

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
Consolidated With
Case No.: 2010-CP-26-11320
Appellate No.: 2016-001063

RECEIVED
SEP 21 2016
SC Court of Appeals

Ronald Jarmuth, *Pro Se* Appellant,

v.

The International Club Homeowners
Association, Inc., Respondents.

RESPONDENT’S REPLY TO APPELLANT’S
RETURN TO RESPONDENT’S MOTION TO DISMISS

The Respondent, The International Club Homeowners Association, Inc.,
(hereinafter “Association”), hereby replies to the Return to the Motion to Dismiss of *pro se* appellant, Ronald Jarmuth (“Jarmuth”).

ARGUMENT

Jarmuth argues in the Return to the Appellant’s Motion to Dismiss that the filing of the Motion to Dismiss does not stay the time limit for perfecting the appeal under South Carolina Appellate Court Rules, Rule 240(b). Furthermore, he asserts that the

Motion to Dismiss based on the law of the case doctrine was improper and not grounds for a motion for dismissal.

Under Rule 240(b), “[a] motion to dismiss an appeal or a motion to relieve counsel, shall . . . automatically stay the time limits for perfecting the appeal until the motion is decided.” The filing of a motion to dismiss after the appellant filed the initial brief is proper and stays the time limits for the respondent’s initial brief. See Lucas v. Rawl Family Ltd. P’ship, 2007 S.C. Unpub. LEXIS 3 * 3 (September 4, 2007). Because the Association filed a motion to dismiss the appeal, the time limits for filing the initial brief are stayed until this Court rules on the motion.¹

Additionally, Jarmuth’s argument that respondent may only file a motion to dismiss based on the untimeliness of the appeal is also meritless. “A party may file a motion to dismiss for any number of reasons (e.g. the appeal is being taken from an order that is not immediately appealable or the notice of appeal has not been timely served)”, including that the appeal is barred by the law of the case doctrine. Jean Hoefter Toal et al., Appellate Practice, 3rd Edition (2016), citing, McLendon v. S.C. Dep’t of Highway & Pub. Transp., 313 S.C. 525, 443 S.E.2d 539 (1994); Bowen v. Bowen, 287 S.C. 188, 337 S.E.2d 1 (1985). Here, the Association filed a motion to dismiss the appeal based upon the multiple, unappealed findings in the Final Order, Order denying Post-Trial Motions, and the Consent Order of Reference that the special referee had subject matter jurisdiction to enter into the Final Order. More specifically, Jarmuth filed post-trial motions in 2012 after the entry of the Final Order arguing that the special referee did not

¹ Jarmuth argues that the Association did not timely file the Motion to Dismiss the Appeal on before the deadline for the initial brief. Out of an abundance of caution, the Association has filed a Motion for an Extension of Time contemporaneously herewith and respectfully requests this Court to extend the deadline as more fully set forth in the Motion.

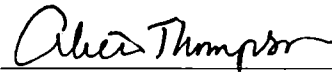
have subject matter jurisdiction, the lower court found that the special referee had subject matter jurisdiction in an Order denying his post-trial motions, and Jarmuth failed to appeal that Order. The failure to appeal those findings bars Jarmuth's present appeal based on the law of the case doctrine. See Holly Hill Lumber Co. v. McCoy, 210 S.C. 440, 442, 43 S.E.2d 143, 143 (1947); see also McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 376, 597 S.E.2d 181 (Ct. App. 2004). Jarmuth's appeal is untimely, in that he should have appealed the findings that there was subject matter jurisdiction in the orders in 2012 when they were entered.

CONCLUSION

For the foregoing reasons, the Association respectfully requests that Jarmuth's Notice of Appeal and Amended Notice of Appeal be dismissed. The deadline to file the Association's brief is stayed pursuant to South Carolina Appellate Court Rules, Rule 240(b).

SIGNATURE BLOCK – NEXT PAGE

Respectfully submitted,



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Attorneys for Respondent
The International Club Homeowners
Association, Inc.

Myrtle Beach, South Carolina
Date: September 19, 2016

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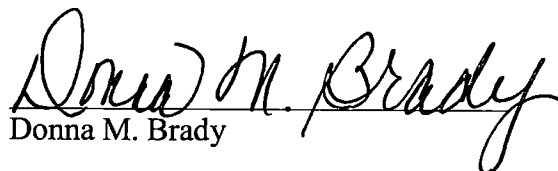
The International Club Homeowners
Association, Inc., Respondent.

PROOF OF SERVICE

I, Donna M. Brady, an employee of McNair Law Firm, P.A., certify that I have served the Respondent's Reply to Appellant's Opposition to Respondent's Motion to Dismiss Appeal, and Proof of Service on all parties to this matter by depositing a copy in the United States Mail, first class postage prepaid on the 19th day of September, 2016.

Pro Se Appellant of Record:

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1306357v1

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September 19, 2016

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

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SC Court of Appeals

RE: *Ronald Jarmuth v. International Club HOA, Inc.*
Appellate Case No.: 2016-001063
Civil Action Nos.: 2009-CP-26-3596 and 2010-CP-26-11320
Our File No.: 051490.00001

Dear Ms. Kitchings:

With regard to the above matter, enclosed for filing with the Court, please find the following:

- Original (unbound) and seven copies of the Respondent's Reply to Appellant's Opposition to Respondent's Motion to Dismiss Appeal; and
- Proof of Service;
- Original (unbound) and seven copies of Respondent's Motion for Enlargement of Time;
- Check for \$25.00 filing fee; and
- Proof of Service.

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

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

Sincerely,

McNair Law Firm, P.A.



Alicia Thompson

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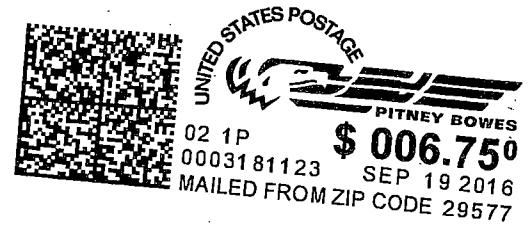
Enclosures

cc: Ronald Jarmuth
Clients

1306376v1

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