

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Presiding Judge

Case No. 2009-CP-26-10523

Appellate Case No. 2012-213287

RECEIVED

DEC 11 2012

SC Court of Appeals

Elizabeth A. Crotty and James K. Orzech *Appellants,*

v.

Windjammer Village of Little River, South Carolina,
Property Owners' Association, a South Carolina
Eleemosynary Corporation *Respondent.*

**RESPONDENT'S REPLY TO
APPELLANT CROTTY'S RETURN,
AND RESPONDENT'S MOTION TO STRIKE**

Respondent Windjammer Village of Little River, South Carolina, Property Owners' Association hereby submits its Reply to Appellant Crotty's Return, and moves for an Order striking Appellant Elizabeth A. Crotty's Return to Respondent's Motion to Dismiss on the following grounds:

(1) Respondent served a copy of its Motion to Dismiss on Appellants by first-class U.S. Mail on November 18, 2012, as evidenced by the Proof of Service attached hereto and incorporated herein as “Exhibit A.”

(2) Appellants’ Returns to Respondent’s Motion to Dismiss were due to be served on or before November 28, 2012.

(3) At the time Appellant Crotty served her Return on December 4, 2012, Appellants jointly submitted a Motion for An Extension of Time until December 4, 2012 to file Returns. Appellants’ Motion for an Extension of Time was filed six (6) days beyond the ten (10) day permissive time period to file a Return. Therefore, the Respondent hereby moves for an Order dismissing and/or striking Appellants’ Motion for an Extension of Time as being untimely. A copy of Appellants’ Proof of Service is attached hereto and incorporated herein as “Exhibit B.”

(4) Appellant Crotty’s Return and Proof of Service are dated December 4, 2012, six (6) days beyond the ten (10) day permissive time period to file a Return. Rule 240(e), *SCACR*, clearly states: “[t]he provisions of Rule 240(c) shall apply to a return. *Failure of a party to timely file a return may be deemed a consent by that party to the relief sought in the motion or petition.*” (Emphasis added.) Moreover, in Ballard v. Carlson, 882 F.2d 93, 96 (4th Cir. 1989), the court stated that:

[p]ro se litigants are entitled to some deference from courts. See, e.g., Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972). *But they as well as other litigants are subject to the time requirements and respect for court [rules]* without which effective

judicial administration would be impossible. [Emphasis added.]

Therefore, the Respondent hereby moves for an Order dismissing and/or striking Appellant Crotty's Return as being untimely. A copy of Appellant Crotty's Proof of Service is attached hereto and incorporated herein as "Exhibit C."

(5) Appellant Crotty's Return does not comply with Rules 240(c)(2), 240(e), and Rule 267, *SCACR*. Therefore, the Respondent hereby moves for an Order dismissing and/or striking Appellant Crotty's Return .

(6) In the present matter, Appellants have appealed the lower court's Order entitled "Order Upon Plaintiffs' Memorandum Requesting That the Court Re-Visit the Final Order in the Name of Justice (*Court accepted as a Rule 60(b), SCRCF Motion*)," signed September 14, 2012 and filed with the Clerk of Court in and for Horry County on September 18, 2012. Remarkably, Appellant Crotty's Return makes only one brief mention of the August 30, 2012 hearing before Judge John, and makes *no reference* to the aforementioned Order which is the subject matter of this Appeal. Appellant Crotty is exploiting her opportunity to file a Return by attempting to re-litigate issues that were fully litigated on June 22–23, 2011, as well as bringing unproven allegations contained in Appellants' pending civil action to the attention of this Honorable Court. Appellant Crotty's Return is not responsive to Respondent's Motion to Dismiss. Moreover, Appellant Crotty's entire Return is completely frivolous. Therefore, the Respondent hereby moves for an Order dismissing and/or

striking Appellant Crotty's Return, and respectfully moves this Honorable Court to impose such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.

Pursuant to Rule 240(c)(1), *SCACR*, and by way of further Reply to Appellant Crotty's Return, the following documents are attached in support of Respondent's Motion and Reply:

(a) Final Order (Ending Action) dated August 3, 2011 and filed August 5, 2011, attached hereto and incorporated herein as "Exhibit D";

(b) Order Upon Plaintiffs' Motion for Reconsideration Pursuant to Rule 59(e), *SCRCP* dated February 22, 2012 and filed February 27, 2012, attached hereto and incorporated herein as "Exhibit E";

(c) Order Denying Defendants' Request for Attorney's Fees But Allowing Defendants to Recover Its Costs (without exhibits) dated February 22, 2012 and filed February 27, 2012, attached hereto and incorporated herein as "Exhibit F"; and

(d) Order Upon Defendant's Motion for an Order and Rule to Show Cause (including Defendant/Respondent's Exhibits 1-4, and Plaintiffs/Appellants' document entitled "Re: August 30th Hearing Plaintiffs' Memorandum in Opposition to Defendant's Proposed Order Awarding Even More Taxable Costs Pursuant to Rule 54(e) *SCRCP*") dated September 14, 2012 and filed September 18, 2012, attached hereto and incorporated herein as "Exhibit G."

For the foregoing reasons, Respondent hereby moves this Honorable Court for an Order striking Appellant Crotty's Return to Respondent's Motion to Dismiss on the following grounds: (1) her Return fails to conform to the Appellate Court

Rules; (2) the filing of her Return was untimely; (3) her Return fails to state any legal rationale why Respondent's Motion to Dismiss should not be granted; and (4) her Return is frivolous and Respondent respectfully requests this Honorable Court impose sanctions to discourage like conduct in the future.

Respectfully submitted,

**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**

A handwritten signature in black ink, appearing to read 'K R Moss', is written over a horizontal line.

Kenneth R. Moss, SC Bar # 15520

1180 Highway 17 North, Suite 2

P.O. Box 250

Little River, SC 29566

Tel: (843) 281-9901

Fax: (843) 281-9903

Email: kennethmoss@wwpemlaw.com

Little River, South Carolina
December 10, 2012

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Presiding Judge

Case No. 2009-CP-26-10523

Appellate Case No. 2012-213287

Elizabeth A. Crotty and James K. Orzech *Appellants,*

v.

Windjammer Village of Little River, South Carolina,
Property Owners' Association, a South Carolina
Eleemosynary Corporation *Respondent.*

PROOF OF SERVICE

I certify that I have served a copy of the Respondent's Motion to Dismiss, with attached Affidavit of Kenneth R. Moss, Respondent's Memorandum of Law in Support of Its Motion to Dismiss, and Proof of Service of same in the above-captioned appeal on the following individuals by United States Mail, with sufficient first-class postage affixed, addressed as follows:

Elizabeth A. Crotty
2121 Brunswick Circle
Little River, SC 29566
Pro se Appellant

James K. Orzech
2148 Gamecock Circle
Little River, SC 29566
Pro se Appellant

COPY

RECEIVED

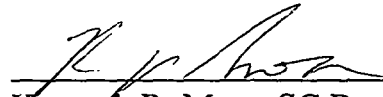
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SC Court of Appeals



Respectfully submitted,

**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**

A handwritten signature in black ink, appearing to read 'K. R. Moss', is written over a horizontal line.

Kenneth R. Moss, SC Bar # 15520

1180 Highway 17 North, Suite 2

P.O. Box 250

Little River, SC 29566

Tel: (843) 281-9901

Fax: (843) 281-9903

Little River, South Carolina

November 18, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas of the Fifteenth Judicial Circuit

Steven H. John, Presiding Judge

Case No. 2009-CP-26-10523

Appellate Case No. 2012-213287

Elizabeth A. Crotty and James K. Orzech, Appellants,

v.

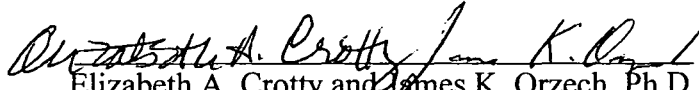
Windjammer Village of Little River, Property Owners' Association, a South Carolina
Eleemosynary Corporation, Respondent.

PROOF OF SERVICE

I certify that I have served a copy of our Motion for an Extension of Time and
Proof of Service of same in the above-captioned Appeal to Respondent's Counsel of
Record by United States Mail, with sufficient first-class postage affixed, addressed as
follows:

Kenneth R. Moss, Esq.
Wright, Worley, Pope, Ekster & Moss, PLLC
1180 Highway 17 North, Suite 2
Little River, SC 29566

Respectfully submitted,


Elizabeth A. Crotty and James K. Orzech, Ph.D.
Pro Se Appellants

2148 Gamecock Circle
Little River, SC 29566
(843) 281-2299

December 4, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas of the Fifteenth Judicial Circuit

Steven H. John, Presiding Judge

Case No. 2009-CP-26-10523

Appellate Case No. 2012-213287

Elizabeth A. Crotty and James K. Orzech, Appellants,

v.

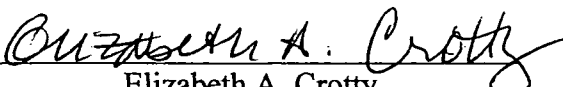
Windjammer Village of Little River, Property Owners' Association, a South Carolina
Eleemosynary Corporation, Respondent.

PROOF OF SERVICE

I certify that I have served a copy of my Return to Motion to Dismiss and Proof of Service of same in the above-captioned Appeal to Respondent's Counsel of Record by United States Mail, with sufficient first-class postage affixed, addressed as follows:

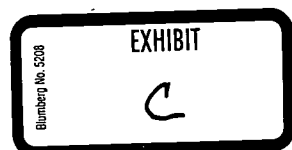
Kenneth R. Moss, Esq.
Wright, Worley, Pope, Ekster & Moss, PLLC
1180 Highway 17 North, Suite 2
Little River, SC 29566

Respectfully submitted,


Elizabeth A. Crotty
Pro Se Appellant

2148 Gamecock Circle
Little River, SC 29566
(843) 281-2299

December 4, 2012



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
2009-CP-26-10523

Elizabeth A. Crotty and James K.
Orzech,

Plaintiffs,

vs.

Windjammer Village of Little River,
South Carolina, Property Owners'
Association, a South Carolina
Eleemosynary Corporation,

Defendant.

FINAL ORDER
(Ending Action)

FILED
HARRIS COUNTY
2011 AUG - 5 AM 9:00
MELANIE HUGGINS-WARD
CLERK OF COURT

The above-captioned matter was tried before this Court in a bench trial on June 22 and 23, 2011. After receiving the evidence and testimony, the Court hereby makes the following:

Findings of Fact

From the record and evidence, the Court finds that the Plaintiffs are members of the Windjammer Village of Little River Property Owners' Association, Inc., and are members because of their status as owners of real property within the Windjammer Village subdivision in Little River, South Carolina.

The Court finds further that Plaintiff Elizabeth Crotty and the Defendant entered into that certain Contract of Sale, dated May 13, 2002, pursuant to which Plaintiff Crotty agreed to buy and the Defendant agreed to sell certain real property within the Windjammer Village subdivision. The Contract of Sale, entered into evidence in the trial of this case as Plaintiffs' Exhibit No. Three (3), incorporated by reference an Exhibit "A" upon which was drafted the legal description of the subject property of the Contract. The legal description further incorporated by way of reference a plat of survey prepared by C. B. Berry, R. L. S., dated November 16, 1998. In addition, and of particular relevance

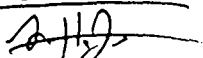
to this action, Page two (2) of the Contract of Sale further included the following provisions:

Purchaser does hereby acknowledge that the property described in Exhibit "A", attached hereto, is subject to the Declaration of Covenants and Restrictions for Windjammer Village of Little River Subdivision. Any proposed construction, alteration, or modification to the structure located on the property shall be submitted to the Windjammer Village of Little River Homeowners Association, Inc. as stated in the Restrictions and By-Laws for Windjammer Village of Little River. The premises may not be used as a bathhouse and shall be converted to a single family dwelling and shall conform with the R-7 Zoning regulations of Horry County, South Carolina. The Purchaser shall locate all underground utility lines prior to any construction. It is further agreed that access to this property shall be from Gamecock Circle. **This paragraph shall survive the closing.**

The Contract of Sale by which Plaintiff Crotty acquired title to her lot restricted her access to the Property "from Gamecock Circle". The Contract of Sale further provided that it "survive the closing". The Court has determined that the Contract of Sale is in no way vague or contradictory and, therefore, it is the duty of the Court to construe the Contract within the four corners of the instrument and without resort to or consideration of extrinsic evidence. The Plaintiff Crotty the Plaintiff James K. Orzech, who received an interest in the property, both had knowledge of the contractual limitation, and are not permitted to void obligations previously incurred, regardless of subsequent events.

The Contract of Sale was closed on or about July 15, 2002, at which time the Defendant issued and delivered to Plaintiff Crotty, or caused to be issued and delivered to Plaintiff Crotty, that certain Title To Real Estate which was recorded in the records of Horry County, South Carolina in Deed Book 2499 at Page 0759. A copy of the Title To Real Estate was admitted into evidence in this case as Plaintiffs' Exhibit No. Two (2).

Plaintiff Crotty's Title To Real Estate is a warranty deed of conveyance of Lot A, Block E of Windjammer Village, in which deed the real property was further described by way of reference to the plat of survey referenced in the parties Contract of Sale, which

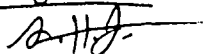


plat was recorded in the records of Horry County, South Carolina in Plat Book 159 at Page 70, and admitted into the evidence of this case as Plaintiff's Exhibit No. One (1). In addition to the property purchased by Plaintiff Crotty, the referenced plat of survey includes a depiction of Defendant's retained Parcel B, on which there is depicted and shown a roadway or driveway, labeled "Paved Driveway," which lies nearly adjacent to Plaintiff Crotty's Parcel A.

Another survey, prepared by Harry F. Bruton & Associates and admitted into the evidence in this case as Defendant's Exhibit No. Three (3), reveals that the edge of the Paved Driveway lies three and 01/10 feet (3.1') from Plaintiffs' property boundary on one line, and five and 07/10 feet (5.7') on another property line. Defendant's Exhibit No. Three (3) further reveals that the Paved Driveway is varying in width and is eleven and 00/10 feet (11.0') wide at or near the eastern end and twelve and 03/10 feet (12.3') wide at or near the northern end.

After purchasing Parcel A, Plaintiff Crotty undertook to remodel the structure situated on the Parcel A, a former community bathhouse, into a single-family residence. Subsequently, Plaintiff Crotty, together with the assistance of Plaintiff Orzech, financial and otherwise, undertook to design and construct on Parcel A a two-car garage with a small amount of living space, which is attached to the single-family residence by a breezeway or covered walkway. The record in this case further evidences that on or about September 14, 2005, Plaintiff Crotty issued and delivered to Plaintiff Orzech, or caused to be issued and delivered to Plaintiff Orzech, a deed for a one-half (1/2) undivided interest in Parcel A. This deed is recorded in the records of Horry County, South Carolina in Deed Book 2976 at Page 0935.

The evidence and testimony presented reveals that very shortly after Plaintiff Crotty's purchase of Parcel A in 2002, the parties began to dispute Plaintiff Crotty's asserted right to utilize the Paved Driveway for access to her Parcel A and for parking. The evidence further reveals the parties' disputes have continued since Plaintiff Crotty's purchase and have escalated into this action.



Plaintiffs initiated this action seeking injunctive relief and to prevent the Defendant from removing the Paved Driveway situated on Defendant's Parcel B. The Plaintiffs have asserted in their pleadings that they have a private easement by implication in and to the Paved Driveway for their permanent and unfettered use. The Defendant asserted counterclaims in this action for Breach of Contract, Slander of Title and Nuisance.

While not pled in this action, the Plaintiffs presented to the Court that there has been discriminatory enforcement of a particular rule or regulation within the Windjammer Village subdivision. To do that, one asserting such a claim must demonstrate arbitrary and purposeful discrimination in the administration of the matter being enforced. A party asserting such a claim cannot assume something is not being enforced equally. The fact that there may be some unequal treatment does not in and of itself rise to the level of a violation of some protected interest. Even assuming that there could be shown some conscious exercise of selectivity in enforcement, that fact in and of itself is not dispositive of the matter. Absent proof by the required standard that arbitrary treatment and selectivity in enforcement was deliberately done based on some unjustifiable and protected standard such as, race, religion, or other protected classification, there can be no recovery or intervention by the Court. The record before the Court reveals that there is absolutely no evidence of arbitrary treatment or selectivity in enforcement by the Defendant in their action with the Plaintiffs.

Also, and while not pled in this action, the Plaintiffs have suggested and presented to the Court that treatment of Plaintiff Crotty by the Defendant has violated the American Disabilities Act. The Court's Order does not address any aspect of the American Disabilities Act. The Court gave the American Disabilities Act no consideration as it is not part of the pleadings in this case and is not an issue in this case. Accordingly the Court's Order herein should not be construed in any manner to address the applicability of the American Disabilities Act, the entitlement of Plaintiffs to the protections of the Act, or whether or not any violation of the Act may have occurred.

The Plaintiffs in this action have presented or asserted that the Defendant might be somehow estopped by the recording statute, S.C. Code 30-7-10, *et seq.*, because neither the Contract of Sale, nor any other document evidencing the parties' agreement concerning access restrictions, was recorded in the public records of Horry County. The Court finds that the recording statute is inapplicable in this case. As to this matter, we are not dealing with unknown or innocent third parties who might be able to assert the legal status of an innocent purchaser for value. The parties to this lawsuit are in fact the parties to the purchase and sale transaction that has given rise to this dispute. While not initially a grantee, Plaintiff Orzech admitted in his cross-examination that at relevant times he was in regular communication with Plaintiff Crotty; provided sums expended by Plaintiff Crotty in the construction of improvements upon Plaintiffs' property; and most importantly, he was aware of the issues and dispute concerning the access to the property that are the subject of this action prior to receiving interest in the property. Accordingly, Plaintiff Orzech cannot be considered an innocent purchaser for value.

Plaintiff Orzech accepted his deed for a one-half (1/2) undivided interest in the property from Plaintiff Crotty. Therefore, the Court finds that Plaintiff Orzech has no greater or lesser rights than Plaintiff Crotty, especially considering the fact from his testimony that he knew of the Contract, the situation, and the access problems prior to purchasing the property.

The Plaintiffs also challenged the right of the Defendant to declare a road open only to one way traffic. The Defendant Property Owners' Association, by and through its duly elected Board of Directors, had the ability and the authority to declare road known in all documents as the "Paved Driveway", a one-way road. There has not been established by the facts of this case any easement or any right to use the Paved Driveway as a two-way road, or for two-way traffic. Looking at all the evidence, including Plaintiffs' deeds, plat, and all other documentation, the Court finds that no easement exists as to a two-way traffic pattern upon the Paved Driveway and by its duly authorized and recorded powers, the Board of Directors had the ability to declare it a one way road only.

The Plaintiffs do have an easement to use the Paved Driveway as it currently exists pursuant to the Plaintiff Crotty's deed from the Defendant for her property, the plat incorporated into Plaintiff Crotty's deed by reference, and other evidence presented in this case. The Defendant Property Owners' Association deeded the property directly to Plaintiff Crotty and established particular rights to her by the transfer. Therefore, the Court finds that Plaintiff Crotty and all members of the POA were in fact granted private easement rights over the driveway in question; however, this easement is not unlimited. The testimony and evidence overwhelmingly establish that it was always the intention of the parties that Plaintiff Crotty would access her deeded property from Gamecock Circle and not from the Paved Driveway. The Court finds that the Plaintiffs' have abandoned and contractually relinquished their rights to use the Paved Driveway in any other way. The Court finds that the Plaintiffs voluntarily and purposefully entered into an agreement that restricted their rights. This was evidenced by the parties' Contract, Plaintiffs' Exhibit No. Three (3), and also many other documents, including but not limited to Defendant's Exhibit Nos. Twenty-four (24), Twenty-five (25), Twenty-seven (27), Twenty-eight (28), Twenty-nine (29), Fifty-seven (57), Thirty (30), Thirty-one (31), Thirty-three (33), Thirty-five (35), Thirty-six (36), Forty-two (42), Forty-three (43), and Forty-eight (48).

At the conclusion of the trial, the Defendant abandoned its counterclaim for Nuisance, which the Court finds was a proper action considering the testimony and evidence presented. As to the Defendant's counterclaims for Breach of Contract and Slander of Title, the Court finds that these claims have not been proven by a preponderance of the evidence. The Court therefore declines to grant any relief upon those claims.

Conclusions of Law:

In analyzing the facts and theories of this case, the following principles are important:

- a. When examining implied easements, the intentions of the parties to the transaction are the overriding focus.

- b. When a deed describes land as shown on a certain plat, that plat becomes part of the deed.
- c. When the deed references the plat, the grantee acquires a private easement for the use of all streets on the map.
- d. The grantee receives a private easement in any streets referenced in the plat at the time of conveyance.
- e. Where lands are platted and sales are made with reference to the plat, the acts of the owner in themselves merely create private rights in the grantees entitling the grantees to the use of the streets and ways laid down on the plat or referred to in the conveyance.
- f. Without any evidence of the seller's intent to the contrary, a private easement by implication over the streets depicted in a map referenced by the conveyance is created with respect to the purchaser of the conveyance regardless of whether there is a commitment to public use.

Murrells Inlet Corp. v. Ward, 378 S.C. 225, 662 S.E.2d 452 (Ct. App. 2008); and

Inlet Harbour v. South Carolina Dep't of Parks, Recreation & Tourism, 377 S.C. 86, 659 S.E.2d 151 (2008).

Therefore, it is

ORDERED, ADJUDGED AND DECREED

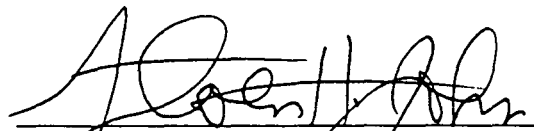
1. That the Defendant, Windjammer Village of Little River, South Carolina Property Owners' Association of South Carolina, an eleemosynary corporation, its successors and assigns, is permanently enjoined and restrained from closing the Paved Driveway, the one-way road used to access the mailboxes as it currently exists. The Court is not requiring that the Defendant must permanently use the Paved Driveway for mailbox access, but the Defendant is permanently enjoined and restrained from closing the Paved Driveway as it currently exists.
2. The Plaintiffs, their heirs, assigns and anyone claiming by and through them, or either of them, are permanently restrained from utilizing the Paved Driveway to

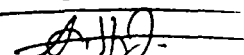
access Plaintiffs' property, or as a parking area, or as a driveway for vehicles. This restriction shall also apply to Plaintiffs' visitors, guests, contractors, and/or other service providers. Plaintiffs' access to their property, parking and driveway for vehicles shall be, with the exception of mailbox access, only over and through the driveway which enters into their property off of Gamecock Circle.

3. The Court declines to grant Defendant relief upon Defendant's counterclaims for Breach of Contract and Slander of Title.
4. A memorandum of this Order shall be filed in the Office of the Register of Deeds in and for the County of Horry, and indexed in the names of all parties hereto, in order that the within restrictions will be a matter of record in the real property records of Horry County.
5. The Clerk of Court shall update her records to indicate that this case is hereby ended.

IT IS SO ORDERED!

August 3, 2011
Conway, South Carolina


The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2009-CP-26-10523

Elizabeth A. Crotty and James K.
Orzech,

Plaintiffs,

vs.

Windjammer Village of Little River,
South Carolina, Property Owners'
Association, a South Carolina
Eleemosynary Corporation,

Defendant.

AFFIDAVIT OF SERVICE

FILED
Horry County
2011 AUG - 8 AM 8:49
MELANIE HUGGINS-WARD
CLERK OF COURT

PERSONALLY APPEARED before me, Renee H. Baxley, an employee of Wright, Worley, Pope, Ekster & Moss, PLLC, Attorney for the Plaintiff, who first being first duly sworn, deposes and states that she hand delivered on the date set forth below, a copy of the document(s) described below, in the above-styled action to the following:

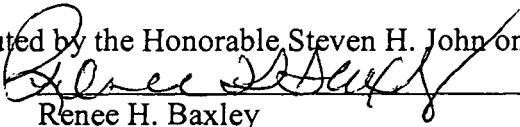
Served upon: Richard M. Lovelace, Jr.

Date Served: August 5, 2011 Time Served: 9:05 a.m.

Place/ Address Served: 1310 2nd Avenue
Conway, SC 29526

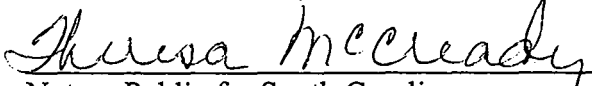
Documents Served:

Final Order (Ending Action) executed by the Honorable Steven H. John on August 3, 2011


Renee H. Baxley

SWORN TO AND SUBSCRIBED

Before me this 5th day of August, 2011.


Notary Public for South Carolina

My Commission Expires: 06-14-2015

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Elizabeth A. Crotty and James K.
Orzech,

Plaintiffs,

vs.

Windjammer Village of Little River,
South Carolina, Property Owners'
Association, a South Carolina
Elccomosynary Corporation,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) C/A NO. 2009-CP-26-10523

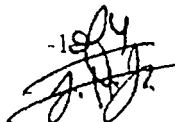
) ORDER UPON PLAINTIFFS'
) MOTION FOR RECONSIDERATION
) PURSUANT TO RULE 59(e), SCRCP

FILED
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12 FEB 27 PM 3:35
CLERK OF COURT

The above matter came before me for hearing on February 13, 2012 upon Plaintiffs' Notice of Motion and Motion for Reconsideration Pursuant to Rule 59(e), SCRCP, which was filed with the Court on August 12, 2011. In their Motion, the Plaintiffs' seek reconsideration of the Court's Final Order dated August 3, 2011 that was filed with the Clerk of Court in and for Horry County on August 5, 2011. Specifically, the Plaintiffs seek reconsideration:

- (1) of the impact of the Order on emergency or public safety providers;
- (2) on so much of the Court's Order of August 3, 2011 as permanently restrains contractors and/or other service providers from utilizing the "Paved Driveway" as referenced in that Order; and
- (3) the provision in the Court's Order which requires a memorandum to be filed with the Office of the Register of Deeds so the Order of the Court

ORDER UPON PLAINTIFFS' MOTION
FOR RECONSIDERATION PURSUANT
TO RULE 59(e), SCRCP

-184


C/A No. 2009-CP-26-10523

Blumberg No. 5208

EXHIBIT

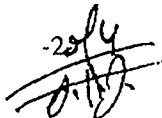
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would be a matter of record in the real property records in Horry County and binding on the successors and assigns of the Plaintiffs.

The Court has received and reviewed the Plaintiff's written Motion, the Defendant's Reply, and the supporting and opposing Memoranda submitted by the parties' respective attorneys. After oral arguments the Court does clarify its Final Order herein as follows:

Nothing in the Court's Final Order dated August 3, 2011 shall be construed in any way to limit, impede, or interfere with emergency or public safety providers such as Police, Fire, or Emergency Medical Services from providing services to Plaintiffs' in the manner deemed appropriate by those responders. The Court is aware that emergency public safety providers often and necessarily deviate from applicable rules and regulations, and it would be unwise for the Court to issue any Order to the contrary. It was never the intent of the Court in its Final Order to limit, impede, or interfere with emergency or public safety providers in the performance of their duties.

The Plaintiffs have also argued that the Court's Final Order dated August 3, 2011 should be reconsidered to the extent that the Order would prevent contractors and/or service or utility providers from accessing the Plaintiffs' property from "the Paved Driveway" referred to in the Court's prior Order. The Court finds the provision restricting "service providers" from using the Paved Driveway may conflict with the applicable restrictive covenants, rules, and regulations of the Windjammer Village subdivision. The Court finds the applicable restrictive covenants, rules, and regulations



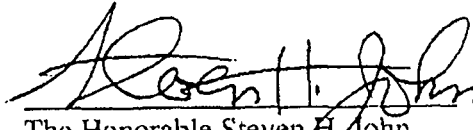
of the Windjammer Village subdivision are the controlling authority concerning whether or not "service providers" may utilize common areas to access not only the Plaintiffs' property, but all properties within the Windjammer Village subdivision. The Court clarifies that its prior Order shall in no way restrict or impede the ability of service providers companies to access the Plaintiffs' property. Rather, any restrictions that would be applicable to these providers must be found within the applicable restrictive covenants, rules, and regulations of the Windjammer Village subdivision.

The Court's Final Order dated August 3, 2011 does properly restrict the Plaintiffs and the Plaintiffs' visitors, guests, and invitees from accessing the Plaintiffs' property via the Paved Driveway referred to in the Court's prior Order. Therefore and accordingly, the Court declines to reconsider its prior Order on this issue.

Finally, the Plaintiffs' request that the Court remove from its Final Order dated August 3, 2011 the provision requiring a memorandum to be recorded in the Office of the Register of Deeds in and for Horry County. The Court so declines. The Court finds the recording of a memorandum in the Office of the Register of Deeds makes it more likely that the Court's Final Order will be found by innocent third parties such as purchasers, lessees, title examiners, and attorneys. Inasmuch as a memorandum will only make what is a public record more readily found, the Court finds that the memorandum is an appropriate measure and method to protect innocent third-parties. Therefore, the Court will not reconsider that portion of its prior Order.

-304-
A. H. J.

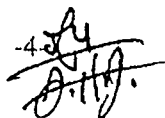
IT IS SO ORDERED!



The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

February 22 2012
Conway, South Carolina

ORDER UPON PLAINTIFFS' MOTION
FOR RECONSIDERATION PURSUANT
TO RULE 59(E), SCRPC

-4-


C/A No. 2009-CP-26-10523

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION # 2009-CP-26-10523

ORDER DENYING DEFENDANTS'
REQUEST FOR ATTORNEY'S FEES
BUT ALLOWING DEFENDANTS TO
RECOVER ITS COSTS

vs.

)
)
)
)
)
)
)
)
)

FILED
HOPKINS COUNTY
12 FEB 27 PM 3:35
CLERK OF COURT

It is axiomatic in the State of South Carolina that attorney's fees are recoverable only if:

- Defendants' Second Cause of Action is Slander of Title alleges action by Plaintiffs which have resulted in "the quality of value of Defendants' property (the common areas) being "disparaged and diminished". The record contains no evidence consistent with the allegations of any diminution of value to the common areas, nor was there introduced into the record any claim for money damages. Slander of Title is not a cause of action recognized by Statute so as to entitle the asserting party, if that party prevails, attorney's fees.

1

The Defendants submitted no testimony in support of its cause of action for nuisance, and subsequent to Motion by Counsel for Plaintiff for dismissal of the counterclaim for a nuisance, counsel for Defendants apprised the Court that he had abandoned the cause of action for nuisance. There is no statutory provision for attorney's fees in connection with a cause of action for nuisance, particularly a cause of action which a party abandons at trial.

Counsel for Defendants contends that a contractual obligation exists which obligates Plaintiffs to pay Defendants' attorney's fees in connection with this action emanates from the Restrictive Covenants which govern both Plaintiffs' lots and the other lots within the Windjammer Village Subdivision, and he cites as his authority for such entitlement the introduction of the various Covenants as an exhibit or exhibits into the record at trial.

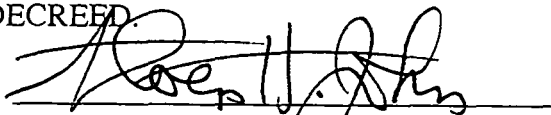
While the Court recognizes that the Restrictive Covenants provide for the Defendant to recovery its attorney's fees in the event that it (the Defendant Association) is forced to hire legal counsel to enforce the Restrictive Covenants (the Court recognizes that Restrictive Covenants are a Contract into which Purchasers within a subdivision enter by virtue of taking title to real estate encumbered by those Covenants), nothing in the Defendant's counterclaims allege, nor was there any proof, that the Restrictive Covenants were violated by the Plaintiffs in any particular.

As to Defendant's Petition for Costs, as prevailing party in this matter, and with regard to Defendant's Motion for Costs and in light of the fact that Defendant prevailed in the litigation, in both South Carolina common law and Rule 54 of the SCRCP provide for a prevailing party to recover taxable costs as defined under Rule 54(e), and based upon the itemized statement of taxable costs attached to Defendant's Motion, it is appropriate that the Defendant recover its taxable costs in the amount of \$1,933.24.

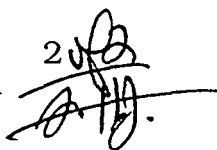
Accordingly,

- a. Defendant's Motion for Attorney's Fees is denied;
- b. Defendant's Motion for Costs is granted and Defendant is awarded costs in this matter in the amount of \$1,933.24.

IT IS SO ORDERED, ADJUDGED AND DECREED.


Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

Conway, South Carolina
February 22 2012



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Elizabeth A. Crotty and James K.)
Orzech,)
Plaintiffs,)
vs.)
Windjammer Village of Little River,)
South Carolina, Property Owners')
Association, a South Carolina)
Eleemosynary Corporation,)
Defendant.)

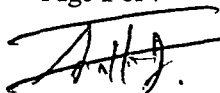
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2009-CP-26-10523

FILED
Horry County
2012 SEP 18 AM 10:50
MELANIE HUGGINS-WARD
CLERK OF COURT

**ORDER UPON DEFENDANT'S
MOTION FOR AN ORDER
AND RULE TO SHOW CAUSE**

The above case came before me for hearing at 9:00 a.m. on August 30, 2012, upon the Defendant's Motion seeking an Order and Rule to Show Cause due to the Plaintiffs' failure and/or refusal to comply with the Court's February 22, 2012 Order Denying Defendant's Request for Attorney's Fees but Allowing Defendant to Recover Its Costs in the above-captioned matter. The Plaintiffs, Elizabeth A. Crotty and James K. Orzech, were present, representing themselves *pro se*; counsel for the Defendant, Kenneth R. Moss, Esquire, was present, along with the Defendant's representative, Cindy Dassoulas.

In response to the Defendant's Motion seeking an Order and Rule to Show Cause, the Plaintiffs' prepared and forwarded to Attorney Moss a document dated August 6, 2012 and entitled "Re: August 30th Hearing Plaintiff's Memorandum in Opposition to Defendant's Proposed Order Awarding the Defendant Even More Taxable Costs Pursuant to Rule 54(e) SCRCP." The Plaintiffs' presented their Memorandum to the Court at the



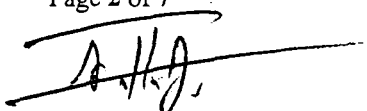
time of the motion, and the Court accepted the Memorandum after confirming with Attorney Moss that the Plaintiffs had provided a copy of the Memorandum to him. The Plaintiffs' Memorandum was never filed with the Clerk of Court.

After reviewing the Plaintiffs' Memorandum, the Court finds that the Memorandum essentially requests that the Court should reconsider its Final Order in the above-captioned case, however no motion has actually been filed. The procedural history of this case is as follows.

PROCEDURAL HISTORY

The above-captioned matter was tried before me in a bench trial on June 22 and 23, 2011. On June 23, 2011 the Court made its ruling in this matter. The Court signed and issued its Final Order on August 3, 2011; the Defendant filed the Order with the Clerk of Court for Horry County and served a copy upon Plaintiffs' counsel on August 5, 2011.

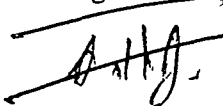
On August 12, 2011, Plaintiffs filed a Notice of Motion and Motion for Reconsideration Pursuant to Rule 59(e), *SCRPC* (hereinafter "Plaintiffs' Motion for Reconsideration"). On August 15, 2011, the Defendant filed a Post-Trial Motion for Attorney's Fees and Costs Pursuant to Rule 54, *SCRPC* (hereinafter "Defendant's Post-Trial Motion"). The costs incurred were supported by receipts and the Affidavit of Defendant's counsel, and receipts and the Affidavit of Angela Marcotte, which were attached to the Defendant's Post-Trial Motion. A copy of the Defendant's Post-Trial Motion, with attachments, was served on Plaintiffs' counsel on August 15, 2011. On



August 29, 2011, the Defendant filed a Return to Plaintiffs' Motion for Reconsideration. On October 7, 2011, the Plaintiffs filed with the Clerk of Court for Horry County a Memorandum in Opposition to Defendant's Post-Trial Motion and Memorandum in Support of Plaintiffs' Motion for Reconsideration, both bearing the date of October 6, 2011. A hearing on the Plaintiffs' Motion for Reconsideration and the Defendant's Post-Trial Motion was scheduled for November 1, 2011; however, Plaintiffs' counsel had received a 90-day suspension from the practice of law and was unable to appear. The hearing was continued until such time as Plaintiffs' counsel would be able to attend. On February 2, 2012, the Defendant filed a Memorandum in Opposition to Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Reconsideration.

A hearing on the parties' Motions was held before the undersigned at 2:00p.m. on February 13, 2012. The Court heard oral argument from the parties on Plaintiffs' Motion for Reconsideration, whereby the Plaintiffs' requested the Court reconsider portions of its Final Order dated August 3, 2011 and filed August 5, 2011. Thereafter, the Court heard oral argument on Defendant's Post-Trial Motion. Defendant's counsel presented to the Court a Supplemental Affidavit of Attorney's Fees and Costs dated January 23, 2012, and signed by Kenneth R. Moss, Esquire. The Supplemental Affidavit itemized attorney's fees and costs the Defendant had incurred with Mr. Moss' law firm as of January 23, 2012.

After reviewing the Memoranda submitted and hearing argument from both parties, the Court issued its written Order on the Defendant's Post-Trial Motion for

A handwritten signature, likely of the court clerk, is written over a horizontal line.

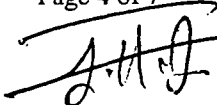
Attorney's Fees and Costs, dated February 22, 2012 and filed February 27, 2012. On March 7, 2012, the Defendant served Plaintiffs' counsel with a copy of the Court's Order Denying Defendant's Request for Attorney's Fees but Allowing Defendant to Recover Its Costs.

On April 30, 2012, counsel for the Defendant filed a Motion seeking an Order and Rule to Show Cause. In response to the Defendant's Motion, Plaintiffs prepared two (2) Memoranda: (1) Plaintiffs' August 6, 2012 Memorandum entitled "Re: August 30th Hearing Plaintiff's Memorandum in Opposition to Defendant's Proposed Order Awarding the Defendant Even More Taxable Costs Pursuant to Rule 54(e) SCRCP," forwarded to Attorney Moss; and (2) Plaintiffs' August 23, 2012 Memorandum entitled "Re: August 30th Rule to Show Cause Hearing: Plaintiffs' Memorandum Requesting That the Court Re-visit the Final Order in the Name of Justice" which was forwarded to the undersigned and Attorney Moss. The Plaintiffs' Memoranda were never filed with the Clerk of Court nor accompanied by a Motion Cover Sheet or any motion filing fee.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In support of the Defendant's Motion, Defendant presented for the Court's review and consideration copies of four (4) email communications between Attorney Moss, the Plaintiffs, and others. The emails were admitted to the Court as Defendant's Exhibits 1 through 4, respectively.

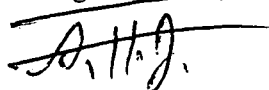
The Defendant's Motion is based upon the failure and/or refusal of the Plaintiffs to pay to the Defendant the costs awarded by the Court in its Order Denying Defendant's



Request for Attorney's Fees but Allowing Defendant to Recover Its Costs, dated February 22, 2012 and filed with the Clerk of Court for Horry County on February 27, 2012. Attorney Moss confirmed to the Court that a copy of the Order was served upon the Plaintiffs, by and through their attorney, on March 6, 2012. A copy of the Certificate of Service by Mail was filed with the Clerk of Court on March 7, 2012. The email communications admitted as Defendant's Exhibits 1 through 4 also show that the Plaintiffs have received a copy of the Order as well as a notice of hearing on the Defendant's Motion seeking an Order and Rule to Show Cause.

In response, the Plaintiffs prepared and forwarded to Attorney Moss a document dated August 6, 2012 and entitled "Re: August 30th Hearing Plaintiff's Memorandum in Opposition to Defendant's Proposed Order Awarding the Defendant Even More Taxable Costs Pursuant to Rule 54(e) SCRCF." While the Court never received a copy of the Plaintiffs' Memorandum, and the Memorandum was not filed with the Clerk of Court, the Plaintiffs presented the Memorandum to the Court at the motion hearing. Upon inquiry by the Court, counsel for the Defendant confirmed he had received a copy of Plaintiffs' Memorandum. The Court accepted Plaintiffs' Memorandum for review, and directed that the Plaintiffs' Memorandum be filed with the Clerk of Court.

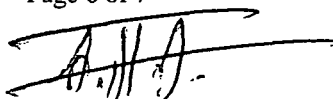
In their Memorandum, the Plaintiffs have asserted they should not be required to pay any costs to the Defendant based upon their assertion that they prevailed in the underlying action. The Plaintiffs' further assert in their Memorandum that the Defendant has not provided a proper basis for the costs for which it sought reimbursement, and

A handwritten signature in black ink, appearing to be "A. H. J.", is written over a horizontal line.

further that they questioned the billing practices by Attorney Moss for his attorney's fees and the costs associated with this action. The Court notes that during the Plaintiffs' arguments, Plaintiff James Orzech incorrectly asserted the amount of costs for which the Defendant sought reimbursement. The record is clear in this case that the Defendant sought significantly more in its Motion for Attorney's Fees and Costs than the Court awarded in its Order dated February 22, 2012.

It is noteworthy that the Plaintiffs never filed any Rule 59 motion seeking to alter or amend the Court's Order dated February 22, 2012, nor did they appeal that Order of this Court. Therefore, this Court's Order Denying Defendant's Request for Attorney's Fees but Allowing Defendant to Recover its Costs dated February 22, 2012 is the law of this case. The Court expects compliance with its prior Order and will not tolerate non-compliance.

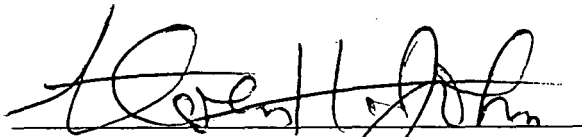
The Court declines to hold the Plaintiffs in contempt of court at this time and has advised the Plaintiffs orally at the Motion hearing and herein that the Court will hold Plaintiffs in contempt of court if the Plaintiffs have failed to fully comply with this Court's prior Order within ninety (90) days, the ninetieth (90th) day being November 28, 2012. If the Plaintiffs have not fully complied with this Court's Order dated February 22, 2012 on or before November 28, 2012, the Plaintiffs may be held in contempt and sanctioned by the Court for their contempt in one or more of the following particulars: (1) the Plaintiffs may be incarcerated in the Department of Corrections for a period of up to one (1) year; (2) the Plaintiffs may be made to serve up to 300 hours of community

A handwritten signature in black ink, appearing to be "A. J. J.", is written over a horizontal line.

service; and/or (3) the Plaintiffs may be made to pay a fine, all of which may be purged upon Plaintiffs' compliance with the Court's prior Order.

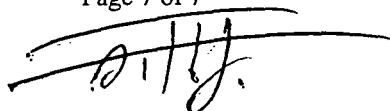
The fact of the Plaintiffs' compliance or non-compliance should be made known to the Court by Attorney Moss by his Affidavit, which shall be filed with the Clerk and a copy of which shall be delivered to the undersigned. The undersigned reserves jurisdiction to hear and decide all further matters concerning the Plaintiffs' compliance with this Court's prior Order.

IT IS SO ORDERED!



The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

9/14/, 2012
Conway, South Carolina



D-11

Kenneth Moss

From: Kenneth Moss
Sent: Friday, June 22, 2012 4:03 PM
To: 'James Orzech'; lizcrotty
Cc: Richard Lovelace [RLovelace@rlovelacelaw.com] (RLovelace@rlovelacelaw.com); holcombech@aol.com; Gunnar Nistad [gunnar.nistad@mgclaw.com] (gunnar.nistad@mgclaw.com)
Subject: FW: Crotty v. Windjammer 2009-CP-26-10523, Notice of Hearing scheduled for August 30, 2012 at 9:00am

James and Liz,

I understand that you are no longer represented by Attorney Lovelace. Accordingly I have forwarded to you the email that I received from Judge John's Law Clerk this morning. Please do let me know if you, or either of you, are represented by an attorney in the above referenced case I order that I may direct my communications appropriately.

Per the below, Judge John has scheduled a hearing upon the Order and Rule to Show Cause that I have sought on behalf of Windjammer Village because you have not yet paid the costs to the village that you were ordered to pay in Judge John's Order Denying Defendants' Request for Attorney's Fees But Allowing Defendants to Recover Its Costs which is dated February 22, 2012. You might recall that pursuant to the Order, you were supposed to pay to the association the sum of \$1,922.34 in costs. The Order was served upon your attorney on April 23, 2012, prior to any communication being relayed that he no longer represents you.

In order to avoid the hearing on the 30th, and possibly the imposition of additional attorney's fees and costs that Judge John might order you to pay, I would encourage you to comply with the order and pay the \$1,922.34 as ordered by Judge John right away. You may deliver the check or funds either to the association office or to my office if you would like to avoid the hearing.

Also, in order to prevent me from having to prepared and have served upon you a notice of the hearing, I do need for you to acknowledge your receipt of this email. Obviously it will costs the association, and consequently the two of you, additional fees if we have to employ a process server to serve you with notice of the hearing.

**** Please note that my email address has changed ****

Kenneth R. Moss
Wright, Worley, Pope, Ekster & Moss, PLLC
PO Box 250
Little River SC 29566
Tel: 843/ 281-9901
Fax: 843/ 281-9903
wwpemlaw.com

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From: John, Steven H. Law Clerk (Abbey Gail Cain) [mailto:SJohnLC@sccourts.org]

Sent: Thursday, June 21, 2012 11:46 AM

To: Richard Lovelace [RLovelace@rlovelacelaw.com] (RLovelace@rlovelacelaw.com); Kenneth Moss; Kenneth Moss; rroy@cookandroy.com

Subject: Crotty v. Windjammer 2009-CP-26-10523

Counselors,

The Court has scheduled a Rule to Show Cause hearing in the above matter for **August 30, 2012 at 9:00am** in courtroom 3B of the Horry County Judicial Complex.

Thank you,
Abbey

Abbey G. Cain
Law Clerk to the Honorable
STEVEN H. JOHN
Resident Circuit Judge
Fifteenth Judicial Circuit
843.915.6697

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Kenneth Moss

From: James Orzech [james.orzech@earthlink.net]
Sent: Tuesday, June 26, 2012 11:12 AM
To: Kenneth Moss; lizcrotty
Cc: holcombech@aol.com; Gunnar Nistad [gunnar.nistad@mgclaw.com]
(gunnar.nistad@mgclaw.com)
Subject: Re: FW: Crotty v. Windjammer 2009-CP-26-10523, Notice of Hearing scheduled for August 30, 2012 at 9:00am

Mr. Moss,

Thank you for finally communicating with us directly and not through Mr. Lovelace. We were wondering whether or not WJV would ever ask to be paid. We would appreciate it if the WJV POA would send us an invoice that included copies of the underlying receipts for each cost claimed?

There is no need to serve us and we look forward to the August 30th Hearing with Judge John. Can you please forward to us all communication you had with the Judge that you would have sent to any other opposing attorney. So far we only have some emails. For better or for worse, we are now Per Se, so we deserve to be treated with the same deference that you would pay to any opposing counsel, as does Gunnar Nistad.

Meanwhile, although I am not at liberty to discuss the Mediation, suffice it to say that the most recent information we have from Mr. Lawson is that Defendants intend to make another offer, which now is overdue. We await closure, hopefully to include a proposal that at least makes progress towards a settlement, short of going to Trial in November. That being said, your side has offered up forgiveness of the \$1,900+ Judgment as a Bargaining Chip, so we believe that any further discussion of this matter with you now would be counterproductive, possibly confounding the ongoing efforts of the Mediator.

Ms. Crotty will return tomorrow, so we then shall discuss the issues that you have brought to our attention and review our notes from our meetings with Mr. Lovelace. Also we likely will seek additional professional legal guidance before going forward,

Regards, James Orzech
phone: (843) 281-2299

073

Kenneth Moss

From: Kenneth Moss
Sent: Wednesday, June 27, 2012 12:12 PM
To: 'James Orzech'; lizcrotty
Cc: holcombech@aol.com; Gunnar Nistad [gunnar.nistad@mgclaw.com]
(gunnar.nistad@mgclaw.com); Richard Lovelace [RLovelace@rlovelacelaw.com]
(RLovelace@rlovelacelaw.com)
Subject: RE: FW: Crotty v. Windjammer 2009-CP-26-10523, Notice of Hearing scheduled for August 30, 2012 at 9:00am

James,

Thank you for your email. I really cannot agree that WJV will send you an invoice with an itemization of the costs that WJV sought in the motion for fees and costs. The reason is certainly not that WJV and I are not willing, but that we do not fully understand how Judge John came to the decision that he did. I will send you by separate email the breakdown of costs for which we sought reimbursement. In as much as Judge John did not grant to the WJV all that was asked and he did not offer an explanation of that which he granted that that which he did not grant, WJV and I cannot provide to you the requested detail. Again, I will send to you the breakdown of that which we asked for.

Concerning an invoice, I do not believe it to be necessary or appropriate for the WJV to provide you with an invoice. Judge John's Order that was served upon Attorney Lovelace, who by the way has not been relieved as an attorney in the case, is very clear and unambiguous. Payment should have been made months ago. Frankly I feel that Ms. Crotty and you would be ill advised to come into Court on the 30th with any assertion that you have not complied with the Order and paid the costs because you have not been provided with an invoice. My guess is that assertion would not sit well with Judge John.

As far as direct communications with Ms. Crotty and you, I will certainly provide you with copies of all communications that I have concerning our case. In as much as no motion or Consent Order has been filed to relieve Attorney Lovelace as your attorney, I will continue to copy him with my communications. While Attorney Nistad is not an attorney in our case, I will copy him upon my communications because you have asked me to do so. I do agree with you, however, that it is appropriate to include Attorney Nistad in our communications.

You are aware of course that I am not involved in your separate litigation with the WJV and several of its residents and I was not present in the mediation conference hosted by Attorney Lawson. If you are not, you should also be aware and mindful that I have not received any communication or direction that Judge John's Order awarding costs to the WJV has been forgiven nor any direction to refrain from proceedings to bring about compliance with Judge John's Order.

Again, I encourage you to comply with Judge John's Order and remit the costs awarded to the WJV immediately in order to avoid your incurring additional fees and costs.

**** Please note that my email address has changed ****

Kenneth R. Moss
Wright, Worley, Pope, Ekster & Moss, PLLC
PO Box 250
Little River SC 29566
Tel: 843/ 281-9901
Fax: 843/ 281-9903
www.pemlaw.com

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0#4

Kenneth Moss

From: Kenneth Moss
Sent: Wednesday, June 27, 2012 12:16 PM
To: James Orzech (james.orzech@earthlink.net); lizcrotty (lizcrotty@earthlink.net)
Cc: holcombech@aol.com; Gunnar Nistad [gunnar.nistad@mgclaw.com] (gunnar.nistad@mgclaw.com); Richard Lovelace [RLovelace@rlovelacelaw.com] (RLovelace@rlovelacelaw.com)
Subject: FW: Crotty vs. WJV
Attachments: Order awarding taxable costs per Rule 54(e) SCRPC 02-17-12.doc ~

James,

As eluded to in my email of a few minutes ago, the below and the attached evidence the costs for which the WJV sought to be reimbursed.

**** Please note that my email address has changed ****

Kenneth R. Moss
Wright, Worley ,Pope, Ekster & Moss, PLLC PO Box 250 Little River SC 29566
Tel: 843/ 281-9901
Fax: 843/ 281-9903
wwpemlaw.com

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P

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-----Original Message-----

From: Kenneth Moss
Sent: Wednesday, February 22, 2012 12:07 PM
To: 'John, Steven H. Law Clerk (Abbey Gail Cain)'; Richard Lovelace
Cc: Richard Lovelace [RLovelace@rlovelacelaw.com] (RLovelace@rlovelacelaw.com)
Subject: RE: Crotty vs. WJV

Good morning Abbey.

I have worked on but not completed my proof read of the attached draft of the order denying Order Denying Defendants' Request for Attorney's Fees But Allowing Defendants to Recover Its Costs. I did so because I had concerns about the draft prepared by Attorney Lovelace. I was not certain where he found the basis for the amount of costs that he included in his draft order and recognize that he would not have had all of the information that was available to me.

Attached is a draft that includes an itemization of those costs for which the Defendant asserts are properly allowable under Rule 54 and pursuant to Judge John's instructions. Please let me know if I can be of any further assistance. Thank you.

**** Please note that my email address has changed ****

Kenneth R. Moss
Wright, Worley, Pope, Ekster & Moss, PLLC PO Box 250 Little River SC 29566
Tel: 843/ 281-9901
Fax: 843/ 281-9903
wwpmlaw.com

CIRCULAR 230 DISCLOSURE: To comply with Treasury Department regulations, we inform you that, unless otherwise expressly indicated, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed under the Internal Revenue Code or any other applicable tax law, or (ii) promoting, marketing or recommending to another party any transaction, arrangement, or other matter.

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Unless otherwise indicated or obvious from the nature of the above communication, the information contained herein may be an attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

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P

Please consider the environment before printing this email.

-----Original Message-----

From: John, Steven H. Law Clerk (Abbey Gail Cain) [mailto:SJohnLC@sccourts.org]
Sent: Wednesday, February 22, 2012 11:31 AM
To: Richard Lovelace
Cc: Kenneth Moss
Subject: RE: Crotty vs. WJV

Mr. Lovelace,

Will you please send the attached Order Denying Defendants' Request for Attorney's Fees But Allowing Defendants to Recover Its Costs to me in Word format.

Thank you,

-----Original Message-----

From: Richard Lovelace [mailto:RLovelace@rlovelacelaw.com]
Sent: Friday, February 17, 2012 10:01 AM
To: John, Steven H. Law Clerk (Abbey Gail Cain)
Cc: Ken Moss
Subject: Crotty vs. WJV

Judge John:

Pursuant to your directive, I have drafted two Orders:

1. Order Denying Defendant's Petition for Attorney's Fees, but allowing its Petition for costs.
2. Order Modifying the previous Order of the Court pursuant to my Rule 59(e) Motion for Reconsideration.

A copy of this transmittal is being simultaneously sent to counsel for Defendant.

If, after receiving this, you have further directions to me with regard to text modification, please let me know, and I will see that the changes are promptly made and circulated.

Richard M. Lovelace, Jr., Esquire
Richard M. Lovelace, Jr., PA
P. O. Box 1704
Conway, SC 29528
(843) 248-7321 ext. 305
(843) 248-9364 (Fax)

NOTICE: This e-mail message and all attachments transmitted with it may contain legally privileged and confidential information intended solely for the use of the addressee. If you are not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by electronic mail or by telephone and delete this message and any copies or backups. Thank you.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C/A NO. 2009-CP-26-10523
Elizabeth A. Crotty and James K. Orzech,	)	
	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER AWARDING TAXABLE
	)	COSTS PURSUANT TO RULE 54(e),
Windjammer Village of Little River,	)	SCRCP
South Carolina, Property Owners' Association, a South Carolina	)	
Eleemosynary Corporation,	)	
	)	
Defendant.	)	
	)	

A hearing was held before me on February 13, 2012 on Defendant's Post-Trial Motion for Attorney's Fees and Costs Pursuant to Rule 54, SCRCP. Plaintiffs Elizabeth A. Crotty and James K. Orzech were present with their counsel, Richard Lovelace, Esq.; Defendant's representative, Cindy Dassoulas, was present along with counsel for Defendant, Kenneth R. Moss, Esq. After hearing argument from both counsel, this Court awarded the Defendant its taxable costs pursuant to Rule 54(e), compelling each of the Plaintiffs, jointly and severally, to pay the costs incurred by the Defendant in defending this action. The costs incurred are supported by receipts and the Affidavit of Defendant's counsel, and receipts and the Affidavit of Angela Marcotte, which were attached to Defendant's Post-Trial Motion for Attorney's Fees and Costs filed on August 15, 2011.

1. Costs Pursuant to Rule 54(e)(2):

Consent Order for Substitution of Counsel filed 09/08/10	\$ 25.00
Notice of and Motion to Consolidate, filed 10/12/10	\$ 25.00

Notice of and Motion to Compel Inspection, filed 11/01/10	\$ 25.00
Notice of and Motion for Leave to Amend Pleadings, filed 11/01/10	\$ 25.00
Defendant's Motion for Continuance, filed 11/10/10	\$ 25.00
Motion to Compel Discovery Responses, filed 12/15/10	\$ 25.00
Post-Trial Motion for Attorney's Fees and Costs, filed 08/15/11	<u>\$ 25.00</u>

Subtotal \$ 175.00

2. Costs Pursuant to Rule 54(e)(4):

Subpoena to Roseanne Pazoga for Deposition, issued 01/07/11	\$ 31.50
Copy charge for documents produced by Roseanne Pazoga in response to Subpoena <i>duces tecum</i> , 02/02/11	<u>\$ 40.00</u>

Subtotal \$ 71.50

3. Costs Pursuant to Rule 54(e)(5):

Witness Subpoena to Elizabeth A. Crotty, issued 02/07/11	\$ 54.91
Witness Subpoena to James Orzech, issued 05/27/11	<u>\$ 53.67</u>

Subtotal \$ 108.58

4. Costs Pursuant to Rule 54(e)(6):

Payment to court reporter Jerry S. Mabry for depositions ¹ of Elizabeth Crotty, James Orzech, and Charles Nill, 07/01/10	\$ 502.35
Payment to FedEx Kinkos for copies of plats and Plaintiffs' Architectural plans, 08/03/10 (Defendant's Trial Exhibit No. 21 and various other exhibits incorporating plats	\$ 24.85
Fees paid to investigator for research of County records, 08/16/10	\$ 75.00
Copy of attorney Roger Roy's file, 08/17/10	\$ 170.00
Copies of Horry County Code Enforcement records, (Defendant's Trial Exhibits No. 25 and 36), 08/17/10	\$ 20.00
Transcription fee paid to court reporter Melissa Decker for excerpt of 09/12/02 POA Architectural Committee Report (Defendant's Trial Exhibit No. 23), 08/24/10	\$ 76.00

¹ Sealed copies of the deposition transcripts for both Plaintiffs was presented at trial and made a part of the Court record. The deposition transcripts were used to by Defendant to impeach the testimony of both Plaintiffs.

Harry S. Bruton for survey of the property (Defendant's Trial Exhibit Nos. 3 and 3A), 11/11/10	\$ 500.00
Enlarged copy/mounting cost for Aerial of Windjammer Village and Plaintiffs' property (Defendant's Trial Exhibit No. 2), and Survey by Harry S. Bruton (Defendant's Trial Exhibit No. 3A), 11/11/10	\$ 150.42
Copy of transcript of 11/03/09 hearing on Temporary Injunction, paid to court reporter Grace Hurley, 11/20/10	\$ 42.25
Enlarged copy/mounting of plat recorded in Plat Book 159 at Page 70, Records of Horry County (Defendant's Trial Exhibit No. 1), 11/26/10	\$ 16.35
Appearance fee for testimony of Harry S. Bruton, Surveyor, regarding Defendant's Trial Exhibits No. 3 and 3A, 06/29/11	\$ 450.00
Court reporter Melissa Decker for deposition testimony of Roseanne Pazoga, ² 02/04/11	\$ 752.94
One (1) copy of each of the following Defense Exhibits used at trial not itemized above: Nos. 3, 3A, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 23, 24, 27, 28, 29, 30, 31, 33, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 55, 56, 57, 59, 60, and 61 [220 pgs. x \$0.15/pg. = \$33.00]	<u>\$ 33.00</u>

Subtotal \$2,813.16

TOTAL COSTS \$3,168.24

THEREFORE, I FIND the costs enumerated above are just and proper; and the Plaintiffs are liable, jointly and severally, for payment of these costs to Defendant within sixty (60) days of the date of this Order.

IT IS SO ORDERED!

Steven H. John, Presiding Judge
Fifteenth Judicial Circuit

_____, South Carolina

_____, 2012

² Ms. Pazoga was listed in Plaintiffs' discovery responses as a witness. Copies of Plaintiffs' discovery responses dated January 4, 2011 were filed with the Clerk of Court on May 31, 2011 and are included in the Court's file. Further, via electronic mail dated May 16, 2011, counsel for Plaintiffs provided a witness list indicating Ms. Pazoga would testify as a witness for the Plaintiffs.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Elizabeth A. Crotty and James K.
Orzech,

Plaintiffs,

vs.

Windjammer Village of Little River,
South Carolina, Property Owners'
Association, a South Carolina
Eleemosynary Corporation,

Defendant.

) IN THE COURT OF COMMON
) PLEAS FIFTEENTH
) JUDICIAL CIRCUIT
) C/A NO. 2009-CP-26-10523

) **RE: AUGUST 30TH HEARING**
) **PLAINTIFFS' MEMORANDUM**
) **IN OPPOSITION TO**
) **DEFENDANT'S PROPOSED**
) **ORDER AWARDING**
) **DEFENDANT EVEN MORE**
) **TAXABLE COSTS PURSUANT**
) **TO RULE 54(e) SCRC**
)

TO: THE HONORABLE STEVEN H. JOHN & ATTORNEY
KENNETH R. MOSS, COUNSEL FOR DEFENDANTS

Defendants' Attorney Kenneth Moss informed us that the Court has scheduled a 'Rule to Show Cause Hearing' in the above case for August 30, 2012 at 9:00am. His stated purpose for asking for the Hearing is to determine whether or not you will sign a new Order awarding him even more taxable costs pursuant to Rule 54(e).

This memorandum and attachment are Plaintiffs' responses to Moss' proposed Order in a case we thought was closed in February 2012. Please be advised that we no longer retain Richard Lovelace, so we will represent ourselves at this Hearing *per se*.

On June 22-23, 2011, you as the Presiding Judge of the Fifteenth Judicial Circuit heard our case and Defendants' counterclaims. Your decided that:

- Defendant WJV POA could not tear up the 'Paved Driveway' and turn it into a park and that the same law applies to the mailbox-circle. The Injunction we initiated in the first place was made permanent, so on that point: **We prevailed.**
- Plaintiffs were precluded from using the 'Paved Driveway' for anything except picking up our mail from our cars, so on that point: **WJV prevailed.**
- Defendants could not recover attorney fees or costs, so again: **We prevailed.**

Also at a Hearing on April 21, 2010, which was part of this case, Judge Hyman found Defendant WJV POA to be in Contempt of Court for violating the Court's Temporary Restraining Order (TRO), so here again: **We prevailed.**

At the Trial nothing was said that gave any indications that:

1. Guests could not come to our home; access from the 'Paved Driveway' and park on our property;
2. Service or Emergency Vehicles (such as from our propane-gas supplier, pest-control or tree services, plumbing and electrical contractors, delivery companies such as *UPS* or *Fedex*, ambulances and fire trucks) could not have access to our home via the 'Paved Driveway;' or
3. That contract restriction would apply to anyone other than Plaintiffs Crotty and Orzech, not to be inflicted upon any potential buyer or future owner.

The 'Final Order' signed on August 5, 2011, made the TRO permanent, saving the access road, ordered us not to access our property from it, but *somehow* all of those crippling restrictions in the above paragraph mysteriously appeared, likely inserted by the assigned author, Defendant's attorney Kenneth Moss.

Consequently on October 6, 2011, attorney Richard Lovelace filed a Motion for Reconsideration on our behalf, pursuant to Rule 59(e), to reverse that part of the Order barring emergency and service vehicles from accessing our home from the 'Paved Driveway,' but attorney Lovelace refused to challenge any other provision, except to

protect us against Defendant's claim for attorney fees and costs (below). Nonetheless, those reconsiderations cost us yet another \$5,000 in attorney fees to Lovelace.

On August 15, 2011, attorney Moss had filed an 'Affidavit of Attorney's Fees and Costs' and a 'Post-Trial Motion for Attorney's Fees and Costs,' pursuant to SC Rules of Civil Procedure Rule 54, specifically citing Rule 54(d), as follows:

(d) **Costs.** Except when express provision therefore is made either in a statute or in these rules, costs shall be allowed as of course to the **prevailing party** unless the court directs otherwise.

According to the Final Order, **both sides partially prevailed**, so we do not comprehend why Moss had standing to ask us to pay Defendant's costs. We too had taxable costs, but our former attorney advised us that we could not collect them, since we only partially prevailed.

At the Hearing on February 12, 2012,

1. Plaintiffs' Motion for Reconsideration, again permitting service and emergency vehicles to use the 'Paved Driveway,' was affirmed: **We prevailed.**
2. Defendant's Motion for Attorney Fees was denied, but it was awarded taxable costs, despite the fact that: **Plaintiffs and Defendants each partially prevailed.**

In Moss' "Affidavit of Attorney's Fees and Costs," there were many discrepancies. For example, he documented only \$1,152.23 in "additional charges," but in his narrative he had alluded to over \$8,000 in other professional fees and costs that the POA *somehow* had incurred, for which he neither sought reimbursement nor provided any itemization or proof that they existed and were related to this case. Then in the final Order stamped on February 27th the award increased *somehow* to \$1,933.24 -- **an inflation of \$781.01 or 68% for no apparent reason.**

We have asked attorney Moss for an invoice and for the underlying receipts for whatever costs he expects us to pay, but our reasonable request was sternly rebuffed. Absent any receipts or other documentation, perhaps Mr. Moss can explain at the upcoming Hearing how these unsubstantiated, inflating, and seemingly bogus numbers were inserted into the Order that were inconsistent with his "Affidavit of Attorney's Fees and Costs" under consideration at the February 2012 Hearing. Where is his proof?

On June 27, 2012, attorney Moss sent us an undated, unstamped email attachment of a proposed 'Order Awarding Taxable Costs Pursuant to Rule 54(e) SCRCP' now asking for \$3,168.24 from us for costs to be decided upon at the August 30th Hearing. That represents **an increase of \$2,016.01 or 275% inflation** from his original request in February 2012. Again Moss provided us none of the underlying receipts for any of these items, without which we cannot validate his claim.

In that proposed 'Order' that he expects you as a Circuit Judge to sign, he states,

"... The costs incurred are supported by receipts and the Affidavit of Defendant's counsel (Moss), and the receipts and the Affidavit of Angela Marcotte¹ (WJV POA's Board and Office Secretary), which were attached to Defendant's Post-Trial Motion for Attorney's Fees and Costs Filed August 15, 2011."

However, when Plaintiff Orzech asked WJV POA's Treasurer, a Certified Public Accountant, to provide him with copies of receipts for items listed in Moss' proposed 'Order' of June 2012, including POA Secretary Marcotte's supporting Affidavit; as well as Moss' Affidavit dated August 15, 2011, she could not produce them, explaining that reimbursement receipts for legal costs are directly sent to and collected by the Association's attorney, Moss, and not by the POA.

¹ Angela Marcotte is a named Defendant in Plaintiffs' pending lawsuit (Crotty and Orzech vs. Cotcamp et al.), Civil Action No. 2010-CP-26-5929.

If the POA Secretary provided an Affidavit, including receipts that went into Moss' accounting, how is it that the POA Treasurer had no knowledge of them? That calls into doubt the veracity of Ms. Marcotte's (sworn) Affidavit, which we have never seen. Perhaps Mr. Moss can produce Marcotte's questionable Affidavit and underlying receipts on August 30th to help the Court sort out these seemingly incongruous claims.

Further, Moss' proposed 'Order' of June 2012 is replete with errors. For starters, the costs that Moss claimed were not supported by receipts. The discrepancies between Moss' June 2012 proposed 'Order' and his August 2011 'Affidavit of Attorney's Fees and Costs' are flagrant. (See Attachment #1.) For example:

- There are seven (7) items totaling \$698.66, which he claimed in both documents; we wonder *if* he intended to double charge us.
- There are eleven (11) items totaling \$453.57, which Moss claimed only on his August 2011 Affidavit that do not appear on his June 2012 proposed 'Order.'
- There are sixteen (16) items totaling \$2,114.50 listed on the June 2012 proposed 'Order' not appearing on the August 2011 Affidavit.

Moss also noted on his Aug. 2011 'Affidavit of Attorney's Fees and Costs' that his total billing to WJV in the fiscal year (July 2010 – June 2011) was \$40,099, of which the POA paid \$19,217 by July 1, 2011, leaving a balance due carried into the next fiscal year of \$20,882. However, in the 'actual budget' published in its Annual Report for the July 2011 through June 2012 fiscal year, the Association reported spending just \$1,236 in Legal Fees, returning \$23,764 to reserves, and apparently not paying Moss. One then must ask whether or not Moss' claim of about \$40,000 for us to pay, if so ordered, was fictitious; but the \$19,000+ that Windjammer POA actually paid was the true charge?²

Meanwhile, Defendant WJV POA filed a Counterclaim for precisely \$40,000 in attorney fees in our pending Civil Action No: 2010-CP-26-5929, despite the fact that

² Moss and the WJV POA tried this maneuver on us before; this is the voice of experience speaking.

attorney Nistad is being paid by the WJV Insurance Company and that this case is ongoing. We wonder if this is a ruse to circumvent your February 2012 decision; with Moss expecting us to pay his denied legal fees from this case through cross-billing the pending civil litigation, of which he is not directly involved. Perhaps Moss can address this matter too on August 30th.

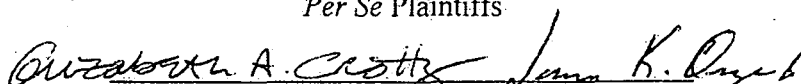
Strange things are happening here that we hope will be sorted out at the upcoming Hearing. In any event, how can we be asked to pay for any cost for which there is such questionable accounting and no verifiable receipts?

Finally, we staunchly maintain that Defendant WJV POA is not entitled to any costs at all, because **we prevailed more often**, and especially in the **most important matter** that forced us to initiate this litigation in the first place – **The Injunction** to save the 'Paved Driveway' -- **We Prevailed**. They prevailed only partially in just some of their counterclaims, for which our former attorney did not warn us about; did not prepare us for; and did not effectively defend us against.

For all of the above well-documented reasons, we pray that you not only will reject Defendant's new proposed Order for even more taxable costs, but also you will rescind that part of your Order stamped on February 27, 2012, allowing Defendant to recover any costs at all, at the Hearing on August 30th.

Respectfully submitted,

Per Se Plaintiffs


Elizabeth A. Crotty and James K. Orzech, Ph.D.

2148 Gamecock Circle
Little River, SC 29566
Tel: (843) 281-2299

Little River, South Carolina
August 6, 2012

Attachment #1

This attachment includes:

- A. Attorney Moss' proposed 'Order Awarding Taxable Costs Pursuant to Rule 54(e) SCRCP' c. June 27, 2012.
- B. Attorney Moss' 'Affidavit of Attorney's Fees and Costs' dated August 15, 2011, pages 12 and 13.
- C. Windjammer Village of Little River, POA, Profit & Loss Budget vs. Actual for July 2011 through June 2012.

The seven (7) items totaling \$698.66, which he claimed in both documents, are color-coded in yellow.

The sixteen (16) items totaling \$2,114.50 listed on the June 2012 proposed Order not appearing on the August 2011 Affidavit are color-coded in green.

The eleven (11) items totaling \$453.57, which Moss claimed only on his August 2011 Affidavit that do not appear on his June 2012 proposed Order are color-coded in blue.

Moss' balance due going into fiscal year (July 2011 – June 2012) and WJV POA's Annual Report of budgeted and actual expenses for Legal Fees that year are color-coded in magenta.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C/A NO. 2009-CP-26-10523
Elizabeth A. Crotty and James K. Orzech,	)	
	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER AWARDING TAXABLE
	)	COSTS PURSUANT TO RULE 54(e),
	)	SCRCP
Windjammer Village of Little River,	)	
South Carolina, Property Owners'	)	
Association, a South Carolina	)	
Eleemosynary Corporation,	)	
	)	
Defendant.	)	
	)	

A hearing was held before me on February 13, 2012 on Defendant's Post-Trial Motion for Attorney's Fees and Costs Pursuant to Rule 54, SCRCP. Plaintiffs Elizabeth A. Crotty and James K. Orzech were present with their counsel, Richard Lovelace, Esq.; Defendant's representative, Cindy Dassoulas, was present along with counsel for Defendant, Kenneth R. Moss, Esq. After hearing argument from both counsel, this Court awarded the Defendant its taxable costs pursuant to Rule 54(e), compelling each of the Plaintiffs, jointly and severally, to pay the costs incurred by the Defendant in defending this action. The costs incurred are supported by receipts and the Affidavit of Defendant's counsel, and receipts and the Affidavit of Angela Marcotte, which were attached to Defendant's Post-Trial Motion for Attorney's Fees and Costs filed on August 15, 2011.

1. Costs Pursuant to Rule 54(e)(2):

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Post-Trial Motion for Attorney's Fees and Costs, filed 08/15/11	\$ <u>25.00</u> ☐

Subtotal \$ **175.00**

2. Costs Pursuant to Rule 54(e)(4):

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Copy charge for documents produced by Roseanne Pazoga in response to Subpoena <i>duces tecum</i> , 02/02/11	\$ <u>40.00</u> ☐

Subtotal \$ **71.50**

3. Costs Pursuant to Rule 54(e)(5):

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Witness Subpoena to James Orzech, issued 05/27/11	\$ <u>53.67</u> ☐

Subtotal \$ **108.58**

4. Costs Pursuant to Rule 54(e)(6):

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¹ Sealed copies of the deposition transcripts for both Plaintiffs was presented at trial and made a part of the Court record. The deposition transcripts were used to by Defendant to impeach the testimony of both Plaintiffs.

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Court reporter Melissa Decker for deposition testimony of Roseanne Pazoga, ² 02/04/11	\$ 752.94
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Subtotal \$2,813.16

TOTAL COSTS \$3,168.24

THEREFORE, I FIND the costs enumerated above are just and proper; and the Plaintiffs are liable, jointly and severally, for payment of these costs to Defendant within sixty (60) days of the date of this Order.

IT IS SO ORDERED!

Steven H. John, Presiding Judge
Fifteenth Judicial Circuit

_____, South Carolina

_____, 2012

² Ms. Pazoga was listed in Plaintiffs' discovery responses as a witness. Copies of Plaintiffs' discovery responses dated January 4, 2011 were filed with the Clerk of Court on May 31, 2011 and are included in the Court's file. Further, via electronic mail dated May 16, 2011, counsel for Plaintiffs provided a witness list indicating Ms. Pazoga would testify as a witness for the Plaintiffs.

	<u>Hrs/Rate</u>	<u>Amount</u>
8/14/2011 Review and revision of draft motion and draft affidavits prepared by Ms. Dassoulas.	0.75 200.00/hr	150.00
6/24/2011 Transcribe tape of Judge John's ruling; telephone calls, email to G. Nistad; telephone conference with K. Moss and G. Nistad; review of documents referenced in Judge John's ruling; email to WJV POA Board Members	4.60 70.00/hr	322.00
6/27/2011 Emails to K. Moss	0.20 70.00/hr	14.00
6/30/2011 Telephone conference with C. Nill and L. Holcombe	0.20 70.00/hr	14.00
8/12/2011 Preparation of Petition for Fees and Costs	1.30 70.00/hr	91.00
8/13/2011 Draft Affidavits and work on Petition for Fees and Costs; review file; work on file	6.00 70.00/hr	420.00
For professional services rendered	373.82	\$38,946.79
Additional Charges :		
8/16/2010 Advance of fees paid to investigator for research of county records.		75.00
8/10/2010 Admin Fee		100.00
8/17/2010 Copying cost from Horry County Code Enforcement		20.00
10/4/2010 Copying cost.		2.10
Postage		0.44
11/1/2010 Courier fee.		30.00
Advance of motions filing fees.		50.00
Postage and copies		2.50
11/3/2010 Copying cost.		1.20
11/20/2010 Transcript of 11/03/09 hearing, payment to Grace L. Hurley, Check #5834		42.25
11/27/2010 Advance of costs at Office Depot for report dividers and for sheet protectors.		176.33
Copying cost (color copies).		16.00
1/7/2011 Witness fee- Roseanne Pazoga		31.50

	<u>Amount</u>
2/2/2011 Copying cost, copies of all documents delivered by Rosanne Pozoga.	40.00
12/15/2010 Advance of motion fee to Clerk of Court.	25.00
2/7/2011 Advance of witness fee to Elizabeth Crotty, in connection with trial subpoena.	54.91
6/16/2011 Courler fee, Memorandum of Law	35.00
6/29/2011 Advance of fees to Harry F. Bruton & Associates.	450.00
Total additional charges	\$1,152.23
Total amount of this bill	\$40,099.02
Accounts receivable transactions	
11/24/2010 Payment - thank you.. Check No. 206	(\$5,000.00)
12/12/2010 Credit applied for office supplies kept by firm.	(\$92.44)
12/15/2010 Payment - thank you. Check No. 2148	(\$3,847.94)
2/11/2011 Payment - thank you. Check No. 209	(\$2,018.08)
5/11/2011 Payment - thank you. Check No. 210	(\$1,973.33)
7/1/2011 Payment - thank you. Check No. 211	(\$6,285.00)
Total payments and adjustments	(\$19,216.79)
Balance due	\$20,882.23

Village of Little River, P.
Profit & Loss Budget vs. Actual
July 2011 through June 2012

	Actual	Budget	\$ Over Budget
Ordinary Income/Expense			
Income			
501 · Assessments	307,043.07	307,128.00	-84.93
503 · Amercements			
503a · Gate Fines and Penalties	1,195.62	2,100.00	-904.38
503 · Amercements - Other	2,494.80	2,000.04	494.76
Total 503 · Amercements	3,690.42	4,100.04	-409.62
504 · Interest	1,720.96	2,000.04	-279.08
506 · Social Committee Income	2,175.00	1,500.00	675.00
510 · Contractor and Initiation Fees	4,013.02	2,000.04	2,012.98
511 · Entry Cards	1,242.00	399.96	842.04
512 · Certificate of Assessments	800.00	500.04	299.96
519 · Miscellaneous Income	1,167.30	99.96	1,067.34
Total Income	321,851.77	317,728.08	4,123.69
Expense			
800 · Electricity	17,424.44	21,000.00	-3,575.56
801 · Water	2,818.65	3,500.04	-681.39
802 · Propane	365.51	500.04	-134.53
805 · Insurance	23,766.80	26,000.04	-2,233.24
807 · Time Warner Cable	2,752.26	2,799.96	-47.70
808 · Accounting	5,600.00	6,300.00	-700.00
809 · Legal Fees	1,235.62	24,999.96	-23,764.34
6150 · Depreciation Expense	10,880.69		
6240 · Miscellaneous	64.89		
8000 · Maintenance			
803 · Recycling	1,658.88	2,499.96	-841.08
804 · Garbage	17,799.11	17,000.04	799.07
811 · Gate Maintenance	4,500.00	4,500.00	0.00
812 · Building	2,850.72	3,000.00	-149.28
813 · Streets			
813a · Street Paving	64,622.38	40,857.96	23,764.42
813 · Streets - Other	4,656.01	5,000.04	-344.03
Total 813 · Streets	69,278.39	45,858.00	23,420.39
814 · Grounds	7,739.25	9,999.96	-2,260.71
815 · Pool Contract	7,065.00	8,499.96	-1,434.96
816 · Pool Maintenance and Chemicals	8,163.45	9,999.96	-1,836.51
818 · Equipment	5,941.33	6,000.00	-58.67
820 · Pier and Boat Ramp	1,138.85	2,000.04	-861.19
821 · Tennis and Basketball Courts	614.67	999.96	-385.29
823 · Brush and Leaves	11,068.05	12,000.00	-931.95
Total 8000 · Maintenance	137,817.70	122,357.88	15,459.82
822 · Beautification	4,528.78	6,200.04	-1,671.26
8100 · Salaries			
824 · Office	18,263.75	20,700.00	-2,436.25
825 · Maintenance	31,852.50	38,000.04	-6,147.54

August 1, 2012

Dear James Orzech:

This letter is to explain why I cannot help you with your request for vendor bills submitted by Ken Moss that were included on the "order awarding taxable costs pursuant to Rule 54(e) SCRCP". I am the treasurer for Windjammer Village and although I have seen interim draft bills from Ken Moss that Windjammer Village has made payments on, no final bill has been approved by Ken Moss's office to official submit to Windjammer Village. The reimbursements receipts included in Ken Moss's draft bill are his property and I have no authority to collect this information from him, as I do not handle his bookkeeping or taxes. Im sorry for any inconvenience, but this information will have to be collect directly from Ken Moss and not Windjammer Village.

Thank you again.

Regards,

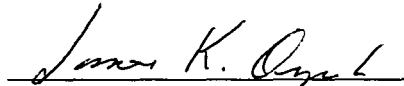
M. Basehoar, CPA

Melissa Basehoar, CPA

CERTIFICATE OF SERVICE

I certify that I have this 6th day of August 2012 served a copy of the foregoing **Plaintiffs Memorandum in Opposition to Defendant's Proposed Order Awarding Defendant Even More Taxable Costs Pursuant to Rule 54(e) SCRCP**, regarding the Rule to Show Cause Hearing scheduled for August 30, 2012, by mail, as follows:

Kenneth R. Moss, Esquire
Wright, Worley, Pope, Ekster & Moss, PLLC
1180 Highway 17 North, Suite 2
P.O. Box 250
Little River, SC 29566
Attorney for Defendants


James K. Orzech, Ph.D.

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DEC 11 2012
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

6534

APPEAL FROM HORRY COUNTY
Court of Common Pleas

RECEIVED

DEC 11 2012

Steven H. John, Presiding Judge

SC Court of Appeals

Case No. 2009-CP-26-10523

Appellate Case No. 2012-213287

Elizabeth A. Crotty and James K. Orzech *Appellants,*

v.

Windjammer Village of Little River, South Carolina,
Property Owners' Association, a South Carolina
Eleemosynary Corporation *Respondent.*

PROOF OF SERVICE

I certify that I have served a copy of the Respondent's Reply/Motion to Strike to Appellant Crotty's Return, along with the Proof of Service of same in the above-captioned appeal on the following individuals by United States Mail, with sufficient first-class postage affixed, addressed as follows:

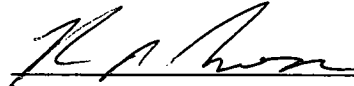
Elizabeth A. Crotty
2121 Brunswick Circle
Little River, SC 29566
Pro se Appellant

James K. Orzech
2148 Gamecock Circle
Little River, SC 29566
Pro se Appellant

*** signature page follows ***

Respectfully submitted,

**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**

A handwritten signature in black ink, appearing to read 'K. R. Moss', is written over a horizontal line.

Kenneth R. Moss, SC Bar # 15520
1180 Highway 17 North, Suite 2
P.O. Box 250
Little River, SC 29566
Tel: (843) 281-9901
Fax: (843) 281-9903

Little River, South Carolina
December 10, 2012

WRIGHT, WORLEY, POPE, EKSTER & MOSS, PLLC

ATTORNEYS AT LAW

1180 HIGHWAY 17 NORTH, SUITE 2 - POST OFFICE BOX 250
LITTLE RIVER, SOUTH CAROLINA 29566
Telephone (843) 281-9901 - Fax (843) 281-9903

O. RICHARD WRIGHT, JR.*
DENNIS T. WORLEY*
HAROLD G. "Butch" POPE*
PAUL J. EKSTER**
KENNETH R. MOSS
MICHAEL T. SMITH++
RICK W. SCOTT*
MARTHA HENLEY SLEDGE*
MELANIE C. NICHOLSON ***
KELLY SANSONE-GALLEY***
D.F. McGOUGAN, JR.
(1921 - 1994)

OTHER OFFICES
TABOR CITY, NC
WHITEVILLE, NC
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*licensed only in NC

**licensed in NC, DC & SC

**DRC-Certified Family Financial Mediator

**licensed in SC & DC and Admitted to the U.S. Supreme Court

***licensed only in SC, Certified Family Court Mediator, Guardian *ad Litem*

December 10, 2012

RECEIVED

DEC 11 2012

VIA U.S. MAIL

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

SC Court of Appeals

Re: Elizabeth A. Crotty and James K. Orzech vs. Windjammer Village of Little River,
South Carolina, Property Owners' Association
C/A No. 2009-CP-26-10523
Appellate Case No. 2012-213287

Dear Ms. Kitchings:

Please find enclosed for filing an original and six (6) copies of Respondent's Reply to Appellant Crotty's Return, and Motion to Strike. Also enclosed is the Proof of Service and filing fee in the amount of \$25.00.

I have enclosed an additional copy of the Proof of Service and would appreciate you returning a clocked copy to me in the enclosed self-addressed, stamped envelope I have provided for your convenience.

With kindest regards,


Kenneth R. Moss

KRM:rb

Enclosures as stated

cc: Elizabeth A. Crotty, *pro se Appellant*
James K. Orzech, *pro se Appellant*