

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

Ronald Jarmuth, *Pro Se* Appellant,

v.

The International Club Homeowners
Association, Inc., Respondent.

RESPONDENT'S RETURN TO APPELLANT'S
MOTION TO LIMIT THE RECORD ON APPEAL

Respondent, The International Club Homeowners Association, Inc. (hereinafter "Association"), hereby submits this Return to the Motion to Limit the Record on Appeal dated December 5, 2016. The motion of Appellant, Ronald Jarmuth (hereinafter "Jarmuth") should be denied, because it attempts to limit relevant matters that were before the lower court in contravention of Rules 209 and 210, South Carolina Appellate Court Rules (hereinafter "SCACR").

RECEIVED

DEC 15 2016

SC Court of Appeals

ARGUMENT

Rule 209(b) states that “[a] party shall not include any matter in his Designation which is not relevant to the appeal.” Rule 209(b), SCACR. Similarly, Rule 210(c) mandates that all matters designated by the parties shall be included in the Record, however, “[t]he Record shall not...include matter which was not presented to the lower court or tribunal.” Rule 210(c), SCACR. As a general principle, “[t]he appellate court ... will not entertain motions to exclude matter designated for inclusion in the record on appeal.” Jean H. Toal, *Appellate Practice in South Carolina*, 141 (2002).

I. Documents Establishing Procedural History

Jarmuth attempts to strike filed documents in Civil Action Nos. 2009 CP-26-3596 (hereinafter “2009 Case”) and 2010-CP-26-11320 (hereinafter “2010 Case”) from the Association’s Designation, because he argues that they were not before the lower court. (Motion to Limit Record, pp. 8-9). Those filings include Orders that were of record on the date of the April 27, 2016 hearing on his Motion to Dismiss: 1) Order transferring the 2010 Case to the circuit court; 2) Order consolidating the 2009 Case and the 2010 Case; 3) Order granting leave to file the Counterclaims that Jarmuth asserts the court lacks subject matter jurisdiction to hear; and 4) Order denying Jarmuth’s Post-Trial Motions finding that the lower court had subject matter jurisdiction to enter the Final Order. (*Id.*, p. 7). The filings that are part of the record for the cases were clearly before the lower court at the time that the Order denying the Motion to Dismiss was entered.

The Motion to Limit the Record also includes an argument that those filing are not relevant to the issue of whether the lower court had subject matter jurisdiction to enter into the Final Order in the 2009 Case and the 2010 Case. The Orders and pleadings

designated establish the manner in which the 2009 Case and the 2010 Case came before the special referee for trial. Furthermore, most of the filings that Jarmuth argues should be stricken were referenced by the Association in its opposition to the Motion to Dismiss and in the lower court's order denying the Motion to Dismiss. Although they were not attached to the memorandum or the order as exhibits, those documents were relied upon by the lower court in denying Jarmuth's Motion to Dismiss and are relevant to this appeal.

II. Filings Related to 2012 Post-Trial Motions

Additionally, Jarmuth's 2012 post-trial motion, filed brief in support, and 2013 Order denying his post-trial motions were part of the record at the April 27, 2016 hearing and are directly relevant to the issue of subject matter jurisdiction. Each of these filings reflect that Jarmuth previously raised that the special referee did not have subject matter jurisdiction to enter the Final Order and that the lower court found that the Final Order is not void for lack of subject matter jurisdiction. They are germane to the issue of whether the law of the case doctrine applies and the lower court's previous consideration and ruling that the special referee had subject matter jurisdiction.

III. Filings Designated to Oppose New Arguments

As to the remaining documents designated by the Association that are challenged in the Motion to Limit the Record, Jarmuth raises new arguments for the first time on appeal that were not presented to the lower court at the April 27, 2016 hearing. More particularly, Jarmuth asserts for the first time that the lower court did not have subject matter jurisdiction to award attorneys' fees to the Association, because he argues that the fees were incurred in defending a complaint before the South Carolina Human Affairs

Commission (hereinafter "SCHAC"). In support of this newly raised argument, Jarmuth designated several documents that were not relied upon by the lower court at the April 27, 2016 hearing, including the HOA's accounting documents, testimony from the 2012 trial, Association meeting minutes, the Declaration, the Bylaws, and checks for attorneys' fees. (Jarmuth's Amended Designation, Nos. 18-20, 24-37, 40-42). In fact, Jarmuth has filed several other post-appeal motions seeking to set aside the Association's judgment in the 2009 Case and the 2010 Case based upon the same evidence, however those motions have not been heard yet by the lower court and are currently pending. Jarmuth's pending motions and the Association's opposition to those motions filed with the Court were designated by the Association to evidence that the lower court has not yet considered those arguments.

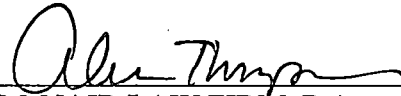
Although Jarmuth has not previously argued that special referee did not have subject matter jurisdiction to award fees incurred in connection with the SCHAC matter, he has argued that the award of fees was generally improper at trial and on appeal. As a result of Jarmuth's new subject matter argument, the Association had no choice to designate matters from the Appellate Case No. 2013-000714 and post-appeal motions wherein he argued that the award of attorneys' fees incurred in defending the SCHAC matter and the orders denying those motions. Because this Court and the Supreme Court have already considered his arguments that the fees were awarded in error based on the same evidence, the filings reflecting those arguments and the orders denying the motions and petition should be included in the Record on Appeal. These matters were designated out of an abundance of caution to defend new arguments raised by Jarmuth that the special referee did not have subject matter jurisdiction to award attorneys' fees.

Each of the filings designated were referred to and relied upon by the Association in its initial brief. Because the filings were before the lower court (or are designated to respond to new arguments) and because they are relevant to this appeal, they should be included in the Record on Appeal.

CONCLUSION

For the foregoing reasons, the Association respectfully requests that the Jarmuth's Motion to Limit the Record on Appeal dated December 5, 2016 be denied.

Respectfully submitted,



McNAIR LAW FIRM, P.A.
Henrietta U. Golding, SC Bar #2173
Alicia E. Thompson, SC Bar #77056
Post Office Box 336
2411 Oak Street, Suite 206
Myrtle Beach, SC 29578
(843) 444-1107

Attorneys for Respondent
The International Club Homeowners
Association, Inc.

Myrtle Beach, South Carolina
Date: December 14, 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

Ronald Jarmuth, *Pro Se* Appellant,

v.

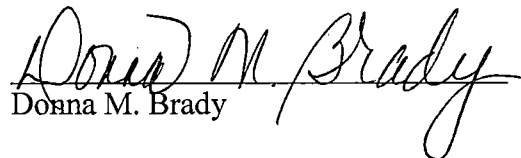
The International Club Homeowners
Association, Inc., Respondent.

PROOF OF SERVICE

I, Donna M. Brady, an employee of McNair Law Firm, P.A., certify that I have served Respondent's Return to Appellant's Motion to Limit the Record on 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 14th day of December, 2016.

Pro Se Appellant of Record:

Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576


Donna M. Brady

Myrtle Beach, South Carolina
1356974v1

RECEIVED

DEC 15 2016

SC Court of Appeals

Alicia Thompson

athompson@mcnair.net
T (843) 443-3058

December 14, 2016

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.*
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:

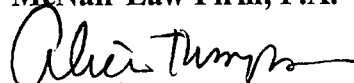
- Original (unbound) and seven copies of the Respondent's Return to Appellant's Motion to Limit Record on Appeal; and
- Proof of Service.

By copy of this letter, 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

AT/dmb
Enclosures
cc: Ronald Jarmuth
Clients

RECEIVED

DEC 15 2016

SC Court of Appeals

McNair Law Firm, P. A.
Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Mailing Address
Post Office Box 336
Myrtle Beach, SC 29578

mcnair.net

RECEIVED

DEC 15 2016

SC Court of Appeals



M C N A I R
ATTORNEYS

McNair Law Firm, P.A.
Post Office Box 336
Myrtle Beach, SC 29578
www.mcnair.net

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

FIRST CLASS MAIL



UNITED STATES POSTAGE



02 1P
0003181123
MAILED FROM ZIP CODE 29577

\$ 002.830

DEC 14 2016