

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

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Benjamin H. Culbertson, Circuit Court Judge

SC Court of Appeals

Case No.: 2009-CP-26-3596
Consolidated With
Case No.: 2010-CP-26-11320
Appellate No.: 2016-001063

Ronald Jarmuth, *Pro Se* Appellant,

v.

The International Club Homeowners
Association, Inc., Respondent.

INITIAL BRIEF OF RESPONDENT
THE INTERNATIONAL CLUB HOMEOWNERS ASSOCIATION, INC.

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STATEMENT OF ISSUES ON APPEAL

- I. Are Jarmuth's Issues on Appeal preserved?
- II. Did the circuit court abuse its discretion in finding that the Special Referee had jurisdiction to enter into the Final Order in Civil Action Nos. 2009-CP-26-3596 and 2010-CP-26-11320 awarding a judgment in favor of the Association?

STATEMENT OF THE CASE

Civil Action Nos. 2009-CP-26-3596 (hereinafter “**2009 Case**”) and 2010-CP-26-11320 (hereinafter “**2010 Case**”) (hereinafter collectively referred to as “**Consolidated Cases**”) arise out of a dispute between the Appellant, Ronald Jarmuth (“**Jarmuth**”) and the Respondent, International Club Homeowners Association, Inc. (“**Association**”) regarding the Association’s authority to govern the International Club community pursuant to the Declaration of Covenants and Restrictions for the International Club filed in Deed Book 2117 at Page 1353 in the Horry County Register of Deed’s Office on February 8, 1999 (“**Declaration**”). (**2009 Complaint; 2009 Amended Complaint; 2010 Complaint; Jarmuth’s Counterclaim**). The Consolidated Cases were tried by a Special Referee in August, 2012. (**Final Order**). The Final Order awarding a judgment to the Association on its counterclaims in the amount of \$7,326.00 was affirmed on appeal in 2015. (**Final Order; Unpublished Opinion**). Jarmuth now seeks to appeal the 2016 order entered by the circuit court denying his Motion to Dismiss counterclaims in the Consolidated Cases filed after the remittitur was issued. (**Jarmuth’s 2016 Initial Brief**).

Jarmuth owns a home in the International Club Community located in Murrells Inlet, South Carolina. (**Final Order**). The Association, the governing body for the International Club, was created by the Association’s Articles of Incorporation and the Declaration. (**Id.**). The Declaration grants the Association architectural review and enforcement rights, including the right to fine members of the Association for violation

the Declaration and to seek attorneys' fees and costs in connection with the enforcement of the Declaration. ¹ (**Id.**).

On April 7, 2009, Jarmuth commenced Civil Action No. 2009-CP-26-3596 seeking an order that the Declaration is unenforceable and/or that the Association breached the Declaration. (**2009 Complaint**). The Association filed an Answer on May 13, 2009 and asserted a counterclaim for attorneys' fees and costs. (**2009 Answer; March 3, 2016 Memorandum in Opposition to Rule 60(b) Motion**). The defense of the Association was covered under its director's and officer's insurance; the Association paid a \$2,500.00 deductible in connection with defending the 2009 Case. (**Memorandum in Opposition to Rule 60(b)(2) and 60(b)(3) Motion**).

While the 2009 Case was pending, Jarmuth filed a complaint with the South Carolina Human Affairs Commission (hereinafter "**SCHAC**") alleging that the Association discriminated against him in connection with denying his application for a swing set. (**Id.**) The Association filed a response and paid an additional \$2,500 deductible in defending the matter; SCHAC determined that there was not cause. (**Id.**) Because he was unsuccessful in the SCHAC matter, Jarmuth filed 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

¹ Section 8.9 provides that the Association is entitled to attorneys' fees incurred in enforcing the Declaration: "[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." (**2015 Return to Petition for Writ of Certiorari**). Moreover, the Bylaws of the Association, § 13.4, echoes § 8.9 of 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." (**Id.**).

property and the denial of his swing set and fence applications. **(2010 Complaint)**. The Association filed an Answer to the Complaint in the 2010 Case on November 17, 2010. **(2010 Answer)**. Thereafter, the Magistrate's Court transferred the 2010 Case to circuit court by order dated November 30, 2010 and filed on December 1, 2010. **(December 1, 2010 Order Transferring Case to Circuit Court)**. Upon the transfer of the 2010 Case, it was consolidated with the 2009 Case by order dated August 29, 2011 and filed September 16, 2011. **(September 16, 2011 Consolidation Order)**.

The Association filed motions to amend the Answers in the 2009 Case and the 2010 Case to assert counterclaims against Jarmuth on August 26, 2011 **(2009 Case August 26, 2011 Motion to Amend; 2010 Case August 26, 2011 Motion to Amend)**, and the Court granted the motions by Order filed on October 11, 2011. **(October 11, 2011 Order Granting Motions to Amend)**. The Association's Amended Answers and Counterclaims in the Consolidated Cases were filed 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 to enforce the Declaration against Jarmuth. **(October 24, 2011 Amended Answer and Counterclaim in 2009 Case; October 24, 2011 Amended Answer and Counterclaim in 2010 Case)**.

Allegations in the amended counterclaims 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;
- “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.” ¶ 73;
- “Plaintiff breach the terms of the Governing Documents and the Architectural Guidelines, and therefore, the Defendant HOA is entitled to a judgment in amount to be determined by this Court, together with costs and attorneys’ fees incurred in bringing this action as well as order requiring Plaintiff to comply with the Governing Documents and the Architectural Guidelines...” ¶ 75.

(October 24, 2011 Amended Answer and Counterclaim in 2009 Case). Jarmuth admitted paragraph 53 of the Association’s Answer and Counterclaim in the 2009 Case asserting that the lower court had jurisdiction. **(Reply to Answer & Counterclaim in 2009 Case).**

Jarmuth and the Association agreed to refer the Consolidated Cases to Special Referee Ralph Stroman on June 15, 2012. **(June 15, 2012 Consent Order of Reference).** The Consent Order referred the cases to the Special Referee 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) SCRCF, 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) SCRCF, and issuing any and all Orders necessary.

(Id.).

The Consolidated Cases were tried from August 8, 2012 through August 10, 2012 by the Special Referee who entered into the Final Order awarding the Association

attorneys' fees, costs, and fines in the amount of \$7,326.00. (**2012 Final Order**). 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”. (**Id.**, p. 1, ¶ 1).

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. (**Order of Recusal and Referring 2009 Case and 2010 Case to circuit court filed October 17, 2012**). As a result, the Consolidated Cases came before the circuit court pursuant to the Order of Recusal. (**Id.**) Jarmuth filed post-trial motions seeking a new trial and to set aside the Final Order based on lack of subject matter jurisdiction on September 19, 2012. (**Jarmuth's September 19, 2012 Post-Trial Motions; Memorandum in Support of September 19, 2012 Post-Trial Motions**).

After circuit court reviewed the entire record and the parties' briefs, Jarmuth's Post-Trial Motions were denied by a written Order filed on March 11, 2013. (**Order Denying Post-Trial Motions**). The circuit court ruled that the Magistrate properly transferred the case to the circuit court and that the Special Referee had jurisdiction to enter into the Final Order. (**Order Denying Post-Trial Motions, p. 6**). Jarmuth timely filed an appeal of the Final Order on April 3, 2013, however, he failed to appeal the Order Denying the Post-Trial Motions finding that the lower court had subject matter jurisdiction. (**Notice of Appeal**).

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”). (**Unpublished Opinion**). Jarmuth filed a petition for Rehearing on March 12, 2015 (**March 12, 2015 Motion for Rehearing**) and Contempt Motions on March 17, 2015 against Freiboth and the undersigned attorneys, whom represent the Respondent. (**March 17, 2015 Motion for Contempt; June 10, 2015 Amended Motion for Contempt**). The petition for rehearing sets forth grounds that the trial court improperly awarded the attorneys’ fees to the Association in connection with the SCHAC matter. (**March 12, 2015 Motion for Rehearing; Respondent’s Return to Motion for Rehearing; Jarmuth’s Reply to Return of Defendants**). Jarmuth also filed a Motion for Contempt and an Amended Motion to Contempt against William Freiboth, the former president of the Association, and the undersigned attorneys on March 13, 2016. (**March 17, 2015 Motion for Contempt; June 10, 2015 Motion for Contempt**). Jarmuth’s petition for rehearing was denied by the South Carolina Court of Appeals on April 24, 2015. (**April 24, 2015 Order Denying Petition for Rehearing**).

On May 12, 2015, Jarmuth filed a Petition for Writ for Certiorari with the South Carolina Supreme Court appealing the Unpublished Opinion and specifically asserting that the award of \$2,500.00 in attorney’s fees incurred in connection with the SCHAC matter and confirming the Declaration was improper. (**May 12, 2015 Petition for Writ of Certiorari**). The Supreme Court denied Jarmuth’s Petition for Writ (**January 15, 2016 Denial of Petition for Writ**); the remittitur was issued on January 21, 2016. (**January 21, 2016 Remittitur**). Upon the issuance of the remittitur, Jarmuth filed his Rule 60(b)(2) and (3) Motion dated January 22, 2016 (**January 22, 2016 Rule 60(b)(2) and (3) Motion**), the amended Rule 60(b) Motion dated February 1, 2016 (**February 1, 2016 Amended Rule 60(b)(2) and (3) Motion**), and Rule 12(b)(1) and Rule 60(b)

Motion to Dismiss the Association's counterclaim dated March 11, 2016. (**Motion to Dismiss Counterclaims**).

The trial court held a hearing on Jarmuth's Motion to Dismiss the Counterclaims on April 27, 2016. At the hearing, Jarmuth contended that the trial court and Special Referee did not have subject matter jurisdiction to award fines, attorneys' fees, and costs for the following reasons:

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

(**Motion to Dismiss Counterclaims; Transcript of April 27, 2016 hearing**). The formal order denying Jarmuth Rules 12(b)(1) and 60(b) Motion to Dismiss the Counterclaims was filed on June 6, 2016. (**June 6, 2016 Order denying Motion to Dismiss**). The order found that the Special Referee had subject matter jurisdiction to enter in to the Final Order pursuant to the Order of Reference entered into by the parties. (**Id.**). The order further held that Final Order and Order of Reference finding that the Special Referee had subject matter jurisdiction constitute the law of the case and cannot be disturbed. Jarmuth filed the amended notice of appeal on June 24, 2016. (**Id.**).

STANDARD OF REVIEW

"Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the trial court." Coleman v. Dunlap, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992). Therefore, this Court's standard of review is limited to determining whether

there was an abuse of discretion. Southeastern Hous. Found. v. Smith, 380 S.C. 621, 670 S.E.2d 680, 687 (Ct. App. 2008). “An abuse of discretion arises when the order was controlled by an error of law or when the order is based on factual conclusions that are without evidentiary support.” Id. citing Tri-County Ice & Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990).

ANALYSIS

I. Issues On Appeal Are Not Preserved

Jarmuth’s appeal should be dismissed, because many of the Issues on Appeal were not timely raised with specificity and ruled upon by the trial court. Several Issues on Appeal are also abandoned due to Jarmuth’s failure to cite to legal authority. Furthermore, Jarmuth’s Issues on Appeal are barred by the law of the case doctrine.

A. Jarmuth Failed to Timely Raise the Issues to the Trial Court with Specificity

The first step in preserving an issue for appellate review is to actually raise it to the lower court. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731,733 (1998). “It is axiomatic that an issue cannot be raised for the first time on appeal, but must have raised to and ruled upon by the trial [court] to be preserved for appellate review.” Id. The specific grounds for an objection must be stated, and the lower court must rule upon the issue for it to be preserved for review. Id. Furthermore, a party cannot make an objection to a ruling after the trial judge had an opportunity to address it; objections must be contemporaneous with the ruling at issue. State v. Aldert, 333 S.C. 307, 312, 509 S.E.2d 811, 813 (1999).

Jarmuth raises legal issues for the first time on appeal without providing the lower court with an opportunity to rule. Jarmuth argues at length in his appellate brief that the

Association was barred from collecting the \$2,500.00 deductibles paid in 2009 and 2010 for lack of subject matter jurisdiction, because he asserts that they were paid in connection with the SCHAC matter.² (**Jarmuth's Initial Brief pp. 27-32**). This issue was not raised at the April 27, 2016 hearing or in his Motion to Dismiss, and the trial court did not have the opportunity to rule on it. Because Jarmuth failed to raise this issue timely, and no ruling exists, it was not preserved on appeal. Wilder Corp., 330 S.C. at 76, 497 S.E.2d at 733. To the extent that the issue was before the circuit court, Jarmuth failed to raise it with specificity and contemporaneously with the denial of his Motion to Dismiss and failed to obtain a ruling from the Court; accordingly, the issue is not preserved. Id.

Jarmuth also raises that the counterclaims were not sufficiently pled under Rules 8 and 9, SCRPC, in order to confer subject matter jurisdiction on the circuit court. Jarmuth's failure to raise these arguments before the Final Order was entered also affects the preservation of these issues. See Sullivan v. Hawker Beechcraft Corp., 397 S.C. 143, 723 S.E.2d 835 (Ct. App. 2012) (holding that the appellant waived his argument regarding a Court order finding that the claims were sufficiently pled under Rule 8 to confer jurisdiction on the lower court); Godfrey v. Heller, 311 S.C. 516, 520, 429 S.E.2d 859, 862 (Ct. App. 1993) (holding when theory of unjust enrichment was first raised in

² Contrary to Jarmuth's unsubstantiated assertions in his appellate brief, the 2009 \$2,500 deductible was paid in connection with defending the 2009 Case asserting that Jarmuth was not subject to the Declaration. The 2010 \$2,500 deductible was paid in connection with defending the SCHAC matter, which contained the same allegations as the 2010 Case, namely, that the Association discriminated Jarmuth by denying his application for a swing set and that the Declaration was not enforceable against his International Club property. Because Jarmuth posited that the Declaration was not enforceable against him in all of the proceedings, those fees were incurred in connection with enforcing the Declaration against him.

judge's order, appellant should have challenged this basis for recovery by a Rule 59 motion to preserve the issue for appeal). By failing to timely file a Rule 12(b) Motion based on a deficiency in the pleading under Rules 8 and 9, SCRC, Jarmuth waived his arguments that the counterclaims were not pled with specificity or verified.

Due to Jarmuth's untimely objections to the above issues, they were not preserved and should not be considered on the merits in this appeal.

B. Jarmuth's Short Conclusory Arguments Without Authority are Abandoned

Jarmuth abandoned his arguments on appeal by failing to provide any legal authority in support. See Fields v. Melrose Ltd. Partnership, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct.App. 1993) (holding that short conclusory arguments are abandoned on appeal). The following issues are not supported by any legal authority and should be considered abandoned: 1) The Special Referee did not have subject matter jurisdiction to award the \$2,500 in attorneys' fees paid in 2010; 2) The Special Referee did not have subject matter jurisdiction to award fines, because the Association lacked standing; 3) The Special Referee did not have subject matter jurisdiction to award fines because the Association failed to hold a hearing before imposing fines; 4) The Special Referee did not have subject matter jurisdiction to award fines, because the Association's architectural review board was not a party to the litigation; 5) the Association's failure to verify the counterclaim for fines and attorneys' fees divested the lower court of subject matter jurisdiction. "[W]here an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal." Ellie, Inc. v. Miccichi, 358 S.C. 78, 99, 594 S.E.2d 485, 496 (Ct. App. 2004). Jarmuth's failure to provide a legal analysis supporting these arguments constitutes an abandonment of the arguments on appeal.

C. Jarmuth's Appeal is barred by the Law of the Case Doctrine

Because Jarmuth failed to appeal the findings in the Order Referring the Case to the Special Referee, the Final Order, and the March, 2013 Order denying Post-Trial Motions finding that the Special Referee had subject matter jurisdiction to award fines and attorneys' fees, his appeal is barred by the law of the case doctrine. Jarmuth's issues are also barred by the Unpublished Opinion which specifically addressed some of the issues asserted in the appellate brief.

It is a fundamental rule of law that an appellate court will affirm a ruling by a lower court if the offended party does not challenge the ruling. See Biales v. Young, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993). Failure to challenge the ruling is an abandonment of the issue and precludes consideration on appeal. Id. 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., 399 S.C. 566, 733 S.E.2d 200, 205 (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).

The following issues were previously ruled upon by the trial court in the Consent Order of Reference, the Final Order, and/or the 2013 Order Denying Jarmuth’s Post-Trial Motions that was never appealed: 1) the Special Referee had subject matter jurisdiction to award the judgment against Jarmuth for attorneys’ fees and costs (**Consent Order of Reference; Final Order; 2013 Order Denying Post-Trial Motions**); 2) Jarmuth waived his right to a hearing under the Bylaws and the Association’s Declaration (**Final Order; 2013 Order Denying Post-Trial Motions**); 3) The Association properly brought the counterclaims rather than the Association’s architectural review board, which is not a separate legal entity (**Final Order; 2013 Order Denying Post-Trial Motions**); and 4) the award of attorney’s fees in the amount of \$5,000.00 in enforcing the Declaration against Jarmuth was proper. (**Final Order; 2013 Order Denying Post-Trial Motions**). Because these orders were affirmed on appeal by the Unpublished Opinion, Jarmuth should not be permitted to raise the same issues again by a second appeal. To allow him to raise these issues again under the guise of a lack of subject matter jurisdiction argument is an undue burden and expense to the Association.

Similarly, Jarmuth has raised many of these issues to the Court of Appeals in the 2013 appeal. Specifically, he objected to the Association’s collection of the \$2,500.00

deductible in defending the SCHAC matter and enforcing the Declaration against him in the 2013 appellate brief, motion for rehearing, and Petition for Writ of Certiorari to the Supreme Court. (**Jarmuth's 2013 appellate brief; Motion for Rehearing**). In those filings, Jarmuth argued that the Association misrepresented the nature of the services performed in connection with incurring the fees.

The Association argued that the Special Referee, in his sound discretion, concluded that defending Petitioner's SCHAC complaint filed while the 2009 Case was pending was undertaken to enforce the Declaration against him under Seabrook Island Prop. Owners' Assn v. Berger, 365 S.C. 234, 240, 616, S.E.2d 431, 434 (Ct. App. 2005). Berger stands for the proposition that the term "enforcement" of the covenants is broader than filing a lawsuit. See Id. Under this progeny, "enforcement" includes legal action taken pre-litigation. The Association argued that because the administrative proceeding was filed while the 2009 case was pending, and before the 2010 case seeking similar relief, the trial judge did not abuse his discretion in awarding the attorneys' fees incurred. This Court and the Supreme Court did not disturb the Final Order based upon the grounds that the attorneys' fee award was improper.

Likewise, Jarmuth raises several issues that were previously addressed by this Court in the Unpublished Opinion by characterizing them as affecting the subject matter jurisdiction of the Special Referee to hear the counterclaims. More specifically, Jarmuth argued at length at the 2012 trial and on appeal that the architectural review board, rather than the Association, was the only entity with authority to seek enforcement of the fines and attorneys' fees. (**Final Order; 2013 Order Denying Post-Trial Motions; Jarmuth's 2013 appellate brief**). He also argued that the Association was precluded

from fining him because it failed to comply with Section 13.3 of the Bylaws by holding a hearing. (*Id.*) This Court considered and rejected these arguments in issuing the Unpublished Opinion and affirming the Final Order. (**Unpublished Opinion**).

Accordingly, these issues have been decided and were affirmed on appeal and should not be disturbed under the law of the case doctrine.

II. No Abuse of Discretion

The circuit court judge did not abuse his discretion in denying Jarmuth's Rule 12(b)(1) and 60(b) Motion to Dismiss Respondent's counterclaims.

A. The Circuit Court had Subject Matter Jurisdiction

The circuit court had jurisdiction over the counterclaims asserted in the Consolidated Cases before the matters were transferred to the Special Referee.

Jarmuth moved pursuant to Rules 12(b)(1) and 60(b)(4) to dismiss the Association's counterclaims and to vacate the judgment based on an alleged 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. 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 . . .”

“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 (Supp. 2008). Under 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.”

The circuit court, “the general trial court with original jurisdiction in civil . . . cases”, had jurisdiction over the Association’s counterclaims for a declaratory judgment as to the rights and obligations of the parties under the Declaration and for fines, attorneys’ fees, and costs. See S.C. CONST. art. V., § 11. As pled in the counterclaims, the Association governs the International Club, a community located in the 15th Judicial District, and Jarmuth owns a home within the International Club. (**2009 Case Amended Answer and Counterclaims; 2010 Amended Answer and Counterclaims**). The counterclaims also asserted a declaratory judgment against Jarmuth that he and his International Club property are subject to the Declaration and the architectural review restrictions contained therein, because Jarmuth asserted in the 2009 Case, the SCHAC

matter, and the 2010 Case that he was not subject to the Declaration. (**Id.**). The Association also sought an order of the circuit court holding that Jarmuth violated the Declaration by beginning the installation of his fence on the property line without approval of the Association's architectural review board. (**Id.**). These allegations established that the Court had subject matter jurisdiction to hear the Association's claims, which was admitted by Jarmuth in replying to the counterclaims. (**Id.**).

The counterclaims further sought attorneys' fees and costs in bringing the counterclaims and enforcing Declaration against him. (**Id.**). Those fees were paid in the form of two \$2,500.00 deductibles to the undersigned counsel, the attorneys retained to defend the Association in the various matters filed by Jarmuth under the Association's director's and officer's insurance policy. (**Memorandum in Opposition to Rule 60(b)(2) and 60(b)(3) Motion**) The first amount was paid after the 2009 Case was filed and the second amount was paid after SCHAC matter was initiated. (**Id.**) No separate deductible was required for the 2010 Case, because it was related to the previous matters filed. (**Id.**) Despite Jarmuth's attempt to characterize the evidence admitted regarding the attorneys' fees as false, testimony was presented at trial as to these facts, and the Special Referee awarded \$5,000.00 to the Association. (**Id.**). Based on the facts alleged in the counterclaims and the testimony presented at trial, the lower court did not abuse its discretion in finding that the Special Referee had subject matter jurisdiction to award fines, attorneys' fees and costs to the Association in the Final Order.

Jarmuth's arguments that the Special Referee did not have subject matter jurisdiction under Rule 8, SCRCF, and Rule 9, SCRCF, are without merit and lack any legal support. The claims were sufficiently pled under the South Carolina Rules of Civil

Procedure in order to confer jurisdiction on the circuit court. Rule 8 requires “(1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled.” The allegations set forth above were sufficient facts alleged in order for the circuit court to exercise jurisdiction over the counterclaims and to award the judgment for fines and attorneys’ fees and costs.

Furthermore, Rule 9, SCRCP, does not affect jurisdiction in this matter. No authority exists for Jarmuth’s contention that the counterclaim needs to be verified in order for the circuit court to hear the Association’s counterclaims and to award fines, attorneys’ fees and costs. The circuit court, as the general trial court over civil disputes, clearly has authority to hear the counterclaims and award the Association the judgment in the Final Order.

B. The Referral was Proper

The referral of this case conferred jurisdiction on the Special Referee to try the counterclaims in the 2009 Case and the 2010 Case.

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.

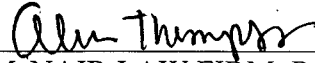
The circuit court properly transferred jurisdiction to the Special Referee by the Order of Reference. Similar to the order in Normandy Corp., the Order of Reference consented to by Jarmuth referred the “above entitled actions” in their entirety to the Special Referee. 386 at 404. No limitations were contained in the Order of Reference that limited the jurisdiction of the Special Referee to enter a final judgment as to the counterclaims 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.

Because the circuit court had jurisdiction over the counterclaims and properly transferred jurisdiction to the Special Referee, the lower court did not abuse its discretion in denying Jarmuth’s motion to set aside the judgment in the Final Order.

CONCLUSION

For the foregoing reasons, this Court should affirm the April 27, 2016 Order denying Jarmuth's Rule 12(b)(1) and 60(b) Motion to Dismiss the Counterclaims.

Respectfully submitted,



McNAIR LAW FIRM, P.A.

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Attorneys for Respondents

The International Club Homeowners
Association, Inc.

Myrtle Beach, South Carolina

Date: November 28, 2016

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

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NOV 30 2016
SC Court of Appeals

Ronald Jarmuth, *Pro Se* Appellant,

v.

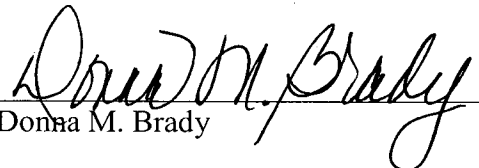
The International Club Homeowners
Association, Inc., Respondent.

PROOF OF SERVICE

I, Donna M. Brady, an employee of McNair Law Firm, P.A., *Pro Se* Appellant Ronald Jarmuth in the above-entitled action, certify that I have served the Initial Brief of Respondent, Designation of Matters of Respondent, 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 28th day of November, 2016.

Pro Se Appellant of Record:

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249 Pickering Drive
Murrells Inlet, SC 29576


Donna M. Brady

Myrtle Beach, South Carolina
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Alicia Thompson

November 28, 2016

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T (843) 443-3058
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The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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

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NOV 30 2016

SC Court of Appeals

Dear Ms. Kitchings:

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

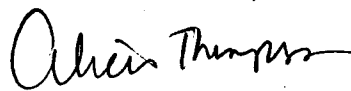
- Original and one copy of the Initial Brief of Respondent, The International Club Homeowners Association, Inc.;
- Original and one copy of the Designation of Matters of Respondent, The International Club Homeowners Association, Inc.; and
- Proof of Service.

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

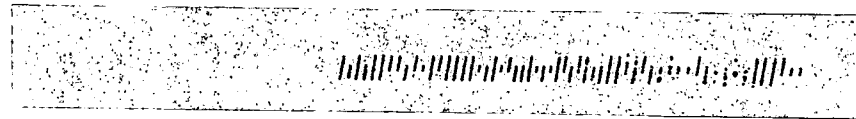
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Enclosures
cc: Ronald Jarmuth
Clients

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SC Court of Appeals

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