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SC Court of Appeals

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

Appeal No. 2016-001063

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

Benjamin H. Culbertson, Circuit Court Judge

CASE NUMBER 2009-CP-26-3596

Ronald Jarmuth

Appellant,

v.

The International Club

Respondent

APPELLANT'S MOTION TO LIMIT THE RECORD ON APPEAL

**Ronald Jarmuth
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Murrells Inlet, SC 29576
843-314-4355
Appellant, Pro Se**

**Henrietta U. Golding
Alicia F. Thompson
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843-444-1107
Attorneys for Respondent**

1. Appellant hereby moves for an order of this Court limiting the Record on Appeal to the material actually considered by the trial court in determining the extremely limited motion before the trial court. At the motion hearing from which this appeal arises, the Court considered only those documents from the case record which directly relate to the decision (order on appeal) of the trial court.

2. The Authority is SCRAP Rules 209 (b) which provides that "A party shall not include any matter in his designation which is not relevant to the appeal" and SCRAP Rule 210 (c) which provides that "The Record shall not, however, include matter which was not presented to the lower court".

WHAT THE APPEAL IS ACTUALLY ABOUT

3. Nature of Appeal.

a. The appeal is from a very short, perhaps 10 minute, motion hearing, the transcript for which is twenty-eight (28) pages.

b. The single, narrow post-trial issue before the court was whether the trial court had subject matter jurisdiction to award a very limited portion of the relief granted in the final order (following a trial). Specifically –

(1) The contract (covenant) has a pre-litigation suit preclusion clause. It says that the HOA defendant may not sue to collect fines (and to recover attorney fees) for violation of covenant usage restrictions until after the HOA Board actually holds an adversary hearing, reflected in the minutes of the Board of Directors (of the HOA) at which, again on the record, a determination is actually made that a violation has occurred; AND further, not until after the HOA Board actually votes on the record to impose a fine; AND further not until after, again on

the record, the HOA Board gives a written notice (again in the HOA Board meeting minutes) of the decision with a time limit to cure the violation before the fine takes effect. The issue was that the complete minutes of the Board reveal that no such hearing was actually held, no decision made on the record, and no letter of decision actually mailed. Without ALL these three pre-requisites being satisfied, there is no violation. The Contract (covenant) has a provision which says that the HOA defendant MAY NOT SUE until the pre-litigation provision is satisfied.

(2) The second part of the issue was that there was no contract provision allowing the trial court, in the final order, to award attorney fees not actually spent to force a homeowner to end a usage violation. The defendant's own evidence proved that the attorney fees awarded were all spent years before a usage violation was even alleged and for purposes not even plead in the defendant's counter – claim. Expenditures for attorney fees was mentioned for the first time, - in passing - (not as a demand for relief) during the trial testimony of a defense witness. Arguendo, if the pre-litigation suit preclusion provision had been satisfied, the contract (covenant) only provides for the collection of attorney fees actually spent to actually end usage violations. There is no contract provision allowing the recovery of attorney fees spent for any other purpose. The defendant's admissions and evidence at trial proves that the attorney fees were spent to defend a housing discrimination claim two years before any violation occurred, and to defend an electrical right of way condemnation threat by Central Electric about which the Plaintiff had nothing to do – over a year before any usage violation actually occurred.

**RESPONDENT DESIGNATED IRRELEVANT MATTERS NEVER
CONSIDERED BY COURT**

4. The Respondent (defendant below) is seeking to make the appeal prohibitively expensive by designating material never before the court at the limited hearing, and which is totally irrelevant to deciding the very limited matter. The Respondent artfully mentions the existence of much of this irrelevant material in a "history of the case" (without citing to any particular section of text). Yet the transcript of the hearing does not even hint that any of this "historic" material was considered by the court at the hearing or that the court should have considered any of the "historic" material. Likewise, the argument section also mentions some material in passing without reference to particular portions of a document or even mentioning how the documents are relevant to the matter at hand.

NARROW SCOPE OF HEARING

5. The transcript of the hearing proves that both the Court and the litigants agreed on the very narrow scope of the review at the hearing:

"MS. THOMPSON: Yes, sir. Just one housekeeping issue, ... Mr. Jarmuth moved to dismiss based on a lack of subject matter jurisdiction, challenging the judgment that was entered ... for attorney's fees, costs and fines. ... I just ask that the motion this morning be limited to the arguments in the motion that was made and filed. ...

THE COURT: All right ... Well, Mr. Jarmuth, you are limited to whatever you allege in your motion as the grounds for the motion. Okay. And you can't get into any extraneous matters that are not included in your motion. ...

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

COURT ACTUALLY CONSIDERED VERY FEW DOCUMENTS

6. The only exhibits actually before the Court were Plaintiff's sixteen (16) pre-labelled exhibits (Table of Contents, Exhibit A) which Appellant filed with the Court at the hearing, plus the three (3) Defense (Respondent) exhibits attached to Defendant's Motion in Opposition.

MR. JARMUTH: May I approach the court reporter? I've got a set of exhibits I want to provide so that you can follow along with what's being said. ... They're labeled. Who gets them?

THE COURT: I do.

[Transcript p6]

The three Defense Exhibits which were attached to Respondent's Memo in Opposition were:

- a. June 13, 2012 Consent Order of Reference (Appellant's proposed item #9);
- b. December 20, 2011 Plaintiff's Answer to Counter – Claim (Appellant's proposed item #39);
- c. October 17, 2012 Special Referee's Order of Recusal (Appellant's proposed item #11).

7. The June 16, 2016 "Long Order" following the hearing (Exhibit B) clearly enumerated what was considered by the court:

"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" [Order p2]

On page 3 of that Order the Court defined the counter claim as

"seeking a declaratory judgment that Jamuth is subject to the Declaration ... and seeking damages related to fines incurred, injunctive relief, and attorneys' fees and costs as a result of Jarmuth's breach of the Declaration." [underlining added]

8. In paragraph 9 of the Order the Court stated it considered the October 24, 2011 Counter-Claim [Appellant's proposed item #38]. In paragraph 10 of the Order the Court stated that it considered Jarmuth's (Appellant's) December 20, 2011 Answer to the Counter – Claim [Appellant's proposed item #39]. In paragraph 11 of the Order the Court stated that it considered the June 13, 2012 Order of Reference (Appellant's proposed item #9). In paragraphs 12 through 15 of the Order the Court stated that it considered the September 12, 2012 Final Order following trial (Appellant's proposed item #10).

9. In Conclusions of Law #1 (Law of the Case) the Court noted that it depended on the September 12, 2012 Final Order (Appellant's item #10) and the March 4, 2015 Court of Appeals decision relating to the 2013 appeal (Appellant item #12).

10. In Conclusion of Law #2 (Subject Matter Jurisdiction) the Court noted that it considered the final order and Appellant's March 11, 2016 Motion to Dismiss (Appellant's item #45) and the previously cited Order of Reference.

MATERIAL PROPOSED BY RESPONDENT IN VIOLATION OF SCRAP Rule 210 (c)

11. SCRAP Rule 210 (c) provides that "The Record shall not, however, include matter which was not presented to the lower court". This would include material which the Court referred to by its' own volition, and should include material available in the overall record of the case which the trial court should have considered which is relevant for the Appellate Panel's review.

12. Respondent has clearly designated (Exhibit C) a boatload of irrelevant material in blatant disregard for SCRAP Rule 210(c). Appellant asserts that this violation of SCRAP Rule 210(c) was made for the sole purpose of increasing the cost and difficulty of preparing the Record on Appeal and serves no purpose in deciding the matter before the Court of Appeals.

MATTERS TO BE EXCLUDED FROM THE RECORD ON APPEAL

13. Based on the previous detailed enumeration of what was considered by the trial court at or after the hearing, the Court of Appeals is asked to order that the following items MARKED WITH A STRIKETHROUGH be excluded from the Record on Appeal. Respondent's complete list is below to facilitate comparison with Respondent's Designation (Exhibit C). The items to be included have all already been included in Appellant's Designation of the Record on Appeal (Exhibit D), and the item numbers proposed by Appellant are set at the end of each Respondent designated item which Appellant believes should be incorporated.

ORDERS

- a. ~~Order transferring Case 2010-CP-26-11320 from Magistrate's Court to Circuit Court - December 1, 2010~~
- b. ~~Order Consolidating Case 2009-CP-26-3596 ("2009 Case") & Case 2010-CP-26-11320 ("2010 Case") - September 16, 2011~~
- c. ~~Order granting HOA Leave to Amend Answers to Assert Counterclaims - October 11, 2011~~
- d. Consent Order of Reference - June 15, 2012. Appellant #9
- e. Final Order - September 12, 2012. Appellant #10.
- f. Order of Recusal - October 17, 2012. Appellant #11
- g. ~~Order Denying Jarmuth's Post-Trial Motions - March 11, 2013~~

- h. Unpublished Opinion of the Court of Appeals No. 2015-UP-111 Appellate Case 2013-000714 - March 4, 2015. Appellant #12.
- i. Order Denying Jarmuth's Appellate Petition for Rehearing - April 24, 2015. Appellant #13.
- j. Order Denying Jarmuth's SC Supreme Court Petition for Writ of Certiorari - January 15, 2016. Appellant #14.
- ~~k. Appellate Court Remittitur - January 21, 2016~~
- l. Form 4 Order Denying Subject Matter Jurisdiction Motion - April 27, 2016. Appellant #15.
- m. "Long Order" Denying Subject Matter Jurisdiction Motion - June 6, 2016. Appellant #16.

PLEADINGS

- a. 2009 Case Complaint - April 7, 2009. Appellant #22.
- b. 2009 Case HOA Answer and Counterclaim - May 13, 2009. Appellant #23.
- ~~c. 2009 Case Jarmuth's Reply to Counterclaim - May 15, 2009~~
- ~~d. 2009 Case Jarmuth's Amended Complaint - May June 9, 2009~~
- ~~e. 2009 Case HOA Answer to Amended Complaint and Answer w same Counterclaim - June 19, 2009~~
- ~~f. 2009 Case Jarmuth's Reply to Counterclaim - July 2, 2009~~
- g. 2010 Case Jarmuth's Magistrate Complaint - October 12, 2010. Appellant #34.
- h. 2010 Case HOA Answer - November 17, 2010. Appellant #36.
- ~~i. 2009 Case HOA Motion to Amend Counterclaim - August 26, 2011~~
- ~~j. 2010 Case HOA Motion to Amend Counterclaim - August 26, 2011
(duplicate of #i)~~
- k. 2009 Case HOA Amended Answer and Counterclaim - October 24, 2011. Appellant #38.
- ~~l. 2010 Case HOA Amended Answer and Counterclaim - October 24, 2011
(same as #k)~~

- m. 2009 Case Jarmuth Reply to Amended Counterclaim - December 20, 2011. Appellant #39.
- ~~n. 2010 Case Jarmuth Reply to Amended Counterclaim - December 20, 2011 (same as #m).~~
- ~~o. Jarmuth Post-Trial Motions - September 19, 2012~~
- p. Jarmuth Memo in Support of Post-Trial Motion - January 22, 2013
- q. Jarmuth Notice of Appeal - April 3, 2013. Appellant #43.
- ~~r. Jarmuth Final Appellate Brief - No. 2013-000614 - July 22, 2013~~
- ~~s. Jarmuth Appellate Motion for Rehearing - March 12, 2015~~
- ~~t. Jarmuth Trial Court Motion for Civil Contempt (Perjury of HOA Witness) - March 17, 2015 (pending)~~
- ~~u. Jarmuth Trial Court Amended Motion for Civil Contempt (perjury by HOA witness) - June 10, 2015 (pending)~~
- v. HOA Appellate Return to Motion for Rehearing - March 24, 2015
- ~~w. Jarmuth Appellate Reply, Motion for Rehearing - March 27, 2015~~
- ~~x. Jarmuth SC Supreme Court Petition for Writ of Certiorari - May 12, 2015~~
- ~~y. HOA Return to SC Supreme Court Petition for Writ of Certiorari - June 12, 2015~~
- ~~z. Jarmuth Rule 60(b)(2) and (3) Motion for Relief (Extrinsic Fraud by HOA Attorney) from Judgment - January 22, 2016 (pending)~~
- ~~aa. Jarmuth Amended Rule 60(b)(2) and (3) Motion for Relief (Extrinsic Fraud) from Judgment - February 1, 2016~~
- bb. William Frieboth's (HOA Witness) Memorandum in Opposition to Jarmuth's Motion for Civil Contempt - March 3, 2016 (pending)
- cc. McNair Law Memo in Opposition to Motion for Civil Contempt - March 3, 2016 (pending). Appellant #44.
- ~~dd. HOA Memo in Opposition to Jarmuth Rule 60(b)(2) and (3) Motion for Relief from Judgment (Extrinsic Fraud) - March 3, 2016 (pending)~~
- ee. Jarmuth Rule 12(b)(1)/Rule 60 Motion to Dismiss Counterclaim - No Subject Matter Jurisdiction - March 11, 2016. Appellant #45.

- ff. HOA Memo in Opposition to Motion to Dismiss Counterclaim - No Subject Matter Jurisdiction - April 8, 2016. Appellant #46.
- gg. ~~Jarmuth Memorandum in Support of Rule 12(b)/Rule 60 Motion to Dismiss Counterclaim No Subject Matter Jurisdiction - April 27, 2016~~
Excluded at request of Appellant (HOA):

“Ms. Thompson: This morning Mr. Jarmuth provided me with a memorandum in support of his motion to dismiss that challenged 25 other conclusions of law in the final order in the 2009 and 2010 cases. I just ask that the motion this morning be limited to the arguments in the motion that was made and filed. ...

THE COURT: All right. Let me look at his motion” Transcript p4.

TRANSCRIPT

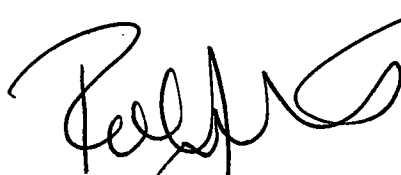
- a. Transcript of April 27, 2016 Hearing. Appellant #17.

(continued)

CONCLUSION

14. Conclusions.

- a. Appellant has clearly identified the material which the trial court considered at and after the hearing in framing the order under appeal.
- b. The items previously designated by the Respondent for inclusion in the Record on Appeal which Appellant has identified by "strike through" have clearly been designated in violation of SCRAP Rule 210(c).
- c. Respondent has provided no relevant reason why the extraneous items were relevant to the trial court Order under appeal or how they are relevant to the pending appellate court decision.
- d. The items objected to by Appellant should be excluded.



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December 5, 2016

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

Appeal No. 2016-001063

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

Benjamin H. Culbertson, Circuit Court Judge

CASE NUMBER 2009-CP-26-3596

Ronald Jarmuth

Appellant,

v.

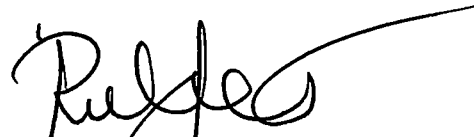
The International Club

Respondent

PROOF OF SERVICE

I certify that on December 5, 2016 I served Appellant's Motion to Limit the Record on Appeal by depositing a copy of same in the United States Mail, postage prepaid, addressed to Respondent's attorney of record, Henrietta Golding; McNair Law Firm, P.A.; 2411 Oak Street; Suite 206; Myrtle Beach, SC 29577-3164

December 5, 2016



**Ronald Jarmuth
249 Pickering Drive
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843-314-4355
Appellant, Pro Se**

**EXHIBITS SUPPORTING JARMUTH
RULE 12(b)(1) MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION**

A

NO SUBJECT MATTER JURISDICTION EXHIBITS		
EXHIBIT	DESCRIPTION	PAGE
1	Conclusions in Final Order Unsupported by Properly Plead Claims	1
1a	Unplead controlling facts omitted from Counter Claim	1
1b	Counter Claim Conclusions of Law mapped to Claim	4
1c	Insufficient fact plead in Counter Claim	5
1d	Conclusions of Law Unrelated to any plead Claim	6
1e	Claims	8
2	Sep 10 2012 Final Order	11
3	2009 Complaint #3596	59
4	HOA Answer #3596	129
5	2009 Complaint Amendment 1 #3596	133
6	HOA Answer #3596 to Amendment 1 adding Counter Claim	166
7	2010 Complaint #11320	178
8	HOA Answer #11320	191
9	HOA Bylaws Section 13.3 Procedure	199
10	May 5 2010 HOA Board Meeting Minutes	200
11	November 10, 2010 HOA Board Meeting Minutes	204

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.)

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

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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.)

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

B

copy

MC

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, SCRPC;
- the Association failed to verify the Counterclaim under Rule 9, SCRPC;
- 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) SCRPC, 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) SCRPC, 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.



The Honorable Benjamin H. Culbertson
Fifteenth Judicial Circuit Judge

May 31, 2016
Conway, South Carolina

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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SC Court of Appeals

Ronald Jarmuth, *Pro Se* Appellant,
v.

The International Club Homeowners
Association, Inc., Respondent.

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD
OF RESPONDENT THE INTERNATIONAL CLUB HOMEOWNERS
ASSOCIATION, INC.

The Respondent, The International Club Homeowners Association, Inc.
("Respondent"), designates the following materials to be included in the record on appeal
pursuant to Rule 209 of the South Carolina Appellate Court Rules:

ORDERS

- a. Order transferring Civil Action No. 2010-CP-26-11320 from Magistrate's Court to Circuit Court filed December 1, 2010
- b. Order Consolidating Civil Action No. 2009-CP-26-3596 ("2009 Case") & Civil Action No. 2010-CP-26-11320 ("2010 Case") filed September 16, 2011
- c. Order granting Motions to Amend Answers to Assert Counterclaims in 2009 Case and 2010 Case filed October 11, 2011
- d. Consent Order of Reference filed June 15, 2012
- e. Final Order Dismissing Jarmuth's Claims and Awarding Judgment Against Jarmuth in the Amount of \$7,326.00 and Granting Injunctive Relief

C

- f. Order of Recusal and Referring C.A. No. 2009 and C.A. No. 2010 to circuit court filed October 17, 2012
- g. Order Denying Jarmuth's Post-Trial Motions filed on March 11, 2013
- h. Unpublished Opinion of the South Carolina Court of Appeals No. 2015-UP-111 in Appellate Case No. 2013-000714 dated January 1, 2015 and filed March 4, 2015
- i. Order Denying Jarmuth's Petition for Rehearing Filed April 24, 2015
- j. Order Denying Jarmuth's Petition for Writ of Certiorari to Review Unpublished Opinion No. 2015-UP-111 dated January 15, 2016
- k. Remittitur for Appellate Case No. 2013-000714 dated January 21, 2016
- l. Form 4 Order denying Jarmuth's Rules 60 and 12(b)(1) Motion filed April 27, 2016
- m. Order Denying Jarmuth's Rules 60 and 12(b)(1) Motion filed June 6, 2016

FILED PLEADINGS, MOTIONS, AND MEMORANDUM IN SUPPORT

- a. 2009 Case Complaint filed April 7, 2009
- b. 2009 Case Respondent's Answer and Counterclaim filed May 13, 2009
- c. 2009 Case Jarmuth's Reply to Counterclaim filed May 15, 2009
- d. 2009 Case Jarmuth's Amendment to Complaint filed May June 9, 2009
- e. 2009 Case Respondent's Answer to First Amendment to Complaint and Counterclaim filed June 19, 2009
- f. 2009 Case Jarmuth's Reply to Counterclaim of Amended Complaint filed July 2, 2009
- g. 2010 Case Jarmuth's Complaint filed in Magistrate's Court on October 12, 2010
- h. 2010 Case Respondent's Answer filed on November 17, 2010
- i. 2009 Case Respondent's Motion to Amend Answer to Complaint and First Amendment to the Complaint and Counterclaim filed August 26, 2011
- j. 2010 Case Respondent's Motion to Amend Answer to Complaint and Counterclaim filed August 26, 2011
- k. 2009 Case Respondent's Amended Answer and Counterclaim filed on October 24, 2011
- l. 2010 Case Respondent's Amended Answer and Counterclaim filed on October 24, 2011
- m. 2009 Case Jarmuth's Reply to Amended Answer and Counterclaim and Assertion of Counterclaim filed on December 20, 2011
- n. 2010 Case Jarmuth's Reply to Amended Answer and Counterclaim and Assertion of Counterclaim filed on December 20, 2011
- o. Jarmuth's Post-Trial Motions in Consolidated Cases dated September 19, 2012
- p. Jarmuth's Memorandum, Brief, and Exhibit List in Support of Post-Trial Motion for Relief dated January 22, 2013
- q. Jarmuth's Notice of Appeal of Final Order in Consolidated Cases dated April 3, 2013
- r. Jarmuth's Final Brief in Appellate Case No. 2013-000614 clocked July 22, 2013
- s. Jarmuth's Motion for Rehearing in Appellate Case No. 2013-000714 dated March 12, 2015

- t. Jarmuth's Notice of Motion and Motion for Civil Contempt filed March 17, 2015
- u. Jarmuth's Amended Notice of Motion and Motion for Civil Contempt dated June 10, 2015
- v. Respondent's Return to Motion for Rehearing in Appellate Case No. 2013-000714 dated filed March 24, 2015
- w. Jarmuth's Reply to Respondent's Return to Motion for Rehearing dated March 27, 2015
- x. Jarmuth's Petition for Writ of Certiorari to Review Unpublished Opinion No. 2015-UP-111 dated May 12, 2015
- y. Respondent's Return to Petition for Writ of Certiorari filed June 12, 2015
- z. Jarmuth's Rule 60(b)(2) and (3) Motion for Relief from Judgment dated January 22, 2016
- aa. Jarmuth's Amended Addition to Rule 60(b)(2) and (3) Motion for Relief from Judgment dated February 1, 2016
- bb. William Friebboth's Memorandum in Opposition to Jarmuth's Notice of Motion and Motion for Civil Contempt and Amended Motion for Contempt filed March 3, 2016
- cc. McNair Law Firm, P.A.'s Memorandum in Opposition to Jarmuth's Notice of Motion and Motion for Civil Contempt and Amended Motion for Contempt filed March 3, 2016
- dd. Respondent's Memorandum in Opposition to Jarmuth's Rule 60(b)(2) and (3) Motion for Relief from Judgment with Exhibits filed March 3, 2016
- ee. Jarmuth's Rule 12(b)(1)/Rule 60 Motion to Dismiss Counterclaim – No Subject Matter Jurisdiction filed March 11, 2016
- ff. Respondent's Memorandum in Opposition to Motion to Dismiss Counterclaim for Lack of Subject Matter Jurisdiction filed April 8, 2016
- gg. Jarmuth's Memorandum in Support of Rule 12(b)1/Rule 60 Motion to Dismiss Counterclaim for Lack of Subject Matter Jurisdiction filed April 27, 2016

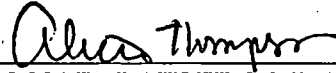
TRANSCRIPTS

- a. Transcript of April 27, 2016 Hearing on Jarmuth's Rule 12(b)(1)/Rule 60 Motion to Dismiss Counterclaim dated March 11, 2016

CERTIFICATION

We certify that this Designation contains no matter which is irrelevant to this Appeal.

Respectfully submitted,



McNAIR LAW FIRM, P.A.
Henrietta U. Golding
Alicia E. Thompson
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(843) 444-1107
Attorneys for Respondent
The International Club, Inc.

Myrtle Beach, South Carolina
Date: November 28, 2016
1343864v1

STATUTES AND RULES

- 1 **42 USC 3617 Retaliation**
- 2 **42 USC 3631 Criminal**
- 3 **SC 31-21 Fair Housing Extracts**
- 4 **Rule 8 SCRCP Pleading Claims**
- 5 **Rule 9 SCRCP Pleading Special Matters**
- 6 **Rule 12 SCRCP Objections**
- 7 **Rule 56 SCRCP Summary Judgment**
- 8 **Rule 60 SCRCP Judgment is Void**

ORDERS

- 9 **June 13, 2012 Consent Order of Reference**
- 10 **September 10, 2012 Final Order**
- 11 **October 17, 2012 Special Referee Order of Recusal**
- 12 **March 4, 2015 Appeal Final Order**
- 13 **April 24, 2015 SCCA Order Denying Rehearing**
- 14 **January 15, 2016 SCSC Order Denying Certiorari**
- 15 **April 27, 2016 Form 4 Order**
- 16 **June 6, 2016 Long Order following Hearing**

TESTIMONY

- 17 **April 27, 2016 Transcript of Hearing (all)**

EVIDENCE

- 18 **January 29, 1999 Deed to Sunbelt Development**
- 19 **February 8, 1999 Covenants
Section 6.1, Creation of a Lien
Section 6.8, Effect of Non-Payment of Assessments**

Jarmuth December 5, 2016 Designation of Material in Record on Appeal

**Section 7.2, Prior Review of All Plans
Section 8.1, Enforcement
Section 8.9, Remedies for Violation of Restrictions**

- 20 February 8, 1999 Bylaws Section 13.3, Procedures [Jarmuth Hearing Exh #9].
- 21 March 1, 2001 HOA Secretary of State Corporate Filing
- 22 April 7, 2009 "2009" 3596 Complaint
- 23 May 12, 2009 HOA Answer to 2009 Complaint
- 24 July 21, 2009 Jarmuth ARB Request
- 25 August 17, 2009 SCHA Complaint
- 26 October 15, 2009 "2009" HOA Legal Services Check
- 27 October 15, 2009 HOA "2009" General Ledger - Legal Services
- 28 May 5, 2010 HOA Board Meeting Minutes "Re Enforcement of Covenants" [Jarmuth Hearing Exh #10]
- 29 June 9, 2010 "2010" HOA Legal Services Check
- 30 June 9, 2010 HOA "2010" General Ledger – Legal Services
- 31 September 27, 2010 Violation Notice #1
- 32 September 30, 2010 Jarmuth ARB Modification Request
- 33 October 5, 2010 ARB Meeting Minutes
- 34 October 12, 2010 "2010" Magistrate Complaint
- 35 November 10, 2010 HOA Board Meeting Minutes [Jarmuth Hearing Exh #11]
- 36 November 17, 2010 HOA "2010" Magistrate Complaint Answer
- 37 December 7, 2010 ARB Meeting Minutes
- 38 October 24, 2011 HOA Counter-Claim pp 7-12 of Amended Answer [Plaintiff's Hearing Exh #8]
- 39 December 20, 2011 Jarmuth Answer to HOA Counter-Claim
- 40 August 8, 2012 Trial Transcript "2009 Check" Description p.59

Jarmuth December 5, 2016 Designation of Material in Record on Appeal

41	August 8, 2012	Trial Transcript “2010 Check” Description p.62
42	August 10, 2012	HOA President William Freiboth Trial Testimony pp. 897-898; 908-909; 946-950
43	April 3, 2013	Notice of Appeal
44	March 3, 2016	McNair Memo – Rule 60 Relief
45	March 11, 2016	Jarmuth Motion to Dismiss
46	April 8, 2016	McNair Opposition to Motion to Dismiss
47	April 27, 2016	Jarmuth Hearing Exhibit 1A “Missing from Counter-Claim”
48	April 27, 2016	Jarmuth Hearing Exhibit 1B HOA Counter-Claim
49	April 27, 2016	Jarmuth Hearing Exhibit 8, 1C HOA Counter - Claim Facts Alleged
50	May 17, 2016	Notice of Appeal
51	June 24, 2016	Amended Notice of Appeal

Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
December 5, 2016

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211-1629
803-734-1890

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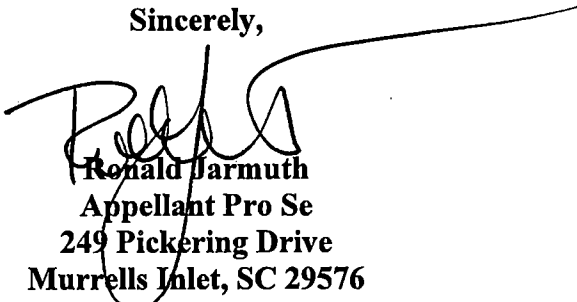
Re: Motion in Appeal 2016-001063 Jarmuth v International Club
2009CP263596 in the Court of Common Pleas, Horry County

Dear Madam Clerk:

Please file the attached Motion to Limit the Record on Appeal, which I provide as one unbound plus six bound copies, together with my check in the amount of twenty five dollars, the motion filing fee.

Thank you for your attention to this matter.

Sincerely,



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

Enc: as
Cf: Henrietta Golding, Attorney for Respondents