

**PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS
THE STATE OF SOUTH CAROLINA
In the Supreme Court**

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

Supreme Court Case No. 18-001624

Ronald JarmuthPetitioner

v.

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

**REPLY TO
Return to
“Motion to Strike Return to Petition
For Writ of Certiorari” /
and
Response to Respondent’s
“Motion for Extension of Time”**

**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
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(843) 444-1107
Attorneys for Respondents**

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NOV 13 2018

S.C. SUPREME COURT

1. Petitioner Ronald Jarmuth, Pro Se, Replies to the Respondent Homeowner Association's (HOA's) Return to Petitioner's "Motion to strike the Return of the Respondent International Club Homeowners Association" / "Motion for Enlargement of Time".

Jarmuth asserts that

(1) the HOA's request for an enlargement of time lacks any authority and is without merit;

(2) the HOA's Return must be stricken because the rules of filing are strict, clear, and well known to the HOA's attorneys who have not stated an exceptional reason for the suspension of the filing rule;

(3) the HOA maliciously and with wrongful intent failed to properly and timely serve the HOA's Return to the Petition so as to deny Jarmuth an opportunity to timely Reply, and filed a perjured Certificate of Service in conjunction with that misconduct.

2. Controlling Rules.

a. No Authority to Extend Time.

The HOA cites SCACR 240 as authority for an enlargement of time, without providing any explanation. In point of fact the rule does not provide an exception to the strict rules of filing and there are no exceptional circumstances to suspend the rule. Here's what the rule actually says:

(a) Applicability. This Rule governs all motions or petitions filed in the appellate court, including but not limited to: motions for extension of time ...

(b) Stay of Time Limits. ... Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion.

Contrast that with SCRCR Rule 6(b), Enlargement of time, which reads:

“When by these rules or by notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the time may be extended by ... the court for cause shown”

Irrespective of the difference in rules, the only “cause shown” by the HOA is that they violated the rules for filing and service, which is a violation and not a justification, and that Jarmuth somehow managed to file his Reply despite the HOA’s attempts to hide from Jarmuth (until too late) that the HOA had filed a Return and the contents thereof. An exception should be limited to exceptional circumstances, such as a natural disaster destroyed the attorney’s office, the attorney died, or the Post Office was closed. The HOA claims only clerical error which is not an exceptional circumstance meriting an exception to the rules.

b. What constitutes Filing of the HOA’s Return to the Petition:

The HOA has admitted that it filed its’ Return with the Supreme Court at least eight (8) days late (the deadline being October 8, 2018):

“The Return was also filed with the Supreme Court on October 16, 2018.” - HOA Motion for Extension of Time / Return to Motion to Strike, page 2, 2nd un-numbered paragraph, last sentence.

(1) If hand delivered, by handing it to the Clerk of the Court where the matter is pending. SCACR 262(a)(1).

“filing may be accomplished by: (1) Delivering the document to the clerk”

But the HOA’s Return was hand delivered to the Clerk of another court, the Court of Appeals. The HOA’s envelope had no postage on it and no US Postal Service (USPS) delivery Post-Net bar code and no USPS sorting facility cancellation mark.

The date of filing is the date the Clerk of the Supreme Court physically

receives the document. SCACR 262(a)(2).

“The date of filing shall be the date of delivery”

But the Clerk of the Supreme Court physically received the HOA’s Return on October 16, 2018, at least eight (8) days late.

(2) If mailed to the Court, by (a) writing the correct address on the envelope and (b) mailing it within the time allowed. SCACR 262(a)(2).

“(2) By depositing the document in the U.S. mail, properly addressed to the clerk,”

But by the HOA’s own admission, the HOA’s Return was (whether mailed or hand delivered), NOT “properly addressed to the clerk”. This rule explicitly rejects the HOA’s notion that its’ Return should be considered filed with the Supreme Court when it was addressed to the Court of Appeals. Not only was the envelope addressed to the wrong court, the letter of transmittal was also addressed to the Clerk of the Court of Appeals and bore the style of the Appellate Court matter, not the style and case number of the matter in the Supreme Court.

“The date of filing shall be ... the date of mailing” only if the Return is “properly addressed” SCACR 262(a)(2).

The HOA’s Return was, in effect, “hand delivered” to the Clerk of the Supreme Court by the Clerk of the Court of Appeals on October 16, 2018, not on October 8, 2018, the deadline for filing by hand delivery..

The USCA-DC has ruled that when a document is hand delivered, it is filed with the Court only when the Clerk of the proper court actually comes into possession of the document. Hussain Kareem v. Federal Deposit Insurance Corp., et al., No. 13-5361, U.S. Sup.; 2013 U.S. LEXIS 6664. Opinion written by (now)

Hon. Justice Kavanaugh.

c. What constitutes proper service – not complied with.

The Return is not valid unless accompanied by a true and honest proof of service. SCACR 242(a)(2)

Any document filed with the appellate court shall be accompanied by proof of service of such document on all parties.

The HOA's Proof of Service falsely claims that it was mailed to Jarmuth on October 8, 2018. In fact it was hand delivered to Jarmuth's street-side mail box on October 18, 2018, the date that the HOA's Return appeared on the on-line docket, which was also the date that Jarmuth was required to file his Reply, an impossible task. The HOA's violation of the Rule of Filing would have deprived Jarmuth of an opportunity to file a Reply, except that Jarmuth was aware of the bad tricks habitually practiced by the HOA's attorney and Jarmuth wrote and filed his Reply without ever seeing the HOA's Return, on October 8, 2018. This was ten days before the HOA's Return appeared on the Court's electronic docket, eight days before the HOA's Return came into the possession of the Clerk of the Supreme Court on October 16, 2018, and ten days before it appeared in Jarmuth's mail box.

See Jarmuth's Motion to Strike for physical evidence of this scenario.

3. Additional Evidence.

a. Exhibit A, Mail from the HOA to Jarmuth.

Even metered mail from a Horry County sender to a Horry County recipient always has the imprint of the Columbia, SC sorting facility to the left of the metered postage sticker, which imprint serves to cancel the postage imprint and to record the date of handling. Such mail always has, at the bottom, a Post-Net bar code

generated and applied by the USPS to assist in final destination sorting.

b. **Exhibit B**, The HOA's envelope with the HOA's Return served on Jarmuth.

The envelope lacks a Columbia, SC sorting facility imprint and lacks the USPS Post-Net bar code. As explained in the Motion to Strike, it has inadequate postage and was placed in Jarmuth's mail box bulging with no sign of being handled (which would have squashed and creased it). It was not in the mail box earlier on or before October 18, 2018. If it was mailed on October 8, 2018, as claimed, it would have been received days later. The HOA Proof of Service was perjured. The HOA should not be rewarded for its' trickery.

4. HOA claim of "no harm, no foul".

The only excuse that the HOA has provided is that because Jarmuth managed to get a Reply into the Record, the HOA should be excused for its' many violations of the applicable rules. The HOA wrote:

In response to the Return, Petitioner timely filed a Reply to the Return to the Petition ... Because the Petitioner timely filed his Reply to the Return, ... Petitioner is not prejudiced by an extension of time for Respondent to file the Return.

No filing rule or jurisdictional statute has a "not prejudiced" exception. The HOA's attorneys are well aware of the rules. No filing rules have a "no harm, no foul" exception. The only exceptions which should be granted arise from exceptional circumstances beyond the control of the filing party or his counsel. No such exceptional circumstance exists.

The issue of "irregular" service and filing of proof of service by the HOA of its' Return on Jarmuth, by itself, merits strict enforcement of the rules of filing and

service.

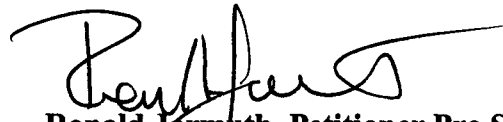
The HOA is represented by a large and experience law firm; it is not proceeding pro se, and thus unfamiliar with rules and practice. It is only by enforcement of the rules that irregularities of filing and service by attorneys will cease. The HOA's recourse is with its' attorney for legal malpractice, not with the Court for an exception to the rules.

5. Conclusion.

a. The HOA's return was not filed or served in conformance with applicable rules.

b. There was no "exceptional circumstances" which merit granting the HOA an exception to the filing and service rules.

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

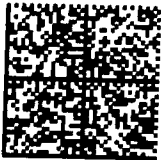



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November 10, 2018

2 Exhibits added
as

International Club HOA
11822 Highway 17 Bypass South
Murrells Inlet, SC 29576
843-357-9888

COLUMBIA
SC 290
15 MAY '18
PM 1 L



U.S. POSTAGE >> PITNEY BOWES

ZIP 29576 \$ 000.47⁰
02 4W
0000345152 MAY 14 2018

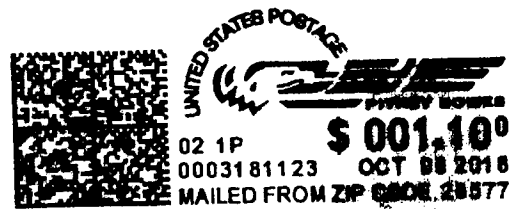
Ronald Jarmuth
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EXHIBIT A

295765756645 

MCNAIR
ATTORNEYS

Post Office Box 336
Myrtle Beach, SC 29578



Ronald Jarmuth
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EXHIBIT B

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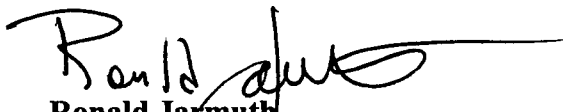
**The International Club Homeowners
Association, Inc., Rosemary Toth, and**

K. A. Diehl & Associates.....Respondents.

PROOF OF SERVICE

**I certify that on November 10, 2018 I Served Petitioner’s Reply to Respondents’
Return to my “Motion to Strike Respondent’s Return to Petition” / Response to
“Motion for Extension of Time” 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.**

November 10, 2018


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