

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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OCT 25 2018

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Benjamin H. Culbertson, Circuit Court Judge

S.C. SUPREME COURT

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.

**PETITIONER'S MOTION TO STRIKE
RETURN OF RESPONDENT
BECAUSE IT WAS FILED LATE
AND WITH THE WRONG COURT**

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

McNair Law Firm
Henrietta U. Golding
Alicia F. Thompson
2411 Oak Street, Suite 206
Myrtle Beach. SC 29578
(843) 444-1107
Attorneys for Respondents

1. Petitioner Ronald Jarmuth, Pro Se, Moves the Supreme Court to strike the Return of the Respondent International Club Homeowners Association, Inc because it was –

a. Filed two days or eight days after the end date for filing a Return to the Petition;

b. Filed with the wrong court; and

c. Hand Served fraudulently on Petitioner on October 18 ten (10) days after the purported date, not on October 8 by mail as sworn to in Respondent's Proof of Service.

2. Return was hand delivered to the Court of Appeals, not to the Supreme Court.

a. At Enclosure 1 is a United States Postal Service (USPS) explanation of the marking the USPS prints on first class mail after it has been deposited in the mail.

b. A copy of the envelope Respondent used to file their Return with the Court of Appeals is provided at Enclosure 2 (downloaded from the Supreme Court's docket). In South Carolina in place of the FIM the USPS imprints a Columbia, SC sorting stamp saying "Columbia, SC" – even for metered first class mail. This is missing from the Respondent envelope.

c. Also missing is any postage. Respondent's attorneys, McNair Law, uses a postage meter (See McNair envelope to Jarmuth, Enclosure 3). Clearly the Return was hand delivered by McNair out of their Columbia, SC office.

3. Respondent did not comply with the Rule for Filing.

a. Rule 262 (a)(1) Filing provides that a hand delivered Return must be delivered to the Clerk of the appropriate appellate court – that being the Supreme Court. The Clerk of the Court of Appeals is not an agent for the Respondent. Filing a document with the clerk of another court does not constitute filing with the clerk of the court which has jurisdiction over the matter.

b. On September 10, 2018 the Clerk of the Supreme Court mailed Petitioner and Respondent a letter (Enclosure 4) which (second paragraph) instructed the parties, **IN BOLD TYPE, that they must use the Supreme Court assigned case “number on all future correspondence relating to this matter”.**

c. The third paragraph of the letter mandated that “all filings must comply with the requirements of Rule 242”.

4. The Deadline for Respondent to file the Return was October 8, not October 10 or October 18.

Jarmuth hand filed his Petition (at the Supreme Court’s Intake Counter) on September 7, 2018. Per Rule 242(f) the deadline to file a Return was 30 days later. September having 30 days, this would have been October 7, except that October 7 was a Sunday, hence the deadline was October 8, 2018. Per Rule 262(a) a hand filed Return had to be handed to the (correct) clerk on October 8, 2018, and not a day later.

5. The Return was filed on October 10 with the wrong court two days late or more accurately with the Supreme Court on October 18 ten days late and must be set aside / not considered.

a. Respondent's attorneys, McNair Law, hand delivered the Return on October 10, 2018 which is the date it was "clocked" Enclosure 2. The deadline to file a Return is statutory. Since the Return was hand filed the date that the Return came into the possession of the Clerk of the Supreme Court also controls.

b. Page 1 of the Return as filed with the Supreme Court (Enclosure 5) notes that it was "clocked" / filed with the Supreme Court on October 16, 2018, eight (8) days after the filing deadline. Although it was by hand filed "clocked" / received at the Court of Appeals on October 10, this does not constitute filing with the Supreme Court.

6. The Return was never filed with the Supreme Court by the Responding Party.

a. The Return was intentionally meant to be filed with the Court of Appeals.

b. McNair's Letter of Transmittal (Enclosure 6) was addressed to the Court of Appeals. The letter used the case number of the appeal, not the case number and address mandated by the Supreme Court's Letter of Case Acceptance (Enclosure 4).

c. The McNair's transmittal envelope (Enclosure 2) was also addressed to the Court of Appeals. The Response was filed with the Court where McNair intended to file it.

d. The Court of Appeals is not the agent of the Respondent. The rules require the RESPONDENT, or his Attorney, to file and serve the Return.

e. The acceptance of the Return as delivered (as a courtesy) by the Court

of Appeals was a clerical error.

7. The Return was fraudulently served on Petitioner Jarmuth on October 18, the day of that deadline for Jarmuth to file a Reply, not on October 8 as claimed in the Proof of Service.

a. The Certificate of Service to Respondent's Return (Enclosure 7) falsely affirms two controlling falsehoods:

(1) That the Return was mailed to Jarmuth on October 8, 2018 "by depositing a copy in the United States Mail, first class postage prepaid".

(2) That this was done "on the 8th day of October, 2018".

b. McNair's envelope at Enclosure 3 showed up in Jarmuth's Murrells Inlet street-side mail box on the afternoon of Thursday October 18, 2018. Jarmuth checked the mailbox early that morning and nothing was there. This date is significant because if Respondent's Return was served on October 8, Jarmuth's Reply would be due / must be filed no later than October 18, the date it was hand delivered to Jarmuth's mailbox. This was calculated to prevent Jarmuth from being able to file a timely Reply.

c. McNair never actually deposited it in the mail. It was "held back" and hand delivered. It lacks the POSTNET bar code which is imprinted by the USPS at the bottom of letters which bar code has automated final delivery sorting instructions.

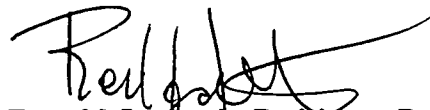
d. The envelope lacked the Columbia, SC handling imprint which the USPS prints to the left of the postage to indicate when the letter was handled at the sorting facility which, for Myrtle Beach, is Columbia, SC.

e. The envelope as delivered had no signs of processing; it retained a rounded shape. The envelope would have been squashed flat and would have had handling creases if actually sent through the mail.

f. The envelope weighed 3-1/2 ounces. It could not fit in the 1/2" machine processable slit thus there is a 21 cent surcharge. The postage is thus \$1.63. McNair imprinted \$1.10 which is the right price for metered 4 ounce first class mail if it is under 1/2" thick and can fit in the measuring slit. The letter would have been returned to McNair for insufficient postage. In any event, it was not "first class mail (correct) postage pre-paid."

8. Conclusion.

For the reasons stated, Respondent's Return to the Petition should be "lodged", not "filed" and should not be considered.



Ronald Jarmuth, Petitioner Pro Se
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
October 24, 2018

7 Enclosures
as

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S.C. SUPREME COURT

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

Ronald JarmuthPetitioner

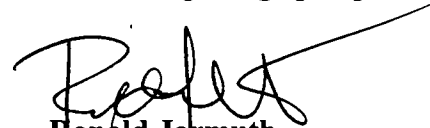
v.

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

PROOF OF SERVICE

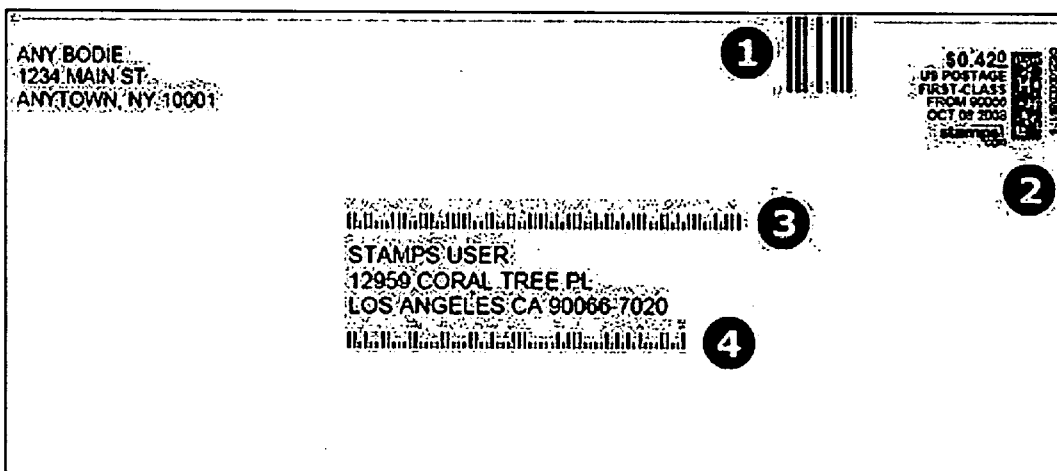
**I certify that on October 24, 2018 I Served Petitioner's Motion to Strike
Respondent's Return on Respondents through Respondent's counsel, Henrietta
Golding; McNair Law Firm, P.A.; 2411 Oak Street; Suite 206; Myrtle Beach, SC
29578-3164 by mailing it to same by first class mail, postage pre-paid.**

October 24, 2018


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

What are all the different barcodes on my mail?

Every mailpiece has at least two barcodes on it, and many contain four. These barcodes help your mail get processed more rapidly and efficiently through the USPS mail processing systems. Here is a guide to the four barcodes:



1. **FIM:** Also known as the Facing Indication Mark, the FIM barcode helps the scanning equipment determine which way is up or down, front or back.
2. **Postage Indicum:** This is the most important barcode, because it contains information about the class of mail you are sending, the date, and the postage amount. This is generally located in the upper right corner of an envelope, just like a regular postage stamp.
3. **PLANET:** This barcode is printed on First-Class Mail envelopes, flyers, and postcards. The PLANET barcode is a mail tracking feature and enables you to make electronic postage refund requests (e/Refunds) without having to mail in physical proof. The barcode looks nearly identical to a POSTNET code (#4), but contains a unique identifier similar to that of the Delivery Confirmation service.
4. **POSTNET:** This barcode is used primarily for final destination sorting. It contains specific carrier routing information for the destination delivery point.

EXHIBIT 1

MCNAIR
ATTORNEYS

Post Office Box 336
Myrtle Beach, SC 29578

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OCT 10 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

EXHIBIT 2

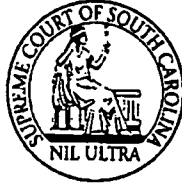
MCNAIR
ATTORNEYS

Post Office Box 336
Myrtle Beach, SC 29578



Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576

EXHIBIT 3



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

September 10, 2018.

Mr. Ronald Jarmuth
249 Pickering Drive
Murrells Inlet SC 29576

Re: Ronald Jarmuth v. The International Club
Appellate Case No. 2018-001624

Dear Mr. Jarmuth:

This Court has received your Petition for Writ of Certiorari and Appendix, and the case has been assigned the appellate case number that appears above. **Please use this number on all future correspondence relating to this matter.**

All parties to this matter are advised that all filings must comply with the requirements of Rule 242 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=932.

EXHIBIT 4

Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. **This office will not review filings for redaction or to determine if materials should be sealed.**

Very truly yours,

David L. Shearouse
65

CLERK

cc:

Henrietta U. Golding, Esquire
Alicia E. Thompson, Esquire
The Honorable Jenny Abbott Kitchings

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
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SC Court of Appeals

Ronald Jarmuth,Petitioner,

v.

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

RETURN TO PETITION FOR WRIT OF CERTIORARI

Henrietta U. Golding, SC Bar #2173
Alicia E. Thompson, SC Bar #77056
McNair Law Firm, P.A.
Post Office Box 336
Myrtle Beach, South Carolina 29578
(843) 444-1107
Attorneys for Respondents International
Club Homeowners Association, Inc.,
Rosemary Toth, and K.A. Diehl &
Associates, Inc.

EXHIBIT 5

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OCT 16 2018

S.C. SUPREME COURT

MCNAIR
ATTORNEYS

October 8, 2018

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OCT 16 2018
S.C. SUPREME COURT

Alicia E. Thompson

athompson@mcnair.net
T 843.444.1107
F 843.444.4729

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

RECEIVED
OCT 10 2018
SC Court of Appeals

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 Writ of Certiorari 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.


Alicia E. Thompson

AET:lc

cc: Ronald Jarmuth
Client (via email)

Enclosures

McNAIR LAW FIRM, P.A.
Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Mailing Address
Post Office Box 336
Myrtle Beach, SC 29578

mcnair.net

EXHIBIT 6

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Benjamin H. Culbertson, Circuit Court Judge

RECEIVED
OCT 10 2018
SC Court of Appeals

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

Ronald Jarmuth, *Pro Se* Appellant,
v.


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

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 Writ of Certiorari 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 8th day of October, 2018.

Addressee(s):

Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576



Lesley Costa

EXHIBIT 7