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 RETURN TO RESPONDENT'S MOTION TO AMEND THE RECORD ON APPEAL

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

Henrietta U. Golding
Alicia F. Thompson
2411 Oak Street; Suite 206
Myrtle Beach, SC 29577-3164
843-444-1107
Attorneys for Respondent

1. Appellant Ronald Jarmuth Responds to Respondent's Motion to Amend the Record on Appeal. Said Motion was "mailed" to the Court of Appeals on December 21, 2016, and allegedly mailed to Appellant that date [1] but received by Appellant on December 28, 2016.

A moment of reflection and clarity is in order. The matter on appeal is whether Appellant's Housing Discrimination Claim was ever before the lower court such that it could award attorney fees to the HOA to defend a Housing Discrimination investigation – where the Housing Discrimination matter is absent from any claim or pleading pre-trial, where the award of reimbursement for the attorney fees to deal with the investigation constitutes criminal retaliation under federal law, and where there is no contract or statutory provision allowing for such an award. The greatest portion of the omitted documents have nothing to do with the discrimination matter nor the related attorney fees and were written long before the discrimination claim was filed with S.C. Human Affairs and long before any counter – claim alleging any claim at all was filed in October, 2011.

2. Instant Motion is frivolous and should be stricken in accordance with Rule 269 SCACR. It is nothing more than an attempt at a "second bite at the apple", an attempt to improve Respondent's December 14, 2016 Return to Appellant's December 5, 2016 Motion to Limit the Record on Appeal. Respondent's instant motion was filed December 21, 2016 four days AFTER the Record on Appeal was filed December 17, 2016.

Without saying so, Respondent is seeking an opportunity to respond to

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1 From Respondent's counsel only miles away.

Appellant's December 17, 2016 Reply on that matter – to which a further comment by Respondent is not permitted. It is filed to disrupt the orderly processing of the case. Four days after the Record on Appeal was filed it seeks to delete 34 of the 53 documents in the Record on Appeal and alter an additional 7, leaving only 11 of the 53 as filed. It also seeks to add 39 documents it never cited which would more than unnecessarily triple the size of the Record on Appeal, from 334 pages to 1216 pages. The hearing from which the appeal arises lasted only less than fifteen (15) minutes!

The proposed massive alteration of the Record on Appeal is not proposed to make the Record on Appeal reflect the documents actually depended on by the lower court or cited in the Briefs but rather simply to increase the cost of litigation and to burden Appellant without any benefit to the reviewing appellate panel.

The review of the belated and unauthorized reply to Appellant's reply to Appellant's Motion to Limit waste of this Court's time to address the same matter twice. The issue of what should or should not be in the Record on Appeal has been fully brief, in excruciating detail, in Appellant's December 5, 2016 Motion to Limit the Record on Appeal, in Respondent's December 14, 2016 Return to that Motion, and in Appellant's December 17, 2016 Reply on the matter.

3. For cause Respondent simply says, Motion p.1, that

> **"The Record should be supplemented to include documents designated by the Association".**

This is the same argument raised by Respondent on December 14, 2017. To sum up the counter – argument:

Neither Respondent nor Appellant ever cited to a single page, paragraph, or word of any omitted document in their pre-hearing pleadings, at the hearing (as

reflected in the Transcript of the April 27, 2016 hearing, nor in their respective Initial Briefs. Given that this argument was raised by Respondent in the pleadings related to the Motion to Limit the Record on Appeal and challenged by Appellant in those pleadings, one would expect that the Respondent would take this opportunity to quote where a single page, paragraph, or word of an omitted document was cited in the testimony or pleadings. The silence is deafening.

4. To reiterate what was stated by Appellant in his pleadings, inclusion of the omitted documents would not serve either of two important purposes:

a. Since Respondent's Initial Response Brief never cites to a single page number (or paragraph or word) of any omitted document, inclusion of the omitted documents would not serve the purpose of Rule 211(b)(1) SCRAP Final Briefs which provides that

> "References to the Record. The references in the initial briefs shall be revised to indicate where the material appears in the record on appeal. These revised references may be in place of or in addition to the initial references ..."

The irrelevance of the omitted documents is that the initial briefs have no "references in the initial briefs" to the omitted documents, certainly not by page or paragraph. Further, Rule 209(b) SCACR states that

> "A party shall not include any matter in his designation which is not relevant to the Appeal".

In Appellant's Motion and Reply to the matter of Limiting the Record on Appeal Appellant cites extensive case law that a party may not raise issues or rely on documents not before the court below. The omitted documents were never before the Court below, were never relied on in the pre-hearing pleadings, never relied on at the hearing, and are not relied on in the Appellate Briefs.

The proper way for Respondent to seek inclusion of the omitted documents which were never part of the lower court's decision making would be for Respondent to comply with Rule 212 SCACR Supplemental Pleadings, showing cause for each desired supplemental document. In instant Respondent's Motion to Amend the Record on Appeal the omitted documents are not represented as supplemental. Instead Respondent artfully attempts to create the illusion that they are part of the material considered by the lower court and depended on by Respondent in its' Appellate Brief. Such a representation is a fraud.

5. Respondent's Exhibit A does not substantiate any reason for the inclusion of any omitted document. It merely affirms that on November 28, 2016 Respondent identified a bunch of documents and said that these should be included "because I say so". The exhibit is useless to ascertain the relevance or need for any omitted document.

6. Appellant's December 17, 2016 Reply to the Motion to Limit the Record on Appeal, at pages 4 through 14, provides in detail why the omitted documents do not belong in the Record on Appeal. Fortunately, Respondent's instant Motion to Amend, Respondent's Return to Appellant's Motion to Limit the Record on Appeal, and Appellant's Return to the Motion to Limit the Record on Appeal all use the same document numbering scheme. To sum up, on pages 4 through 14 of Appellant's Reply thereto, Appellant cites (one by one) where documents are omitted from the pre-hearing pleadings, from the hearing, and from Respondent's Initial Response Brief. In Respondent's Motion to Amend the Record on Appeal Respondent fails to show, for a single omitted document, were it was depended on,

mentioned, cited, or for many that the document were even in the Horry County Courthouse. Respondent is simply wasting this Court's time.

7. At Exhibit A to this Pleading Appellant, document by document, points to where (in Appellant's December 17, 2016 Reply to the Motion to Limit the Record on Appeal) Appellant explains the reason why each should be omitted – that all omitted documents were not in the pleadings, mentioned at the hearing, nor depended on in the Appellate Briefs. Further, that many were not even in the Courthouse and that many, if they had been mentioned, are irrelevant to the question of subject matter jurisdiction of an award of attorney fees to defend a housing discrimination investigation where there is no statute or contract provision allowing such an award and where the demand for same was never raised in a claim.

8. Scattered among the documents mentioned by Respondent's Motion are a few where Respondent objects to how the documents are reproduced. Appellant deals with each in Appellant's Exhibit B to this Return. To sum up, these few documents were not quoted by Respondent in any way – mentioned in passing – or were before the lower court as printed in the Record on Appeal. Respondent also asserts that several were "unfiled". Appellant's discussion at Exhibit A addresses this as well. Appellant also submits Exhibit C – the Table of Contents which was the first page of Appellant's Exhibits presented to the Court Reporter (and Judge) (Record on Appeal Page 94 Lines 2 through 11) at the beginning of the hearing for filing – without objection by Respondent at the time. At the hearing Respondent never objected to the form of any such document and any objection to the form

below is lost on appeal, there being no cross – appeal.

9. As a test Appellant assembled a PDF including all of the omitted documents which Respondent demands be included. The Record on Appeal as filed totals 332 pages. The omitted documents, never cited to or relied on below of in this Appeal, total an additional 892 unnecessary and irrelevant pages. The unnecessary addition would enlarge the Record on Appeal to approximately four (4) times its' current size. The proposed alterations are even more outrageous since Respondent has not a single page citation to any of these (or to any page at all) in Respondent's Initial Response Brief.

[Continued on Next Page]

CONCLUSION

10. Conclusions.

a. Respondent's Motion to "Amend" is an unauthorized and unjustified attempt to reply to Appellant's previously fully "briefed" (by both sides) Motion to Limit the Record on Appeal.

b. The proposed alterations attempt to remove from the Record almost all the documents depended on by the lower court and cited by Appellant in the Appeal Briefs.

c. In Respondent's Initial Response Brief no citations are made to any page in any document thus the proposed alterations are not needed by Respondent to translate Respondent's non-existent references to pages in documents to pages in the Record on Appeal.

d. The proposed alterations do not contribute in any way to the determination of the matters before the Court of Appeals.

e. Respondent's Motion to Amend should be completely denied.

Ronald Jarmuth, Appellant Pro Se
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
December 29, 2016

Exhibits:
A – Consideration of 26 Documents Respondent wants Added.
B – Consideration of 7 Documents Respondent wants Altered.
C – Appellant's prior Reply to Motion to Limit Record, which has detailed analysis.
D – Actual Table of Contents to Exhibits Appellant filed at the Hearing.
E – Consideration of 34 Documents that Respondent wants Deleted.

EXHIBIT "A"
WHY OMITTED DOCUMENTS DO NOT BELONG IN RECORD ON APPEAL

Numbering

Document "numbering" are those provided by Respondent in Respondent's Motion to Amend the Record on Appeal, and are the same numbers used by Appellant in his Reply to Appellant's Motion to Limit the Record on Appeal. These are also the same numbers used by Respondent in Respondent's Designation of the Record on Appeal. For each document, a cross reference is provided to Appellant's detailed explanation in this December 17, 2016 Reply to Appellant's Motion to Limit the Record on Appeal – Exhibit C to Appellant's Return to Respondent's instant motion.

The Twenty Eight Documents Were Never Before the Court

ORDERS

a. Order transferring Case 201O-CP-26-11320 from Magistrate's Court to Circuit Court - December 1, 2010.

See "a" on page 4.

b. Order Consolidating Case 2009-CP-26-3596 ("2009 Case") & Case 2010-CP-26-11320 ("2010 Case") - September 16, 2011

See "b" on page 5.

c. Order granting HOA Leave to Amend Answers to Assert Counterclaims - October 11, 2011

See "c" on page 6.

g. Order Denying Jarmuth's Post-Trial Motions - March 11, 2013

See "g" on page 6.

Exhibit A

k. Appellate Court Remittitur - January 21, 2016

See "k" page 6.

PLEADINGS

c. 2009 Case Jarmuth's Reply to Counterclaim - May 15, 2009

See "c" page 7.

d. 2009 Case Jarmuth's Amended Complaint - May June 9, 2009

See "d" page 7.

e. 2009 Case HOA Answer to Amended Complaint and Answer - June 19, 2009

See "e" page 7.

f. 2009 Case Jarmuth's Reply to Counterclaim - July 2, 2009

See "f" page 8.

l. 2010 Case HOA Amended Answer and Counterclaim - October 24, 2011 (same as #k) thus [included in RoA by Appellant]

See "l" page 8.

n. 2010 Case Jarmuth Reply to Amended Counterclaim - December 20, 2011.

See "n" page 9.

o. Jarmuth Post-Trial Motions - September 19, 2012

See "o" page 9.

p. Jarmuth Memo in Support of Post-Trial Motion - January 22,

2013. See "p" page 10.

r. Jarmuth Final Appellate Brief - No. 2013-000614 - July 22, 2013

See "r" page 10. Appellate pleadings are not in the Horry County courthouse.

s. Jarmuth Appellate Motion for Rehearing - March 12, 2015

See "s" page 10. Appellate pleadings are not in the Horry County courthouse.

t. Jarmuth Trial Court Motion for Civil Contempt (Perjury of HOA Witness) - March 17, 2015 (pending)

See "t" page 10. This pleadings has never been heard by any court.

u. Jarmuth Trial Court Amended Motion for Civil Contempt (perjury by HOA witness) - June 10, 2015 (pending)

See "u" page 11. This pleadings has never been heard by any court.

v. HOA Appellate Return to Motion for Rehearing - March 24, 2015

See "v" page 11. Appellate pleadings are not in the Horry County courthouse.

w. Jarmuth Appellate Reply, Motion for Rehearing - March 27, 2015

See "w" page 11. Appellate pleadings are not in the Horry County courthouse.

x. Jarmuth SC Supreme Court Petition for Writ of Certiorari - May 12, 2015

See "x" page 11. Appellate pleadings are not in the Horry County courthouse.

y. HOA Return to SC Supreme Court Petition for Writ of Certiorari - June 12, 2015

See "y" page 12. Appellate pleadings are not in the Horry County courthouse.

z. Jarmuth Rule 60(b)(2) and (3) Motion for Relief (Extrinsic Fraud by HOA Attorney) from Judgment - January 22, 2016 (pending)

See "z" page 12. This pleadings has never been heard by any court.

aa. Jarmuth Amended Rule 60(b)(2) and (3) Motion for Relief (Extrinsic Fraud) from Judgment - February 1, 2016

See "aa" page 12. This pleadings has never been heard by any court.

bb. William Frieboth's (HOA Witness) Memorandum in Opposition to Jarmuth's Motion for Civil Contempt - March 3, 2016 (pending)

See "bb" page 13. This pleadings has never been heard by any court.

cc. McNair Law's March 3, 2016 Memorandum in Opposition to Motion for Civil Contempt.

This pleading IS IN THE RECORD ON APPEAL! The representation that this is omitted illustrates that McNair Law, Respondent's counsel, is just "throwing the kitchen sink" out there and making frivolous demands.

[Continued on Next Page]

gg. Jarmuth Memorandum in Support of Rule 12(b)l/Rule 60 Motion to Dismiss Counterclaim No Subject Matter Jurisdiction - April 27, 2016

See "gg" page 14. At the hearing this document was excluded by the Judge at the request of Respondent's Counsel. As a result it was unavailable to Appellant to use at the hearing nor in his brief. It was never before any court.

Respondent never cites to a page, paragraph, or word of this in Respondent's Initial Response Brief.

> **"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.**

This is another illustration of the frivolous and outrageous pleading conduct of Counsel for Respondent!

Ronald Jarmuth, Appellant Pro Se
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
December 29, 2016

EXHIBIT "B"
DOCUMENTS WHERE RESPONDENT OBJECTED TO FORM

Numbering

Document "numbering" are those provided by Respondent in Respondent's Motion to Amend the Record on Appeal, and are the same numbers used by Appellant in his Reply to Appellant's Motion to Limit the Record on Appeal. These are also the same numbers used by Respondent in Respondent's Designation of the Record on Appeal. For each document, a cross reference is provided to Appellant's detailed explanation in this December 17, 2016 Reply to Appellant's Motion to Limit the Record on Appeal – Exhibit C to Appellant's Return.

Here's why these twenty eight documents do not belong in the Record on Appeal:

ORDERS

e. September 10, 2012 Final Order of Trial Court.

Respondent asserts that six (6) pages of this document in Respondent's copy of the Record on Appeal are "illegible". Appellant has confirmed that these pages in all other copies of the Record on Appeal are "fine". Appellant has provided Respondent replacements for these pages. If believed, this problem exists only in Respondent's copy. Neither party cites to these pages.

PLEADINGS

g. October 12, 2010 Appellant's Magistrate Court Complaint.

Exhibit B

This document predates the S.C. Human Affairs Discrimination Complaint by two years. It is not cited to by any pre-hearing pleading, nor depended on to prove anything at the hearing, nor depended on to prove anything in Respondent's Initial Response Brief. No page, paragraph or word is cited by any party. The same document "image" was used in the Appeal of the Final Order with no objection by Respondent.

Respondent objects that the "image" has no signature but Respondent does not assert that the document is other than word for word the document as filed, including spacing and formatting. The objection if frivolous.

Respondent also asserts that the document was never "filed". Appellant points to Appellant's Hearing Exhibits Table of Contents, Exhibit D to Appellant's Reply to Respondent's instant motion. The 2010 Magistrate Complaint was before the lower court as Plaintiff's Exhibit #7 and, per the transcript RoA P.94, Lines 2-11 was filed with the Court WITHOUT A SIGNATURE. Respondent did not object at the time and has not cross appealed thus this issue is lost on appeal.

m. December 20, 2011 Appellant's Answer (as Plaintiff) to Counter – Claim

At various times Respondent has mentioned that in Appellant's Answer to paragraph #53 of the Answer to the Complaint, Appellant consented to subject matter jurisdiction without actually quoting a single word or citing to a page. Without such a citation it is almost impossible for the Appellate Panel to figure out just what Respondent is relying on. Certainly in Respondent's Final Response Brief Respondent can not translate a non-existent page reference to a corresponding page in the Record on Appeal.

Appellant included the document as a courtesy to Respondent. Since

Respondent does not state where the important phrase is, Appellant drew a box around the phrase so that the Appellate Panel can find it.

Respondent also asserts that neither side actually filed this document with the court below, prior or at the hearing so it is unfathomable why Respondent simultaneously says it is "unfiled", but wants it included in the Record on Appeal AND why the "box" is objected to. Respondent can't have it both ways.

Appellant's solution is appropriate – include it and add the "box" absent a citation by Respondent so that the Appellate Panel can see if Appellant is correct that paragraph #53 can not convey subject matter jurisdiction by consent of one party and that if anything it deals with venue.

q. April 3, 2013 Notice of Appeal of prior Order.

This document was never cited to in any pre-hearing pleading nor depended on in any way at the hearing below. It is also not cited to in the Initial Response Brief nor anywhere by Appellant. It does not belong in the Record on Appeal in this Appeal but is included as a courtesy.

Respondent clearly desires its' inclusion since it is in Respondent's list as "q". Yet Respondent also says it is "unsigned, unfiled copy". Respondent does not contest the accuracy or authenticity of the document. Not a word of the document has any legal or factual bearing on the matters under appeal and was never before the court below at the hearing. Respondent can't have it both ways.

Appellant suggests leaving the document as is in the Record on Appeal to humor Respondent; it will never be cited by page in Respondent's Final Response Brief (no citation in the Initial Response Brief) and will never be read by the Appellate Panel. The whole issue is frivolous by Respondent.

dd. HOA Memo in Opposition to Jarmuth Rule 60(b)(2) and (3)Motion for Relief from Judgment (Extrinsic Fraud) - March 3, 2016 (pending)

The HOA's Memo in Opposition was not before the Court at the hearing. Not a word about this is to be found in Respondent's pre-hearing memo nor in the final order. Not a word about this was mentioned at the hearing.

The HOA (Respondent) Memo has not been heard by any court and has no factual or legal value against Appellant.

Respondent objects that the copy in the Record on Appeal omits the exhibits. However, those exhibits were never seen by any court as part of the Memorandum. The Memo itself, again never heard, dealt with another matter.

The body of the Memo is included because it includes an admission against interest by Defendant / Respondent, which Appellant cited by original page and paragraph, quoting the relevant phrases. In that admission Respondent admits that the second attorney fee check has nothing to do with the underlying case but was paid for legal services related to the S.C. Human Affairs Housing Discrimination investigation – absolutely relevant to the appeal. The annotation is a "box" showing where the phrases are that Appellant quotes and cites to. There is nothing relevant in the absent Exhibits and Respondent does not assert there is.

Respondent did not rely on this pre-hearing, at the hearing, nor in the Initial Response Brief so Respondent's issues are frivolous. The inclusion of irrelevant exhibits will just physically burden the Record on Appeal and contribute nothing to determining the issues on Appeal. Respondent has a real issue complying with the rules.

ee. Appellant's March 11, 2016 Motion to Dismiss Counter – Claim for lack of Subject Matter Jurisdiction.

Respondent objects that the copy in the Record on Appeal is "unsigned" but does not contest that it is precisely the document (less the signature) that was before the lower court that brought on the hearing that is the source of this Appeal. The lack of the signature on the reproduced copy does not alter the factual or legal relevance of the document.

What is unfathomable is that Respondent also objects that the document is "unfiled". How then does Respondent explain that a hearing was held in the first place? If it was "unfiled" the signature issue is irrelevant. Respondent is simply being frivolous and obstructive.

Respondent next objects that the Record on Appeal contains an "annotated version". However, the annotations are on EXHIBITS and were on the Exhibits AS FILED IN THE LOWER COURT. To remove the annotations would be to alter the record. In addition, in the court below, Respondent did not object to the annotations and has lost that issue in appeal (and there is no cross – appeal).

This is all one more frivolous object by Respondent.

ff. April 8, 2016 Respondent Motion Opposing Appellant's Motion to Dismiss Counter – Claim for lack of Subject Matter Jurisdiction.

Respondent objects that the "Exhibits [are] omitted".

There are three Exhibits: (A) June 13, 2012 Consent Order of Reference (RoA p. 312); (B) December 20, 2011 Plaintiff's Answer to Amended Counter – Claim (RoA p. 248); and (C) October 17, 2012 Special Referee's Order of Recusal (RoA p.67).

Respondent never quoted a single phrase in any of these documents and

never cited to a single page of any. As Exhibits, they are duplicates of the Originals found elsewhere (as themselves) in the Record on Appeal. At Record on Appeal pp312-314, Appellant inserted pages stated where the Exhibits, as originals, are to be found. There is nothing to be gained by weighing down the Record with duplicates, especially when Respondent never actually cites to anything in those documents to as a fact or point of law. The three documents are present because in the hearing below Respondent said that somewhere in these documents is something to be found supporting that the lower court had subject matter jurisdiction – but Respondent never quoted any phrase or pointed to any sentence (or page) where the magic phrases might be found (because there are simply none; neither a court nor the parties can create their own subject matter jurisdiction).

The whole matter of wanting duplicates of material with no factual or legal contribution to the matter is frivolous.

Ronald Jarmuth, Appellant Pro Se
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
December 29, 2016

THE STATE OF SOUTH CAROLINA
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Appeal No. 2016-001063

APPEAL FROM HORRY COUNTY
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CASE NUMBER 2009-CP-26-3596

Ronald Jarmuth Appellant,

v.

The International Club Respondent

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

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

Henrietta U. Golding
Alicia F. Thompson
2411 Oak Street; Suite 206
Myrtle Beach, SC 29577-3164
843-444-1107
Attorneys for Respondent

Exhibit C

1. Appellant Ronald Jarmuth replies to Respondent's return to Appellant's Motion to Limit the Record on Appeal – to exclude extraneous material never before the trial court and which is immaterial to the matter on appeal.

2. There is only Appellant's Appeal. There is no cross appeal. As Courts have consistently held the Record on Appeal must contain only material actually presented at the trial court level, and which is actually material to determining the issues set before the Court of Appeals by Appellant.

3. The Respondent has no burden to prove anything.

4. The Respondent is prohibited from raising arguments or citing documents not raised to / set before the trial court.

5. Respondent seeks to set before the Court of Appeals, in the Record on Appeal, twenty eight (28) documents never before the trial court. Six (6) of those documents are not even to be found in the Horry County Courthouse and are not to be found in the docket of the case below. Most of these documents were not even mentioned in Respondent's pre-hearing Memo, nor by anyone during the hearing, nor in the Order following the hearing. Amazingly, the last of those documents that Respondent seeks to include was excluded by the Judge at the Hearing – at the Request of the Respondent!

6. The fact that Respondent's Initial Response Brief does not cite to a single page, paragraph, or word of these twenty six (26) documents in support of Respondent's arguments makes Respondent's demand for their inclusion even more outrageous. In support of inclusion Respondent advances some theories which are diametrically opposed to the controlling rules of appellate procedure:

(a) That Respondent can designate anything that Respondent has a mind to state, citing a comment by Hon. Justice Toal which was not stated in a court opinion (Respondent at P.2 top, "Argument").

(b) That while the documents were not before the court at the hearing, they establish "I ... procedural history" (Respondent's Brief, p.2).

(c) That they are collaterally "II ... Related to 2012 Post-Trial Motions" although these were never before the Court at the 2016 hearing nor were they mentioned in Respondent's Pre-Hearing Memo, nor mentioned during the hearing, nor in the Order following the hearing which is under appeal.

(d) That the Respondent is allowed to introduce, for the first time at the appeal, impeachment evidence that was not before the trial court at the hearing, that was not in Respondent's Pre-hearing Memo, and that was absent from the Order following the hearing (Respondent, P3 "Oppose New Arguments").

7. In Respondent's Return, Respondent does not even attempt to show where Appellant was in the least bit incorrect about why any of the documents should be excluded. The Return does not even attempt to justify the inclusion of a single one for cause specific to any particular document. The argument is that "Respondent wants to include an additional 892 pages [1] which is almost triple the number of pages of documents which belong in the Record on Appeal and the Court should allow it "because Respondent says so".

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1 As a test, Appellant assembled a PDF including every one of the twenty eight documents to determine what the burden would be.

The Controlling Rule

8. a. SCRAP Rule 210 (c) provides that

> "The Record shall not, however, include matter which was not presented to the lower court".

Respondent's Return does not show where a single one of the twenty eight challenged documents was "presented to the lower court".

b. SCRAP Rules 209 (b) which provides that

> "A party shall not include any matter in his designation which is not relevant to the appeal"

The Twenty Eight Documents Were Never Before the Court

9. For the purpose of being able to compare this analysis with the Respondent's Designation and with Appellant's List of Documents to be Excluded, Appellant (below) includes documents (with the phrase "included in RoA by Appellant") which Appellant agrees belongs in the Record on Appeal. Thus the numbering is identical in this and the other two lists.

Here's why these twenty eight documents do not belong in the Record on Appeal:

ORDERS

a. Order transferring Case 201O-CP-26-11320 from Magistrate's Court to Circuit Court - December 1, 2010

> No citation to a single word in this order in Respondent's trial court memo, at the hearing, nor in the final order. No conclusions of law nor findings of fact citing this Order.

Respondent's Pre-Hearing Memo is silent on the Order Transferring.

Hearing: Respondent mentioned it existed, without citing how it has anything to do with the matter before the Court. Transcript Respondent P19 @7-9 "The Association moved to dismiss based on lack of subject matter jurisdiction, and the case was transferred to Circuit Court". [Respondent argued that Appellant's claim exceeded the statutory limit for a magistrate court].

Final Order: Mentioned in passing without assigning any factual or legal relevance:
P3 @ 6. "The Magistrate's Court transferred the 2010 Case to circuit court by order dated November 30, 2010 and filed on December 1, 2010."
P3 @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."

The Order transferring was not in evidence at the hearing.

b. Order Consolidating Case 2009-CP-26-3596 ("2009 Case") & Case 2010-CP-26-11320 ("2010 Case") - September 16, 2011

No citation to a single word in this order in Respondent's trial court memo, at the hearing, nor in the final order. No conclusions of law nor findings of fact citing this Order.

Respondent's Pre-Hearing Memo is silent on the Order Transferring.

Final Order: Mentioned in passing without assigning any factual or legal relevance:
P20 @ 9-11 "After that case was transferred, the case was consolidated with 2009-CP-3596,"
P3 @ 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."

The Order was not before the Court at the hearing.

c. Order granting HOA Leave to Amend Answers to Assert Counterclaims - October 11, 2011

Not a word about this in Respondent's pre-hearing memo nor in the final order. Not a word about this mentioned at the hearing.
The Order was not before the Court at the hearing.

d. [included in RoA by Appellant]

e. [included in RoA by Appellant]

f. [included in RoA by Appellant]

g. Order Denying Jarmuth's Post-Trial Motions - March 11, 2013

Not a word about this in Respondent's pre-hearing memo nor in the final order. Not a word about this mentioned at the hearing.
The Order was not before the Court at the hearing.

h. [included in RoA by Appellant]

i. [included in RoA by Appellant]

j. [included in RoA by Appellant]

k. Appellate Court Remittitur - January 21, 2016

Neither the Remittitur nor the Appellate Court Order were before the court at the hearing.

Respondent's pre-hearing Memo made did not cite anything in this Order that had any evidentiary or legal applicability. The Remittitur was mentioned in passing" Memo P.4: "The remittitur was issued on January 21, 2016" and at P5 "Upon the issuance of the remittitur, an appealed order becomes the law of the case "

Hearing: Respondent mentioned it as a historic occurrence without citing where there was any legal or factual relevance: Transcript –

P21 @ 19-21 "The case -- the final order in the two cases was affirmed on appeal and then the remittitur was issued on January 21st, 2016."

The Final Order likewise did not assign this any factual or legal significance

P5 @ 18. "The remittitur was issued on January 21, 2016."

P6 @ 2. "Upon the issuance of the remittitur, an appealed order becomes the law of the case"

P7 @ 7. "Because the findings in the Final Order were affirmed on appeal, they became the law of the case once the remittitur was issued"

l. [included in RoA by Appellant]

m. [included in RoA by Appellant]

PLEADINGS

a. [included in RoA by Appellant]

b. [included in RoA by Appellant]

c. 2009 Case Jarmuth's Reply to Counterclaim - May 15, 2009

Not a word about this in Respondent's pre-hearing memo nor in the final order. Not a word about this mentioned at the hearing.

The Reply was not before the Court at the hearing.

d. 2009 Case Jarmuth's Amended Complaint - May June 9, 2009

Not a word about this in Respondent's pre-hearing memo nor in the final order. Not a word about this mentioned at the hearing.
The Amended Complaint was not before the Court at the hearing.

e. 2009 Case HOA Answer to Amended Complaint and Answer - June 19, 2009

The HOA's 2009 Answer was not before the Court at the hearing.

Not a word about this in Respondent's pre-hearing memo. Not a word about this mentioned at the hearing.

The Final Order mentioned it as a historic fact without assigning it

any factual or legal significance.

P3 @ 2 "The Association filed an Answer on May 13,2009 and asserted a counterclaim for attorneys' fees and costs"

f. 2009 Case Jarmuth's Reply to Counterclaim - July 2, 2009

The Reply was not before the Court at the hearing.

Not a word about this in Respondent's pre-hearing memo nor in the final order. Not a word about this mentioned at the hearing.

g. [included in RoA by Appellant]

h. [included in RoA by Appellant]

i. 2009 Case HOA Motion to Amend Counterclaim - August 26, 2011

The HOA Motion was not before the Court at the hearing.

Not a word about this in Respondent's pre-hearing memo nor in the final order. Not a word about this mentioned at the hearing.

j. 2010 Case HOA Motion to Amend Counterclaim - August 26, 2011 (duplicate of #i)

The HOA Motion was not before the Court at the hearing.
Not a word about this in Respondent's pre-hearing memo nor in the final order. Not a word about this mentioned at the hearing.

k. [included in RoA by Appellant]

l. 2010 Case HOA Amended Answer and Counterclaim - October 24, 2011 (same as #k) thus [included in RoA by Appellant]

The HOA's 2010 Amended Answer was not before the Court at the hearing.

All references to the HOA's Counter – Claim and to Appellant's Answer to it relate to the HOA's Amended Answer (and Counter – Claim) to the 2009 Complaint.

Appellant's Exhibit #8 at the hearing, RoA P. 243, is an extract of the HOA's Counter – Claim in the 2009 Complaint. Appellant's Answer, RoA P.248, is to the 2009 Counter – Claim. All of Appellant's

testimony related to the 2009 documents.

At the hearing respondent referred to the counter – claim in generic terms:
P20 @ 16-17 "After that the answer was amended by the Association to, to assert a counterclaim and in -- two counterclaims"
P21 @ 102 "as asserted in paragraph 53 of the amended answer and counterclaim." this being the 2009 complaint. Never cited to a paragraph in Respondent's counter claim to the 2010 complaint.

The Final Order likewise referred to the 2009 documents:
P3 @ 8: "Thereafter, the Association filed an Amended Answer and Counterclaim, with leave by this court, on October 24, 2011 seeking a declaratory judgment"
P4 @10 " Jarmuth admitted paragraph 53 establishing that this Court has jurisdiction over the Counterclaim", The parallel allegation in the 2010 counter-claim was not at para 53 (in the counter – claim) thus no reference by respondent to the 2010 counter - claim.

m. [included in RoA by Appellant]

n. 2010 Case Jarmuth Reply to Amended Counterclaim - December 20, 2011 (same as #m).

This document was not before the Court at the hearing and no citations were made in Respondent's pre-hearing memo, in Respondent's testimony at the hearing, nor in the final order to any phrase in Appellant's Reply.

o. Jarmuth Post-Trial Motions - September 19, 2012

Jarmuth's Post-Trial Motion was not before the Court at the hearing. Not a word about this is to be found in Respondent's pre-hearing memo nor in the final order. Not a word about this was mentioned at the hearing.

p. Jarmuth Memo in Support of Post-Trial Motion - January 22, 2013.

Jarmuth's Memo was not before the Court at the hearing.
Not a word about this is to be found in Respondent's pre-hearing memo nor in the final order. Not a word about this was mentioned at the hearing.

q. [included in RoA by Appellant]

r. Jarmuth Final Appellate Brief - No. 2013-000614 - July 22, 2013

No document from the Appeal was / is in the Horry County Courthouse. Jarmuth's Final Appellate Brief was not before the Court at the hearing.
Not a word about this is to be found in Respondent's pre-hearing memo nor in the final order. Not a word about this was mentioned at the hearing.

s. Jarmuth Appellate Motion for Rehearing - March 12, 2015

No document from the Appeal was / is in the Horry County Courthouse. Jarmuth's Appellate Motion was not before the Court at the hearing.
Not a word about this is to be found in Respondent's pre-hearing memo nor in the final order. Not a word about this was mentioned at the hearing.

t. Jarmuth Trial Court Motion for Civil Contempt (Perjury of HOA Witness) - March 17, 2015 (pending)

Jarmuth's Contempt Motion was not before the Court at the hearing.
Not a word about this is to be found in Respondent's pre-hearing memo nor in the final order. Not a word about this was mentioned at the hearing.

The matter on appeal was heard by Hon. Benjamin Culbertson, Circuit Court Judge. The Civil Contempt matter was scheduled to be

heard at a later date by the Chief Administrative Judge, Hon. Steven John, but on May 31, 2016 Hon. Judge John entered an order that this matter will be deferred and was never heard.

u. Jarmuth Trial Court Amended Motion for Civil Contempt (perjury by HOA witness) - June 10, 2015 (pending)

Jarmuth's Amended Contempt Motion was not before the Court at the hearing.

Not a word about this is to be found in Respondent's pre-hearing memo nor in the final order. Not a word about this was mentioned at the hearing. It likewise has been deferred by Order of the Chief Administrative Judge.

v. HOA Appellate Return to Motion for Rehearing - March 24, 2015

No document from the Appeal was / is in the Horry County Courthouse. The HOA's Appellate Return was not before the Court at the hearing.

Not a word about this is to be found in Respondent's pre-hearing memo nor in the final order. Not a word about this was mentioned at the hearing.

w. Jarmuth Appellate Reply, Motion for Rehearing - March 27, 2015

No document from the Appeal was / is in the Horry County Courthouse. Jarmuth's Appellate Reply was not before the Court at the hearing.

Not a word about this is to be found in Respondent's pre-hearing memo nor in the final order. Not a word about this was mentioned at the hearing.

x. Jarmuth SC Supreme Court Petition for Writ of Certiorari - May 12, 2015

No document from the Petition was / is in the Horry County Courthouse. Jarmuth's Petition was not before the Court at the

hearing.

Not a word about this is to be found in Respondent's pre-hearing memo nor in the final order. Not a word about this was mentioned at the hearing.

y. HOA Return to SC Supreme Court Petition for Writ of Certiorari - June 12, 2015

No document from the Petition was / is in the Horry County Courthouse. The HOA's Return was not before the Court at the hearing.

Not a word about this is to be found in Respondent's pre-hearing memo nor in the final order. Not a word about this was mentioned at the hearing.

z. Jarmuth Rule 60(b)(2) and (3) Motion for Relief (Extrinsic Fraud by HOA Attorney) from Judgment - January 22, 2016 (pending)

Jarmuth's Rule 60(b) Motion was not before the Court at the hearing.

Not a word about this is to be found in Respondent's pre-hearing memo nor in the final order. Not a word about this was mentioned at the hearing.

The matter on appeal was heard by Hon. Benjamin Culbertson, Circuit Court Judge. The Rule 60(b) matter was scheduled to be heard at a later date by the Chief Administrative Judge, Hon. Steven John, but on May 31, 2016 Hon. Judge John entered an order that this matter will be deferred and was never heard.

aa. Jarmuth Amended Rule 60(b)(2) and (3) Motion for Relief (Extrinsic Fraud) from Judgment - February 1, 2016

Jarmuth's Rule 60(b) Amended Motion was not before the Court at the hearing.

Not a word about this is to be found in Respondent's pre-hearing memo nor in the final order. Not a word about this was mentioned at the hearing.

The matter on appeal was heard by Hon. Benjamin Culbertson, Circuit Court Judge. The Rule 60(b) matter was scheduled to be heard at a later date by the Chief Administrative Judge, Hon. Steven John, but on May 31, 2016 Hon. Judge John entered an order that this matter will be deferred and was never heard.

bb. William Frieboth's (HOA Witness) Memorandum in Opposition to Jarmuth's Motion for Civil Contempt - March 3, 2016 (pending)

Like the related pleadings, this Memo was never before the Court and was scheduled for hearing before a different Circuit Court Judge. By order, the matter has been deferred. No reference to this Memo is to be found in the HOA's pre-hearing Memo, in their testimony at the hearing, nor in the final order.

It would have questionable evidentiary value because Mr. Freiboth has absented himself from the state after having been served a civil contempt summons – naming him – by the Horry County Sheriff.

cc. [included in RoA by Appellant]

dd. HOA Memo in Opposition to Jarmuth Rule 60(b)(2) and (3)Motion for Relief from Judgment (Extrinsic Fraud) - March 3, 2016 (pending)

The HOA's Memo in Opposition was not before the Court at the hearing.

Not a word about this is to be found in Respondent's pre-hearing memo nor in the final order. Not a word about this was mentioned at the hearing.

The matter on appeal was heard by Hon. Benjamin Culbertson, Circuit Court Judge. The Rule 60(b) matter was scheduled to be heard at a later date by the Chief Administrative Judge, Hon. Steven John, but on May 31, 2016 Hon. Judge John entered an order that this matter will be deferred and was never heard.

ee. [included in RoA by Appellant]

ff. [included in RoA by Appellant]

gg. Jarmuth Memorandum in Support of Rule 12(b)l/Rule 60 Motion to Dismiss Counterclaim No Subject Matter Jurisdiction - April 27, 2016

The document was not before the court at the hearing. It was excluded at the 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.

There is no reference to this document in Respondent's Pre-hearing memo, nor by Respondent at the hearing, nor in the final order.

Applicable Case Law

9. The purpose of the Record on Appeal is not to give the Respondent a second chance to re-litigate the issues on appeal. Rather, the Record on Appeal brings the same documents (and no more) that were before the trial court to the Court of Appeals for consideration of the arguments set before it by the Appellant. The Court in Beverly S. v. Kayla R., 395 S.C. 399, 401-02, 718 S.E.2d 224, 225-26 (Ct. App. 2011 stated that the Record on Appeal provides "sufficient for intelligent review" of the decision by the trial court.

10. Respondent is mistaken when it argues that Rule 210(h) SCACR [2] means that Respondent can insert anything it wants. The Court has uniformly held that the rule should be read as if it says "so long as the matter was actually before the

2 "The appellate court will not consider any fact which does not appear in the Record on Appeal."

trial court below". See Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010) (stating "a matter may not be raised for the first time on appeal"). In Goldstandt v. Goldstandt 1924 OK 520 228 P. 770 102 Okla. 218 Case Number: 14749 Decided: 05/07/1924 Supreme Court of Oklahoma the court noted "and as this theory was not presented to the lower court, it is not available here".

The role of the Respondent is not to make a new argument proving that the trial court decided correctly but rather, using the documents that were before the trial court, disprove the argument of the Appellant. In Harkins v. Greenville County, 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000) the Court noted that the Record on Appeal is to decide the arguments raised by the Appellant. The Court held likewise in State v. Mitchell, 330 S.C. 189, 199, 498 S.E.2d 642, 647 (1998).

In Morris v. Tidewater Land & Timber 696 S.E.2d 599 (S.C. Ct. App. 2010 the Court held that where the Briefs do not contain a citation to a relevant portion of a document, the document is irrelevant to the determination by the Court of Appeals. In State v. White, 372 S.C. 364, 642 S.E.2d 607 (Ct. App. 2007 the Court held that "matter which was not presented to the lower court or tribunal ... cannot be properly included in the Record on Appeal." (affirmed on Certiorari by the S.C. Supreme Court).

A great number of reported cases in South Carolina for at least forty years have emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration before raising them in the Court of Appeals. Facts, issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court. E.g.,

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 been raised to and ruled upon by the trial judge to be preserved for appellate review."); Long v. Dunlap, 87 S.C. 8, 68 S.E. 801 (1910) (Supreme Court will not consider any point which was not presented and considered below unless it involves jurisdiction of the court); Gaffney v. Peeler, 21 S.C. 55 (1884) (question of law which was not presented to or passed upon by the trial court cannot be raised on appeal). See also Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). In Polson v. Burr 235 S.C. 216 (1959); 110 S.E.2d 855 the Supreme Court of South Carolina held that when "for some unexplained reason" a party does not include a controlling document as evidence actually before the trial court, it may not be provided to the appellate court in deciding the matter stating that in such an instance we can not "properly consider the merits" of the effect of the omitted (below) document at the appeal.

(continued on next page)

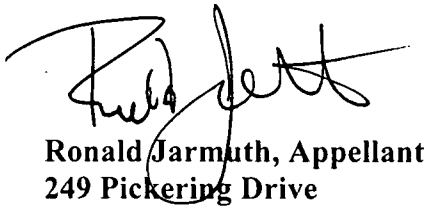
CONCLUSION

11. Conclusions.

a. The documents which Appellant seeks to exclude were never before the trial court at the hearing and thus must be excluded by virtue of SCRAP Rule 210 (c).

b. The Response Brief does not depend on any of the contested documents to state relevant facts or arguments and thus the contested documents must be excluded by virtue of SCRAP Rules 209 (b).

c. The contested documents do not relate to the arguments actually made in the pre-hearing briefs and at the hearing and thus constitute matters raised for the first time on appeal and thus must be excluded.



Ronald Jarmuth, Appellant Pro Se
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
December 17, 2016

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

Exhibit D

EXHIBIT "E"
DOCUMENTS WHERE RESPONDENT
OBJECTED TO INCLUSION OF DOCUMENTS

Numbering

The numbers used by Respondent to not correspond to the Record on Appeal nor to Appellant's Designation of Matters to be included in the Record on Appeal.

At page 3, middle of Respondent's Motion to Amend the Record on Appeal Respondent writes:

> "Furthermore, Jarmuth included materials that are irrelevant to the appeal and were not before the circuit court judge in ruling on Jarmuth's motion to dismiss for lack of subject matter jurisdiction. Matters that should be stricken from the Record or otherwise disregarded by this Court in ruling on Jarmuth's appeal include the following:"

On December 5, 2016 Appellant filed a Motion to Limit the Record on Appeal. This was "global" and open to Respondent to state, at that appropriate moment, matters that Respondent likewise felt should be excluded. Appellant stated identified documents identified by Respondent which should be excluded. On December 14, 2016 Respondent filed a Return to the Motion to Limit the Record on Appeal. At that time Respondent did not state any matters that Respondent felt should be excluded that Appellant had designated.

Respondent having not challenged any document designated by Appellant, Appellant thereupon prepared and filed the Record on Appeal.

By not identifying any items in Respondent's Return, Respondent abandoned a challenge to any document identified by Appellant. Respondent now wants "a second bite at the apple". That is why Respondent identifies its Motion as a

EXHIBIT
E

"Motion to Amend" not a "Motion to Limit".

Further, Respondent fails to cite specific documents either by title or by Exhibit Number in the Record on Appeal. Respondent in effect says, "everything from pages xx to yy, whatever they might be" with no explanation as to what the problem with inclusion is. This is entirely frivolous.

Items Untimely Challenged by Respondent

"1. Unfiled Statutes and Rules of Civil Procedure, Record pp. 1-11".

This relates to Exhibits 1 through 8, laws and rules cited by Appellant in his pre-hearing pleadings, during the hearing per the transcript, and in both of Appellant's Briefs. Respondent wants them out because they identify how Respondent's conduct is criminal per federal law or flaunted the rules of civil procedure. By skipping inclusion of the demands for payment in a counter – claim, Respondent denied an opportunity to file Rule 12 objections, obtain discovery, and to depose witnesses over the matter. This was further worsened by not even making the demands related to the discrimination matter in honest evidence or direct testimony at trial. One does not "file" a statute or rule at any level of a proceeding – one refers to it. It is self-authenticating. Respondent does not challenge the accuracy of a single word of the eight included statutes or rules – all of which were referred to many times and in many documents and in testimony by Appellant. Appellant does not state what the issue is, just that Respondent doesn't like it being included.

"2. Unfiled and unrecorded excerpts of the Declaration of Covenants and Restrictions for the International Club, the Bylaws of the Association, purported lists of property subject to the Declaration, and untiled Articles of Incorporation for the Association, Record pp. 120-133;"

This refers to Exhibits #18 through #21. Each and every one of these documents were in the file of this case and were referred to by Appellant in pre-hearing pleadings, at the hearing, and / or in Appellant's Briefs – cited to at least by page. They are (#18) the master deed to the development; (#19) various section of the Covenants and the Bylaws which constitute the contract under which attorney fees can be reimbursed, if at all, and which limit the authority of the HOA Board to sue; (#20) the related HOA Bylaws with further limiting suit preclusion provisions ignored by the HOA; (#21) the HOA's corporate filing with the Secretary of State which identifies the names under which the HOA is allowed to act, and which is important since, per the pleadings, another HOA which exists is cited in the Covenants and acknowledged as such by the Final Order.

These documents were either Plaintiff's Hearing Exhibit #9 at the hearing (not objected to by Respondent) or were quoted verbatim in Appellant's pleadings. They are central to the legal issues before the Court of Appeals.

They are neither "unfiled" nor "unrecorded" and have been used, over and over, by Respondent as exhibits and Respondent has mentioned these innumerable times.

They properly belong in the Record on Appeal.

"3. Unfiled Architectural Board and Association records and Jarmuth's SCHAC Complaint with Jarmuth's notations, Record pp. 189-219, 232- 236, 241-242;"

Respondent blankets thirteen (13) documents disguised as a range of some pages, seemingly perhaps in a single document. No document is identified by name because it quickly becomes obvious that all these documents are relevant. All were cited in pre-hearing pleadings, at testimony, and in Appellant's Briefs. None were cited when Respondent filed it's Return to the Motion to Limit the Record on Appeal.

Surprisingly, every one of them were mentioned someplace by Respondent in pre-hearing pleadings, in testimony, or in Respondent's Initial Response Brief. Most are not depended upon by Appellant but were designated because they are referred to by Respondent in the body of pleadings.

#24 is the Appellant's July 21, 2009 Architectural Review Board Request which was referred to only by Respondent. #25 is the August 27, 2009 S.C. Human Affairs Housing Discrimination Complaint referred to extensively by both parties and which is cited by page number by Appellant in Briefs, and quoted by Appellant at the hearing per the Transcript. #26 is one of the attorney fee checks referred to at the hearing, per transcript pages 4, 11, 12, 18 and elsewhere. #27 is the HOA's General Ledger relating to that check, showing the check as discrimination investigation related, not covenant enforcement. #28 is the HOA's May 5, 2010 Board Minutes Plaintiff Exhibit #10 at the hearing, referred to extensively by Appellant in pleadings and briefs. #29 and #30 is the second attorney fee check and corresponding portion of the HOA General Ledger, likewise incriminating the amount as not related to covenant enforcement. #31 is the September 27, 2010

"Violation Notice" included because Respondent referred to it in pleadings and Respondent's Brief. #32 is Appellant's September 30, 2010 ARB Modification Request, included because Respondent referred to it. #33 is the October 5, 2010 ARB Minutes, referred to extensively by both parties where Appellant pointed out that the ARB never imposed a fine, impeaching claims to the contrary by Respondent.

Item #34 is particularly interesting because it is Appellant's October 12, 2010 "Magistrate Complaint" which elsewhere in the same Motion Appellant says, at Page 2, item #g, that Appellant omitted it and it is needed. Here Respondent is simultaneously asserting that the same document is improperly present!

Item #35 is the HOA's November 10, 2010 Board Meeting Minutes, Plaintiff's Exhibit #11 at the hearing, which impeaches Respondent's claim that a hearing was held at which the HOA Board voted that Appellant committed a covenant violation and likewise claims that the HOA Board, on the Record, imposed a fine. Both are perjuries as supported by this document which was in evidence at the hearing and extensively referred to by Appellant in pre-hearing pleadings, at the hearing, and in Briefs with quotations and page citations. The document is just too problematic for Respondent because it explicitly says Respondent perjured itself at the trial and in NUMEROUS pleadings. #37 is the December 7, 2010 ARB minutes which relates that a month after the HOA Board supposedly imposed a fine, no fine had been imposed, referred to extensively by Appellant with citations to the record.

All these documents belong in the Record on Appeal as filed.

"4. Unfiled, unrecorded, and/or annotated copies of pleadings, Record pp. 243-256, 274-290, 291-303;"

Respondent is claiming that the following documents were never filed with the Court. What is meant by "unrecorded" is a mystery since none are deeds.

#38 is the Respondent's Hearing Exhibit #8, the text of the October 23, 2011 counter – claim extensively cited by Appellant by page and paragraph number in pleadings and the Briefs. It is also cited by Respondent yet Respondent wants it out.

#39 is Appellant's December 20, 2011 Answer to the Counter Claim where Respondent repeatedly cites to paragraph #53. On page 2 #n of Respondent's Motion Respondent claims that Appellant "omitted" this document which Respondent now asserts MUST be omitted.

#40 is page 59 of the trial transcript where the Court Reporter describes the attorney fee checks, cited by page by Appellant in the Briefs.

#44 is Respondent's March 3, 2016 Memo opposing Rule 60 Relief, quoted and cited to extensively by Appellant in pre-trial pleadings, at the hearing, and in Briefs. Curiously, at page 3 #dd, Respondent asserts that this document MUST be included. It contains an admission against interest that Check #2 is to handle the Discrimination Claim investigation, not to enforce covenant violations.

#45 is Appellant's Mach 11, 2016 Motion to Dismiss for lack of subject matter jurisdiction – the very thing that placed the issues before the lower court. Clearly it was in evidence because at the hearing all parties and the Judge addressed it.

Clearly all the above documents belong in the Record on Appeal.

"5. Unfiled, annotated copies of the trial transcript for the Consolidated Cases, Record pp. 257-271;"

#40 is the Court Reporter transcript description of the first attorney fee check which was referred to. #41 is the corresponding trial transcript entry for the second check, likewise referred to multiple times by both parties.

#42 is the trial transcript testimony by William Freiboth, HOA President. His testimony was referred to by Respondent at the hearing, Record on Appeal p.113. The exhibit relates what he actually said. The annotation "surrounds" and points to the particular words he said, since Respondent did not provide a page / line reference.

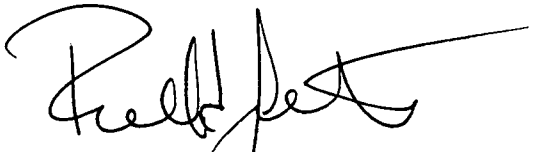
Respondent asserts these are "unfiled". The trial transcript was filed with the lower Court by Order of the Chief Administrative Judge on November 9, 2012.

The testimony is cited by Appellant as an admission against interest in open court that the attorney fees were related to the Human Affairs investigation, not to enforcement of covenant use restrictions, and hence no contract provision for recovery.

"6. Unfiled, unsigned Notice of Appeal dated April 3, 2013, Record pp. 272- 273."

This is Record on Appeal item #43, the April 3, 2013 Notice of Appeal. Respondent does not challenge that this is a copy of the actual Notice of Appeal. It is included in the Record on Appeal because Respondent mentioned this document in Respondent's pre-trial pleading, at the hearing, and in the Response Brief. It has no evidentiary or factual value to Appellant in the matter at hand and was provided because Respondent repeatedly mentioned the 2003 Appeal taken April 3, 2013. See transcript of hearing, Record p. 109 for example.

The many documents in the Record on Appeal which Respondent identifies by page number "range" all belong in the Record on Appeal because all of them were cited by one or the other party or by both, either in pre-hearing pleadings, at the hearing, or in the Briefs.



Ronald Jarmuth, Appellant Pro Se
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
December 29, 2016

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DEC 29 2016
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

PROOF OF SERVICE

I certify that on December 29, 2016 I served Appellant's Return to Respondent's Motion to Amend the Record on Appeal on Respondent 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 29, 2016

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

Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
December 29, 2016

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

Re: Appellant's Return to Respondent's Motion to Amend the Record on Appeal in Appeal Case 2016-001063 Jarmuth v The International Club.

Dear Madam Clerk:

Please file the attached Appellant's Return to Respondent's Motion to Amend the Record on Appeal in Appellate Case 2016-001063 Jarmuth v The International Club which I provide as one unbound plus six bound copies.

Please take note that Appellant received said Motion on December 28, 2016 (only scant miles from the offices of Respondent's counsel) despite Respondent's Motion being "clocked" December 21, 2016 and the Certificate of Service alleging service that date. A seven day delay in the mail is beyond belief.

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