ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Circuit Court 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.

FINAL BRIEF OF APPELLANTS (Rev. April 2014)

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

The B00 House

2148 Gamecock Circle

Little River, SC 29566

Tel: (843) 281-2299

Pro Se Appellants

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Attorney for Respondent

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Propositions

(1) Contracts made in South Carolina must be interpreted and enforced according to the true meanings of the words actually in the Contract in the English language, and not by the decrees of Board Members in some Property Owners' Association.

(2) To be enforceable in South Carolina, the terms of a Sales Contract must actually appear in that Contract signed by the buyer, and not just be someone else's belatedly faint recollection of some informal understanding made with another party four years prior, unbeknownst to the current buyer.

(3) To be adequately represented in South Carolina by Counsel, the attorney must at least inform his or her clients that they were walking into a (non-jury) TRIAL, at which their property rights would be put at risk in perpetuity, and not just another routine MERITS HEARING to make a TEMPORARY INJUNCTION permanent.

(4) A Court's FINAL ORDER that: **(a)** Did not accurately reflect what the Presiding Judge actually said in the Courtroom during the TRIAL; **(b)** Failed suddenly and spectacularly just twenty-four days after signing; **(c)** Required that several of its tenets be clarified and/or modified at a MOTIONS-FOR-RECONSIDERATION HEARING; and **(d)** Poses questions and unintended consequences that cannot be addressed without the prospect of perpetual litigation, should be reversed.

(C) STATEMENT OF THE CASE

Defendant Windjammer Village POA Board Actions

At a Board of Directors' Meeting in September 2009 attended by over sixty members, the Windjammer Village Property Owners' Association (Respondent) Board president Rosanne Pazoga reported that the POA's own attorney, Roger Roy, had told members of the Board of Directors that POA members, (Appellants) Elizabeth A. Crotty and James K. Orzech, indeed, could legally *park* anywhere on their property at '2148 Gamecock Circle,' also known as *The B00 House* (after its lot number 'B-zero-zero').

Consequently the Board rescinded a $100 fine against Ms. Crotty, a disabled veteran, for *parking* in her own front yard. Rather than just letting the *B00-parking* issue, which by then had festered off and on since 2003, be resolved right then and there, the other Board members immediately voted to remove Pazoga as Board president and started openly devising yet another way to deny us (Appellants) our property rights.

At a Special Board Meeting on Oct. 13, 2009, the remaining four Directors voted to send a 'Mail-In Ballot' (R. pp. 56-57) to the POA Membership for the purposes of **(1)** Removing Pazoga from the Board, outright, and **(2)** Taking out the *access road*, known as the 'Paved Driveway,' directly in front of our home, expressly to deny us the physical means for our cars to reach those *parking* spots, under the guise of turning the *access road*, along with the adjoining 'Mailbox Island,' into a 'Garden/Park' (R. pp. 54 and 56).

Temporary Injunction

After the POA's Board denied all of our attempts to rebut the measures and the misrepresentations on the 'Mail-In Ballot' (R. 56-57), either as an enclosure to

accompany the voting material or as a rebuttal statement in the Association's newsletter, each of which would have been sent to all voting members, many of whom live full time in other states, we were forced to retain attorney Richard M. Lovelace, Jr., to file a VERIFIED COMPLAINT (R. pp. 37-57) with the Court of Common Pleas, seeking a TEMPORARY INJUNCTION, protecting our property rights against our POA illegally and vindictively tearing out this vital *access* road to and in front of our home.

The Honorable Larry B. Hyman, Jr., Presiding Judge of the Fifteenth Judicial Circuit, Court of Common Pleas, pursuant to our VERIFIED COMPLAINT, granted us an ORDER FOR TEMPORARY INJUNCTION (R. pp. 6-8) dated October 28, 2009, stating,

> "... Further it appears South Carolina Common Law clearly recognizes those rights Plaintiffs (now Appellants) claim in and to the driveway described in the PLAT (R. p. 52) by which Plaintiffs took title, and that the threatened action by Defendant (now Respondent Windjammer Village POA) appears to be in degradation of Plaintiffs' vested property rights under South Carolina Law, pursuant to the following (nine) decisions (of case law). ..."

Judge Hyman's ORDER (R. p. 7) went on to state,

> "... Defendant is enjoined on a temporary basis ... from in any way disturbing, uprooting, blocking or impairing Plaintiffs access in, and over the driveway shown and depicted on the PLAT (R. p. 52) by which Plaintiffs took title, without any limitation as to directional use, notwithstanding any physical posting to the contrary."

This ORDER FOR TEMPORARY IJUNCTION (R. pp. 6-8) merely restored the rational *status quo* that had existed **(a)** Since the 1970's, in which the 'Paved Driveway' provided ***access*** both to the old Bathhouse and to the community mailboxes from either the Little River Drive or the Gamecock Circle direction, easily accommodating the slow-moving two-way mailbox traffic, as well as **(b)** Appellants' ability to park on our own property near our front door, which we enjoyed from the purchase of the old Bathhouse in July 2002 through June 2007.

The matter of the TEMPORARY INJUNCTION went before the Honorable Benjamin H. Culbertson. The Defendants' attorney, Roger Roy, argued that the motion was not yet 'ripe,' meaning that the results of the 'Mail-In Ballot' were not yet counted, so Judge Culbertson issued his ORDER (EXTENDING THE TEMPORARY INJUNCTION) (R. p. 9) dated Nov. 4, 2009, by consent of both Counsel, continuing it in full force and effect in accordance with its terms, pending an outcome of a future MERITS HEARING.

On November 17, 2009, the POA announced that the ballot measures to take out the 'Paved Driveway' and to remove Rosanne Pazoga from the Board of Directors passed, but thanks to the TEMPORARY INJUNCTION (R. pp. 6-8), the *access* road was spared.

Contempt of Court

At the POA Board Meeting on March 16, 2010, the Windjammer Village POA Board of Directors, in **defiance** of Judge Hyman's (R. pp. 6-8) and then Judge Culbertson's (R. p. 9) TEMPORARY INJUNCTION, once again fined both Plaintiffs (now Appellants) Crotty and Orzech $100 each. The Defendant POA then sent two letters (R. pp. 75-76) notifying each of us that an assessment was made against us for:

"...not accessing your property from Gamecock Circle as per the contract"

And further advising us that the amount of the fine would be due and owing within 10 days after the notice of imposition of the penalty and that if payment were not received, then our privileges (use of the pool, fishing pier, clubhouse and boat/RV trailer storage facility and attendance at meetings) would be suspended.

On March 24, 2010, attorney Lovelace filed a PETITION FOR ORDER AND RULE TO SHOW CAUSE (R. pp. 62-76) in the Court of Common Pleas, asking for a CONTEMPT-OF-COURT HEARING, citing Judge Hyman's ORDER FOR TEMPORARY INJUNCTION (R. pp. 6-8) and Judge Culbertson's CONSENT ORDER (R. p. 9), which read,

> "... Violations of this ORDER FOR TEMPORARY INJUNCTION shall result in severe sanctions, to include civil and/or criminal contempt being imposed upon Defendant, its officers and directors. ..."

At the April 21, 2010, HEARING, Judge Hyman found Defendant Windjammer Village POA to be in CONTEMPT OF COURT, and signed an ORDER (R. pp. 10-11), dated April 28, 2010, in the Court of Common Pleas, Fifteenth Judicial Circuit, to the POA's Board of Directors to abate any fines, concluding,

> "... This Court will monitor the conduct of the Defendants to ensure their compliance and, in the event of failure of strict compliance, reserve the right to impose all available sanctions within its power. ..."

From that date, April 21, 2010, through to the TRIAL ending on June 23, 2011, fourteen blessed months, we, Appellants Elizabeth Crotty and James Orzech, again fully enjoyed the use of our magnificent new home, *The B00 House*, without any fear of the constant, ferocious, debilitating and deliberate infliction of emotional suffering, imposed by the Respondent Windjammer Village POA, its Board Members and surrogates, over *access* and *parking*, thanks to Judge Hyman's TEMPORARY INJUNCTION (R. pp. 6-8).

In June 2010, Defendants' attorney, Roger Roy, filed COUNTER-CLAIMS (R. pp. 58-61) to Plaintiffs' VERIFIED COMPLAINT (R. pp. 37-57); and then in September 2010, the POA Board sacked attorney Roy, who had told the Board what they did not want to hear about Crotty's and Orzech's property rights, replacing him with attorney Moss.

The June 2011 Trial

On June 22-23, 2011, The Honorable Steven H. John, Presiding Judge, Court of Common Pleas, Fifteenth Judicial Circuit, heard our (Plaintiffs') case for a PERMANENT INJUNCTION to prevent Defendant WJV POA from ever removing the *access road* in front of our home, as well as Defendants' COUNTER-CLAIMS (R. pp. 58-61).

Prior to the Court Proceeding that day, our Attorney Lovelace had not informed us, his clients, that: **(1)** It would be any more than the final MERITS HEARING that we expected, promised in Judge Culbertson's CONSENT ORDER (R. p. 9) in November 2009, as to whether or not to make Judge Hyman's TEMPORARY INJUNCTION (R. pp. 6-8) permanent; **(2)** Defendants' COUNTER-CLAIMS were anything other than arguments against that INJUNCTION; **(3)** Vital property rights to our home, involving *access* and *parking*, were being placed at risk in perpetuity at a legal proceeding that, unexpectedly for us, became a two-day TRIAL, for which neither we nor our attorney were prepared;

and worst of all, **(4)** *Somehow* we had gone from being Plaintiffs to being *de facto* Defendants, never having been given the opportunity to opt for a **TRIAL BY JURY.**

Judge John granted Plaintiffs Crotty and Orzech the INJUNCTION (R. p. 18 lines 20-26) that we originally sought in our Verified Complaint (R. pp. 37-57), citing that Defendant WJV POA cannot remove the *access* road known as the 'Paved Driveway,' as shown on the PLAT (R. p. 52) at the time The *B00* property was sold.

However, in response to the POA's COUNTER-CLAIMS, Judge John forbade us from ever utilizing that very same *access road* for any reason other than mail pickup, specifically denying us the use of the *parking spots* in our own yard near the front door, forever depriving us of a critical property right, while at the same time making our new home virtually worthless in the resale market and unlivable for elderly and/or disabled persons. Indeed, Appellant Crotty, an aging, disabled Navy Veteran, already had been forced to move out of *The B00 House* in 2009, rather that having to trudge over 47 yards each way to and from the POA-approved *parking area* every time she came home – night or day, rain or shine, hot or cold – often carrying bags of groceries or other packages.

In the Judge's SPOKEN ORDERS FROM THE BENCH, he discounted all of the injustices we had endured at the hands of our POA, stating,

> "... There is no sense in living your lives fighting and wasting your time on what in reality are 'insignificant items.' ..."

Then to our abject horror Judge John appointed the Defendants' attorney to draft his FINAL ORDER, guaranteeing that Moss would twist his SPOKEN ORDERS to favor his clients, just as he had done in another case involving *The B00 House* in 2004.

The 'Final Order'

On August 5, 2011, The Honorable Steven H. John issued his FINAL ORDER (R. pp. 12-19), drafted by Respondent's attorney Moss. As we anticipated, it varied significantly from his SPOKEN ORDERS FROM THE BENCH strongly to our detriment. Although the Judge did affirm the INJUNCTION (R. p. 18 lines 20-26) against the Windjammer Village POA from ever removing the *access* road shown on the PLAT (R. p. 52), we as the current owners of *The B00 House*, our guests, service providers, contractors, heirs and assigns could never use it, despite the fact that the 'Paved Driveway' was built in the first place over thirty years prior expressly to service the old bathhouse, which we painstakingly had renovated into our dream home.

Although Windjammer Village had never recorded *access* and *parking* restrictions claimed by the POA in the TITLE (R. pp. 43-46) or the WARRANTY DEED (R. pp. 48-52), the usual law on this matter singularly did not protect *us*, as we *somehow* were deemed to be 'not-innocent purchasers.' Consequently, the Court declared that it would send a debilitating RECORDING MEMORANDUM (R. pp. 35-36) on these rulings to the Horry County Registrar of Deeds, ensuring that these restrictions would become a matter of record, thereby forever clouding our TITLE to *The B00 House*.

The photographic evidence that we provided of discriminatory enforcement of *parking* practices within Windjammer Village, directed only against us, *somehow* did not rise to some vague legal standard. The Court ruled that the POA's Board had the right to make the 'Paved Driveway' one-way from the Little River Drive direction (R. pp. 103-105, but especially p. 105 lines 11-13), despite the fact that doing so would abrogate their

2002 Sales Contract (R. pp. 93-95), which required us to *access* the property only *from* Gamecock Circle.

It also ignored the fact that the POA Board never actually acted on changing the 'Paved Driveway' to *one-way*, but rather three rogue Board members did so as retribution against Ms. Crotty for having caused Magistrate Blanton to file criminal Assault & Battery charges against the POA's Board president for having punched her in the jaw with a clenched fist -- a salient point never argued by our ill-informed attorney at TRIAL.

Additionally, the Judge stated that nothing in his FINAL ORDER spoke to Ms. Crotty's rights under the 'Americans with Disabilities Act' (R. p. 15 lines 21-28) and by inference to any other similar State or Federal statutes, such as the 'Fair Housing Act,' which she now is pursuing with the South Carolina Human Affairs Commission and the U.S. Department of Housing and Urban Development (HUD).

Plaintiffs' Motions for Reconsideration

Through attorney Richard M. Lovelace, Jr., we filed PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR RECONSIDERATION PURSUANT TO RULE 59(e), SCRCP (R. pp. 77-78), dated August 12, 2011, in the Court of Common Pleas, Fifteenth Judicial Circuit, to reverse: **(1)** That part of the Court's FINAL ORDER (R. pp. 18-19 para.2) barring contractors and/or service providers, even including emergency vehicles, from *accessing* our home from the 'Paved Driveway,' and to revoke **(2)** That provision in the Court's ORDER (R. p. 19 para. 4), requiring that a RECORDING MEMORANDUM (R. pp. 35-36) be filed with the Office of the Horry County Registrar of Deeds. However, attorney Lovelace declined our requests to challenge the other provisions of the FINAL ORDER, such as *access* and *parking*, but he did agree to defend us against Defendant's

MOTION FOR ATTORNEY FEES AND COSTS, but not to ask for fees and costs for ourselves, although we, too, had partially prevailed at TRIAL with the INJUNCTION.

On February 13, 2012, a MOTIONS HEARING PURSUANT TO RULE 59(e), SCRCP, was held before the Honorable Steven H. John, presiding Judge, Court of Common Pleas, Fifteenth Judicial Circuit, for Civil Action #2009-CP-26-10523. The Court filed its ORDER UPON PLAINTIFFS' MOTION FOR RECONSIDERATION (R. pp. 21-24), dated February 27, 2012, in which it ruled that:

1. "Nothing in the Court's FINAL ORDER (R. pp. 12-19) 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 providers."
2. "... 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. „"
3. The FINAL ORDER properly restricts Plaintiffs and the Plaintiffs' visitors, guests, and invitees from *accessing* the Plaintiffs' property via the 'Paved Driveway.'
4. "... The Court finds that the recording of a MEMORANDUM in the Office of the Registrar of Deeds makes it more likely that the Court's FINAL ORDER will be found by innocent third parties such as purchasers ..."

Further, the Court issued another ORDER DENYING DEFENDANT'S REQUEST FOR ATTORNEY FEES BUT ALLOWING DEFENDANT TO RECOVER ITS COSTS (of $1,934.24), also filed on February 27, 2012. Once these ORDERS were delivered, our retention of Richard M. Lovelace, Jr. as our attorney was terminated.

Unexpected Motions Hearing of August 2012

The Court scheduled a HEARING in the above case for August 30, 2012. The purpose of this HEARING was to determine whether or not Defendant's MOTION FOR AN ORDER AND RULE TO SHOW CAUSE for Plaintiffs' failure to comply with the Court's ORDER DENYING DEFENDANT'S REQUEST FOR ATTORNEY FEES BUT ALLOWING DEFENDANT TO RECOVER ITS COSTS, filed February 27, 2012. Defendant Windjammer Village POA also wanted to be awarded *even more* COSTS ($3,168.24 more), pursuant to Rule 54(e). On August 6, 2012, *Pro Se* Plaintiffs Elizabeth Crotty and James Orzech submitted our PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S PROPOSED ORDER AWARDING DEFENDANT EVEN MORE TAXABLE COSTS PURSUANT TO RULE 54(e) SCRCP, arguing that Defendant's claims for additional COSTS were questionable, discrepancy-ridden and possibly fictitious. We also had expected some documentation, such as receipts, for the supposed COSTS we were being asked to pay, which attorney Moss never could find a way to produce.

Then on August 23, 2012, we forwarded RE: AUGUST 30TH RULE TO SHOW CAUSE HEARING: PLAINTIFFS' MEMORANDUM REQUESTING THAT THE COURT RE-VISIT THE FINAL ORDER IN THE NAME OF JUSTICE (R. pp. 79-92 with Attachments A through F pp. 93-105) to the Court, stating,

"Now that attorney Moss has caused this case to be reopened, we respectfully request that the Court also reevaluate some of its decisions from the June 2011 TRIAL and the February 2012 HEARING based on: **(1) New evidence** that Plaintiffs were not aware of until after the TRIAL of June 2011, that dramatically clarifies this otherwise murky Sales Transaction in a way that demands that the decisions, regarding '*access*' and '*parking*,' be reversed; **(2)** The confusion at the TRIAL brought about by the improper interpretation of the words *'access from'* and *'entrance'* in the **English language,** as used in the Sales Contract, and **(3)** The **ineffective representation** by our former attorney at TRIAL."

At the August 30th HEARING, we vigorously argued our positions before the Judge, as *Pro Se* Plaintiffs, as recorded in the TRANSCRIPT (R. pp. 111-160). The Honorable Steven H. John signed an 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), SCRCP Motion)*" (R. pp. 25-31) dated September 14, 2012. However, the Judge rejected each of Plaintiffs' points. Judge John also ordered Plaintiffs to pay Defendant the COSTS ($1,933.24) already assigned in a prior ORDER within ninety days, which we then paid in full on November 5, 2012, as verified by attorney Moss' AFFIDAVIT OF PLAINTIFFS' COMPLIANCE WITH THE COURT'S FEBRUARY 22, 2012, ORDER (R. pp. 32-34), but Judge John did **not** award the Defendant Windjammer Village any additional COSTS.

The Appeals Process to Date (January 2014)

On October 18, 2012, we, now as *Pro Se* Appellants, served a NOTICE OF INTENT TO APPEAL (R. pp. 106-110) the Trial Court's 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), SCRCP Motion)* (R. pp. 25-31) stamped September 18, 2012, and by direct inference, the FINAL ORDER (R. pp. 12-19), itself. Then on November 18th Respondent Windjammer Village POA filed a MOTION TO DISMISS, with an attached AFFIDAVIT of attorney Kenneth R. Moss and Respondent's MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS, citing mostly procedural and timeliness issues.

Subsequently, *Pro Se* Appellant James Orzech filed his RETURN TO MOTION TO DISMISS, while noting that *Pro Se* Appellant Elizabeth Crotty had been away at sea on a trans-Atlantic cruise, unavailable to respond throughout the entire ten-day period allowed under Rule 240, but would do so by December 4, 2012. Then Appellants filed a MOTION TO EXTEND TIME for their RETURNS, and *Pro Se* Appellant Crotty filed her RETURN TO MOTION TO DISMISS on that day, as promised.

By December 2nd Respondent Windjammer Village POA, through its attorney Moss, had filed its REPLY TO APPELLANT ORZECH'S RETURN, and moved for an ORDER STRIKING APPELLANT ORZECH'S RETURN TO RESPONDENT'S MOTION TO DISMISS. Then on December 10th Respondent filed its REPLY TO APPELLANT CROTTY'S RETURN and moved for an ORDER STRIKING APPELLANT CROTTY'S RETURN, citing timeliness and non-responsiveness.

Appellants filed their RETURN TO RESPONDENT'S MOTION TO STRIKE on December 19, 2012, rebutting Defendant's objections as **moot.** Then on February 11,

2013, the Court of Appeals notified *Pro Se* Appellants Crotty and Orzech, as well as Respondent's attorney Moss, by ORDER signed by Jasper M. Curitan, A.J. that:

> "After careful consideration, Respondents' motion to dismiss is denied. Furthermore, Appellants' motion for an extension to serve the return to the motion to dismiss is granted, and Respondents' motions to strike the return to the motion to dismiss is denied."

Appellants filed their original INITIAL BRIEF and DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL by the due date on March 13, 2013, after which attorney Moss had thirty days until April 12th to complete Respondent's INITIAL BRIEF. However, on March 15th, Respondent's attorney filed a PETITION FOR AN EXTENSION OF TIME TO FILE ITS INITIAL BRIEF AND DESIGNATION OF MATTER, asking for an extension of time of 45-days beyond the normal 30-days allowed per RULE 208(a)(2), but offering no reason. On March 20th Appellants answered with a RETURN TO RESPONDENT'S PETITION FOR AN EXTENSION OF TIME TO FILE ITS INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL, stating that we had no objection to a reasonably long extension of time for good reason, but not for a 45-day extension with no reason.

Then on March 29, 2013, the South Carolina Court of Appeals sent out an ORDER signed by Chief Judge John Cannon Few, stating,

> "Respondent is requesting an extension of forty-five (45) days to serve and file the respondent's initial brief and designation of matter. Appellants have filed a return. The time for serving and filing the respondent's initial brief and designation of matter is hereby extended to May 13, 2013."

Rather than apply his efforts to producing Respondent's INITIAL BRIEF by the due date of May 13th, attorney Moss instead chose to file yet another redundant RESPONDENT'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, TO STRIKE MATTER FROM APPELLANTS' INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL on April 29, 2013. That forced Appellants to file yet another RETURN TO MOTION TO DISMISS on May 9, 2013, stating,

> "Appellants Elizabeth A. Crotty and James K. Orzech, hereby, submit their RETURN TO MOTION TO DISMISS, asking that RESPONDENT'S MOTION TO DISMISS dated April 29, 2013, be **denied**, in that Respondent's attorney Moss's prior MOTION TO DISMISS, dated November 18, 2012, covered essentially the same objections, which already have been **denied** by the Court of Appeals, so are therefore **moot**."

Regarding Respondent's ALTERNATIVE TO STRIKE MATTER FROM APPELLANTS' INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD OF APPEAL**:** Appellants agreed that our DESIGNATION OF MATTER could be shortened for the sake of simplicity, noting our intention to thoroughly review the DESIGNATION that we sent to the Court of Appeals along with our INITIAL BRIEF on March 13, 2012, and then, if necessary, to submit a MOTION to amend it. To that end, we, as Appellants, submitted our MOTION TO AMEND AND REPLACE APPELLANTS' DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL with its Amended DESIGNATION OF MATTER, revised on May 24, 2013.

On July 2, 2013, the South Carolina Court of Appeals sent out an ORDER signed by Associate Judge Jasper M. Curitan, stating,

> "Respondent has filed a Motion to Dismiss, or in the Alternative, to Strike Matter from Appellants' Initial Brief and Designation of Matter. After careful consideration, we find Appellants' Initial Brief contains material that does not comply with the requirement of Rule 208(b)(1)(b), SCAR, that the Statements of Issue on Appeal 'be concise and direct to each issue.' Accordingly, we grant Respondent's motion and strike pages 1 and 2, as well as the non-enumerated paragraphs on page 3, from Appellants' Initial Brief. Appellant shall file an Amended Initial Brief within ten days. Appellants have filed a Motion to amend their Designation of Matter, which Respondent does not oppose. Appellants' Motion is hereby granted."

After missing the deadline to file a RETURN, opposing Appellants' Amended DESIGNATION OF MATTER, attorney Moss belatedly chose to file RESPONDENT'S MOTION TO STRIKE MATTER INCLUDED IN APPELLANTS' AMENDED DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL, which the Court denied. Respondent Windjammer Village Property Owners' Association, through its attorney Kenneth R. Moss, Esq., finally submitted its 25-page INITIAL BRIEF on November 12, 2013. Appellants then filed a REPLY BRIEF on November 22, 2013, and served a RECORD ON APPEAL to Respondent's attorney on December 23, 2013.

(D1) FACTS

The substance of this Appeal properly begins with the actions of Respondent Windjammer Village (WJV) Property Owners' Association (POA) Board at its monthly meeting in September 2009, when the Board of Directors first plotted to remove the *access road*, designated on the PLAT (R. p. 52) as the 'Paved Driveway,' in front of Appellants' home, known as *The B00 House*. As necessary background information, here follows an accounting of those events, as seen by Appellants, that are relevant to this case, but which happened prior to September 2009:

- In November 1998, Surveyor C.B. Berry presented the Windjammer Village Property Owners Association (Respondent) with a revised PLAT (R. p. 52) that split Block E into two parts (Lots A and B), which PLAT the POA approved for recording by Horry County.

- Prior to 1998, Block E was undivided and designated as a 'Reserved Common Area' within Windjammer Village (WJV), which included a 'one-Story, Frame Bathhouse,' a 'Paved Driveway' and community mailboxes.

- 'Lot A, Block E' and 'the old Bathhouse' and 'Bathhouse #1' and '2148 Gamecock Circle' and '*B00*' designate the same property that is the subject of this Appeal. *B00* means Circle B (Gamecock Circle), Lot 00 (Zero-Zero). Appellants Crotty and Orzech's home is referred to as *The B00 House*.

- 'Lot B, Block E' a.k.a. the 'Mailbox Island' remains a 'Reserved Common Area' to this day, with an *access* road along its boundary with 'Lot A' identified as the 'Paved Driveway' and with mailboxes where residents from three Circles receive mail.

- In 1998 the Windjammer Village POA first offered this common property, Lot A, Block E, the site of one of the former trailer park's community bathhouses, for sale.

- In October 1998, 'James R. Hackert' indicated an interest in purchasing Lot A, but he lowered his bid by **$3,000,** due to the fact that the POA informed him that first he would be required to build a costly *long* 'private driveway' from Gamecock Circle to the old Bathhouse parallel to the existing 'Paved Driveway' through the then densely forested land on that property, which was to be the sole *access* to his home and the only authorized place for him to *park* (R. pp 98-101).

- The 1998 sale did not go through, because Windjammer Village then was embroiled in another lawsuit that complicated the fate of the *B00* property, *Dedmon v. Horry County Board of Adjustments*, involving grandfather rights of trailer owners, but not related to this case, which was decided against the POA in the SC Supreme Court.

- Appellant Crotty initially moved to Windjammer Village in late 1999 after inheriting her parent's home at 2121 Brunswick Circle, at a time when the old Bathhouse property was no longer on the market, so consequently she had no 'corporate knowledge' of the terms of the attempted sale to 'James Hackert' in 1998, involving any requirement that the buyer first must build a costly *long* 'private driveway' parallel to the existing 'Paved Driveway' for *access* and *parking*.

- After *Dedmon v. Horry County Board of Adjustments* was decided, the POA again offered the 'B00' property up for sale in late 2001 with bids starting at $35,000.

- In March 2002, Elizabeth A. Crotty in good faith bid $35,001 for Lot A, expressing her intention to re-make the property into a showplace residential home. Two days later, the POA notified her that they had accepted her bid for the property.

- Ms. Crotty signed the Sales Contract (R. pp. 93-95) for Lot A in May 2002, which contained the clause, **"... It is further agreed that *access* to this property shall be *from* Gamecock Circle. This paragraph shall survive the closing. ..."** -- The interpretation of which is at the very heart of this controversy.

- Notably, the words "enter," "entrance," "parking," "vehicle" and "automobile" do not appeared anywhere in that Sales Contract (R. pp. 93-95).

- For at least the prior thirty-plus years while the bathhouse was in daily use, residents of this former campground routinely *parked* near the *entrance* to the old bathhouse and all over the property and its *access road* to use its toilets, showers, mail and laundry facilities, *accessing* it either from the Little River Drive or from the Gamecock Circle direction, along a circular 'Paved Driveway' without objection. .

- When Ms. Crotty signed the Sales Contract (R. pp. 93-95) in 2002, she fully expected to be able to do the same, despite the fact that the contract specified that her '*access*'

would be '*from*' Gamecock Circle (e.g. the Gamecock Circle direction), as the 'Paved Driveway' always had been two-way.

- At the time of the sale, the only '*access* to the property *from* Gamecock Circle' was along that 'Paved Driveway.' The part of that property actually abutting Gamecock Circle then was heavily forested with no such '*access*' or any possible '*entrance*.'

- The sale closed in July 2002, with Ms. Crotty receiving TITLE TO REAL ESTATE (R. pp. 43-46), showing no DEED RESTRICTIONS involving *access* and/or *parking*.

- Unlike for 'James R. Hackert' in **1998** (R. pp. 98-101), the POA **never** informed Ms. Crotty prior to the sale in **2002** that she would be required to build a costly *long* 'private driveway' from Gamecock Circle to the old Bathhouse parallel to the existing 'Paved Driveway' through densely forested land, which was to be her sole *access* to her home and the only authorized place for her to *park*.

- Near the start of the renovation in July 2003 – an entire year after the sale – Respondent's office secretary, nonetheless, wrote a letter to Ms. Crotty on behalf of the POA's Architectural Committee chairman, erroneously demanding that she clear the forest adjacent to Gamecock Circle and immediately build an expensive *long* 'private driveway' parallel to the existing 'Paved Driveway' which was to be her sole *access* to the property and the only place she could *park*.

- There was no provision in the Sales Contract (R. pp. 93-95) to build such a *long* 'private driveway' parallel to the existing 'Paved Driveway' through the undeveloped

forest land on her property, but each time she asked the POA's architectural committee chairman for justification, she was greeted only with intense intimidation.

- The POA, thereafter, relented and let Ms. Crotty and her contractors *access* the property *from* along the existing 'Paved Driveway' to reach the *parking* spots located near her front door of her property that had been used for over thirty years when it was a community bathhouse, for the next four years through June 2007.

- During that time she completed renovation of the old Bathhouse, receiving a 'Certificate of Occupancy' from Horry County in 2004, and then in 2005 built, at her own discretion, a garage with a *short* 'private driveway' on that part of the property once densely forested.

- Then in 2005, the property passed from Elizabeth A. Crotty to Elizabeth A. Crotty and James K. Orzech in 'Joint Tenancy.'

- As part of that real estate closing, Ms. Crotty and Dr. Orzech received a WARRANTY DEED (R. pp. 48-52), again showing no DEED RESTRICTIONS involving *access* or *parking*.

- Appellants took out a mortgage together in 2005 to add a garage building with an attached home office, as well as an enclosed porch, necessary to stop flooding, as had occurred during Tropical Storm *Bonnie* and Hurricane *Charley*, plus a connecting archway, receiving CERTIFICATES OF OCCUPANCY in 2006.

- Appellants continued at their discretion to *park* either in the spot adjacent to their front door or on their new *short* 'private driveway' until June 2007, when the POA suddenly decided to make their *access* and *parking* an issue again (R. pp. 103-105), confusing the word ***enter***, which does not appear in the Sales Contract (R. pp. 93-95), with the word ***access***, which does.

- That choice of words results in vastly different interpretations of where we can and cannot *park* – the central issue for making this Appeal.

- So began six-plus more years of continuously stressful disputes with the POA over *parking* near Appellants' front door, as opposed to *parking* only on the recently created *short* 'private driveway' some forty-seven (47) yards from the front door.

- During that time Ms. Crotty and Dr. Orzech were alternately forbidden *to park* there but then allowed to do so over and over again, always with great acrimony from Respondent Windjammer Village POA Board of Directors, and unlike for any other property in Windjammer Village.

- On July 4, 2007, Appellants posted a protest letter (R. pp. 103-105) on the community bulletin board outside the village's clubhouse. After the village's Fourth of July party, as Appellant Crotty was standing by that letter, explaining it to passers by, the POA's then-acting Board president came over to her and punched Ms. Crotty with a clenched fist right in the chin and tore down her letter, violently assaulting her while at the same time violating her Constitutional right to free speech.

- In August 2007 members of the POA's Board summarily without valid reason or any formal Board action put up 'One Way' signs, making Appellants' contractually guaranteed *access* to their home *from* Gamecock Circle along the 'Paved Driveway' impossible without violating the newly posted directionality, effectively abrogating that clause in the Sales Contract (R. p. 94 line 12).

- Just before Thanksgiving 2008, Ms. Crotty was admitted to the *Bay Pines Veteran's Administration Medical Center* in St. Petersburg, Florida, for two months, suffering from a new flare-up of acute post-traumatic stress disorder (PTSD), originating from a vicious assault she had suffered years earlier in the Navy, but rekindled with resultant flashbacks by the physical assault upon her in July 2007 by the president of the Windjammer Village Property Owners' Association, and by all the other accumulated stresses of living always under duress in Windjammer Village.

- Appellant Crotty returned home from rehabilitation in January 2009, but soon thereafter broke her knee. She immediately sent an email to the POA's Secretary, announcing that she had a broken knee, and therefore, she intended to start *parking* directly in front of her home near her front door per her Doctor's orders.

- In February 2009 she received a letter from the POA stating, "The Board of Directors is in receipt of your request *to park* in front of your home due to a knee injury. Please provide a letter from your doctor stating the rehabilitation time."

- There is no one else in Windjammer Village, a community of over 360 homes, who cannot *park* anywhere they choose on their own property, or who needs a 'note from their doctor' *to park* near their front door!

- Nonetheless, Ms. Crotty visited Dr. Eric Angermeier at the VA Medical Center in Charleston on February 23, 2009, who wrote, "Ms Crotty has a fractured patella and will be significantly limited in her mobility for the next three months. It would benefit her to be able *to park* in front of her home during this time."

- As a result of the POA's nasty harassment after her initial 'Note from my Doctor' that expired at the end of May, Ms. Crotty provided the POA with yet another note and supporting documentation from her Spinal Orthopedist, Dr. Michael S. Wildstein, of the VA Medical Center in Charleston, stating, "Please allow Mrs. Crotty *to park* in front of her house, as she is under my care for a spinal degenerative condition, which makes walking painful and difficult for her."

- Also, as a 100% Disabled Veteran due to PTSD, resulting from her assaults, Appellant Crotty is justifiably fearful of walking a long distance from her car to her front door at night. She therefore obtained a DISABLED PARKING IDENTIFICATION PLACARD and later a South Carolina DISABLED VETERAN'S LICENSE PLATE for her car, documentation of which she promptly forwarded to the POA Board of Directors.

- Despite Notes from Drs. Angermeier and Wildstein, as well as her DISABLED PARKING IDENTIFICATION PLACARD and DISABLED VETERAN'S LICENSE

PLATE, the POA's Board continued to not allow her not *to park* in her own yard near her front door.

- Then the POA's attorney sent their attorney a letter, stating, "... My client has reviewed the letter from Dr. Wildstein and the correspondence from Ms. Crotty. My client has decided not to allow Ms. Crotty to permanently *park* in front of her home (*The B00 House*). As you and Ms. Crotty are *well aware*, this would be a violation of the use of the common area within Windjammer Village."

- On the contrary, the POA's attorney was *well aware* that there is no statement in the POA's Restrictions-Rules-Regulations (R. pp. 169-190) or By-Laws (R. 191-201) or anywhere else, which restricts anyone's ability to drive on a public *access road* or over common property to reach one's own property for any purpose. However, the Windjammer Restrictions-Rules-Regulations (Attachment #2. p. 2 para. 6a) 'Parking in Windjammer Village' states, "Vehicles of residents and their guests must be parked on their lot or in designated parking spaces" (R. p. 187 line 26-29).

- Both Appellants are dues-paying Members of the POA, owning between us five lots in WJV and paying **$210** per month in POA dues. That most certainly should guarantee us full privileges, including the unrestricted use of and easement over all common properties (R. p. 192 lines 12-16), including the 'Paved Driveway' and common property adjoining *The B00 House*, without exception.

- Every WJV resident must cross common property with their automobiles *to park* on their property, since the rights-of-way for the roadways are usually 24 feet, but the

pavements are typically only 12 feet. That leaves on average six (6) feet of common property on each side of the road in front of nearly every home.

- Although Appellant Crotty was forced to move away from *The B00 House* in early 2009 to escape the daily POA-induced trauma, she visits there often to use her home office, computer and sunroom.

- In early August 2009 Appellants hired attorney James Purvis to write to Respondent's attorney, clearly explaining their legal arguments and appealing for a resolution.

- That letter was discussed at the monthly Windjammer Village POA Board meeting in August 2009. With neither Appellant in attendance, the Board, as well as members of the audience, felt free to discuss Ms. Crotty's *parking* near her front door due to her military-service-connected disabilities in candid and shockingly cynical ways, publicly referring to her broken knee and disabilities as her "latest parking scam."

- Afterwards, the Board sent Ms. Crotty a letter stating, "... per your Doctor's note, the three months for *parking* in front of your home would expire May 23, 2009. The Board of Directors met on Tuesday, August 18, 2009. A motion was made and carried to impose (a) fine (on) you (of) $100.00. This is due to the fact that you are continuing *to park* in an area other than your driveway."

- Soon thereafter, Ms. Crotty's Orthopedist, Dr. Wildstein, wrote yet another 'Medical Progress Note,' which Ms. Crotty gave to the POA, stating that in his Medical Opinion, "Ms. Crotty continues to have difficulty with her HOA not allowing her *to*

park in front of her house. She should be able *to park* in front of her house, as her back condition makes it difficult for her to walk for extended distances."

- Ms. Crotty quickly sent off a written response to the Board's letter, re-stating her case while imploring them to rescind the fine.

- After the WJV attorney, Roger Roy, reportedly told the POA Board that she could, indeed, legally *park* on her own property, the Board sent her a letter, rescinding the $100 fine previously imposed for the fictitious *parking* violation.

- In September 2009, Respondent Windjammer Village Property Owners' Association's Board of Directors passed a resolution to send a 'Mail-in-Ballot' (R. 56-57), asking all members to approve the removal of the 'Paved Driveway' *access road* in front of Appellants' home under the thin guise of making it into a so-called 'Garden/Park.'

- That proposed measure, if passed, would be in clear violation to South Carolina law, as Judge John would decree in his FINAL ORDER (R. 18 para. 1).

- Its true purpose was to prevent both Appellants from *accessing* the *parking* spots near their front door, contrary to guarantees in the Sales Contract (R. pp. 94 line 12) that: "It is further agreed that ***access*** to this property shall be ***from*** Gamecock Circle," which includes along the 'Paved Driveway,' as it had been for campsite and trailer-park residents for more that thirty years by the time that Ms. Crotty signed the Sales Contract in 2002.

Appellants Elizabeth A. Crotty and James K. Orzech then were forced to retain attorney Richard M. Lovelace, Jr., to seek an INJUNCTION to stop Respondent Windjammer Village Property Owners' Association from removing the 'Paved Driveway' *access road* to their home, which action initiated a long series of legal proceedings leading up to this Appeal, which are detailed in Section **(C)** 'Statement of the Case' and in Section **(D2)** 'Arguments' in this FINAL BRIEF.

(D2) ARGUMENTS

ARGUMENT FOR PROPOSITION #1

"Contracts made in South Carolina must be interpreted and enforced according to the true meanings of the words actually in the Contract in the English language, and not by the decrees of Board Members in some Property Owners' Association."

Words are the basic building blocks of language. Without them and their precise meanings that are agreed upon and understood by all, there can be no law, no courts, and indeed, no state and no civilization. Remarkably, Respondent's attorney in his Memorandum of Law, page 9, stated,

> "There is no basis in law or in fact to grant relief under Rule 60(b), SCRCP, on the second of Appellants' asserted grounds that the Trial Court

improperly interpreted the English language usage of the words **'access from'** and **'entrance.'** ..."

Attorney Moss further went on to cite the Court's September 14, 2012 Order:

"As a second of Plaintiffs' asserted grounds, mainly that there was confusion at the TRIAL brought about by the interpretation of the words **"access from"** and **"entrance."** The Court is persuaded that those matters were fully litigated before the Court, ..."

The true meanings of these words were not and could not be litigated in a Circuit Court in South Carolina or anywhere else. They are integral parts of a major human language, which has evolved over many centuries and is in worldwide usage for basic communication, commerce, science and law, well beyond Appellants' contract with Windjammer Village in Horry County.

Even the suggestion that Courts or Governments or POA Boards of Directors can or might litigate and/or manipulate the true meanings of words for their own unfair advantage seems tyrannical. The specter of this was raised most notably in George Orwell's prescient novel *1984* in which 'Big Brother' had decreed changing the language from *Oldspeak* to *Newspeak*. In one passage Syme says to Winston,

"Don't you see that the whole aim of *Newspeak* is to narrow the range of thought? In the end we shall make thought-crime literally impossible, because there will be no words in which to express it. Every concept that can ever be needed will be expressed by exactly *one* word, with its

meaning rigidly defined and all subsidiary meanings rubbed out and forgotten. ..."

Appellants are not suggesting that the lower Court or the Judge acted in any *Orwellian* way. However, we are affirming that the various Board presidents and Directors of Respondent Windjammer Village over time, on their own and/or through their attorneys, routinely did so, just like 'Big Brother' and his 'Thought Police.'

The lower Court seems to have bought into the POA's faulty logic, conflating the words "*access*" and "*entrance*" into just *one* word – "*entrance*" – and simply '*rubbing out*' the word "*access*" with its distinct but inconvenient meaning, just like in *Newspeak.*

According to the *Merriam-Webster Dictionary* (1996 Ed.) (R. p. 102), the definitions of the word ***"access"*** include, "permission, liberty, or ability to enter, approach, communicate with, or pass to and from." The preposition ***"from"*** is used as a function word to indicate a starting point. ***"Entrance"*** is defined as "a means or 'place' of entry." *Webster's New Compact Desk Dictionary* from 2002 – the very year that the Sales Contract (R. pp. 93-95) was signed – defines "***access***" as: '**1.** Approach or means of approach' and '**2.** The right to enter, use etc.' and "***entrance***" as: '**1.** The act of entering' and '**2.** A place for entering; door, etc.'

The 2002 Sales Contract (R. pp. 94) states: "It is further agreed that ***access*** to the property shall be ***from*** Gamecock Circle." By definition the clause ***"access from"*** means that Gamecock Circle can be the 'starting point' for 'entering or approaching' *The B00 House*. Therefore, the Sales Contract actually guarantees us that we can *access* the parking spots in our front yard along the 'Paved Driveway' by using Gamecock Circle as our 'starting point,' as we as Plaintiffs and now as Appellants, have *always* contended.

By contrast, if the Sales Contract had said, "*entrance* to the property shall be *from* Gamecock Circle," which it does not, the "place (or point) of entry" would have to be on Gamecock Circle, as Defendants and now Respondents claim, making our ability to *access* those *parking* spots from along the 'Paved Driveway' impossible. Nonetheless, Respondent POA has routinely substituted the word "*entrance*" for "*access*" in this dispute over *parking*, with us as well as in Court, despite our forlorn pleas over many unpleasant years to the contrary, but by definition they have always been mistaken.

To Appellants' horror, that 'mistake' and 'inadvertency' went unchallenged at the TRIAL by our ineffective Counsel, but we brought it up again at the August 30th HEARING that produced the RULE 60(b) COURT ORDER that we now are appealing. Please see R. pp. 83-85, 'The English Language,' for a concise statement on this issue.

The proceedings of the TRIAL and the subsequent HEARING changed nothing; the words in the contract are still the words in the contract and their definitions in the English language are still their definitions in the English language, whether or not the lower Court got it right. Correcting this sort of error is exactly the reason for which there is a RULE 60(b), addressing 'mistakes and inadvertences' in the first place, as well as the very rationale for having a Court of Appeals.

If what Respondent's attorney stated in his MEMORANDUM OF LAW is true -- that "there is no basis in law or in fact to grant relief ... on ... grounds that the Trial Court improperly interpreted the English language," there should be. Perhaps this case will be the one forever cited, making that self-evident concept clear before the Law in South Carolina, once and for all.

In any case, we pray that the South Carolina Court of Appeals will overturn the lower Court's RULE 60(b) ORDER (R. pp. 25-31) and by inference its FINAL ORDER (R. pp. 12-19) in this case, based on the Court's improper interpretation of the English Language, which lead directly to a basic misunderstanding of the very sense of the 2002 Sales Contract (R. pp. 93-95), and thereby, an erroneous decision.

ARGUMENT FOR PROPOSITION #2

"To be enforceable in South Carolina, the terms of a Sales Contract must actually appear in that Contract signed by the buyer, and not just be someone else's belatedly faint recollection of some informal understanding made with another party four years prior, unbeknownst to the current buyer."

It is well established that at the time of Appellant Crotty's signing of the Sales Contract (R. pp. 93-95) with Respondent Windjammer Village POA for Lot A, Block B in 2002, **(a)** The only ***access*** to the old Bathhouse ***from*** Gamecock Circle was along the 'Paved Driveway,' with that part of the property abutting Gamecock Circle being densely forested and undeveloped; **(b)** The words ***entrance*** and ***parking*** did not appear anywhere in the Sales Contract; and **(c)** Windjammer Village residents had ***accessed*** the old Bathhouse along the 'Paved Driveway' ***from*** either the Little River Drive or the Gamecock Circle direction for over thirty years.

Further, there was absolutely no reference in the 2002 Sales Contract (R. pp. 93-95) with the POA to any requirement that Ms. Crotty first must build a costly *long* 'private driveway' from Gamecock Circle parallel to the existing 'Paved Driveway' on her property through densely forested land, to be used as her sole means of *access* and *parking*, thereby denying her any right to utilize the 'Paved Driveway' *access* road in front of her new home. Please see the PLAT (R. p. 52).

If such a contractual requirement between the POA and Ms. Crotty had been agreed upon prior to her purchasing of the '*B00*' property in 2002, which there was not, the initial conditions of the sale would have been vastly different and there would be no need for an Appeal today. *Access* and *parking* never would have been an issue. Ms. Crotty either could have opted out of that agreement prior to signing it -- **or** -- Built the costly *long* 'private driveway' parallel to the existing 'Paved Driveway' and used it. It should be noted that the POA Board approved all of her plans all along the way from 2002 through 2006, which never included building such a long parallel driveway.

Near the start of the renovation in July 2003 – an entire year after the sale – Respondent's office secretary, nonetheless, wrote a letter (R. p. 96) to Ms. Crotty on behalf of the POA's Architectural Committee chairman, *erroneously* demanding that she clear the forest adjacent to Gamecock Circle and *immediately* build an expensive ***long* 'private driveway'** parallel to the existing 'Paved Driveway.' Each time she asked the elderly chairman for clarification, she was greeted only with intense intimidation.

The POA, thereafter, relented and let Ms. Crotty and her contractors *access* the property *from* along the existing 'Paved Driveway' to reach the *parking* spots located near her front door of her property for the next four years through June 2007, after which

there developed this continuously nasty struggle between Appellants Crotty and Orzech vs. Respondent Windjammer Village POA that is discussed in **Part D1** of this BRIEF.

As it turned out, Ms. Crotty signed a Sales Contract (R. pp. 93-95) without any requirement for building a parallel driveway, and then over many years we renovated our home and built our garage under the assumption that we could *access* our property *from* Gamecock Circle over the 'Paved Driveway.' Now more than a decade later the Respondent POA is insisting that because in its opinion we should have built such an expensive *long* 'private driveway' parallel to the existing 'Paved Driveway,' instead of a garage with a shorter driveway, and did not do so many years ago, *somehow* we forfeited any right *to park* in our front yard, as all other residents of Windjammer Village do.

Unbeknownst to us until well after the June 2011 TRIAL, there in fact had been discussions involving a *long* 'private driveway' parallel to the existing 'Paved Driveway' with a person named 'James Hackert,' who thought about purchasing that 'B00' property in 1998, but who did not. The **'new evidence'** that we cited in Plaintiffs' 8/23 Memo (R. pp. 80-83) was a memo (R. pp. 98-101) discussing the POA's informal agreement with Mr. Hackert, sent to the Windjammer Village Board of Directors, dated October 24, 1998, and signed by Barbara Culver, the Association's Treasurer. That Memo ironically first appeared to us as EXHIBIT #12 in attorney Moss' TRIAL EXHIBIT BOOK from the June 2011 TRIAL, which our attorney never showed us before the TRIAL. Even if that Memo does not qualify as *new* evidence, it still can be considered in this Appeal, because Defendant's attorney Moss presented it to the lower Court at the TRIAL.

Unlike Mr. Hackert, the POA never informed Ms. Crotty, prior to the purchase in 2002, about any such a requirement. That 1998 agreement (R. pp. 98-101) had absolutely

nothing to do with Ms. Crotty and her purchase of that property four years later in 2002. Nonetheless, some vague memory of that mythical *long* 'private driveway' parallel to the existing 'Paved Driveway' persisted with the POA's Board, who then for ten more horrific years have erroneously attributed it to Ms. Crotty, effectively trying to force us to comply with terms of a Contract that never existed, except in the collective imaginations of Windjammer's 'Good Ole Boys.'

In September 2009 in support of the POA's referendum to illegally remove the 'Paved Driveway' in front of our home, Defendant WJV POA published in its *Village Breeze* newsletter (R. p. 54 and p. 97), as well as in its 'Mail-In Ballot' package (R. pp. 56-57), mailed out to all of our neighbors, out-of-state residents and homeowners in Windjammer Village, the following false and libelous disinformation (R. pp. 54 and 97), regarding the circumstances of Ms. Crotty's purchase of the 'B00' Property in 2002:

> "... The contract of purchase had stated the property must be accessed from Gamecock Circle. It was stated *in writing* and the bid was reduced by **$3,000** due to the fact they were going to have to install a **long driveway**."

At that time, we had no idea *why* the WJV POA was making those outrageously mistaken and unsubstantiated claims in their newsletter. No matter how intently we denied all responsibility for agreeing to build a *long* 'private driveway' parallel to the existing 'Paved Driveway' in 2002 and for taking **$3,000** to do so, our tyrannical Board would insist that we were wrong, using their phony and libelous notion that we *somehow* violated some fictitious agreement and just pocketed the money, as justification for denying us the free usage of the 'Paved Driveway' *to access parking* spots near the front door in our front yard in 2009.

The 'Hackert Memo' (R. pp. 98-101) that we found in attorney Moss' TRIAL EXHIBIT BOOK, identified as Defendant's EXHIBIT **#12**, stated that in October 1998,

> "... Both bidders (James Hackert and Richard Gherri) have indicated ... that they lowered their bids by approximately **$3,000** due to the fact of building a ***long driveway*** that *access* to the property would now require."

And in a handwritten note initialed by James Hackert, "Reason for the low offer: **(1)** Length of driveway $3,500 and **(2)** 25% of land is gone."

Therefore, it now has been shown that Respondent WJV POA and its agents:

a. Erroneously for many years tried to enforce an understanding made with 'James Hackert' in 1998 against us, Appellants Elizabeth Crotty and James Orzech, despite the fact that no such agreement ever had been made with either of us contemporaneous to the 2002 Sales Contract, or at any time afterwards.

b. Maliciously published disinformation they knew to be false in their September 2009 *Village Breeze* newsletter (R. p. 54 and p. 97) and in their package mailed to voters (R. pp. 56-57), *purposely* and *wrongfully* attributing understandings made with someone else in 1998 to us, in a dishonest attempt to rig their Mail-In-Ballot referendum to obtain the POA Members' approval to *illegally* and *punitively* tear out the 'Paved Driveway,' just so that we, Appellants Crotty and Orzech, could never *access* our home by *parking* near our front door, as part of their ongoing vendetta against us.

It was all a big mistake followed by big lies!

ARGUMENT FOR PROPOSITION #3

"To be adequately represented in South Carolina by Counsel, the attorney must at least inform his or her clients that they were walking into a (non-jury) Trial, at which their property rights would be put at risk in perpetuity, and not just another routine Merits Hearing to make a Temporary Injunction permanent."

We as *Pro Se* Appellants/Plaintiffs long ago separated from our attorney, Richard M. Lovelace, Jr., who we believe did not effectively protect us against Defendant's COUNTER-CLAIMS at the June 2011 TRIAL. In fact, before the TRIAL, we were blissfully unaware that Defendant's COUNTER-CLAIMS (R. pp. 58-61) were anything other than arguments against us being granted a PERMANENT INJUNCTION to stop the Windjammer Village POA from removing the 'Paved Driveway' *access* road in front of their home. The first day of the TRIAL we thought that we were going to just another short "MERITS HEARING," as promised by Judge Culbertson's in his November 2009 ORDER (R. p. 9), to make the TEMPORARY INJUNCTION (R. pp. 6-8) permanent – not a two-day TRIAL, at which our vital interests & property rights would be sacrificed forever.

Although attorney Lovelace did excellent work on the INJUNCTION, for which he initially was retained under a fixed-fee contract, he apparently felt little responsibility to meaningfully defend his clients against Defendant's subsequent COUNTER-CLAIMS that would have required of him much more work than he bargained for. Further, he told us

that he had spoken by phone with the POA's attorney Moss on several occasions, during which time we feel that he bought into Defendant's arguments over *access* and *parking*, hence deciding that he could not and/or would not vigorously defend our positions.

At the TRIAL, our attorney's only comment, again and again, to Defendant's EXHIBITS and often-false TESTIMONIES, was "No Objection, Your Honor," even as we, his clients, were furiously writing him notes, begging him to object. All he would say to us was that this or that point was not relevant. Please see Plaintiffs' Rule 60(b) Motion (R. pp. 86-91 Myths #1 through #7) for the full story. So we lost without ever having had our arguments fully heard, which verdict drastically limited our property rights in perpetuity, including convenient *access* and *parking* near to our front door, clouded our TITLE (R. pp. 43-46), and devalued our property, for which we were not compensated.

Most unjustly, although we were considered 'Plaintiffs,' since we had initiated the Motion for a PERMANENT INJUNCTION, we were in reality *de facto* Defendants in a BENCH TRIAL over COUNTER-CLAIMS (R. pp. 58-61), and as such we were never given an opportunity to ask for a JURY TRIAL or to defend ourselves.

Through attorney Lovelace, we then filed a MOTION FOR RECONSIDERATION (R. pp. 77-78), objecting to the part of the FINAL ORDER (R. pp. 18-19 para. 2) that forbade Emergency and Service Vehicle from utilizing the 'Paved Driveway' to service our home. We also challenged that provision in the FINAL ORDER (R. p. 19 para. 4), requiring that a RECORDING MEMORANDUM (R. pp. 35-36) be filed with the Office of the Horry County Registrar of Deeds. We wanted our attorney to challenge more issues, including utilization of the 'Paved Driveway' for *access* to *parking* both for us and for our guests, but he refused.

At the HEARING, Judge John staunchly supported the rights of Emergency Vehicles to go anywhere and also agreed that service and contractor vehicles again could visit *The B00 House*, utilizing the 'Paved Driveway.' However, the Judge did not reverse his decision on the RECORDING MEMORANDUM (R. pp. 35-36), and awarded Defendant COSTS, despite the fact that we, too, had partially prevailed with the INJUNCTION.

It should be noted that the only reason that our attorney Lovelace filed a MOTION FOR RECONSIDERATION (R. pp. 77-78) is that we, his clients, found out that there was such a thing from another lawyer we interviewed for our pending Civil Case. We had to go back to Mr. Lovelace to ask him to do it inside a very short time limit, which he did, but we had to pay him yet another substantial legal fee.

Attorney Lovelace had charged us an Engagement Fee, then a Fixed Fee for representing us for the INJUNCTION (R. pp. 6-9), plus another Fixed Fee for the CONTEMPT-OF-COURT (R. pp. 62-76) proceedings against our Defendant POA, and yet another Fixed Fee for representing us at the MOTION-FOR-RECONSIDERATION HEARING (R. pp. 77-78) and for defending us against Defendant's demands for FEES & COSTS. That is fair and we as his clients had no objections. He duly earned those fees.

However, he never did ask us for any additional compensation to defend us against Defendant's COUNTER-CLAIMS (R. pp. 58-61). If we had been informed of their truly insidious nature, we would have been forced to retain Lovelace to defend us and we would have participated wholeheartedly in preparing our own defense.

Quite to the contrary, Defendant's attorney Moss, to his great credit, had prepared a 1.5-inch thick loose-leaf notebook entitled DEFENDANTS' TRIAL EXHIBITS. In it were

fifty-eight (58) well organized EXHIBITS that he used to devastating effect at the TRIAL. We (Appellants) now possess the copy of that book, which attorney Moss had provided for attorney Lovelace, but which our attorney had not shown to us, his clients, prior to the TRIAL. The only reason we even saw it is because Appellant Orzech collected it off the table in the Courtroom after the TRIAL. Despite the fact that we, as Plaintiffs, had in our possession large numbers of documents that could have countered Defendant's COUNTER-CLAIMS (R. pp. 58-61), our side had no such organized collection at the TRIAL to counter those of the Defense, as verified by the following METADATA: In the FINAL ORDER (R. pp. 13-15, 17), Judge John referred to Plaintiffs' EXHIBITS: #2 and 3, plus an indirect mention of our photographic EXHIBITS, but mentioned Defendant's EXHIBIT #'s 24, 25, 27, 28, 29, 57, 30, 43 and 48 fourteen times.

Consequently, at the TRIAL, Moss' EXHIBITS went unchallenged, while his witnesses spun one myth after another (R. pp. 86-91 Myths #1 through #7) before the Judge. Consequently, the Court's FINAL ORDER (R. pp. 12-19) was *in error* on several key points, largely because of the 'ineffective representation' we received from our former attorney, Richard Lovelace, whom we nonetheless continue to hold in esteem. However, he:

- Did not alert us that Defendant's COUNTER-CLAIMS (R. pp. 58-61) were any more than arguments against granting a PERMANENT INJUNCTION against the unlawful removal of the 'Paved Driveway' ***or*** that we were walking into a (non-Jury) TRIAL over *access* and *parking*, not a MERITS HEARING to make a TEMPORARY INJUNCTION (R. pp. 6-9) permanent.

- Refused to fully listen to our story or to study the material that we provided him before the TRIAL, enough to understand the complex history inherent in defending our interests in this dispute against the Windjammer Village POA.
- Did not take the issues brought out in Defendant's COUNTER-CLAIMS (R. pp. 58-61) seriously, while not adequately preparing himself, or us, for the TRIAL, except for the INJUNCTION part.
- Failed to challenge attorney Moss' EXHIBITS and WITNESSES, which painted a decidedly one-sided and blatantly false accounting of key events and issues, and for which there were many other DOCUMENTS in our possession and our own WITNESSES that could have argued to the contrary.

So were we fairly and fully represented at a TRIAL in which we lost considerable property rights, likely lowering our home's value and our ability ever to sell it, while making our ability to live there much more stressful? Are there any minimum standards to be met in South Carolina before the TRIAL process fails before the Law, because of ineffective representation? Does it even matter? That is what we are asking the Appeals Court to decide, and if those standards have not been met, to strike down the Trial Judge's FINAL ORDER (R. pp. 12-19) except for the INJUNCTION, while at the same time making Judge Hyman's TEMPORARY INJUNCTION (R. pp. 6-8) -- in its entirety – permanent, and especially,

> **"... Defendant is enjoined ... ... from in any way disturbing, uprooting, blocking or impairing Plaintiffs access in, and over the driveway shown and depicted on the PLAT (R. p. 52) by which**

Plaintiffs took title, without any limitation as to directional use, notwithstanding any physical posting to the contrary."

ARGUMENT FOR PROPOSITION #4

"A Court's Final Order that: (a) Did not accurately reflect what the Presiding Judge actually said in the Courtroom during the Trial; (b) Failed suddenly and spectacularly just twenty-four days after signing; (c) Required that several of its tenets be clarified and/or modified at a Motions for Reconsideration Hearing; (d) Poses questions and unintended consequences that cannot be answered without the prospect of perpetual litigation, should be overturned."

(a) THE SPOKEN ORDER vs. THE FINAL ORDER

Immediately after the June 2011 TRIAL attorney Lovelace advised us that:

1. Defendant Windjammer Village could **not** tear up the 'Paved Driveway' and turn it into a so-called 'Garden/Park' and that the same law applies to the 'Reserved Common Area' known as the 'Mailbox Circle.'
2. We were precluded from driving our cars on the 'Paved Driveway' for anything except picking up our mail.
3. The Judge had denied attorney Moss' request for costs and attorney fees.

Further, the Judge had said nothing from the Bench that gave any indications that:

4. Guests, including our elderly and/or disabled friends, even with Disabled Placards, could not come to our home and *park* in our yard near the front door.
5. Service or emergency vehicles (such as from our propane-gas supplier, pest-control or tree services, contractors, delivery companies, such as *UPS* or *Fedex*, ambulances and fire trucks) could not have *access* to our home via the 'Paved Driveway.'
6. The Contract restrictions would apply to anyone other than Plaintiffs Crotty and Orzech, not to be inflicted upon our heirs and assigns, including any potential buyer.

As expected, Judge John's FINAL ORDER, (R. pp. 12-19) recorded on August 5, 2011, permanently enjoined Windjammer Village from removing the 'Paved Driveway' *access* road in front of our home; but ordered us not to ***access*** our property from it. There was a requirement that a RECORDING MEMORANDUM (R. pp. 35-36) should be filed with the Office of the Registrar of Deeds, so that the FINAL ORDER (R. pp. 12-19) would be a matter of record in the real property records in Horry County and binding on our successors and assigns," making the '*B00*' property virtually worthless for re-sale.

However, all three of those crippling restrictions (**#4, #5** and **#6** above), not even mentioned at the TRIAL in Judge John's summation or SPOKEN ORDER FROM THE BENCH, which we recorded, *somehow* were inserted *ex post facto*.

As dazed citizens, we are left wondering just *how* that could have happened to us, but we suspect that Defendant's attorney Moss, whom the Judge assigned to write the FINAL ORDER (R. pp. 12-19) for him, simply inserted those punishing clauses into it on

behalf of his clients, for vengeance, and the Judge accepted them, contrary to any input of our feckless attorney. From our perspective, all of this happened completely behind closed doors in a smoke-filled room without our knowledge, and certainly not in the transparency of an open Courtroom in public view.

The basic legal dilemmas that we, as ordinary citizens and as *Pro Se* Appellants, pose here for the Appeals Court Judges who read this BRIEF are: **(1)** What kind of legal ethic permits a JUDGE to allow an opposing attorney, our long-time bitter adversary, whose clients have inflicted a ferocious vendetta against us for nearly a decade, to write the FINAL ORDER? **(2)** If the opposing attorney gets to write the verdict, why did we bother with a JUDGE and a TRIAL in the first place? **(3)** How can this practice of asking an opposing attorney to write a FINAL ORDER possibly satisfy the protections in Section 1 of the Fourteenth Amendment to the U.S. Constitution, which states, "No State ... shall deprive any person of life, liberty, or property, without due process of law; ..."**?** **(4)** How can this practice possibly be consistent with the RULE OF LAW and the DUE PROCESS OF LAW? And **(5)** How can this have happened to us in America?

(b) Hurricane *Irene*

Late on Friday evening, August 26, 2011, an ancient *Loblolly Pine* fell on *The B00 House* during Hurricane *Irene*, whose aftermath rendered the FINAL ORDER (R. pp. 18-19 para. 4), barring emergency vehicles, contractors and service providers from using the 'Paved Driveway,' suddenly and spectacularly unworkable. After we called the Horry County Fire Department to come out and check for fire hazards, such as gas leaks and electrical damage, a Fire Truck pulled up right in the 'Paved Driveway' at about 2am. Appellant Orzech implored the Fire Chief not to park there while servicing our home, lest

he violate the Court's FINAL ORDER (R. pp. 12-19), but he simply refused to move his truck.

After our panicky calls to attorney Lovelace for guidance went unanswered early that Saturday morning, we had to make a tactical decision to knowingly ***ignore*** the FINAL ORDER (R. pp. 12-19) to permit a tree-removal service and roofers, along with their truck and cranes, to utilize the 'Paved Driveway' all weekend long to save our home. All the time we were living in fear that we were violating the law and would be found in Contempt of Court, with the POA's so-called 'Legal Committee' chairman driving back and forth, watching us all-day-long from his golf cart, without ever stopping by to speak with us, until Appellant Orzech finally confronted him late Saturday afternoon.

Finally on Monday morning attorney Lovelace returned our many calls and informed us that because of our MOTION FOR RECONSIDERATION (R. pp. 77-78) had been filed, the FINAL ORDER (R. pp. 12-19) was automatically stayed, so we really had nothing to worry about. However, he went on to warn us that, despite the fact that the FINAL ORDER had been stayed, we still should not *park* in our usual spots, "so as not to '*piss off*' the Judge." Although our friend Richard Lovelace provided us with some much welcome comic relief, this entire episode dramatically demonstrated to us just how absurd, clumsy, awkward and tenuous the FINAL ORDER (R. pp. 12-19) really ***is***, just twenty-four days after its signing.

(c) The MOTION-FOR-RECONSIDERATION HEARING

As previously stated, our attorney had filed two MOTIONS FOR RECONSIDERATION (R. pp. 77-78) on our behalf prior to Hurricane *Irene*, objecting to

the part of the blatantly unworkable provisions in the FINAL ORDER (R. pp. 18-19 para. 2) that forbade emergency, service and contractor vehicle from utilizing the 'Paved Driveway' to service our home. We also challenged that provision in the FINAL ORDER (R. p. 19 para. 4), requiring that a RECORDING MEMORANDUM (R. pp. 35-36) be filed with the Office of the Horry County Registrar of Deeds.

When we won in Court on the emergency and service vehicle issue, Mr. Lovelace told us that in his 38 years of practicing law in this State, he had never before seen a Judge reverse one of his Rulings in a MOTION-FOR-RECONSIDERATION HEARING.

Obviously the lower-Court Judge now realized that he had gone too far. With that reversal we now can receive *UPS* and *Fedex* packages at our door again and restock our propane tank, but only at a substantial premium, amounting to hundreds of dollars per transaction over time to cover the attorney fees we had to pay to secure that right, which everyone else in Windjammer Village has forever enjoyed without question or cost.

However, the Judge refused to lift the requirement for a RECORDING MEMORANDUM. Given that the Windjammer Village POA had **neglected** and/or never intended to file any 'Deed Restrictions' on the '*B00*' property prior to the time of the sale to Ms. Crotty in 2002, or even by 2005, when Dr. Orzech became an owner in 'Joint Tenancy,' we as citizens wonder how a RECORDING MEMORANDUM (R. pp. 35-36) that is so tardy, but yet so terribly deleterious to us and our property's value now could make it into the FINAL ORDER (R. p. 19 para. 4). Then, how could it ultimately be delivered to the Registrar of Deeds in Horry County on May 15, 2012, to become a permanent stain upon our TITLE (R. pp. 43-46) and WARRANTY DEED (R. pp. 48-50) to

our home, thus rendering our home nearly worthless in the re-sale market – ten full years after Respondent Windjammer Village POA had sold that property to us!

(d) Unintended Consequences

As Hurricane *Irene* so rudely demonstrated, the FINAL ORDER (R. pp. 12-19) was a flawed document right from the start, because it did not anticipate that emergency and tree-removal vehicles might become necessary to save our home. It was based on the false premise that *somehow* the 'Paved Driveway' could be considered as separate from *The B00 House*, as though it did not pass directly in front of it and was not built decades prior expressly to service it. When the Judge decided that the 'Paved Driveway' *access* road could not be removed, but in the very next breath decreed that we only could use it to pick up our mail from our cars, he betrayed his basic lack of situational awareness of the actual conditions on the ground at *The B00 House* in Windjammer Village.

There is no mention of 'automobiles' and 'parking' in the 2002 Sales Contract (R. pp. 93-95) – none at all. Yet its controversial clause: "It is further agreed that *access* to this property shall be from Gamecock Circle," *somehow* has been said to relate only to 'automobiles.' After the TRIAL, attorney Lovelace assured us that despite the verdict, we still could *access* our property from any direction on foot or by bicycle or even on a skateboard or roller blades, along the 'Paved Driveway' from either direction. How can that possibly be inferred from the words actually appearing in the Sales Contract?

Let us say that instead of a bicycle, we started using a Moped. Could we *access* our property from the 'Paved Driveway' on that Moped, like we can on our bicycles? What about a motorized scooted? What about a Motorcycle? What if that Motorcycle has a sidecar, as one of our neighbors actually uses to get his mail? What if one of us

becomes no longer ambulatory? Appellant Crotty already has been rated 100% 'disabled' by the Veterans' Administration for PTSD, as well as from a variety of orthopedic problems. Can she use a wheel chair to get from her car in the *short* 'private driveway' to our front door over the 'Paved Driveway' forty-seven (47) yards away? What if that wheelchair is motorized, like the ones that many seniors around here do in fact use?

What about our elderly or disabled guests, most of whom are Veterans? Remember that the FINAL ORDER (R. p. 19 lines 3-5) says that we only can use the 'Paved Driveway' to pick up our mail. Many residents of Windjammer drive around the Village in Golf Carts. We likely will want to get one for ourselves someday. Could we then *access* our property on that Golf Cart, using the 'Paved Driveway,' and then *park* it near our front door, without the fear of being hauled back into Court? Where-oh-where is the line? What other unexpected situations might we face? And why is no other home in Windjammer Village so confusingly restricted, or even restricted at all?

Would any or all of these scenarios qualify us for a CONTEMPT-OF-COURT HEARING and possible legal sanctions? We submit that the FINAL ORDER (R. pp. 12-19) is simply too vague for anyone to comprehend. It is patently unworkable, as Hurricane *Irene* so rudely demonstrated just 24 days after it was signed.

(E) CONCLUSIONS

Respectfully, we believe that the Circuit Court erred in issuing a FINAL ORDER (R. pp. 12-19) that completely missed the mark for the actual conditions on the ground here at *The B00 House* in Windjammer Village for all of the reasons discussed in detail in this Appeal BRIEF. In our opinion, the Honorable Steven H. John conscientiously heard

the faulty case that was presented to him and made the best decisions that he could. Nonetheless, as well-educated citizens who both are retired Naval Officers with advanced degrees, and who both have put a substantial portion of our retirement savings toward renovating *The B00 House* to be our home, we believe that we have exposed so many fundamental problems with the FINAL ORDER (R. pp. 12-19) that it should be reversed.

We submit that The Honorable Larry B. Hyman, Jr., of the Fifteenth Judicial Circuit, Court of Common Pleas, got it exactly right when he granted us an ORDER FOR TEMPORARY INJUNCTION (R. pp. 6-8) on October 28, 2009, stating,

> "... Further it appears South Carolina Common Law clearly recognizes those rights Plaintiffs (now Appellants) claim in and to the driveway described in the PLAT (R. p. 52) by which Plaintiffs took title, and that the threatened action by Defendant (now Respondent Windjammer Village POA) appears to be in degradation of Plaintiffs' vested property rights under South Carolina Law ..."

Judge Hyman's Order went on to state,

> "... Defendant is enjoined on a temporary basis ... from in any way disturbing, uprooting, blocking or impairing Plaintiffs access in, and over the driveway shown and depicted on the PLAT (R. p. 52) by which Plaintiffs took title, without any limitation as to directional use, notwithstanding any physical posting to the contrary."

We therefore request that the South Carolina Court of Appeals:

(1) Strike down the FINAL ORDER (Ending Action) (R. pp. 12-19) by The Honorable Steven John, except for the PERMANENT INJUNCTION against the removal of the 'Paved Driveway,' recorded August 5, 2011, in the Court of Common Pleas, Fifteenth Judicial Circuit, (Civil Action #2009-CP-26-10523); and instead,

(2) Grant PERMANENT STATUS to the ORDER FOR TEMPORARY INJUNCTION by The Honorable Larry B. Hyman, Jr. (R. pp. 6-8), dated October 28, 2009; and,

(3) Cause the RECORDING MEMORANDUM (R. pp. 35-36), dated May 15, 2012 and filed with the Office of the Registrar of Deeds for Horry County, to be removed; and,

(4) Order that the COSTS, amounting to $1,933.24 that we paid to Respondent's attorney in November 2012 (R. pp. 32-34), be returned to us.

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

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April 25, 2014

CERTIFICATE OF COUNSEL

We certify that this Final Brief complies with Rule 211(b).

Respectfully submitted,

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ORIGINAL