

**PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS**

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

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SEP 17 2018

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

SC Court of Appeals

Benjamin H. Culbertson, Circuit Court Judge

**Opinion No. 2018-UP-275 (S.C. Ct.App. filed June 27, 2018
Rehearing Denied August 16, 2018)
(Appeal No. 2016-001063)**

Ronald JarmuthPetitioner

v.

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

PETITION FOR A WRIT OF CERTIORARI

**Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
Petitioner**

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SEP 07 2018

S.C. SUPREME COURT

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CERTIFICATE OF COUNSEL

Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on August 16, 2018.

QUESTIONS PRESENTED

- 1. Were Jarmuth’s Constitutional Due Process Rights violated when the Special Referee invented claims on behalf of the HOA in his final order which was never litigated, when he awarded relief to the HOA for the non-existent claims, and when he failed to enforce pre-litigation provisions of the contract?**
- 2. Did the court’s exercise of jurisdiction over the attorney fee and HOA fine matters violate established precedent and law and was it an abuse of judicial authority?**
- 3. Was the failure to void the award of attorney costs and fines an abuse of judicial discretion?**
- 4. Is the Court of Appeals reliance on and affirmation of the legally void “long order” entered after Jarmuth filed his appeal reversible appellate error?**

Statement of the Case

1. Homeowner Association Discrimination Investigation Legal Costs.

The Special Referee (“SR”) acted against precedent and denied Jarmuth his due process rights to notice of certain claims, an opportunity to defend against these “secret” claims,[1] and right to have discovery. The SR granted relief for these “secret” claims without statutory or contractual authority. This was an abuse of judicial (non-) authority. The Respondent Homeowners Association (“HOA”) never plead these “secret” claims. Jarmuth had no opportunity pre-trial to plead a preliminary 12(b) objection.

On September 10, 2012 SR Ralph Stroman entered a Final Order in the

1 (1) Attorney fees to represent the HOA before the S.C. Human Affairs Commission (“SCHAC”) on an investigation of Jarmuth’s report that the HOA had committed family status discrimination; (2) Attorney fee deductible for the HOA as defendant in the underlying civil suit.

underlying civil case in which he made twenty five (25) conclusions of law unrelated to any claim or cause of action stated in the complaint or counter – claim. These were unrelated to any transaction which was in support of a plead claim.

This was an abuse of Jarmuth's 14th Amendment due process rights. It was an abuse of judicial discretion. The SR actually had no discretion at all in the matter since there was no related claim nor legal authority for the relief. He held that Jarmuth owed the HOA two thousand five hundred dollars (\$2,500) to reimburse the HOA for its voluntary retention of an attorney in the SCHA matter. The SCHA matter never resulted in a civil claim in any court. Jarmuth never erected the swing set which the HOA refused to allow for Jarmuth's children. If there had been a related civil case the HOA would have had no basis to recover attorney costs. As a matter of law only a prevailing complainant in an actual discrimination civil case had standing to recover attorney fees. Without standing there was no subject matter jurisdiction over the SCHA "non-claim". Irrespective, there was no authority for the SR to grant the HOA its SCHA attorney costs.

When Jarmuth questioned the SR's conduct and the basis for the SR's assertion of unplead claims on behalf of the HOA, the SR recused himself. In pleadings related to the Rule 12 / Rule 60 SCRCPP hearing and on appeal the HOA asserted that the recusal conferred subject matter jurisdiction on and legitimized the award of HOA SCHA costs. The Hearing Judge and the Panel bought into this nonsense.

On March 11, 2016 Jarmuth demanded the court set aside this award asserting a Rule 12 lack of subject matter jurisdiction and a Rule 60 (Order is Void) lack of authority to award SCHA attorney costs and case defense costs.

On April 27, 2016 Hon. Judge Ralph Culbertson presided at a hearing on Jarmuth's motion. The HOA's brief in opposition and the HOA's appellate brief admitted that the SCHA related check had nothing to do with the civil case.

Judge Culbertson and the Appellate Panel abused their discretion by affirming these awards despite the law being clear that without a claim and without authority the award was clearly legally erroneous. It was clear that there was no subject matter jurisdiction over these claims nor standing nor authority.

There was no discretion because there was only one outcome allowed by the law and it was disregarded by the SR thus this was an abuse of judicial discretion at all levels.

The HOA claimed in its hearing and appellate briefs and in trial testimony that its 2010 check Ap.p.350 to McNair Law was its deductible for the September 1, 2009 SCHA matter.[2] The only evidence of the purpose of that check was the HOA's 2010 General Ledger (Ap. p.361 which stated it was written for McNair legal services related to a Central Electric easement matter. In the hearing and on appeal the HOA has never disputed Jarmuth's assertion that the 2010 General Ledger shows that this check was the second of six checks to McNair Law in "matter 051490, McNair – easement exp".[3] It was an abuse of Jarmuth's due process rights to ignore this evidence. It was likewise an abuse of those courts discretion as well. Neither the order following the hearing nor the appellate opinion mentioned this. The 2010 check as "evidence of loss" relating to SCHA legal costs was no evidence at all because it related to a Central Electric Easement matter with

2 Without any supporting evidence of the actual purpose of the check

3 The six checks were April 3, 2010 (\$889.50); June 9, 2010 (\$2,500) – the one they claim was the SCHA deductible; November 17, 2010 (\$ 913.90); November 30, 2010 (\$325.00); December 1, 2010 (\$562.95); and December 17, 2010 (\$275).

no connection to Jarmuth or to any plead claim in the case.

The 2009 check itself Ap.p.354 was the only evidence of payment of HOA case legal costs (deductible). The case was filed by Jarmuth on April 7, 2009. The 2009 HOA General Ledger – Legal Costs Ap.p.355 says however that the check was for September 2009 legal services. The ledger also says that on June 4 2009 the HOA paid a lawsuit deductible to McCutcheon Law – which was for a suit filed by The Villas HOA against the HOA Case 2009CP2603211 filed on March 30, 2009. This was a week before Jarmuth filed his complaint on April 7, 2009. That check does not demonstrate any arguable loss.[4] Per the HOA’s insurance policy the deductible for the Villas lawsuit meant that the HOA paid no deductible toward the Complaint Jarmuth filed a week after the Villas case was filed. Without a loss there is no injury and no relief the court can grant. Without an injury there was no subject matter jurisdiction of the (unplead) claimed nor authority to grant reimbursement.

2. HOA 2009 case related attorney costs.

The court ordered reimbursement of the \$2,500 (2009) HOA check without due process: (a) The HOA never stated a related cause of action (claim; (b) there was no authority for the court to grant such relief; (c) the 2009 check had nothing to do with the civil case thus the HOA had no cognizable injury for which relief could be sought; and (d) the HOA had no standing to request relief in this matter.

The special referee, the hearing judge, and the court of appeals were

4 The record included the HOA’s insurance policy which provides for a single deductible; and an earlier payment of \$2,500 to McCutcheon Law relating to a successful suit against the HOA by The Villas Homeowners Association. The court was shown that any later claims in 2009 brought no HOA deductible ergo no SCHA or 2009 case legal expenses.

required to vacate the relief as a matter of an error of law. They lacked discretion at all which put it beyond an abuse of discretion. The law is clear on the matter.

a. No claim.

The trial court awarded the HOA attorney fees the HOA alleged it paid in 2009 to DEFEND Jarmuth's April 7, 2009 lawsuit. In its May 12, 2009 Answer Ap.pp339-340 as an "Eighth Defense and Counter-Claim" the HOA asked for "attorney fees, costs and expenses associated with the defense of this action" as relief. This is not a claim and does not state a cause of action. It does not state an injury. It did not state any basis of an entitlement for the demand (standing). A demand for "relief" is not a "claim". Only a proper claim can implicate subject matter jurisdiction. There was no claim at all hence no subject matter jurisdiction.

b. No authority. The "eighth defense / counter-claim" did not cite any statute or contract entitling the HOA to any relief. There is no authority for such a recovery in common law, statute or contract to defend a civil suit.[5] In "Defenses" One through Seven the HOA never stated an injury and never characterized the \$2,500 paid in 2009 as an "injury".

At all times the HOA has alleged it spent this money as its deductible to "defend" the 2009 case. The only contract authority supporting attorney fee reimbursement is (1) the HOA's Bylaws, Section 13.3 (in evidence) which relates to money spent to "enforce" against a violation of the covenants, or (2) the covenants which permits recovery when assessments are not paid. No assessment was late.

c. No loss / 2009 check unrelated to the civil case.

5 The HOA never alleged that the complaint was made in bad faith or that it was frivolous.

The evidence [6] before the trial court, the hearing court, and the court of appeals shows that the HOA never paid anything in connection with the case (not at the trial level nor at the appellate level).

In Discovery Jarmuth demanded the HOA's case related insurance policy and financial documents. The HOA provided its' insurance policy but nothing to show it ever paid anything related to the case. The two checks to McNair were produced for the first time at trial. There is no invoice or authorization for payment to show that either check had anything to do with the case.

As stated supra, the HOA's insurance policy proves that the HOA paid nothing towards this case and there was no loss to recover. The HOA claims that on October 13, 2009, six months after they were sued, four months after the deductible was paid for "The Villas" litigation, and after the HOA filed extensive pleadings authored by McNair, that the HOA belatedly paid McNair Law \$2,500 "to defend the 2009 lawsuit". The "2009" check has nothing to do with this case. This was obvious to the hearing judge and the appellate panel.

The trial, hearing, and appellate courts abused their discretion by failing to note that not only was there no claim for the 2009 money, but no standing and no authority. They further abused their discretion by ignoring the evidence of "no expense at all".

d. No standing.

Without a loss and without a basis to demand recovery the HOA had no standing to demand repayment of the 2009 check. The lack of standing brought with it a lack of subject matter jurisdiction to adjudicate the check non-claims.

6 The HOA's own documents.

3. Award of "fines" never actually imposed by HOA for "building" a permitted never-actually-built fence.

a. The HOA never stated a cognizable cause of action / claim in their Answer / counter-claim entitling the HOA to any fine.

On October 24, 2011 the HOA amended its Answer and added a "Second Counter-Claim" Ap.pp. 395-399. It related to an alleged violation of a contract (land covenant) where there was no injury plead. The HOA never alleged it actually incurred any costs related to this alleged violation. The HOA alleged that Jarmuth erected a "fence or wall" without the HOA's permission. In para 63 of the HOA Answer (Ap.p.396) they cited a provision of the covenants which permits fences, so long as the fence:

"does not obstruct the view of any streams or other bodies of water, golf courses or recreation amenity ... or which interferes with the playing of golf or any nearby golf course...."

The HOA plead (para 68) that "the brick wall is a continuing violation of the Governing Documents" which is a conclusion not an allegation of a cause of action.

The HOA never plead how the alleged "wall" violated any of the restrictive provisions of the covenant which otherwise allows fences or walls. In point of fact Jarmuth's lot is not adjacent to the golf course, to any bodies of water, nor to any amenities.

The HOA never plead how it or anyone else was injured by the alleged construction of the fence / wall. They never plead any damages.

In the HOA'se prayer for relief (para c. Ap.p.398) the HOA asked "for an order requiring Plaintiff to ... remove the brick wall". This is not before the Supreme Court because no "fence or wall" was ever built and there is no allegation one remains.

In para 65 Ap.p. 397 the HOA plead that

“The Architectural Review Board also demanded that the brick wall be removed ... or he would be subject to monthly fines in the amount of One Hundred and 00/100 (\$100.00) Dollars”

without citing the authority for such action and without asserting that such a fine had actually been imposed. In para 72 Ap.p. 398 the HOA plead that “the Plaintiff owes One Thousand One Hundred Thirty Two and 00/100 (\$1,132,00) dollars ... for his continuing violation”. They never plead the authority for such a fine nor by whom and when such a fine was imposed.

This is at best a claim at law for violation of an alleged contractual provision requiring someone NOT to do something, where violation of the obligation creates no damages to the complaining party. The HOA failed to plead a contractual provision imposing consequential punitive damages and there is none.

b. HOA never plead a source of authority to demand fines.

(1) The HOA never plead that it had the authority to impose fines. It plead instead that it was entitled to go to court to collect unpaid debts authorized by the covenants:

“71. ... the Governing Documents further provide that if the Plaintiff does not pay the assessments, fines or other related charges Plaintiff is responsible for all costs of collection...” Ap. P. 397.

The counter-claim thus never provided the court a source of authority to award the HOA the fines it demanded.

(2) Pre-litigation provisions of the contract (HOA Bylaws) prohibited the HOA from imposing a fine and prohibited them from going to court to collect a fine.

The HOA did not plead or show compliance with the “pre-litigation”

provisions which exist.[7] In fact they ignored the pre-litigation provisions of the Bylaws relating to fines. The Bylaws is part of the Covenants because it is Exhibit C of the Covenants Ap.pp 280-282. Jarmuth mentioned the non-compliance with the preclusive provisions at the trial, at the hearing, and before the Court of Appeals. The relevant portion is Section 13.3, Procedure. The pertinent parts read:

13.3 Procedure.

Except with respect to the failure to pay Assessments, the Board shall not impose a fine, ... for violations of the Declaration, By-Laws or any rules and regulations for the Association, unless and until the following procedure is followed:

13.3.1 Written demand to cease and desist

13.3.2 Within two (2) months of such demand, ... written notice of a hearing to be held by the Board in executive session. The notice shall contain:

13.3.2.1 The nature of the alleged violation;

13.3.2.2 The time and place of the hearing, ...

13.3.2.3 An invitation to attend the hearing ...

13.3.2.4 The proposed sanction to be imposed.

13.3.3 The hearing shall be held in executive session of the Board ... and shall afford the alleged violator a reasonable opportunity to be heard.

Prior to the effectiveness of any sanction here under, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. ... The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

The HOA never presented any evidence or testimony that it complied with even one of mandatory steps. – because they ignored them all.

On May 5, 2010 the HOA Board held a meeting at which it clarified that the interpretation of Section 13.3, Procedure. In Board Meeting Minutes, Section VI New Business, C. New Violation Policy Ap.p. 358: it is written “She shared the progressive steps in detail. The final notice will be a hearing scheduled”. This clarification was made before the alleged covenant violation, before the counter-claim was filed, before the trial was held, and prior to the Rule 12 / Rule 60 hearing.

7 If they had disclosed the existence of these “administrative pre-litigation” provisions they would have had to admit they had not complied with them.

Also in evidence at all judicial levels was the minutes of the HOA Board Meeting of November 10, 2010 Ap.pp. 384-388 where (per the HOA) the HOA Board “determined” that Jarmuth had violated the covenants and where the HOA Board allegedly imposed a continuing fine. The Minutes was Jarmuth’s impeachment evidence (the burden was on the HOA to plead compliance with Section 13.3 to show that it had satisfied the pre-litigation / suit preclusion provisions of the contract).[8]

This is a matter of clear contract law. Since the only authority available to the HOA to impose a fine is Bylaws Section 13.3 and since the HOA is precluded from imposing a fine without a hearing and since they failed to do so, there was no contract authority to impose a fine OR to sue to collect the non-existent contract created debt styled as a “fine”.

c. There was no subject matter jurisdiction over the “fines because there was no relief the Court could grant as to the fines.

To put it another way, there was no cognizable injury which could be remedied by the intervention of the court, and this is a component of subject matter jurisdiction over a claim.

The counter – claim also failed to affirmatively plead that Jarmuth had actually violated the covenants in any way. Instead, in para 60 Ap.p., 396 the HOA plead:

“Upon information and belief the Plaintiff constructed a brick wall...”

At the trial the HOA presented no evidence and no first hand witness to testify that a “wall” had actually been built. William Freiboth, HOA President (at

8 At trial Jarmuth put into evidence the minutes of every HOA Board 2010 and 2011 meeting – at none of them was a violation determined nor a fine imposed.

the time) who testified, never even implied that he had witnessed such a wall and never named anyone who had. In impeachment Jarmuth provided his Exhibit #623 (p. 3894 of the exhibits related to the trial) which was a photo of the area in question. It showed a lawn with the grass undisturbed except as to some prohibited signs and stakes erected by Jarmuth's neighbor on the neighbor's property. The neighbor ("Cartman") was an Architectural Review Board member.

The "fine" was clearly predicated upon a "usage violation". The HOA never pointed to any evidence or produced first hand testimony that a usage violation (that a "wall" or "fence" was ever built) actually occurred. This included at the post-trial Rules 12 / 60 hearing.

d. The HOA had no standing to demand that Jarmuth pay the "fines". Ignoring that there was no evidence of a violation, with no enforceable contract provision available to the HOA to demand "fines" the HOA lacked standing to go into court to demand fines. This is a component of subject matter jurisdiction over a claim.

4. The mystery of why the Special Referee ("SR") awarded "fines" and attorney fees.

It was clearly an abuse of judicial discretion for the SR to award attorney fees when the facts and the law are so clearly against this. It likewise a mystery why the Motions Judge and Court of Appeals ignored the unambiguous facts and law.

As to the SR, it is useful to note that he never bothered to read the complaint, answer and counter-claim. They remained locked in the Clerk of Court's office before, during and after the trial. Likewise he never read the trial exhibits. They were locked in the courtroom when the trial was not in session (and he did not have access to the room). Immediately after the trial the Exhibits were removed from the

courthouse by an employee of Defense Counsel (without the knowledge or permission of the Clerk of Court) and stayed out of the courthouse until months after the SR wrote his final order. When Jarmuth requested copies of the sign out log relating to the case documents the Clerk of Court responded that none existed because no one ever signed the case file out or examined it (it was stored in the Clerk of Court's personal office because of early issues with document integrity). That was when the Clerk of Court discovered the exhibits were missing from the Courthouse.

5. Orders following the April 27, 2016 Rule 12 / Rule 60 Hearing.

On April 27, 2016 a hearing was held to determine whether the trial court lacked subject matter jurisdiction and / or the authority to grant attorney fees and fines. Central was whether any claim at all was made for the attorney fees and whether authority existed for the award of fines. Hon. Judge Benjamin Culbertson, presided because the SR had recused himself. The Order of Reference which he consented to (Ap.pp. 167-170) ordered that "Ralph P. Stroman ... shall exercise all the powers ... to ... hearing pre-trial and post-trial motions".

At the close of the hearing Judge Culbertson entered a bench Form 4 Order Ap.pp. 229-230 denying any relief. It made no findings of fact nor conclusions of law.

On May 17, 2016 Jarmuth filed a notice of appeal Ap.pp. 483-484.

On May 31, 2016 at a hearing before the Chief Administrative Judge Hon. Judge Steven John the Court entered a Form 4 Order holding that as of May 17, 2016 "this court does not have jurisdiction". The HOA's attorney [9] concurred.

On June 6, 2016 Judge Culbertson entered a “long order” Ap.pp. 231-240 which stated findings of fact and conclusions of law.

On June 24, 2016 Jarmuth filed an amended notice of appeal Ap.pp. 485-486. adding the second order as a matter of sound discretion even though the Court lacked jurisdiction over the case to enter such an order.

Jarmuth plead this scenario in his appellate brief Ap.p. 10.

6. Appellate Affirmation of a void order.

The Court of Appeals ignored the legitimate April 27, 2016 Form 4 Order and Affirmed the void [10] June 6, 2016 Order. The Panel cited conclusions of law in the second order rather than analyzing the matter de novo because of the absence of a record of the reasoning of the hearing court in the “bare” Form 4 Order.

On August 16, 2018 the Court denied reconsideration holding that “the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded”.

ARGUMENT

- 1. Jarmuth’s Constitutional Due Process Rights were violated when the Special Referee invented claims on behalf of the HOA in his final order which claims were never litigated; when he awarded relief to the HOA for the non-existent claims; and when he did not enforce pre-litigation provisions of the contract.**

In Allgeyer v. Louisiana, 165 U.S. 578 (1897) the U.S. Supreme Court held that the 14th Amendment to the U.S. Constitution applied to civil litigation relating to contracts. It has defined procedural due process to include (1) Notice of the proposed action and the grounds asserted for it; (2) The opportunity to present

10 The trial court lost jurisdiction to enter Orders on May 17, 2016.

reasons for the proposed action not to be taken; and (3) The right to know the opposing evidence. These rights transcend rules and statutes. Any application of an otherwise constitutional rule or statute which interferes with these rights is an unconstitutional interpretation / application and is itself a violation of due process. Because the SR, not the HOA, formulated the attorney fee claims, and assumed on the HOA's behalf the right to "fines" which does not exist, it was the Court (the SR) that violated Jarmuth's due process rights in these regards.

When the motion judge and the panel failed to even minimally question whether those due process rights were denied, they too violated Jarmuth's due process rights. The requirement to put Jarmuth on sufficient notice of these claims through a properly plead claim was ignored. The decision of the panel is against precedent. The precedential cases include:

Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review."

"Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." **Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007)**

"The procedural component of the state and federal due process clauses requires the individual whose property or liberty interests are affected to have received adequate notice of the proceeding, the opportunity to be heard in person, the opportunity to introduce evidence, ... and the right to meaningful judicial review.") **Dangerfield v. State, 376 S.C. 176, 179, 656 S.E.2d 353, 354 (2008)**

An interested party must be given notice "reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." **Blanton v. Stathos, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (2002)** (citing **Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)**; **Murdock v. Murdock, 338 S.C. 322, 334, 526 S.E.2d 241, 248 (Ct. App. 1999)**).

2. The court's exercise of jurisdiction over the attorney fee and HOA fine matters violate established precedent and law and was an abuse of judicial authority.

a. The court(s) erred in asserting that authority to process this case (action) implied subject matter jurisdiction over the disputed claims.

To reiterate, neither the 2012 Order following the trial nor the 2018 Affirmation addressed jurisdiction. The "Long Order" following the hearing based its assertion of authority to deal with the attorney fee issue (no claim plead) and fines issue (no authority plead) on assertions of venue made in the counter-claim Long Order para #9 Ap.p.234. The HOA plead that Jarmuth lived in a house located in Horry County and that the HOA's covenants applied to the property.[11] The Long Order held that when Jarmuth admitted (A.p.234 #10) that the house he lives in is in Horry County, which is in admission of venue, that Jarmuth "established that this Court has jurisdiction over the counter-claim". This is counter to precedent. The correct analysis concludes that the court never gained subject matter jurisdiction over or authority to determine the claims.

The U.S. Supreme Court in Spokeo, Inc. v. Robins, 136 S. Ct. 1540 (2016), held that to invoke the power, or subject matter jurisdiction over a claim, the plaintiff must first state in a plead claim that he suffered a concrete and particularized "injury in fact," that the injury is fairly traceable to the defendant's conduct, and that the relief sought will redress the harm. As Justice Antonin Scalia explained in Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992), asserting standing in a plead claim is "an indispensable part of the plaintiff's case" requiring that the plaintiff support (in a claim stated in a complaint) each element of standing

11 Counter-claim para's #52-55, #2 and #24.

“with the manner and degree of evidence required at the successive stages of the litigation.” The Court went on to hold that the failure to “state a claim” implicates a lack of subject matter jurisdiction. In Allstate Ins. Co. v. Global Med. Billing, Inc., 2013 U.S. App. LEXIS 7277 (6th Cir. April 8, 2013) the court held that a **failure to state a claim** deprives a court of subject matter jurisdiction over the (unplead) claim citing also

McGlone v. Bell, 681 F.3d 718, 728 (6th Cir. 2012) (citing Prime Media, Inc. v. City of Brentwood, 485 F.3d 343, 348 (6th Cir. 2007)) ... (and) Harold H. Huggins Realty, Inc. v. FNC, Inc., 634 F.3d 787, 795 n.2 (5th Cir. 2011); see also Murray v. U.S. Dep't of Treasury, 681 F.3d 744, 748 (6th Cir. 2012).

In the above cases the courts have noted that the failure to show standing in a plead claim is jurisdictional. The courts have also held that the failure to plead “aggrievement” in a claim is also jurisdictional and aggrievement was never plead viz the attorney costs or the fine.

“The requirement that a (plaintiff plead in a claim that he is) ... an aggrieved party is jurisdictional- Dolomite Products Co., Inc. v. Town of Ballston, 151 AD3d 1328 [3d Dept 2017] [“Aggrievement is a ... necessary component to invoke this Court’s jurisdiction ... [I]f a party is not aggrieved, then this Court does not have jurisdiction” -- Leeds v. Leeds, 60 NY2d 641 [1983]

In Jones v. Bock 549 U.S. 199 the Court clarified that subject matter jurisdiction is claim, not action, based holding that

“dismissal of an entire action (will not occur) if a single claim fails to meet the pertinent standards”.

The decision explored in detail the distinction between an “action” and a “claim” adding

“More generally, statutory references to an ‘action’ have not typically been read to mean that every claim included in the action must meet the pertinent requirement before the ‘action’ may proceed ... if a complaint contains both good and bad claims, the court proceeds with the good and leaves the bad”.

The S.C. Supreme Court stated the precedent in State v Conyers (June 9,

Ronald Jarmuth
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September 10, 2018

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SC Court of Appeals

Jenny Abbott Kitchings
Clerk of the Court of Appeals
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201
803) 734-1839 fax

**Subject: Service on Friday September 7, 2018 of copy of
Petition to S.C. Supreme Court for Writ of Certiorari to Court of Appeals
Court of Appeals Case No. 2016-001063 Jarmuth v International Club et al.**

Dear Ms. Kitchings:

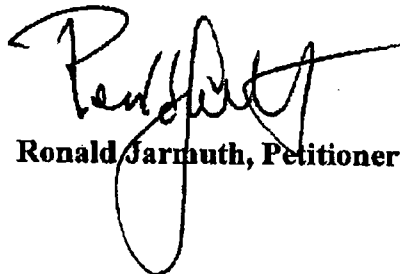
Attached find a courtesy copy of the "clocked" cover of my Petition to the S.C. Supreme Court for a Writ of Certiorari. The S.C. Supreme Court has assigned case number 2018-001624 to this Petition.

Last Friday, September 7, 2018 I hand delivered a copy of the Petition and the (2 volume) Appendix to the intake desk of the Court of Appeals. As of 10 AM this morning the case manager, "Shelby", acknowledged having this "in my hands right now". Yet as of the sending of this fax it has not appeared on the docket of the case in the Court of Appeals.

I have faxed you a copy of the "clocked" Petition so that the Court of Appeals does not erroneously issue the Remittitur before the Supreme Court deals with the Petition. To reiterate, the case clerk "Shelby" acknowledges service of the Petition on the Court of Appeals, but that is not reflected in the docket of the case.

Thank you for your attention to this matter.

Sincerely,


Ronald Jarmuth, Petitioner

1 Encl:
as

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SEP 17 2018

SC Court of Appeals

Ronald Jarmuth
249 Pickering Drive
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843-314-4355
September 7, 2018

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S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk of the Supreme Court
Supreme Court of South Carolina
1231 Gervais Street
Columbia, SC 29201-3206
(803) 734-1080

Subject: Filing of Petition for Writ of Certiorari to Court of Appeals.

Dear Mr. Shearouse:

Attached find:

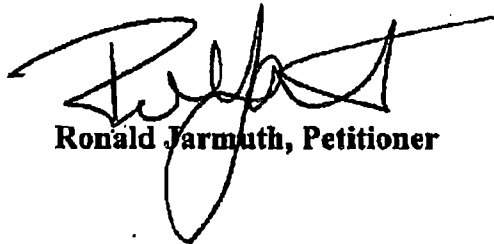
- a. **Petition for Writ of Certiorari to Court of Appeals, 1 unbound, 6 bound.**
- b. **Appendix to Petition, 1 bound, 1 unbound, which incorporates the Record on Appeal in Court of Appeals.**
- c. **The Filing Fee: \$100.00.**

I am also providing my own copy of the Petition and of the Appendix to be "clocked" and returned to me.

If there are any problems please phone me immediately.

Thank you for your attention to this matter.

Sincerely,



Ronald Jarmuth, Petitioner

Encl:
as