.E.2d 605 (2003).

The records attached to the Rule 60(b) Motion do not evidence extrinsic fraud and are not grounds for altering the Final Order under Rule 60(b)(3), SCRPC. The documents that are not bates numbered and/or were not made as exhibits at the trial of this case include correspondence from the Association’s insurance agent and minutes of the Association’s meetings. These documents do not evidence that the Defendants “deprive[ed]” Jarmuth “the opportunity to be heard”. Jarmuth was given a full and fair opportunity to present arguments in opposition to the judgment for attorneys’ fees and fines and the findings regarding his property being subject to the Declaration, and made those arguments at length and repeatedly, at every stage of the litigation.²

Due to the complete absence of evidence of fraud in the Consolidated Cases, Jarmuth’s Rule 60(b)(3) Motion should be denied.

² The alleged fraud raised by Jarmuth is intrinsic in nature and does not give rise to Rule 60(b) relief. Jarmuth alleges that Freiboth committed “perjury” and failed to produce documents. He further alleges that the undersigned attorneys mischaracterized evidence presented. Additionally, he asserts that the Association failed to produce documents in this case. Although none of these allegations are true, the allegations amount to intrinsic fraud, which is not grounds for an alternation of a final order under South Carolina law. See *Raby Constr., L.L.P.* 358 S.C. at 19; 594 S.E.2d 478; *Chewning*, 345 S.C. 72, 579 S.E.2d 605.

IV. No Meritorious Defense Exists.

No meritorious defenses have been raised by the Rule 60(b) Motion that support an alteration to the Final Order.

Our courts have held that in order to obtain relief from a default judgment under Rule 60(b)(1) through (3), the movant must make a proper showing he is entitled to the relief based upon one of the specified grounds and make a prima facie showing of a meritorious defense. Bowers v. Bowers, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991) (affirming the denial of a motion to set aside a portion of an order pursuant to Rule 60(b)(3) based solely on the movant's failure to present a meritorious defense). A meritorious defense raises some question of law deserving some investigation or a real controversy as to real facts arising from conflicting or doubtful evidence. Thompson v. Hammond, 299 S.C. 116, 120, 382 S.E.2d 900, 903 (1989).

Despite Jarmuth's arguments that no evidence exists that the Association rendered fines, the Association admitted several letters and corporate documents through Freiboth's testimony showing that the fines were assessed against him. Evidence was also admitted that the fines were rendered consistent with fine policy contained in the ARB Guidelines adopted by the Association's Board. The ARB minutes submitted to the Court (without affidavits in support) do not negate the fact that the fines were rendered. Although Jarmuth asserts that no motion was made at an ARB meeting to assess fines, the ARB minutes reflect that the fines "will continue until the unapproved modification is brought into compliance". (Exhibit 12).

Additionally, the award of \$5,000 for deductibles for attorneys' fees to the Association was proper. Under the Declaration, as the prevailing party, the Association is entitled to attorneys' fees incurred in connection with this matter. At trial, testimony was presented that the deductibles were paid in connection with enforcing the Declaration against Jarmuth in the Consolidated Cases and the SCHAC matter. (Exhibit 13, pp. 2762-2763). Jarmuth appealed the judgment for

attorneys' fees based upon the grounds that the deductible was paid in connection with the SCHAC matter, and the Court of Appeals affirmed. No meritorious defense is presented by the evidence and arguments asserted in the Rule 60(b) Motion that justifies the alteration of this finding in the Final Order.

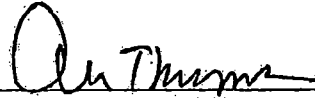
Lastly, Jarmuth argues that the undersigned attorneys mischaracterized the contents of Trial Exhibits 544 and 545. On cross examination, the undersigned counsel asked Jarmuth to admit that the deed from Plantation A.D., LLC to Sunbelt Associates, LLC, the developer of Jarmuth's International Club property in the subdivision Pebble Creek, subjected the Pebble Creek tract to the Declaration. The property description attached to Exhibit 545 sets forth that it is subject to the Declaration. Jarmuth argued ad nauseam on appeal that his property was not subject to the Declaration in reliance of Trial Exhibits 544 and 545, and the Court of Appeals affirmed the Final Order. Accordingly, Jarmuth fails to raise any meritorious defense that his property is not subject to the Declaration in arguing that Exhibits 554 and 545 were mischaracterized by the undersigned counsel.

Because the evidence presented does not support any meritorious defenses, the Rule 60(b) Motion should be denied.

CONCLUSION

The Defendants respectfully request that Jarmuth's Rule 60(b) Motion be denied without a hearing for the foregoing reasons.

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Attorneys for the Defendant

Myrtle Beach, South Carolina
March 3, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Ronald Jarmuth)

Plaintiff)

vs.)

The International Club)
Homeowners Association, Inc.,)
Et Al)

Defendants)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2009-CP-26-3596

PLAINTIFF'S RULE 12(b)(1) / RULE 60
MOTION TO
DISMISS COUNTER CLAIM FOR LACK
OF SUBJECT MATTER JURISDICTION

1. Plaintiff Ronald Jarmuth, Pro Se, MOVES this Court to DISMISS the Defendant International Club Homeowners Association ("IHOA") Counter-Claim for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) and Rule 60, SCRCivP.

2. On October 24, 2011 Defendant filed a Counter – Claim through it's Amended Answer (Exhibit A) which implied but did not sufficiently plead

a. That an enforceable contract existed between the parties in the form of a covenant running with Plaintiff's property;

b. That the IHOA Counter – Plaintiff Board of Directors did in fact determine that Plaintiff had violated the usage restrictions in the covenant, and that the IHOA Counter – Plaintiff had satisfied all the procedural requirements of its Bylaws in doing so;

c. That the IHOA Counter – Plaintiff Board of Directors did in fact impose a fine upon Plaintiff, and that the IHOA Counter – Plaintiff had satisfied all the procedural requirements of its Bylaws in doing so;

d. That Jarmuth, the Counter – Defendant (Plaintiff), owed a certain sum on his account due to the imposition of said fines by the IHOA Counter – Plaintiff.

FILED
HORRY COUNTY
2016 MAR 11 AM 10:37
MELANIE HUGHES-WARD
CLERK OF COURT

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BACKGROUND FACTS

3. **Defense of Lack of Subject Matter Jurisdiction over the Counter – Claim was never raised before.**
 - a. **At trial the lack of subject matter jurisdiction was never raised.**
 - b. **It was never raised prior to this date in any post-trial motion.**
 - c. **It was never on appeal.**
4. **The violation of alleged Usage Restrictions raised in the Counter – Complaint has long ago been mitigated.**

THE COUNTER CLAIM

5. **The Counter Claim is stated in the IHOA's "Second Counter Claim" paragraphs 49 through 75 (Exhibit A).**

- a. **The Counter – Claim did not assert facts relating to the existence of a contract between the parties. The only assertion is at Paragraph 54 which reads:**

"54. As the owner of the Property, the Plaintiff is subject to the Governing Documents."

The Counter – Claim does not allege any facts needed to establish that the Governing Documents are in the form of a covenant, that (and how) the covenants are properly invoked by Plaintiff's deed, that the contractual relationship between the parties satisfies the Statute of Frauds, that the Covenant is properly recorded, that (and how) the declarant of the covenants had privity to impose the covenants or that Plaintiff consented to the covenants. The pleading failed to state with peculiarity – or even at all – the dates of the execution deed of Plaintiff's vertical predecessor (or any date at all) and the date of the recording of the Covenants (or any date at all). Without such a allegations there is no subject matter jurisdiction because the existence of the underlying covenant pursuant to which the IHOA Counter – Plaintiff is proceeding has not been properly plead – if at all.

b. The Counter – Claim did not allege that predicate procedural requirements had been satisfied which preclude filing suit if not satisfied.

The Bylaws of the IHOA Defendant provide a procedural predicate which must be satisfied before a Covenant Use Restriction Violation “ripens” and before a fine for violating a use restriction becomes “ripe” for collection. This procedural predicate acts in the same manner of state and municipal rules and statutes which impose administrative procedures which must be followed before a claim can be adjudicated in court. They are as effective at barring a court from hearing a claim as a provision which requires arbitration, or a provision which requires prior notice to the attorney general of a pending suit against the state or predicates to malpractice suits. The predicate procedural provision in the Bylaws is:

13.2 Authority and Enforcement.

13.3 Procedure. ... the Board shall not impose a fine, suspend voting rights or infringe upon or suspend any other rights of an Owner ... for violations of the Declaration, By-Laws or any rules and regulations for the Association, unless and until the following procedure is followed:

13.3.1 Written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violation specifying:

13.3.1.1 The alleged violation;

13.3.1.2 The action required to abate the violation; and

13.3.1.3 A time period of not less than ten (10) days during which the violation may be abated without further sanction, ..., a statement that any further violation of the same provision of the Declaration, ... may result in the imposition of sanctions after notice and hearing.

13.3.2 ... if the violation continues past the period allowed ... written notice of a hearing to be held by the Board in executive session. The notice shall contain:

13.3.2.1 The nature of the alleged violation;

13.3.2.2 The time and place of the hearing, ...;

13.3.2.3 An invitation to attend the hearing ...; and

13.3.2.4 The proposed sanction to be imposed.

13.3.3 The hearing shall be held ... shall afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction here under, proof of notice and the invitation to be heard shall be placed in the minutes ... The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

While the Counter claim contains a skeletal allegation that it satisfied Bylaws Section

13.3.1, it did not allege compliance with the rest of the predicate procedure.

65. The Architectural Review Board also demanded that the brick wall be removed or he would be subject to monthly fines ... "

Paragraph 65 alleges only the possibility of fines and does not allege that the IHOA's Board actually imposed such a fine. Both paragraph 65 of the Counter – Claim and Section 13.3.1.3 of the predicate Bylaws provide only the possibility of a fine.

The Counter – Claim alleges that the violation continued, paragraph 68

"68. The brick wall is a continuing violation of the Governing Documents and the Defendant HOA's Architectural Guidelines, and the Plaintiff has been fined accordingly."

but it never alleges that any of the predicate requirements after the initial notice had been satisfied. The Counter – Complaint is silent about what Bylaws Sections 13.3.2.2 and 13.3.2.3 require, specifically, that a written notice of hearing had been sent, that a hearing had been held, and that the IHOA Board had voted "on the record in the minutes" that a violation had actually occurred (and not been mitigated) and that a specific fine had actually been imposed. The date of such hearing is important because it tolls the computation of when a fine would begin to run and hence the amount. Lacking such affirmative pleading the Court lacks subject matter jurisdiction. Absent pleading compliance with the predicate procedures of the Bylaws, the IHOA Counter –Plaintiff is precluded by its own Bylaws from filing a claim to mitigate damages, to collect fines, and for consequential attorney fees, and the Court lacks subject matter jurisdiction through lack of a well plead complaint.

c. The Counter – Claim did not adequately plead sufficient facts to support its allegation of the amount on the account of Plaintiff; it does not satisfy the pleading requirement of SCRCF Rule 9(i). The Counter – Claim states only that

"72. As of August 26, 2011, the Plaintiff owes One Thousand One Hundred Thirty Two ... Dollars plus the costs of collection."

The Answer (and Counter – Claim) is not verified. There is no "copy of the account (attached)

to the pleading” verified or not.

6. The Counter – Claim does not satisfy the “well plead” complaint provision of the SCRPC and thus the Court lacks subject matter jurisdiction over the Counter – Claim.

APPLICABLE LAW

7. Civil Rules.

a. SCRPC Rule 8 General Rules of Pleading provides that

(a) Claims for Relief. A pleading which sets forth a ... counterclaim ... shall contain (1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends ...

b. SCRPC Rule 9(i) Pleading Special Matters – Verification of Account -- provides that

In an action on an account the pleader shall attach a verified copy of the account to the pleading, or if the items of the account are set forth in the pleading, it must be verified

c. SCRPC Rule 12(b)(1) Defenses and Objections – Subject Matter Jurisdiction – provides that

the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter,

Subsection (h)(1), Waiver or Preservation of Certain Defenses, does not include “lack of jurisdiction over the subject matter” among the defenses which must be plead in the Answer or even at trial. There is no time limit on pleading this defense. Subsection (h)(3) goes on to state that

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

8. Case Law.

a. Verification and itemization of account.

In Dawkins v Fields, 345 S.C. 23, 545 S.E.2d 515 (Ct. App. 2001, the SC Court of Appeals addressed verifications in the context of a SCRPC Rule 12(b) Motion to Dismiss for

Lack of Subject Matter Jurisdiction. The Court stated what elements must be present to qualification as a verification whether in the context of a complaint itself or in a separate statement of accounts. The Court enumerated:

“an affidavit or verified complaint must meet three criteria to be considered by the court: (1) it must be made upon personal knowledge; (2) it must set forth facts admissible in evidence; (3) it must show that the affiant is competent to testify to the matters stated therein. The verification in the present case states:

PERSONALLY APPEARED before me, Lamar W. Dawkins, who being duly sworn, deposes and says: that he is one of the Plaintiffs, in the foregoing action, that he has read the within Complaint, and that the facts are true of his own knowledge, except those matters and things therein alleged upon information and belief, and as to those, he believes them to be true.

In Dawkins v Fields, 580 S.E.2d 433, 354 S.C, the SC. Supreme Court agreed with the above determination of the SC Court of Appeals. The Supreme Court noted that the issue was “novel” when reviewed by the Court of Appeals. The Supreme Court noted that

“Few pleadings will satisfy these requirements, even when verified.”

The Supreme Court added that “Allegations made upon information and belief do not meet the “personal knowledge” requirements”. In the case at bar, no affirmation at all was present.

b. Lack of Specificity in Pleading precludes subject matter jurisdiction.

(1) Subject Matter Jurisdiction is achieved solely through the actual textual allegations of the Counter – Claim.

Subject matter jurisdiction is achieved based on allegations contained in the (counter) complaint. It is the ... counterclaimant ... who has the burden of alleging facts in the complaint that will establish the court’s subject matter jurisdiction. ... lack of subject matter jurisdiction is never waivable; either the court has it, or it cannot assert it. ... Furthermore, a party can raise lack of subject matter jurisdiction at any time; there are no time restraints on when such an objection can be raised... “Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” Brown v State, Opinion 25227, January 8, 2001 284 S.C. 407 (1985); 326 S.E.2d 410.

Prior Judgements are void if it is later determined that the trial court lacked subject matter jurisdiction.

The jurisdiction of a court over the subject matter of a proceeding is fundamental. Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). "Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court." Id. It is well-settled that issues related to subject matter jurisdiction may be raised at any time, including for the first time on appeal in this Court. Carter v. State, 329 S.C. 355, 495 S.E.2d 773 (1998); State v. Funderburk, 259 S.C. 256, 191 S.E.2d 520 (1972). Furthermore, "[t]he acts of a court with respect to a matter as to which it has no jurisdiction are void." Funderburk, 259 S.C. at 261, 191 S.E.2d at 522.

Subsequent pleadings, testimony, or evidence presented at trial do not expand a court's subject matter jurisdiction; subject matter jurisdiction is determined solely by what is explicitly stated in the counter-claim.

"a court's subject-matter jurisdiction cannot be expanded to account for the parties' litigation conduct" (2004 Kontrick v. Ryan, 540 U.S. 443 (2004))

There is no time limit on when a Motion to Vacate based on lack of subject matter jurisdiction can be raised. The subject matter jurisdiction exception is a corollary to the even more basic rule that a judgment rendered by a court without subject matter jurisdiction is void and can be attacked at any time, either directly or collaterally.

In re Marriage of Morton, 11 Kan App 2d 473 474, 726 P.2d 297, 298 "judgment is void if court lacked subject matter jurisdiction; motion to set aside void judgment may be made at any time; Fredman Bros Furniture Co v Department of Revenue, 109 Ill 2d 202, 215, 486 N.E. 2d 893 898 (lack of subject matter jurisdiction can be raised at any time, in any court, either directly or collaterally; 7 J Moore & J Lucas Moore's Federal Practice 60.25 2d ed Jurisdiction over subject matter

This motion is a "Direct Attack", not a collateral one, as it is filed within the case itself and between the case parties.

Direct attack is defined as an attack within the framework of the original case, either in the trial court, or on appeal, and either pre or post judgment. ... A motion made under Rule 60(b) is a direct attack because it is filed in the same proceeding. 7 J Moore & J Lucas Moore's Federal Practice 60.25(2) 2d ed 1985.

8. Limitations of Actions precludes re-litigating the Counter – Claim.

a. The alleged covenant usage violation ceased on September 10, 2012 when the trial court entered it's order.

b. Actions to enforce a covenant are actions upon a contract, and are governed by SC Code 15-3-530, which reads

“Three years. Within three years: (1) an action upon a contract ...”

c. The three year period expired September 10, 2015 (last year).

Conclusion

9. It is concluded that:

a. The trial court lacks subject matter jurisdiction over the IHOA Defendant’s Counter – Complaint (to mitigate a violation; to collect a fine; and for attorney fees to mitigate the violation and collect the fines);

b. The judgment in favor of the IHOA as to its Counter – Complaint is void and should be vacated and dismissed;

c. The dismissal of the counter – claim should be “with prejudice” because of the expiration of the applicable limitations of actions.

10. WHEREFORE the Court is asked to enter an order

Vacating and dismissing the IHOA Defendant’s Counter – Claim with prejudice.

Ronald Jarmuth, Plaintiff Pro Se
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
March 11, 2016

SEVENTEENTH DEFENSE
AND SECOND COUNTERCLAIM

49. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, and Sixteenth Defenses are incorporated herein and made a part and parcel hereof.

50. The Defendant HOA is a non-profit corporation organized under and existing by virtue of the laws of the State of South Carolina.

51. Upon information and belief, the Plaintiff, Ronald Jarmuth, is a citizen and resident of the State of South Carolina.

52. Upon information and belief, the Plaintiff, Ronald Jarmuth, owns Lot 12 of the Pebble Creek at the International Club ("Property").

53. The Property is located in Horry County, South Carolina, and this Court has jurisdiction over both the Property and the parties to this action.

54. As the owner of the Property, the Plaintiff is subject to the Governing Documents.

55. The provisions of the Governing Documents provide that the Defendant HOA governs the International Club subdivision.

56. Section 7.2 of the Declaration provides:

"Prior Review of All Plans. No building, structure, fence, sidewalk, wall, drive, exterior lighting, painting, landscaping, or other improvement...shall be commenced, erected, or maintained upon any portion of the Subdivision, nor shall any exterior addition or change be made until the plans and specifications...showing the grading, filling nature, kind, size, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to the harmony of the exterior design and location in relation to the surrounding structures and topography by the Developer...Provided however, that upon Developer's selling of not less than 3,650 of the Units in the Subdivision, this right of approval shall be transferred to an Architectural Review Board of the Association."

A

57. The Architectural Review Board for the Defendant HOA holds the architectural review rights pursuant to the Governing Documents. All Owners within the International Club apply to the Architectural Review Board for approval of plans and specifications for improvements constructed within the International Club.

58. The Defendant HOA enacted Architectural Guidelines in 2005 and has amended them from time to time.

59. Upon information and belief, the Plaintiff applied to the Architectural Review Board for approval of improvements on several occasions, and the Plaintiff's plans and specifications were approved.

60. Upon information and belief, the Plaintiff constructed a brick wall on the Property without obtaining the approval of the Defendant HOA or the Architectural Review Board.

61. The Defendant HOA, through its Architectural Review Board, sent notice to the Plaintiff that he violated the Governing Documents and the Architectural Guidelines by constructing improvements on the Property without approval from the Architectural Review Board and that the violation subjected him to fines.

62. Thereafter, the Plaintiff applied to the Architectural Review Board for approval of the brick wall and a fence, as well as a flower bed and edging.

63. Pursuant to Section 7.4 of the Declaration:

"Fences. No fences whatsoever shall be erected or allowed to remain in the Subdivision except privacy patio fences or walls approved by the Developer and the Architectural Review Board in their sole discretion may require...No fences shall be permitted which obstruct the view of any stream or other body of water, golf courses or recreational amenity when viewed from inside any other Unit, or which interfere with the playing of golf on any nearby golf course or with the use of any Recreational Amenity."

64. The Architectural Review Board approved the Plaintiff's request for the flower bed and edging and denied the Plaintiff's request to construct the fence and wall, because the proposed construction violated the Governing Documents and the Architectural Guidelines and did not comply with the general scheme of development for the International Club.

65. The Architectural Review Board also demanded that the brick wall be removed from the Property within fifteen (15) days or he would be subject to monthly fines in the amount of One Hundred and 00/100 (\$100.00) Dollars.

66. Upon information and belief, the Plaintiff paid a fine for constructing the brick wall in the amount of Fifty and 00/100 (\$50.00) Dollars imposed by the Defendant HOA under protest several weeks later and threatened to sue the Defendant HOA.

67. Although the Plaintiff's application for the fence and the brick wall were denied and the Defendant HOA directed the Plaintiff to remove the brick wall, the Plaintiff failed and refused to remove the brick wall constructed.

68. The brick wall is a continuing violation of the Governing Documents and the Defendant HOA's Architectural Guidelines, and the Plaintiff has been fined accordingly.

69. Moreover, the Plaintiff has failed and refused to acknowledge the validity of the Governing Documents, the Architectural Guidelines, and the authority of the Defendant HOA and the Architectural Review Board to enforce the same.

70. Pursuant to the provisions of the Governing Documents, Plaintiff is responsible for paying assessments, fines, late fees, interest and other related charges to the Defendant HOA.

71. Provisions of the Governing Documents further provide that if the Plaintiff does not pay the assessments, fines or other related charges, Plaintiff is responsible for all costs of collection, including reasonable attorney's fees, that are incurred by the Defendant HOA.

No allegation of date when HOA BoD upheld violation & imposed fine !!!

72. The Plaintiff, as owner of the Property, was and is assessed regular assessments, fines, late fees, interest and other related charges. As of August 26, 2011, the Plaintiff owes One Thousand One Hundred Thirty Two and 00/100 (\$1,132.00) Dollars plus the costs of collections for his continuing violation of the brick wall, which the Plaintiff has not paid despite due demand being made upon him to pay said assessments and fines.

73. The Plaintiff, as current owner of the Property, continues to incur fines, fees and additional related charges throughout the pendency of this case during his continued ownership of the Property.

74. As a direct and proximate result of the Defendant HOA pursuing collection of these fees and costs, Defendant HOA has and will continue to incur attorney's fees and costs.

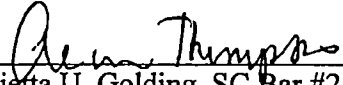
75. Plaintiff breached the terms of the Governing Documents and the Architectural Guidelines, and therefore, the Defendant HOA is entitled to a judgment in an amount to be determined by this Court, together with costs and attorney's fees incurred in bringing this action as well as an order requiring the Plaintiff to comply with the Governing Documents and the Architectural Guidelines and to remove the brick wall from the Property.

WHEREFORE, having answered the Plaintiff's Complaint and the First Amendment to the Complaint, the Defendants hereby pray as follows:

- a. the Plaintiffs' Complaint and First Amendment to the Complaint be dismissed with prejudice;
- b. judgment against the Plaintiff in an amount to be determined by the Court;
- c. an order requiring Plaintiff to comply with the Defendant HOA's Governing Documents and Architectural Guidelines and to remove the brick wall from the Property in violation of the Governing Documents and Architectural Guidelines;

- d. this Court award reasonable attorney's fees and costs to the Defendant HOA; and
- e. for such other and further relief as this Court deems just and proper.

McNair Law Firm, P.A.


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Alicia E. Thompson, SC Bar #77056
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athompson@mcnair.net
Attorneys for the Defendants

Myrtle Beach, South Carolina
October 24, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Ronald Jarmuth,)
Plaintiff,)

vs.)

The International Club Homeowners)
Association, Inc.,)
Rosemary Toth,)
And K.A. Diehl & Associates,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-26-3596

**DEFENDANT INTERNATIONAL
CLUB HOMEOWNERS
ASSOCIATION, INC.'S
MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION TO
DISMISS COUNTERCLAIM**

STATE OF SOUTH CAROLINA)
IN THE COURT OF COMMON
PLEAS)

COUNTY OF HORRY)

Ronald Jarmuth,)
Plaintiff,)

vs.)

The International Club Homeowners)
Association, Inc.)
Defendant.)

FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-26-11320

FILED
HORRY COUNTY
2016 APR -8 PM 1:06
HELANIE HUGGINS-WARD
CLERK OF COURT

Defendant, The International Club Homeowners Association, Inc. (hereinafter "Association"), by and through its undersigned counsel, submits this Memorandum in Opposition to Plaintiff's Motion to Dismiss Counterclaim for Lack of Subject Matter Jurisdiction pursuant to Rules 12(b)(1) and 60 dated April 11, 2016 and filed March 11, 2016 (hereinafter referred to as "Motion to Dismiss") by the *pro se* Plaintiff, Ronald Jarmuth (hereinafter "Jarmuth").

Copy 12

INTRODUCTION

The Motion to Dismiss seeks the dismissal of Association's breach of the Declaration claim filed on October 24, 2011 (hereinafter "**Counterclaim**") in Civil Action No. 2010-CP-26-11320 (hereinafter "**2010 Case**"). Jarmuth asserts that this Court did not have subject matter jurisdiction to enter into the Final Order granting the Association fines, attorneys' fees, and costs for Jarmuth's breach of the Declaration of Covenants and Restrictions for the International Club filed in the Horry County Register of Deeds Office (hereinafter "**Declaration**"). Although Jarmuth, the Association and the individuals Jarmuth sued agreed to refer the above captioned actions (hereinafter "**Consolidated Cases**") to a Special Referee for trial by a consent order (hereinafter "**Order of Reference**"), Jarmuth now argues that the Association failed to sufficiently plead a cause of action under Rule 8 that provided the Special Referee with jurisdiction to try the Counterclaim. As a result, Jarmuth argues that the Final Order in the Consolidated Cases awarding the Association attorneys' fees, costs, and fines is void pursuant to Rule 60(b), S.C.R.C.P. Because the unappealed Order of Reference conferred jurisdiction on the Special Referee to enter the Final Order, and the Final Order affirmed, on appeal, specifically found that the Special Referee had jurisdiction, Jarmuth's Motion to Dismiss is without merit and should be denied without a hearing.

PROCEDURAL HISTORY

Jarmuth filed the 2010 Case challenging the Association's authority to enforce the architectural restrictions in the Declaration against his property and the denial of his swing set application on October 12, 2010. The Association filed its Amended Answer and Counterclaim seeking a declaratory judgment that Jarmuth is subject to the Declaration pursuant to S.C. Code Ann. 15-53-10 *et seq.* and seeking damages related to fines incurred, injunctive relief, and

attorneys' fees and costs as permitted by the Declaration.¹ The Counterclaim sought fines imposed against Jarmuth for constructing an unapproved addition on his property line.

Allegations in the Counterclaim establishing subject matter jurisdiction include the following:

- "Plaintiff's International Club property is subject, without qualification to the Declaration . . . and the HOA's Bylaws, as amended (collectively referred to as 'Governing Documents')." ¶ 2.
- "... this Court has jurisdiction over [Jarmuth's Lot 12 of Pebble Creek at the International Club] and the parties to this action." ¶¶ 52-3
- "Plaintiff is subject to the Governing Documents." ¶ 54
- "Provisions of the Governing Documents provide that the Defendant HOA governs the International Club subdivision." ¶ 55

Jarmuth admitted paragraph 53 establishing that this Court has jurisdiction over the Counterclaim.

Exhibit A, Jarmuth's Reply to Amended Answer and Counterclaim.

The Consent Order referring this matter to Ralph Stroman as Special Referee (Exhibit B, Order of Reference) set forth that the Consolidated Cases were referred with all power and authority to enter final judgment as provided for in Rule 53(b):

IT IS ORDERED that the above entitled actions are referred to Ralph P. Stroman who, pursuant to Rule 53(b) SCRCP, shall exercise all power and authority that a circuit judge sitting without a jury would have, including but not limited to, hearing pre-trial and post-trial motions, making findings of fact and conclusions of law, directing entry of final judgment in these actions under Rule 53(b) SCRCP, and issuing any and all Orders necessary.

The Consolidated Cases were tried in 2012 by the Special Referee, who entered into a Final Order awarding the Association attorneys' fees, costs, and fines. The Final Order found "[t]he

¹ The Association also filed a counterclaim for attorneys' fees and costs in enforcing the Declaration against Jarmuth in Civil Action No. 2009-CP-3596, however, he does not contend that the Special Referee did not have subject matter jurisdiction over that counterclaim.

above entitled actions were referred to the undersigned, as Special Referee, by Consent Order” and that the “referral” to Judge Stroman “is a referral with finality”. The Special Referee recused himself from hearing the Post-Trial Motions as a result of the Plaintiff’s accusations that he was biased. As a result, the Consolidated Cases came before the Circuit Court pursuant to an Order dated and filed October 12, 2012. Exhibit C, Order of Recusal. Jarmuth appealed the Final Order which was affirmed on appeal in 2015. The remittitur was issued on January 21, 2016. As admitted by Jarmuth in his Motion to Dismiss, lack of subject matter jurisdiction has not been previously raised.

STANDARD OF REVIEW

“[W]hen considering whether to grant relief from final judgments under Rule 60(b), a court must balance the interest of finality against the need to provide a fair and just resolution of the dispute.” Raby Constr., L.L.P. v. Orr, 358 S.C. 10, 20, 594 S.E.2d 478 (2004), citing Chewning v. Ford Motor Co., 345 S.C. 72, 579 S.E.2d 605 (2003). South Carolina courts have “recognized a longstanding policy towards final judgments” and that “important benefits are achieved by the preservation of final judgments”. Id. The movant must also seek relief “within a reasonable time”. S.C.R.C.P., Rule 60(b). In determining whether to set aside a judgment under Rule 60(b), the trial judge should consider the following relevant factors: 1) the promptness of the relief sought; 2) the reasons for failure to act promptly; 3) the existence of a meritorious defense; and 4) the prejudice to the other parties. McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (Ct. App. 2008).² Although the trial court has wide latitude in granting relief under Rule 60(b), that discretion is

² Jarmuth has waited almost 4 years to bring his Rule 60(b) motions, an unreasonable amount of time under the circumstances. These motions are being made to further delay the finality of the Final Order and to avoid collection efforts on the part of the Association for its attorneys’ fees, costs, and fines. To allow Jarmuth to raise these issues after the Association has spent 7 years litigating the case, would severely prejudice the Association.

limited by the above factors contained in Rule 60(b), S.C.R.C.P. See McClurg, 380 S.C. at 571, 671 S.E.2d 87; Coleman, 306 S.C. at 494, 413 S.E.2d at 17. The granting of relief under Rule 60(b) is within the sound discretion of the judge. Coleman v. Dunlap, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992). "An abuse of discretion occurs when the order of the court is controlled by an error of law or where the order is based on factual findings that are without evidentiary support." Ware, 404 S.C. at 10.

ARGUMENT

I. Law of the Case

Both the Final Order and the Order of Reference, holding that the Special Referee had jurisdiction to render final judgment with respect to the Counterclaim, is the law of the case and cannot be disturbed.

Upon the issuance of the remittitur, an appealed order becomes the law of the case and the findings contained in the order govern the case. Holly Hill Lumber Co. v. McCoy, 210 S.C. 440, 442, 43 S.E.2d 143, 143 (1947) (appellate court's decision, from which "there was no petition for rehearing," becomes "the law of the case" and prevents the re-raising of the issue appealed). As a result, the lower court cannot make findings in separate order that are inconsistent with the findings in an order affirmed on appeal after the remittitur has issued. Id. If an appellant does not challenge an issue on appeal that has been ruled upon in the appealed order, that ruling becomes the law of the case and cannot be disturbed. See, e.g., Bone v. United States Food Serv., 733 S.E.2d 200, 205 (S.C. 2012) ("The law of the case doctrine applies where a party does not challenge an issue on appeal when there has been an opportunity to do so"); McEachern v. Wilson, 154 S.C. 201, 151 S.E. 472 (1930) (an order "which is the law of the case" cannot be challenged). "A portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case." Austin v. Specialty Transp. Servs., 358 S.C.

298, 302, 594 S.E.2d 867, 878 (Ct. App. 2004). Likewise, "[a]n unappealed order that is appealable becomes the law of the case". McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 376, 597 S.E.2d 181 (Ct. App. 2004) (unappealed order dismissing parties with prejudice is the law of the case).

Because the findings in the Final Order were affirmed on appeal, they became the law of the case once the remittitur was issued. The Order of Reference finding that the Special Referee has jurisdiction is also the law of the case, because it was not appealed. Accordingly, Jarmuth cannot raise lack of subject matter jurisdiction as grounds to void the Final Order due to the law of the case doctrine.

II. Order of Reference

The Final Order is not void for lack of subject matter jurisdiction, because the Order of Reference confers jurisdiction on the Special Referee to enter the Final Order.

Although not specifically stated in Jarmuth's motion, it appears that he is moving pursuant to Rule 60(b)(4) to vacate the judgment based on lack of subject matter jurisdiction. "Rule 60(b)(4) of the South Carolina Rules of Civil Procedure provides, on motion and upon such terms that are just, the court may relieve a party or his legal representative from final judgment, order or proceeding if the judgment is void." Ware v. Ware, 404 S.C. 1, 10, 743 S.E.2d 817 (2013). "The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." Id. "A void judgment is one that, from its inception, is a complete nullity and is without legal effect. Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002).

Subject matter jurisdiction is the power to hear and determine cases of the general class to which proceedings belong." Normandy Corp. v. S.C. DOT, 386 S.C. 393, 688 S.E.2d 136 (Ct.

App. 2010). The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution of the laws of the state. Id. Issues involving subject matter jurisdiction may be raised at any time, including on appeal. Id.

The circuit court may, upon application of any party or upon its own motion, "direct reference" of some or all of the causes of action in a case to special referee. Rule 53(b), S.C.R.C.P. When a reference is made, the special referee must enter final judgment as to the causes of action referred. S.C. Code Ann. § 14-11-85 (Supp. 2008). "Once an action is referred, the special referee possesses all power and authority that a circuit judge sitting without a jury would have in a similar matter." Rule 53(c), S.C.R.C.P.

In Normandy Corp., the Department of Transportation argued that the Master-In-Equity did not have subject matter jurisdiction to enter a declaratory judgment action as to the amount of jurisdictional wetlands. 386 at 404. In that case, the parties entered an order of reference that "did not limit the issues to be addressed by the master" but rather "it referred the case to him". Id. The South Carolina Court of Appeals found that the Master-In-Equity had jurisdiction to enter a declaratory judgment action based on the broad authority conferred upon him under the order of reference.

Similar to the order in Normandy Corp., the Order of Reference signed by Jarmuth referred the "above entitled actions" in their entirety to the Special Referee. No limitations were contained in the Order of Reference that limited the jurisdiction of the Special Referee to enter a final judgment as to the Counterclaim asserted. It also held that the Special Referee had authority to rule on "pre-trial and post-trial motions" and to make "findings of fact and conclusions of law, directing entry of final judgment." Because the Order of Reference expressly conferred jurisdiction on the Special Referee to enter a final judgment and rule on post-trial motions without

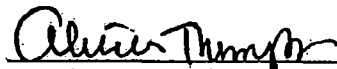
any limitations, he had authority to enter the Final Order awarding the Association fines, attorneys' fees and costs.

As a result, the Final Order is not void for lack of subject matter jurisdiction.

CONCLUSION

The Association respectfully requests that Jarmuth's Rule 60(b)(4) Motion be denied without a hearing for the foregoing reasons.

McNair Law Firm, P.A.



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athompson@mcnair.net

Attorneys for the Defendant

Myrtle Beach, South Carolina
April 1, 2016

EXHIBITS PAGE 77

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-26-03596; 2010-CP-26-11320

Ronald Jarmuth,

The International Club Homeowners Association, Inc.,
et al.,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: ALICIA E. THOMPSON, SC BAR # 77056
MCNAIR LAW FIRM, P.A.
P.O. BOX 336
MYRTLE BEACH, SC 29578

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Plaintiff's Rule 60 and 12(b)(1) Motion are denied.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : Enclosed is a proposed Order Denying Plaintiff's Rule 60 and 12(b)(1) Motion.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Morgan M. Culbertson
Circuit Court Judge

2148
Judge Code

May 31, 2016
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Copy
Page 1 of 2

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2009-CP-26-3596

Ronald Jarmuth,)
)
Plaintiff ,) Transcript of Record
)
vs.) April 27, 2016
)
International Club Homeowners)
Association, Inc., et al .)
)
Defendants.)

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Ronald Jarmuth, Appearing Pro Se

Alicia Thompson, Esquire
Attorney for Defendants

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

Jarmuth v. International Club HOA, et al.

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1 (There were no exhibits marked during the hearing.)

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Jarmuth v. International Club HOA, et al.

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1 (On the record, April 27, 2016.)

2 THE COURT: All right. This is the case of Ronald
3 Jarmuth -- am I pronouncing that correctly?

4 MR. JARMUTH: Yes, Your Honor.

5 THE COURT: -- all right -- versus the International Club
6 Homeowners Association, Inc., Rosemary Toth, and K.A. Diehl &
7 Associates, Inc., also Ronald Jarmuth versus the International
8 Club Homeowners Association, Inc. According to my roster, the
9 matter is before the court on a motion to dismiss. Please
10 give the court reporter your name and who you represent.

11 MR. JARMUTH: Ronald Jarmuth, Plaintiff, pro se.

12 THE COURT: All right.

13 MS. THOMPSON: Good morning, Your Honor. My name is
14 Alicia Thompson, and I represent the Defendants in the case.
15 Your Honor --

16 THE COURT: Alicia?

17 MS. THOMPSON: Alicia Thompson.

18 THE COURT: Thompson, okay.

19 MS. THOMPSON: Yes, sir. Just one housekeeping issue,
20 Your Honor, that I wanted to address at the beginning of the
21 hearing --

22 THE COURT: All right.

23 MS. THOMPSON: -- Mr. Jarmuth moved to dismiss based on a
24 lack of subject matter jurisdiction, challenging the judgment
25 that was entered in the 2010 case in favor of the Association

Jarmuth v. International Club HOA, et al.

4

1 for attorney's fees, costs and fines. This morning Mr.
2 Jarmuth provided me with a memorandum in support of his motion
3 to dismiss that challenged 25 other conclusions of law in the
4 final order in the 2009 and 2010 cases. I just ask that the
5 motion this morning be limited to the arguments in the motion
6 that was made and filed and that the court require our motion
7 to dismiss on the additional grounds so that it can brief, be
8 briefed properly and comply with the administrative order in
9 place that requires motions and memos in support.

10 THE COURT: All right.

11 MS. THOMPSON: And I also wanted to provide you with our
12 memorandum in opposition to the motion which was filed just so
13 you have a handy -- copy handy, Your Honor.

14 THE COURT: All right.

15 MS. THOMPSON: Thank you.

16 THE COURT: All right. Let me look at his motion. When
17 was his motion filed?

18 MS. THOMPSON: This one's filed on March 15th, 2016,
19 Plaintiff's Rule 12(b)(1) Rule 60 motion to dismiss
20 counterclaim for a lack of subject matter jurisdiction.

21 THE COURT: Yeah. All right. Let me see. This is an
22 eight-page motion? All right. Well, Mr. Jarmuth, you are
23 limited to whatever you allege in your motion as the grounds
24 for the motion. Okay. And you can't get into any extraneous
25 matters that are not included in your motion.

Jarmuth v. International Club HOA, et al.

5

1 MR. JARMUTH: Your, Your Honor, I'd like, Your Honor, I'd
2 like to point out under Rule 12(h)(3) says that whenever it
3 appears by suggestion of the parties or otherwise that the
4 court lacks jurisdiction of the subject, subject matter of any
5 claim the court shall dismiss the action. I believe you're,
6 it's up to you to say how it's going to be, that that was a
7 matter to be presented to the court for lack of subject,
8 subject matter jurisdiction at any time, we have, have the
9 evidence --

10 THE COURT: That's right, at any time, but you've got to
11 put them on notice as to the basis for your argument.

12 MR. JARMUTH: Fine, Your Honor.

13 THE COURT: You can't ambush them at a hearing. You've
14 got to -- you're right. The court can dismiss it for lack of
15 jurisdiction at any time, the day after the judgment or a
16 hundred years after the judgment, but when you bring your
17 motion to dismiss for lack of jurisdiction you have to give
18 them the reasons and you can't show up at the motion hearing
19 with any extraneous argument to catch them off guard. Okay?

20 MR. JARMUTH: Fine, Your Honor.

21 THE COURT: Because, because the, the, the issue is
22 you're supposed to put everything before the court with you
23 knowing what they're going to say, they know what you're going
24 to say and then the court makes the right decision.

25 MR. JARMUTH: Fine, Your Honor.

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1 THE COURT: All right.

2 MR. JARMUTH: May I approach the court reporter? I've
3 got a set of exhibits I want to provide so that you can follow
4 along with what's being said. These consist --

5 THE COURT: All right.

6 MS. THOMPSON: Thank you, Your Honor.

7 THE COURT: All right. Thank you.

8 MR. JARMUTH: They're, they're numbered. They're
9 labeled. Who gets them?

10 THE COURT: I do. All right. Go ahead. Let me hear
11 from you, Mr. Jarmuth.

12 MR. JARMUTH: The counterclaim is void because of lack of
13 subject matter jurisdiction in the claim. There's no subject
14 matter jurisdiction. The counterclaim, which are void --
15 which is void because there was procedural defects with a
16 claim or conclusions of law in the final order without
17 supporting claims. The counterclaim is defective for four
18 basic procedural reasons: one, that pre-litigation contract
19 provisions that is in the by-laws of the HOA itself which
20 preclude going to court until those pre-litigation provisions
21 are satisfied. These are mandatory on the HOA. South
22 Carolina Supreme Court has held that pre-litigation provisions
23 will be enforced if they are clear, unambiguous and mandatory
24 on the party moving the case.
25 Second area, that the counterclaim involves a demand on

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1 an account which of specific amounts, and therefore, a
2 verified case requirement is required which was ignored in the
3 claim, rather than a verification of the account on actual
4 knowledge under oath the counterclaim was just signed by Ms.
5 Thompson without even a verification or authentication.
6 Third, there's -- the counterclaim is an assertion by the
7 HOA of a non-party's claim, that is a claim properly asserted
8 by the ARB, and this is, as I will say later, the court, the
9 court in conclusion of law itself said that these claims were
10 claims of the ARB as I'll explain later. The court itself
11 held that the ARB is, in fact, independent of the HOA, and the
12 fourth thing is that the claim does not provide sufficient
13 facts of law to create a viable claim. Rule 12(h) (3)
14 preservation of defenses provides if a court is shown at any
15 time, well, you know obviously. Then the Supreme Court in
16 Gainey v. Gainey has said a judgment of a court without
17 subject matter jurisdiction is void and constitutes
18 grounds for the court to vacate the judgment under Rule
19 60(b) (4), and it goes on to say a void judgment is one that,
20 from its inception, is a complete nullity and is without
21 legal effect.
22 Only two things are to be examined here. The first is
23 the claim stated in the counterclaim, and secondly, the final
24 order. We do not look at the trial. We don't look into the
25 pleadings, and we look back from the final order to the claim

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1 to see if the, the, the conclusions of law relate actually
2 back to a viable claim.

3 Voiding a conclusion of law means that res judicata does
4 not apply to this issue, and this is one of the reasons I'm
5 bringing it. There's no subject matter jurisdiction over an
6 issue addressed by a conclusion of law unless there is or has
7 been properly raised in a claim.

8 Subject matter jurisdiction is derived exclusively from
9 within the four corners of the counterclaim. Consent of the
10 parties cannot convey it. The court cannot create its own
11 subject matter jurisdiction by order, and the conclusion or
12 finding must map directly to a well pled claim in a complaint.
13 It requires well-pled claim and may be challenged at any time.
14 Let me go to the four areas. Pre-litigation preclusion,
15 the Defendant ignored the pre-litigation claim -- clause in
16 the applicable contract of the HOA by-laws Section 13.3, which
17 is Exhibit Nine in my book page 199, as ratified by the HOA's
18 board at its May 5th, 2010, meeting by Exhibit 10 on page 202.
19 The evidence is that the required hearing was not held at the
20 board's November 10th, 2010, meeting, Exhibit 11, book page 205
21 before the fines were imposed.

22 THE COURT: But how does that dissolve the court of
23 jurisdiction?

24 MR. JARMUTH: Because the pre-litigation clause in the
25 by-laws 13.3 says that the HOA may not impose a fine, may not

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1 deprive me of any rights under the covenants and may not go to
2 trial or try to collect fines, whatever, or anything else
3 until and unless they've satisfied all the provisions of 13.3.
4 It operates the same way as an arbitration clause in a
5 contract. It operates the same way as the requirement to pre-
6 file a notice with the, with the Attorney General if you're
7 suing the state or the municipality if you're suing a
8 municipality or if you're a franchise holder, to notify the
9 franchise granter.

10 THE COURT: Well, it might be a prerequisite, but it
11 still doesn't dissolve the court of jurisdiction to hear and
12 decide the matter. That means -- jurisdiction means whether
13 or not the court is the proper forum to decide the issue.

14 MR. JARMUTH: Except as I'll cite in a few minutes the
15 South Carolina Supreme Court has held that if you don't
16 satisfy pre-litigation clause it will deprive the court of
17 jurisdiction. I'm looking for the case. Here it is. In
18 Ranucci v. Crain, the South Carolina Supreme Court held that,
19 that courts will strictly enforce a pre-litigation clause, and
20 if the pre-litigation clause is not, is not complied with the
21 courts will dismiss the claim for lack of subject matter
22 jurisdiction. That's Ranucci v. Crain, number 27422 South
23 Carolina Supreme Court filed July 23rd, 2014. It's Shearouse
24 advisory number 29 at 49. It's called Ranucci II.
25 The clauses, there are other pre-litigation clauses at

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1 13.3 which have to be satisfied. Number one, the by-laws
2 required that a hearing be held, but none was even scheduled.
3 The pre-litigation clause requires a notice of hearing be sent
4 to me, but it was never pled that the hearing was held, nor
5 that the notice, the requirement of 13.3, was sent to me. The
6 pre-litigation clause requires that the hearing be held on the
7 record in the minutes of the HOA, and the minutes at Exhibit
8 11 show that no hearing was held. The -- 13.3 also requires
9 that the minutes of the board show the results of the hearing,
10 but there exists no hearing, there's no results of the
11 hearing. The minutes of the -- the 13.3 requires that the
12 minutes also show that a notice was sent to me of the results
13 of the hearing so I know what to do all before they could
14 proceed to trial, and of course, it was not pled nor an actual
15 fact that any notice to me of the non-existent hearing was
16 ever sent, so they didn't satisfy a host of pre-litigation
17 clauses, and of course, the courts have universally held that
18 similar pre-litigation clauses such as arbitration, the
19 requirement to send a notice to the Attorney General, they
20 send a notice to the municipality, send a notice to a
21 franchisee is fatal to find to go into court.
22 Now, sir, as to notice, the claim did plead that the ARB
23 sent me a notice, but conclusion of law number 10 reads the
24 ARB is a separate board parallel to and independent of the HOA
25 created by Article 7 of the covenants, and they did this

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1 because and they claim I filed which was never answered,
2 that's another matter, I allege that all acts of the ARB are
3 void because contrary to the South Carolina Non-Profit
4 Corporation Act which requires two members of the board on
5 every committee for it to have a viable, legally viable act,
6 no members of the HOA board were on the ARB. So they answered
7 it with this conclusion of law saying that's okay, it's not a
8 part of the HOA. It's a separate independent parallel body.
9 So any pleading having pled that the ARB did, did this, the
10 ARB did that is irrelevant because the ARB is not a party to
11 the act, to the complaint.
12 Again, Exhibit Two, page 36 it was not pled or true that
13 the HOA itself ever sent a notice. It only pled that the ARB
14 sent a notice, the counterclaim, Exhibit Eight, paragraph 33
15 at page 195, and also I want to point out it ignored the
16 requirement to file an affidavit, which is also at 13.3.
17 Let's look at another reason why the counterclaim is
18 fatally flawed. It required authentication or verification
19 requirement. The counterclaim did not satisfy Rule 9(i)'s
20 requirement for a verification of the amount due on account.
21 Ms. Thompson here merely signed the counterclaim, Exhibit
22 Eight, book page 198. The claim at page 197, paragraph 44
23 reads about the amount on account. 44, as of August 26th,
24 2011, the Plaintiff owes \$1,132. 46, Defendant HOA has
25 incurred attorney fees, again, that's the HOA, never pled the

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1 ARB, they incurred attorney's fees, the conclusion of law
2 relied on the unverified claim and took at its exact amount on
3 account, conclusion 24, Exhibit Two, page 56.24, as to the
4 RB fine as of August 8th, 2012, the Plaintiff owes \$2,326.
5 Again, conclusion of law says it's the ARB fine, not an HOA
6 fine, the ARB not a party to the case. The Plaintiff is
7 indebted, it said also the Plaintiff is indebted to the
8 Defendant HOA in the amount of \$7,326. Note that conclusion
9 reads ARB fines. It never reads violation of covenants. The
10 conclusion 10 at page 36 again says the ARB is a separate,
11 parallel and independent board created by the declaration.
12 Conclusion 24 went on to relate at page 56 the Defendant HOA
13 paid \$5,000 to McNair Law Firm, the \$5,000 the exact sum
14 created in 2009 over two years before the counterclaim was
15 filed. Therefore, it's an exact claim of an exact amount
16 they're claiming on an account. Therefore, it also would be
17 part of the verification on actual knowledge which was never
18 filed with a notary in the counterclaim. The claim was -- the
19 attorney fees was claimed as quote, fines and costs to collect
20 the fines. Rule 9(i), verification of account, as held by the
21 Supreme Court in Dawkins v. Fields, a verification is required
22 and its absence deprived the court of subject matter
23 jurisdiction over the counterclaim.
24 The next issue, the counterclaim does not satisfy
25 pleading requirements of Rule 8(a)(1), which requires specific

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1 facts in the counterclaim and the legal basis entitling the
2 Plaintiff, the pleader to the relief sought. See my Exhibit
3 One page one, which means they didn't show how the HOA somehow
4 was able to demand fines to the separate ARB.

5 In Player v. Chandler, the Supreme Court held that the
6 pleading must show four things: one, relating to demands on
7 the covenant, that a covenant exists before the deed was
8 executed; two, that the covenant was properly recorded with
9 the correct recorder of deeds, signed -- and it was assigned a
10 book and page; three, that the deed actually cited the
11 covenant by book and page; four, that the HOA is a named party
12 in the covenants you must plead sufficient facts to satisfy
13 the statute of frauds, that -- but here the counterclaim
14 didn't plead any of that, none of the four things, just went
15 on at the beginning, "Oh, here are the covenants and you
16 violate the covenants, we want money."

17 In Player v. Chandler, the court went on to say such
18 phrases as subject to the covenants of record, which where,
19 where there are any, are mere meaningless and their meaning
20 unenforceable or all terms must exist and be in writing at the
21 time the deed is signed. The terms cannot be interpreted to
22 include a secret purpose or intent on the part of one of the
23 parties thought were in his mind.

24 The HOA failed to plead that the HOA is a named party to
25 the covenants. Exhibit Two, book -- page, my page one,

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1 conclusion of law number one and here's how -- I need some
2 background. When I filed claim 5(f) in my 2010 complaint
3 there were at the time three HOAs which could compete to be
4 the Association named in the covenants. The covenants
5 actually say the name of the Association with rights under the
6 covenants. The first one was the Murrells Inlet Golf
7 Plantation Association, which actually is a viable South
8 Carolina non-profit corporation with papers recorded in this
9 courthouse. The second one is the International Club
10 Association, another South Carolina non-profit corporation
11 with papers recorded in this courthouse. The third is the
12 Defendant International Club Homeowners Association. This is
13 like asking in a contract is Jane Doe the party because the
14 contract says Jane Doe is one of the parties or is it Jane Doe
15 Hudson because she says she's the party even though the
16 contract only said Jane Doe, not Jane Doe Hudson, and that's a
17 legally distinguishable name.
18 Conclusion of law number one says that the declaration
19 identified the Association as the Murrells Inlet Golf
20 Plantation, Inc. The name in the covenant was changed by the
21 first amendment to the International Club, Inc., which is ICA,
22 not International Club Homeowners Association. That would
23 satisfy one of my questions I raised, but it went on to ask
24 another question. It said -- went on to say, oh, there was a
25 claim not pled which is can the Defendant HOA step into the

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1 shoes of a named party to the contract because of performance.
2 That claim was not raised in the counterclaim. It was not
3 raised by me. Yet the conclusion of law went on to assume
4 that claim was pled, which it wasn't.
5 They said, they said that the HOA by virtue of
6 performance can enforce the covenants, can collect
7 assessments. That question was never raised, and the germane
8 question in enforcing the covenants and suing you under the
9 covenants is are you a named party to the covenants, and the
10 court answered the question by saying the International
11 Association, Association, Inc., is the named party, not the
12 HOA and maybe there's some other reason they could sue, but in
13 their counterclaim they never gave an explanation of how they
14 -- how the rights under the covenant to seek relief under the
15 covenant, they just assume, "Hey, there's a covenant, you
16 violated the covenant, pay us." Basically the HOA did not
17 plead the legal basis of principal rights to relief. Rule
18 9(a) reflects Rule 8(a)(2)'s requirement that the claim show
19 that the pleader personally is entitled to relief by stating
20 the entitling relationship of the pleader to the claim for
21 relief.
22 Another problem, defective pleading of amount in dispute.
23 Rule 9(i) requires that if a claim states that a Defendant
24 owes an amount on account such in unpaid assessments, such as
25 unpaid assessments, fine or specific sums allegedly owed to

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1 pleader the claim must be again be supported by a sworn
2 verification of personal knowledge and it hasn't been.
3 I will point out at this point that res judicata does not
4 preclude this motion because the issue of subject matter
5 jurisdiction was never before raised either the trial or the
6 appellate levels.

7 Let me look at the HOA defense. There are two defenses
8 raised. Number one, they allege I consented to the -- to
9 subject matter jurisdiction when I answered without contesting
10 one of their paragraphs in their counterclaim where they said
11 that the court has personal jurisdiction. Of course they do,
12 I mean, because I filed the complaint to which they did a
13 counterclaim, and then they said the court has jurisdiction
14 over the property because it is in Horry County. I admitted
15 this because that is an admission of venue not of subject
16 matter jurisdiction, and again, no matter what I might have
17 said the court could not do subject matter jurisdiction by
18 consent of the parties.

19 Defense two, they claim that the court created subject
20 matter jurisdiction over everything through -- when it --
21 through its order of reference to Ralph Stroman as a special
22 referee, but subject matter jurisdiction resides in the court
23 not in the individual judge, and transferring a case from one
24 judge to another does not change the status of the case, and
25 again, the courts can't bestow subject matter jurisdiction on

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1 tself by its own order. So the order of reference is
2 irrelevant to the issue of subject matter jurisdiction, and
3 the fourth problem, the counterclaim judgments are void
4 because they assert claims of the non-party ARB. The
5 conclusions of law relates to its obligations and rights
6 between me as a party and the ARB a non-party. The court, the
7 counterclaim asserts that the order to move the bricks was
8 issued by the ARB and the, and the fine actually imposed, I
9 don't see it in the counterclaim, was imposed by the ARB, not
10 by the HOA. At page 195, paragraph 29, counterclaim, 29, the
11 Architectural Review Board holds the architectural review
12 rights pursuant to the covenants, and at 37, the Architectural
13 Review Board also demanded that the brick wall be removed or
14 he would be subject to monthly fines. Again, never pled as
15 subject fines, no fines were actually imposed. The
16 counterclaim gave no explanation how the demand of the ARB,
17 the ARB's entitlement to fines were transferred to the HOA.
18 The transfer of the rights to collect a debt is governed by
19 the Federal Fair Debt Collection Practices Act of 1977, FDCPA,
20 15 U.S.C 459(e). By Section Five of the Federal Trade
21 Commission Act these are preclusive statutes. They --
22 basically they say you can't collect on a transferred debt
23 unless you send notice of the transfer, and they don't plead
24 that they sent notice of the transfer of the debt from the ARB
25 to the HOA. In addition, South Carolina has its own notice

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1 law. South Carolina 37-2-412, which also says you can't
2 collect on a debt as a transferred debt unless you've sent
3 notice of the transfer.
4 The claim asserts that the HOA, not the ARB, spent money
5 on attorney's fees to collect the transferred debt, but the
6 claim belonged to the ARB, book page 197, says, 46, as a
7 direct and proximate result of the Defendant HOA pursuing
8 collection of these fees and costs which belonged to the ARB,
9 by the order of the court and by their own pleadings, pleading
10 -- to collect these fees and costs imposed by the ARB. South
11 Carolina 37-7-412 addresses attorney's fees relating to
12 transferred debts and they limit it to no more than 15 percent
13 of the original debt which would amount here to maybe \$372.
14 aragraph 44 of the counterclaim says, "As of August 26th,
15 2011, the Plaintiff owes 1132," which would be about \$50, the
16 maximum attorney's fees if the transfer of the debt was
17 viable. It says at 37, the Architectural Review Board, that
18 the claim, counterclaim also demanded that the wall be removed
19 within 15 days or he could be subject to a monthly fines, book
20 page 196. They never pled at all that the HOA made any
21 demand. The final order has a conclusion of law page 57 that
22 the fine is owed to the ARB. 24, conclusion of law, as to the
23 RB fines as of August 8th, 2012, the Plaintiff owes \$2,326 to
24 the Defendant HOA, somehow missing the issue of transfer
25 entitled to relief. As stated here and above the ARB, and

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1 again it goes back to the ARB, the ARB has the authority to
2 assess these funds. It never says in the conclusion of law
3 the HOA has that authority. Simply put, there is no subject
4 matter jurisdiction over claims by the non-party ARB. This
5 voids the fine clause of conclusion 24, page 5, quote, "The
6 Defendant HOA shall have judgment against the Plaintiff,"
7 which is also void because it is transfer of debt governed by
8 the FDCPA and by South Carolina 37-2-412, and the attorney
9 fees exceeds the statute limit of 37-2-412. They never pled,
10 one, a transfer was made of a non-party ARB's claims and
11 demands and they never pled, two, that the debt transfer
12 notice requirement was satisfied and they never made any debt
13 transfer notice. Thank you, Your Honor.

14 THE COURT: All right. Ms. Thompson.

15 MS. THOMPSON: Thank you, Your Honor. May it please the
16 court? The standard of review for a Rule 60 motion is --
17 defers to the finality of the judgment. Finality is balanced
18 with the need for a just result, but there's a longstanding
19 policy recognizing finality in South Carolina. There are
20 factors that the court should consider in deciding on this
21 motion today including the promptness of the relief sought,
22 the reasons for any failure to act in seeking the relief, the
23 existence of a meritorious defense and any prejudice to the
24 non-moving parties.
25 Because we're talking about subject matter jurisdiction,

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1 it would make sense and would be helpful to talk about the
2 procedural history in the cases and how it came before the
3 special referee to make the findings in the final order that
4 re being challenged today. In October 12th, 2010, Mr. Jarmuh
5 filed this action challenging the Association's authority to
6 enforce the architectural review restrictions in magistrate's
7 court. The Association moved to dismiss based on lack of
8 subject matter jurisdiction, and the case was transferred to
9 Circuit Court and the Association then filed an answer. After
10 that case was transferred, the case was consolidated with
11 2009-CP-3596, and that that 2009 case also included a
12 counterclaim for attorney's fees and costs. My understanding
13 is that Mr. Jarmuth is only challenging the court's subject
14 matter jurisdiction with respect to the counterclaim in the
15 2010 case, so that's particularly important.
16 After that the answer was amended by the Association to,
17 to assert a counterclaim and in -- two counterclaims, one, a
18 declaratory judgment action that Mr. Jarmuth is subject to the
19 declaration of restrictive covenants for International Club,
20 and two, a breach of the covenants action seeking fines for an
21 improvement that he constructed on his property without
22 approval as required by the declaration of covenants. Jarmuth
23 then filed a reply to that amended answer and counterclaim,
24 and in that reply he specifically admitted in paragraph two
25 that the Circuit Court had jurisdiction over the counterclaim

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1 as asserted in paragraph 53 of the amended answer and
2 counterclaim.
3 n June 12th, 2012, an order of reference was entered into
4 in this case, and Mr. Jarmuth signed and consented to that
5 order of reference, and the order of reference referred the
6 case to Ralph Stroman under Rule 53 with all powers to enter a
7 final judgment in the 2009 and 2010 cases and that order of
8 reference was not limited in any respect.
9 After that the case was tried in August of 2012, and a
10 final order was entered into in the fall of 2012, and in that
11 final order the court awarded attorney's fees and costs and
12 fines to the Association on its counterclaims, and the order
13 specifically found that the 2009 and 2010 cases were referred
14 to the special referee with finality.
15 After that, Mr. Jarmuth challenged the final order on the
16 basis that Ralph Stroman acted improperly and accused him of
17 wrongdoing. So Judge Stroman at that time had to enter into
18 an order of recusal and that sent the case back to the Circuit
19 Court. The final order was then appealed. The case -- the
20 final order in the two cases was affirmed on appeal and then
21 the remittitur was issued on January 21st, 2016. So there are
22 two main arguments here that in opposition to the motion to
23 dismiss. First, the final order and the order of reference
24 specifically found that Judge Stroman, the special referee,
25 had subject matter jurisdiction over the cases and to enter

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1 any final order in the case, and the established case law in
2 South Carolina is that an un-appealed finding in an order that
3 is appealed and affirmed on appeal and then a remittitur is
4 issued that becomes the law of the case after that remittitur
5 is issued and it cannot be disturbed. Likewise, South
6 Carolina case law holds that an un-appealed order becomes the
7 law of the case. So both the final order and the order of
8 reference found that there was subject matter jurisdiction and
9 those findings are the law of the case and cannot be disturbed
10 pursuant to this Rule 60 motion.

11 Secondly, the court did, the special referee did have
12 subject matter jurisdiction to enter into the final order in
13 this case. Under Rule 53 the Circuit Court can refer claims
14 to the special referee or master-in-equity to make any
15 findings in the case and to enter into a final judgment. As I
16 explained, the order of reference referred both cases without
17 any limitations and the, the special referee in that case was
18 -- had the authority to make any findings in that case
19 pursuant to the order of reference and there's cases on point,
20 Normandy Corp. versus South Carolina Department of
21 Transportation. In that case the Department of Transportation
22 tried to challenge a final order that was entered into the --
23 by the master-in-equity and said that the order of reference
24 didn't give him the authority to make certain findings in that
25 case and the court held that if the case is referred then the

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1 judge has the ability to make any findings that would be
2 necessary to enter into a final order. So under Normandy
3 Stroman did have the authority to enter into the final order
4 and did have jurisdiction over the case to award the fines,
5 attorney's fees and costs.

6 With respect to the factors that were brought up at the
7 beginning of the case or at the beginning of this argument,
8 Jarmuth admitted that there was jurisdiction in his pleading.

9 He waited more than four years after the final order was
10 entered to challenge jurisdiction and more than six years
11 after the case was initially, the counterclaim was initially
12 brought. The Association -- there's no reason for the delay.
13 There are several -- there's other Rule 60 motions that are
14 currently pending. This is just an attempt to try to get out
15 of the final judgment that was rendered against him for
16 attorney's fees and costs because he lost on appeal, and the
17 Association has spent many years litigating this case and
18 expended a lot of funds. So there would be prejudice to the
19 Association if the final order was disturbed.

20 Now, addressing Mr. Jarmuth's specific arguments, he has
21 four of them. One of them is that the -- let's see. I'm
22 sorry -- that the -- that there needed to be a hearing before
23 the action could be brought because there was no jurisdiction.
24 The final order specifically found that a hearing was not
25 required as a procedural requirement before the action could

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1 be filed. So that finding is the law of the case and cannot
2 be disturbed now at this time.

3 Secondly, he says the ARB should have been the entity to
4 bring the action. The ARB is a separate committee or board of
5 the Association that has the authority to make decisions about
6 ARB improvements in the community and to render fines, but the
7 Association is the legal entity with the authority to bring
8 the action under the declaration for breach of the covenants.
9 So that argument also does not have any validity, and then
10 with respect to the Rule 9 verification, this was a breach of
11 the covenants claim and a verification was not required under
12 Rule 9. It doesn't affect subject matter jurisdiction in the
13 case.

14 Lastly, Jarmuth says that the pleading is deficient, it's
15 not specific enough. The Association pled that the
16 declaration of covenants was subject to the property, that he
17 was noticed a fine, noticed a violation for making an
18 improvement, that their -- that he was fined under the
19 covenants and he failed to remove the improvement and that's
20 sufficient under the South Carolina Rules of Civil Procedure
21 under Rule 8 to plead a cause of action. Thank you, Your
22 Honor.

23 THE COURT: All right. Anything in reply?

24 MR. JARMUTH: Your Honor, if it pleases the court, there
25 are two -- there actually were a number of claims in their

1 counterclaim. One is a demand for fines. Another one is a
2 demand to remove a row of bricks. Each one is an independent,
3 the fact, cause of action or a demand for relief, and if you
4 go to the demand for relief at the end of the counterclaim it
5 specifically says they want money and they want the wall
6 removed. When they make a demand for a specific sum in any
7 complaint and the rule is, the rule is for a verification is
8 extremely broad. It says has no exceptions to it. It says
9 when you have a demand, it's pleading special matters, you
10 demand a specific sum or sum on account and a fine was a sum
11 on account, you must do a verification on actual knowledge
12 under oath. There is no exception to it, and the cases I've
13 cited show that this is strictly enforced by the courts
14 without exception. Number two, I ask where in the final order
15 is held that a hearing need not be held? I don't see that,
16 that we have the whole final order here as I think it's
17 Exhibit Two.

18 As a matter of a fact at trial the president of the HOA,
19 Bill Freiboth, testified that a hearing was, in fact, held,
20 and the final order reflect, reflects about the hearing being
21 held by the HOA, but of course, that's another matter because
22 we don't look to what the trial has said, we look what the
23 claim said and the claim never claimed that the HOA held that,
24 held that hearing, and the claim says ARB this and ARB that
25 and the final order it says ARB fine, ARB demand.

Jarmuth v. International Club HOA, et al.

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1 Let's look at the order of reference. Orders of
2 reference can grant subject matter jurisdiction, and it just
3 says that the Ralph Stroman inherited the status that a judge
4 would have held. Here's the important thing. To make a
5 determination of subject matter jurisdiction, there must be a
6 claim, a demand for the court to find there is no subject
7 matter jurisdiction or the court must enter a, a finding
8 saying that, "Because of this and because of that I find I had
9 subject matter jurisdiction." None of that is there in the
10 final order, and this is just a matter of routine thing, and
11 there's one thing that Ms. Thompson left out, that's Henrietta
12 Golding, another attorney, wrote in its entirety the final
13 order, and another matter it's not a, a motion under 2010.
14 It's an action under the consolidated cases, which is 2009 and
15 2010, and the final order is not two final orders. It's a
16 final order against the consolidated cases, but that doesn't
17 matter because the counterclaim was raised in duplicate
18 counterclaims by the McNair in both the 2010 case and 2009
19 case with word for word exact paragraphs, so whichever one you
20 want to proceed on, and furthermore, she talked about the
21 original answer in the 2009 claim which says, "We want
22 attorney's fees." Well, until November of 2011, long after
23 the answer in 2009, there was not even an allegation of
24 violation of the covenants. They never pled that. I have to
25 go back to the covenants and the by-laws have a special

Jarmuth v. International Club HOA, et al.

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1 provision, and as we know under the law of South Carolina, the
2 common law, you can't get to attorney's fees unless your
3 contract, this is an action under a contract or a covenant,
4 unless the contract specifically provides for attorney's fees
5 under the circumstances which they may be collected, and the
6 covenants say, actually the covenants say you can only collect
7 attorney's fees to collect unpaid assessments. They never
8 pled I didn't pay my assessments, and in fact, I've always
9 paid the assessments. The by-laws, which questionable
10 applicability, the by-laws say that after doing 13.3 the HOA
11 can then proceed to court and then can collect attorney fees
12 to collect fines and enforce the covenants, but the original
13 demand for attorney fees under the 2009 complaint was
14 unrelated to any covenant violation, as a matter of a fact the
15 allegation of a covenant violation didn't occur until the
16 November 2011 counterclaim. So there was no pled basis for a
17 right to collect attorney fees under the 2009, only goes to
18 the 2010 complaint, counterclaim where they alleged a
19 violation of covenants as determined by the ARB, and again,
20 let's go to the timeline. As soon as the final order was
21 determined by the trial court as binding, within a week I went
22 to the Court of Appeals. This motion was only filed quickly
23 after the case came back, within weeks after the case came
24 back from the Court of Appeals. This court did not have
25 jurisdiction over the case to entertain or adjudicate on a

Jarmuth v. International Club HOA, et al.

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1 motion to void an essential element of the case that is
2 subject matter jurisdiction their counterclaim. Rule, the
3 rule one, two and three is the provisions that said those
4 reasons for vacating a judgment must be done within one year.
5 The rule explicitly excludes Rule B(4) summary judgment from
6 the requirement to, to plead within one year. Now, those say
7 this is explicitly done to avoid the necessity for a separate
8 action to vacate the judgment for lack of subject matter
9 jurisdiction. The courts have held that they should really go
10 directly to the motion because of a denied motion all I have
11 to do is go back in and file a separate action to void the
12 subject matter jurisdiction because all of the reasons I've
13 stated, and the economies of, of the court, the Supreme Court
14 said we should always look at the motion for subject matter
15 jurisdiction without requiring a party to go file a separate
16 action to void a judgment. There is no case I've seen, recent
17 case, and these document change over the years which says that
18 the, the case should not be allowed to proceed on subject
19 matter jurisdiction as the motion just because I waited till
20 after the case came back from the Court of Appeals, and the
21 rule says that the court can only proceed on a Rule 60 motion
22 if you go to the Court of Appeals and the Court of Appeals
23 grants a motion for the court to proceed on motion as to
24 subject matter jurisdiction. Without the Court of Appeals
25 action time is standing still, and this court could not have

Jarmuth v. International Club HOA, et al.

29

1 acted on a motion I had filed in 2010, '11, '12, whenever
2 because and not until 2016 when it came back from the Court of
3 Appeals. This court simply did not have jurisdiction to hear
4 this matter, and quite frankly, from my point of view, I think
5 any such motions filed would have to be not docketed but it's
6 another phrase, have it booked or something because the court
7 would not have subject matter jurisdiction over this thing to
8 hear it until it came back from the Court of Appeals. Thank
9 you, Your Honor.

10 THE COURT: All right.

11 MR. JARMUTH: Oh, there was one other thing. Ms.
12 Thompson cited all sorts of things which happened between the
13 filing of their claim and the final order, and again, issues
14 of subject matter jurisdiction only occur with -- by looking
15 through the four corners of the counterclaim and the final
16 order. Nothing at trial, not look to immediate pleadings,
17 nothing even at the Court of Appeals which where -- when this
18 was not pled. Thank you.

19 THE COURT: All right. All right. I'm going to deny
20 your motion to dismiss. I find that there is subject matter
21 jurisdiction. All right.

22 MS. THOMPSON: Your Honor, do you need a proposed order?

23 THE COURT: Mr. Jarmuth, will a Form 4 suffice or do you
24 need a formal order?

25 MR. JARMUTH: I need a formal order, Your Honor, since it

Jarmuth v. International Club HOA, et al.

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1 ill be appealed.

2 THE COURT: All right. Ms. Thompson -- all right, Ms.

3 Thompson, if you would prepare the order.

4 MS. THOMPSON: Okay. Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 MS. THOMPSON: Ten days is sufficient?

7 THE COURT: That'll be fine.

8 MS. THOMPSON: Thank you, Your Honor.

9 (Adjourned.)

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Jarmuth v. International Club HOA, et al.

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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court
Reporter for the State of South Carolina, do hereby certify
that the foregoing is a true, accurate and complete Transcript
of Record of the Hearing held in the case of Ronald Jarmuth
versus International Club Homeowners Association, Inc., et
al., held in the Court of Common Pleas for Horry County, Horry
County Courthouse, Conway, South Carolina, on April 27, 2016.

I do hereby certify that I am neither of kin, counsel,
nor interest to any party hereto.

Grace L. Hurley, CVR-CM-M
Official Reporter

July 5, 2016.

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2009-CP-26-3596

Ronald Jarmuth
Plaintiff, Pro Se

Appellant

v.

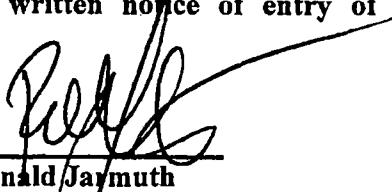
International Club Homeowners Association, Inc,
Rosemary Toth, and
K.A. Diehl, Inc.
Defendants

Respondents

NOTICE OF APPEAL

Ronald Jarmuth appeals the order of the Honorable Benjamin H. Culbertson dated April 27, 2016. Appellant received written notice of entry of this order on May 2, 2016.

May 17, 2016



Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
Plaintiff, Pro Se

Other Counsel of Record:

**Henrietta U. Golding
Alicia Thompson
McNair Law Firm, P.A.
2411 Oak Street; Suite 206
Myrtle Beach, SC 29577-3164
843-444-1107
Attorney for all Respondents**

LETTER TO THE SOUTH CAROLINA COURT OF APPEALS
FILING COPY OF THE TRANSCRIPT ORDER

May 23, 2016

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211-1629

RE: Ronald Jarmuth Appellant v Rosemary Toth, International Club Homeowners
Association, Inc, K.A. Diehl, Inc. Respondents,
Trial Court Case No. 2009-CP-26-3596,

Dear Ms. Kitchings:

In accordance with SCRAP Rule 2077 (Transcript of Proceedings) I enclose a copy of the
correspondence I used to order a copy of the transcript of proceedings.

Sincerely,

Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
Plaintiff, Pro Se

cc:

Henrietta U. Golding
Alicia Thompson
McNair Law Firm, P.A.
2411 Oak Street; Suite 206
Myrtle Beach, SC 29577-3164
843-444-1107
Attorneys for Respondents

Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
ronaldjarmuth@hotmail.com
May 18, 2016

Grace Hurley, Court Reporter
Post Office Box 30878
Myrtle Beach, SC 29588-0878

RE: Ronald Jarmuth v International Club HOA et al 2009-CP-26-3596

Dear Ms. Hurley:

On April 27, 2016 a hearing was held before Hon. Judge Benjamin H. Culbertson in the Horry County Courthouse at Conway. The hearing concerned my motion to vacate the counter-claim in this case for lack of subject matter jurisdiction / the order (respecting that matter) being void.

I desire to order the transcript of the testimony of the hearing that date. If McNair Law has already purchased a copy of the transcript I would expect that this would be at the "second copy" rate; else at the primary rate.

I agree to pay the cost of the "hardcopy" transcript of testimony.

Please let me know by email what additional charge, if any, will be due for a "pdf" copy of the transcript. I will let you know whether I want to order same after hearing from you about this.

Sincerely,

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

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Ronald Jarmuth,)
Plaintiff,)

vs.)

The International Club Homeowners)
Association, Inc.,)
Rosemary Toth,)
And K.A. Diehl & Associates,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-26-3596

**ORDER DENYING PLAINTIFF'S
RULE 60 AND 12(b)(1) MOTION**

2015 JUN -5 PM 2:34

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Ronald Jarmuth,)
Plaintiff,)

vs.)

The International Club Homeowners)
Association, Inc.)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-26-11320

PRESIDING JUDGE:
HEARING DATE:
PLAINTIFF *Pro Se*:
ATTORNEY FOR DEFENDANTS:

The Honorable Benjamin Culbertson
April 27, 2016
Ronald Jarmuth
Alicia Thompson, Esq.

The above captioned actions (hereinafter "Consolidated Cases") came before me on April 27, 2016 in Conway, South Carolina for a hearing on the Motion to Dismiss Counterclaim and to void the September 10, 2012 Final Order for Lack of Subject Matter Jurisdiction pursuant to Rules 12(b)(1) and 60 of the South Carolina Rules of Civil Procedure ("SCRCP") dated April 11, 2016

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copy

THC

and filed March 11, 2016 (hereinafter referred to as "Motion to Dismiss") by the *pro se* Plaintiff, Ronald Jarmuth (hereinafter "Jarmuth").

The Motion to Dismiss seeks the dismissal of the breach of the Declaration claim of the International Club Home Owners Association (hereinafter "Association") filed on October 24, 2011 (hereinafter "Counterclaim") in Civil Action No. 2010-CP-26-11320 (hereinafter "2010 Case"). Jarmuth asserts that the Court did not have subject matter jurisdiction to enter into the September 10, 2012 Final Order (hereinafter "Final Order") granting the Association fines, attorneys' fees, and costs for Jarmuth's breach of the Declaration of Covenants and Restrictions for the International Club filed in the Horry County Register of Deeds Office (hereinafter "Declaration"). Jarmuth argues that the Court and the Special Referee did not have subject matter jurisdiction, because:

- the Association failed to sufficiently plead a cause of action under Rule 8, SCRCF;
- the Association failed to verify the Counterclaim under Rule 9, SCRCF;
- the ARB was the only entity that had standing to bring the Counterclaim;
- the Association violated Section 13.3 of the Bylaws by failing to provide Jarmuth with a hearing before suit was filed.

As a result, Jarmuth argues that the Final Order in the 2010 Case and Civil Action No. 2009-CP-26-3596 (hereinafter "2009 Case") awarding the Association attorneys' fees, costs, and fines is void pursuant to Rule 60(b), S.C.R.C.P.

Having duly considered the arguments of the parties, and based on a review of the pleadings, memorandums, and applicable case and statutory law, the following are my findings and conclusions.

PROCEDURAL HISTORY

1. The 2009 Case was filed by Jarmuth on April 7, 2009 asserting equitable and legal causes of action against the Association, Rosemary Toth, and K.A. Diehl & Associates, Inc. in connection with the Association's operation of the International Club located in Horry County, South Carolina.
2. The Association filed an Answer on May 13, 2009 and asserted a counterclaim for attorneys' fees and costs.
3. Jarmuth filed the complaint in the 2010 Case in Magistrate's Court on October 12, 2010 challenging the Association's authority to enforce the architectural restrictions in the Declaration against his International Club property and the denial of his swing set application on.
4. The Association moved to dismiss the 2010 Case on November 9, 2010 for lack of subject matter jurisdiction and due to the pendency of the same claims in the 2009 Case.
5. After the motion to dismiss was filed in Magistrate's Court, the Association timely filed an Answer to the complaint in the 2010 Case on November 17, 2010.
6. The Magistrate's Court transferred the 2010 Case to circuit court by order dated November 30, 2010 and filed on December 1, 2010.
7. After the 2010 Case was transferred, it was consolidated with the 2009 Case by order dated August 29, 2011 and filed September 16, 2011.
8. Thereafter, the Association filed an Amended Answer and Counterclaim, with leave by this court, on October 24, 2011 seeking a declaratory judgment that Jarmuth is subject to the Declaration pursuant to S.C. Code Ann. 15-53-10 *et seq.* and seeking damages related to fines incurred, injunctive relief, and attorneys' fees and costs as a result of Jarmuth's breach of the Declaration. The Counterclaim sought fines imposed against Jarmuth for breaching the

architectural review restrictions in the Declaration by constructing an unapproved addition on his property line.

9. Allegations in the Counterclaim establishing subject matter jurisdiction include the following:

- "Plaintiff's International Club property is subject, without qualification to the Declaration . . . and the HOA's Bylaws, as amended (collectively referred to as 'Governing Documents')." ¶ 2.
- "...the Plaintiff, Ronald Jarmuth, owns Lot 12 of the Pebble Creek at International Club ('Property')." ¶ 24
- "The Property is located in Horry County, South Carolina, and this Court has jurisdiction over the Property and the parties to this action." ¶¶ 52-3
- "Plaintiff is subject to the Governing Documents." ¶ 54
- "Provisions of the Governing Documents provide that the Defendant HOA governs the International Club subdivision." ¶ 55

10. Jarmuth admitted paragraph 53 establishing that this Court has jurisdiction over the Counterclaim.

11. The Consent Order referring this matter to Ralph Stroman as Special Referee set forth that the Consolidated Cases were referred with all power and authority to enter final judgment as provided for in Rule 53(b):

IT IS ORDERED that the above entitled actions are referred to Ralph P. Stroman who, pursuant to Rule 53(b) SCRCP, shall exercise all power and authority that a circuit judge sitting without a jury would have, including but not limited to, hearing pre-trial and post-trial motions, making findings of fact and conclusions of law, directing entry of final judgment in these actions under Rule 53(b) SCRCP, and issuing any and all Orders necessary.

12. The Consolidated Cases were tried in 2012 by the Special Referee, who entered into the Final Order awarding the Association attorneys' fees, costs, and fines.

13. The Final Order included a finding that "[t]he above entitled actions were referred to the undersigned, as Special Referee, by Consent Order" and that the "referral" to Judge Stroman "is a referral with finality".

14. The Special Referee also found in the Final Order that "the Defendant HOA 'may' provide the Owner with a hearing" under Section 13.3 of the Bylaws, but that a hearing was not required before fines were levied.

15. After the Final Order was entered, the Special Referee recused himself from hearing the post-trial motions as a result of the Plaintiff's accusations that he was biased by Order of Recusal dated and filed on October 12, 2012 (hereinafter "**Order of Recusal**").

16. As a result, the Consolidated Cases came before the Circuit Court pursuant to the Order of Recusal.

17. Jarmuth appealed the Final Order, which was affirmed on appeal in 2015.

18. The remittitur was issued on January 21, 2016.

STANDARD OF REVIEW

1. "[W]hen considering whether to grant relief from final judgments under Rule 60(b), a court must balance the interest of finality against the need to provide a fair and just resolution of the dispute." Raby Constr., L.L.P. v. Orr, 358 S.C. 10, 20, 594 S.E.2d 478 (2004), citing Chewning v. Ford Motor Co., 345 S.C. 72, 579 S.E.2d 605 (2003).

2. South Carolina courts have "recognized a longstanding policy towards final judgments" and that "important benefits are achieved by the preservation of final judgments". Id.

3. In determining whether to set aside a judgment under Rule 60(b), the trial judge should consider the following relevant factors: 1) the promptness of the relief sought; 2) the reasons for failure to act promptly; 3) the existence of a meritorious defense; and 4) the prejudice to the other parties. McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (Ct. App. 2008).

4. The movant must also seek relief "within a reasonable time". S.C.R.C.P., Rule 60(b).
5. The granting of relief under Rule 60(b) is within the sound discretion of the judge. Coleman v. Dunlap, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992).
6. Although the trial court has wide latitude in granting relief under Rule 60(b), that discretion is limited by the above factors contained in Rule 60(b), S.C.R.C.P. See McClurg, 380 S.C. at 571, 671 S.E.2d 87; Coleman, 306 S.C. at 494, 413 S.E.2d at 17.
7. "An abuse of discretion occurs when the order of the court is controlled by an error of law or where the order is based on factual findings that are without evidentiary support." Ware v. Ware, 404 S.C. 1, 10, 743 S.E.2d 817 (2013).

CONCLUSIONS OF LAW

I. Law of the Case

1. The findings in the Final Order and the Order of Reference that the Special Referee had jurisdiction over the Consolidated Cases and that the fines were proper without a hearing are the law of the case and cannot be disturbed.
2. Upon the issuance of the remittitur, an appealed order becomes the law of the case and the findings contained in the order govern the case. Holly Hill Lumber Co. v. McCoy, 210 S.C. 440, 442, 43 S.E.2d 143, 143 (1947) (appellate court's decision, from which "there was no petition for rehearing," becomes "the law of the case" and prevents the re-raising of the issue appealed).
3. As a result, the lower court cannot make findings in separate order that are inconsistent with the findings in an order affirmed on appeal after the remittitur has issued. Id.
4. If an appellant does not challenge an issue on appeal that has been ruled upon in the appealed order, that ruling becomes the law of the case and cannot be disturbed. See, e.g.,

Bone v. United States Food Serv., 733 S.E.2d 200, 205 (S.C. 2012) ("The law of the case doctrine applies where a party does not challenge an issue on appeal when there has been an opportunity to do so"); McEachern v. Wilson, 154 S.C. 201, 151 S.E. 472 (1930) (an order "which is the law of the case" cannot be challenged).

5. "A portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case." Austin v. Specialty Transp. Servs., 358 S.C. 298, 302, 594 S.E.2d 867, 878 (Ct. App. 2004).

6. Likewise, "[a]n unappealed order that is appealable becomes the law of the case". McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 376, 597 S.E.2d 181 (Ct. App. 2004) (unappealed order dismissing parties with prejudice is the law of the case).

7. Because the findings in the Final Order were affirmed on appeal, they became the law of the case once the remittitur was issued.

8. I find that the Final Order finding that the Special Referee had subject matter jurisdiction is the law of the case and cannot be disturbed.

9. Additionally, I find that the finding in the Final Order that the Association did not need to hold a hearing before fining Jarmuth and bringing this action is also the law of the case and cannot be disturbed.

10. Moreover, I find that the Order of Reference finding that the Special Referee has jurisdiction is also the law of the case, because it was consented to by Jarmuth and was never appealed.

11. Therefore, I find that the Special Referee had subject matter jurisdiction over the claims in the Consolidated Cases, including the Counterclaim, and that the Final Order is not void for lack of subject matter jurisdiction.

II. Subject Matter Jurisdiction

12. The Final Order is not void for lack of subject matter jurisdiction, because the Circuit Court had jurisdiction over the Consolidated Cases, and the Order of Reference conferred jurisdiction on the Special Referee to enter the Final Order.

13. Although not specifically stated in Jarmuth's motion, it appears that he is moving pursuant to Rule 60(b)(4) to vacate the judgment based on lack of subject matter jurisdiction.

14. "Rule 60(b)(4) of the South Carolina Rules of Civil Procedure provides, on motion and upon such terms that are just, the court may relieve a party or his legal representative from final judgment, order or proceeding if the judgment is void." Ware, 404 S.C. at 10.

15. "The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." Id.

16. "A void judgment is one that, from its inception, is a complete nullity and is without legal effect." Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002).

17. Subject matter jurisdiction is the power to hear and determine cases of the general class to which proceedings belong." Normandy Corp. v. S.C. DOT, 386 S.C. 393, 688 S.E.2d 136 (Ct. App. 2010).

18. The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution of the laws of the state. Id.

19. Pursuant to Art. V., § 11 of the Constitution of the State of South Carolina, "[t]he Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts . . ."

20. "Every circuit court judge in this State shall at all times have jurisdiction to discharge and perform all duties of his office within the circuit wherein he resides . . ." S.C. Code Ann. § 14-5-390.

21. Pursuant to S.C. Code Ann. § 14-5-350, circuit court judges may "hear and determine actions for partition and foreclose suits and all other equity matters concerning real estate whether within or without the county where the land in questions lies."

22. Furthermore, the circuit court may, upon application of any party or upon its own motion, "direct reference" of some or all of the causes of action in a case to special referee. Rule 53(b), S.C.R.C.P.

23. When a reference is made, the special referee must enter final judgment as to the causes of action referred. S.C. Code Ann. § 14-11-85 (Supp. 2008).

24. "Once an action is referred, the special referee possesses all power and authority that a circuit judge sitting without a jury would have in a similar matter." Rule 53(c), S.C.R.C.P.

25. The claims asserted in the Consolidated Cases were related to Jarmuth's International Club property and arose out of the Association's governance of the International Club subdivision located in Horry County, South Carolina. The causes of action asserted actionable conduct by the Defendants in connection with the Association's operations.

26. I find that the circuit court had subject matter jurisdiction over the claims alleged in the Consolidated Cases, including the Counterclaim, at the time that the actions were brought.

27. Additionally, I find that the Association properly pled a cause of action for breach of the Declaration in accordance with Rule 8, SCRCF, to confer the jurisdiction of the circuit court over the Counterclaim.

28. Furthermore, I find that the that the Association did not violate Rule 9, SCRPC, by not verifying the Counterclaim, nor does the absence of a verification affect the jurisdiction of this Court over the Counterclaim.

29. Moreover, the Association, rather than the ARB, had standing to bring the Counterclaim, under the Declaration and the Bylaws of the Association.

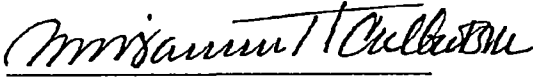
30. I find that the Order of Reference providing the Special Referee with jurisdiction over the Consolidated Cases is valid and not void for lack of subject matter jurisdiction.

31. Accordingly, the Special Referee had subject matter jurisdiction over the claims asserted in the Consolidated Cases, including the Counterclaim, and the Final Order is not void for lack of subject matter jurisdiction.

THEREFORE, it is hereby **ORDERED, ADJUDGED AND DECREED** that this Court **DENIES** Plaintiff's Motion to Dismiss Counterclaim for Lack of Subject Matter Jurisdiction pursuant to Rules 12(b)(1) and 60.

AND IT IS SO ORDERED.

May 31, 2016
Conway, South Carolina


The Honorable Benjamin H. Culbertson
Fifteenth Judicial Circuit Judge

AMENDED NOTICE OF APPEAL IN A CIVIL CASE

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

Benjamin H. Culbertson, Circuit Court Judge

Appeal Case No. 2016-001063

Lower Court Case No. 2009-CP-26-3596

**Ronald Jarmuth
Plaintiff, Pro Se**

Appellant

v.

**International Club Homeowners Association, Inc,
Rosemary Toth, and
K.A. Diehl, Inc.
Defendants**

Respondents

AMENDED NOTICE OF APPEAL

Ronald Jarmuth appeals

the Form 4 order of the Honorable Benjamin H. Culbertson signed, filed and docketed April 27, 2016, received by Appellant on May 2, 2016, and the Supplemental (Long Form) Order signed May 31, 2016, "Clocked" June 6, 2016, Filed and Docketed June 14, 2016, and never mailed to Appellant by the lower court.

June 24, 2016

**Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
Plaintiff, Pro Se**

Other Counsel of Record:

**Henrietta U. Golding
Alicia Thompson
McNair Law Firm, P.A.
2411 Oak Street; Suite 206
Myrtle Beach, SC 29577-3164
843-444-1107
Attorney for all Respondents**

**Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
August 2, 2016**

**The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201**

**Post Office Box 11629
Columbia, South Carolina 29211-1629
803-734-1890**

**Re: Appellant's Initial Brief in Appeal 2016-001063 Jarmuth v International Club HOA
2009-CP26-3596 in the Court of Common Pleas, Horry County**

Dear Madam Clerk:

Please file the attached Appellant's Initial Brief which I provide as one copy stapled in the upper left hand corner in accordance with the rules.

Thank you for your attention to this matter.

Sincerely,

**Ronald Jarmuth
Appellant Pro Se
249 Pickering Drive
Murrells Inlet, SC 29576**

**1 Encl: as
CF: Henrietta Golding, Attorney for Respondents**

Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
September 12, 2016

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Post Office Box 11629
Columbia, South Carolina 29211-1629
803-734-1890

RECEIVED

SEP 12 2016

SC Court of Appeals

Re: Appellant's Initial Brief in Appeal 2016-001063 Jarmuth v International Club HOA
2009-CP26-3596 in the Court of Common Pleas, Horry County
Filing of Appellant's Opposition to Respondent's "Motion to Dismiss Appeal"

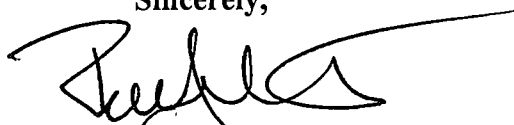
Dear Madam Clerk:

Please file the attached Appellant's Opposition to Respondent's Motion to Dismiss which consists of a Memorandum, a Certificate of Service, and 19 supporting exhibits. This is provided to you as

- * One original unbound copy; and
- * Six bound copies.

Thank you for your attention to this matter.

Sincerely,



Ronald Jarmuth
Appellant Pro Se
249 Pickering Drive
Murrells Inlet, SC 29576

Encl: as
CF: Henrietta Golding, Attorney for Respondents