

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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

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JUL 23 2018

SC Court of Appeals

Ronald Jarmuth, *Pro Se* Appellant,

v.

The International Club Homeowners
Association, Inc., Rosemary Toth, and
K.A. Diehl & Associates, Inc., Respondents.

RESPONDENTS' RETURN TO APPELLANT'S
PETITION FOR REHEARING

The Respondents, The International Club Homeowners Association, Inc. ("Association"), Rosemary Toth, and K.A. Diehl & Associates, Inc. (collectively hereinafter referred to as "Respondents"), hereby submit this Return to Appellant's Petition for Rehearing and Suggestion for Rehearing *en banc* dated July 10, 2018 ("Petition"). This Court should deny the Petition, because it raises no issues that the Court either misapprehended or overlooked, unpreserved issues are raised for the first time on appeal, and sufficient grounds do not exist to justify a rehearing *en banc*.

BRIEF PROCEDURAL HISTORY

Consolidated Case Nos. 2009-CP-26-3596 and 2010-CP-26-11320 were tried by a special referee in August, 2012. The final order (hereinafter “Final Order”) awarding a judgment to the Association on its counterclaims under the Declaration of Covenants for the International Club Community (hereinafter “Declaration”) was affirmed on appeal in 2015. Appellant now seeks to appeal a 2016 order (hereinafter “Order”) entered by the circuit court denying his post-appeal Motion to Dismiss the Association’s counterclaim.

STANDARD OF REVIEW

The purpose of a petition for rehearing is not to try the case for a second time or to argue a party’s appeal to the Court again. Kennedy v. S.C. Ret. Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). “The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.” Arnold v. Carolina Power & Light Co., 168 S.C. 163, 173, 167 S.E. 234, 238 (1933). The purpose of a petition for rehearing is to bring those matters to the Court’s attention that it “overlooked or misapprehended.” Rule 221(a), SCACR. Petitions for rehearing are usually “dismissed with a simple order ... for the reason that they contain nothing but a ‘rehash’ of what the losing party has said before, matters which the Court has already considered well and disposed of.” Arnold, 168 S.C. at 173, 167 S.E. at 238.

ARGUMENT

I. No Facts or Arguments Were Overlooked or Misapprehended.

This Court should deny the Appellant's Petition for Rehearing because it raises no issue this Court either overlooked or misapprehended. The Petition merely rehashes the same arguments the Appellant made in his brief.

Appellant contends that the Association did not properly plead a counterclaim; thus, no subject matter jurisdiction existed to award fines and attorneys' fees and costs under the Declaration. This argument was addressed on page twenty-seven (27) of Appellant's brief. The Court of Appeals properly affirmed the Order under SCACR, Rule 220.

Next, Appellant argues that this Court erred in citing to SCRCP, Rule 12(b) in affirming the Order under SCACR, Rule 220. The Order was properly affirmed pursuant to Rule 12(b). The Appellant did not assert this defense in reply to the Association's counterclaim.

Appellant also argues that this Court erred in ignoring his argument that the attorneys' fees and costs recovered were related to "Central Electric", as the Association did not address this argument in its brief. The Court of Appeals need not address any argument that is manifestly without merit under SCACR, Rule 220.

The next argument is that the Declaration is not a binding contract and does not grant the Association with the right to award fines and attorneys' fees and costs. The Appellant made the same argument on pages thirty-six (36), thirty-seven (37), and thirty-eight (38) of his brief. This Court properly affirmed the Order in light of this argument under SCACR, Rule 220.

The Court of Appeals should deny the Petition because it raises no issues that were overlooked or misapprehended. Instead, in his Petition, the Appellant makes the same arguments that he has made in the multiple appeals in these cases.

II. New Issues Are Not Preserved On Appeal.

Appellant raises new, unpreserved issues for the first time in his Petition.

The first step in preserving an issue for appellate review is to actually raise it to the lower court. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). “It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review.” Id.

The following issues were not raised or ruled upon by the trial court or set forth in his brief to this Court: 1) the Association’s counterclaim did not provide sufficient notice and was a violation of due process under the Fifth Amendment to the U.S. Constitution; 2) the special referee abused his discretion in entering the Final Order Case Nos. 2009-CP-26-3596 and 2010-CP-26-11320; 3) the Order is void under SCRCF, Rule 60(b)(4); 4) the circuit court did not have subject matter jurisdiction to enter the Order.¹ These issues are not preserved on appeal; therefore, the Petition should be denied as to those grounds. Furthermore, under SCACR, Rule 220, this Court need not address points which are manifestly without merit.

III. No Grounds Justify Rehearing *En Banc*.

A rehearing *en banc* is only appropriate in order to maintain uniformity of the Court’s decisions or where there is an issue of exceptional importance. See, Rule 219,

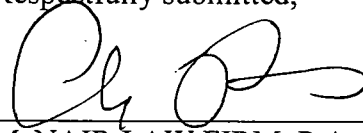
¹ In fact, as to the third issue, the Appellant asserted in his brief that the lower court “had the authority to rule on the original lack of subject matter jurisdiction to grant relief for the counter-claim” at the April 27, 2016 hearing. Appellant’s Brief, p. 1.

SCACR. Here, the Court's decision is consistent with the South Carolina Rules of Civil Procedure and statutory and case law regarding subject matter jurisdiction. No exceptional issue is presented in this case. It fits within well-established jurisprudence on jurisdictional issues. Accordingly, *en banc* review is not warranted.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition.

Respectfully submitted,



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Myrtle Beach, South Carolina
Date: July 20, 2018

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PROOF OF SERVICE

I, Lesley Costa, an employee of McNair Law Firm, P.A., attorneys for Respondents, The International Club Homeowners Association, Inc., Rosemary Toth, and K.A. Diehl & Associates, Inc., in the above-entitled action, certify that I have served Respondents' Return to Appellant's Petition for Rehearing and Proof of Service on all parties to this matter by depositing a copy in the United States Mail, first class postage prepaid on the 20th day of July, 2018.

Addressee(s):

Ronald Jarmuth
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Lesley Costa

July 20, 2018

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JUL 23 2018

SC Court of Appeals

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

Re: Ronald Jarmuth v. The International Club Homeowners Association,
Inc.
Case Track#: 2016-001063
Civil Action Nos.: 2009-CP-26-3596 and 2010-CP-26-11320
Our file no.: 051490.1

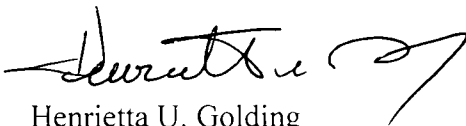
Dear Ms. Kitchings:

Enclosed for filing with the Court, please find the original and seven copies of Respondent's Return to Appellant's Petition for Rehearing and Proof of Service in the above matter. By copy of this letter to parties of record, and as shown on the Proof of Service, I hereby serve a copy of the aforementioned documents.

Please return to me one clocked copy of the enclosed documents in the self-addressed stamped envelope provided.

Sincerely,

McNAIR LAW FIRM, P.A.



Henrietta U. Golding

HUG:lc

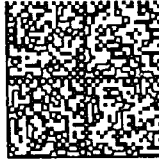
cc: Ronald Jarmuth
Client (*via email*)

Enclosures

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SC Court of Appeals

Honorable Jenny Abbott Kitchings
of Court
Carolina Court of Appeals
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Columbia, South Carolina 29211

