

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas
Douglas M. Zayicek, Special Referee

Appellate Case No. 2019-001630

RECEIVED
DEC 10 2019
SC Court of Appeals

Larry W. Richardson, Appellant,

v.

Ashford Subdivision Homeowners'
Association, Inc., Respondent.

[INITIAL] BRIEF OF APPELLANT

TABLE OF CONTENTS AND CASES

STATUTES	Page(s)
Code of Laws of the State of South Carolina	
Title 15, Chapter 39, Article 5, Section 1539635	8
Title 27, Chapter 30, Article 1, Section 2730170	7

- Issue # 4 I contend that it is impossible for the referee to issue any conclusion considering that no evidence was ever presented in the hearing.
- Issue # 5 I contend that the entire process as it unfolded denied my U.S. Constitutional right to a trial by jury granted in the Constitution of the United States.
- Issue # 6 I contend that the results of the ruling that my house could be sold is a violation of the Constitution of the State of South Carolina.

STATEMENT OF THE CASE

History of the proceedings

- | | |
|--------------------------------|--|
| September 16, 2009 | I purchased my home for cash. |
| May 2013 thru June 2017 | I received numerous communications from two different real estate management companies. I replied to their initial requests. |
| Mid June thru late August 2019 | I received numerous communications from FirstService Residential. I replied to their original demand for back dues. |
| On or about Nov. 6, 2019 | I received notice of a 'lien' being filed against me. |

On or about May 27, 2019 I received a LIS PENDINS (Foreclosure)(Non-Jury), a CERTIFICATE OF EXEMPTION FROM ADR DOCKET NO. 2019-CP-26, and a 7 page SUMMONS. I responded and filed my reply with the Horry County Clerk of Court's office on June 19, 2019.

On or about July 3, 2019 I received a letter from the plaintiff's lawyer that mentioned a "proposed Order of Reference" (which did not accompany the letter). Other documents came with the letter, a CERTIFICATE OF MAILING, an AFFIDAVIT OF DEFAULT, and a CERTIFICATE OF MAILING that concerned documents mailed to Conway Hospital.

On or about July 19, 2019 I received a copy of a letter sent by Ms. Saraniti (the plaintiff's lawyer) to a Mr. Doug Zayicek (the referee).

On or about 24 July, 2019 I received a letter from Ms. Saraniti transmitting a copy of an ORDER OF REFERENCE, an EMAIL REPORT reference

the participation of Mr. Doug Zayicek, an
AFFIDAVIT OF DEFAULT, a
CERTIFICATE OF MAILING, and a
NOTICE OF HEARING. I responded by
calling the number given within the time
specified that I would be present at the
hearing.

August 21, 2019

The 'hearing' was held.

On or about Aug. 31, 2019

I received a letter from Ms. Saraniti that
included the NOTICE OF SALE and a
CERTIFICATE OF MAILING.

September 11, 2019

I hand delivered a cashier's check for
\$5,593.00 to Ms. Saraniti's office. I was
given a receipt for the check.

September 23, 2019

I prepared and mailed a letter to the South
Carolina Court of Appeals stating my
intention to appeal the finding of the referee.

On or about Sep. 25, 2019

I received a letter from Ms. Saraniti containing
a SATISFACTION OF JUDGMENT AND
RELEASE OF LIS PENDENS, a
SATISFACTION OF LIEN, and an HORRY

COUNTY REGISTER OF DEEDS

TRANSMITTAL SHEET.

October 4, 2019

I prepared a PROOF OF SERVICE document and submitted it to the SCCOA.

October 15, 2019

I prepared and submitted a corrected copy of the PROOF OF SERVICE. I also submitted an AMENDED NOTICE OF APPEAL.

On or about Nov. 15, 2019

I received a letter from the SCCOA informing me of the deadline for submitting this initial brief.

STANDARD OF REVIEW

This being a civil case I presume the standard for making decisions will be by a preponderance of the evidence on each element of the case.

ARGUMENT

Does an HOA or POA have the legal right to force a person to be a member?

The facts are that nowhere in any of the paperwork that was provided me at the time I purchased my home did the subject of an HOA or POA ever present

itself. In fact, the real estate agent I used informed my wife and I that there was no HOA or POA. I had made sure he was aware that I was not interested in buying in any community that had one. Beyond the preceding information, I was aware, because of research I had done concerning SC laws on the subject of HOAs, that SC Title 33, Chapter 31, Article 6, Subarticle A (b), Section 3331601 clearly says, "No person may be admitted as a member without his consent.". This is further emphasized by Title 27, Chapter 30, Article 1, Section 2730170, known as the South Carolina Nonprofit Corporation Act. Which says, "No provision of this article may be construed to be in conflict with the provisions of the South Carolina Nonprofit Corporation Act.". The aforementioned Title 33, Chapter 31 referred to is known as the South Carolina Nonprofit Corporation Act. In addition to the above two facts, the current organizational papers on file in Horry County records shows that it was organized on October 8, 2012, and it was calling itself a POA at that time. How is it that an HOA?/POA? Can claim with it's organizational papers filed on October 8, 2012 have jurisdiction over someone who purchased their home 3 years earlier? Wouldn't the no ex post facto law provision of the Constitution of South Carolina, Article 1, Section 4, which says" No bill of attainder, ex post facto law, law impairing the obligation of contracts, nor law granting any title of nobility or hereditary emolument, shall be passed, and no conviction shall work corruption of blood or forfeiture of estate."

The very existence of a hearing conducted by a ‘Special Referee’ in Horry County is not legal.

Title 15, Chapter 39, Article 5, Section 1530635 of the SC Code of Laws says, “In the counties which do not have a masterinequity, judicial sales of real property which a master has authority to perform may be performed by a referee in those matters referred to him by the presiding judge of the court of common pleas, or by a referee appointed by the presiding judge for this purpose.” It seems clear to me that since Horry County does have a masterinequity the use of a referee is not provided for in SC Law.

Six inaccuracies or omissions of facts are found in the SPECIAL REFEREES REPORT ORDER FOR JUDGMENT AND JUDGMENT OF FORECLOSURE AND SALE.

(one) In the second paragraph of the judgment Mr. Zayicek states that I tried to intimidate him by “getting within inches of the Special Referee’s face”, in reality I did lean towards him and stared at him, AFTER he glared at me, scooted his chair closer to the corner of the table, and leaned noticeably closer to me. As to the matter of “inches”, that is subjective, to the best of my recollection

the closest distance between our eyes was probably around 36 inches.

(two) Under the FINDINGS OF FACT paragraph 4 of the judgment document, I have no idea what Patricia Richardson, who I do not know nor know of, and the Conway Hospital have to do with the case. I assumed it was something the HOA was throwing at me to enhance their scare tactics.

(three) Under the FINDINGS OF FACT paragraph 5 of the judgment document, when I stated that my answering the complain also amounted to my wife doing so, Mr. Zayicek that in South Carolina it did not. I told it did in my house, and I believe I have a higher authority than even the Constitution of the United States to back me up. In the KJV Bible Matthew 5:5-6 says, "And said, For this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh? Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let no man put asunder."

(four) The document mentioned in paragraph 6 of the FINDINGS OF FACT of the judgment document was never presented

before the Special Referee during the hearing. In fact NO evidence at all was ever presented in the meeting. The only possible time it could have been shown to him would have been in the approximately 20 minutes that the HOA lawyer (Ms. Saraniti) and the Special Referee (Mr. Zayicek) were in the meeting room before my wife, my neighbor and I were asked to come in. (I believe this may just be a textbook example of an improper ex parte contact.) Since NO evidence at all was presented in the meeting, how can the referee make a ruling based on the preponderance of the evidence?

(five) The amount of payment due according to paragraph 9(c) of the FINDINGS OF FACT of the judgment document shows \$5,154.08 as the amount due, while the amount, relayed to a friend (lawyer) friend of mine from Ohio who I asked to help me by asking the lawyer for the HOA (Ms. Saraniti) what the amount needed to keep my house from going up for auction would be, was \$5,593.00. I know a few days passed between the ruling and my friend's inquiry, but the reason I ask him to make the inquiry for me was because I

had not received the judgment document or any communication telling me the amount needed.

- (six) The fact that my neighbor accompanied me, and was present in the meeting, was totally ignored in the Special Referee's account. I had a specific reason to ask my neighbor to come with me, exactly because I wanted a witness to the proceedings because I thought it might not be totally proper. In my opinion I was correct in my suspicions.

No decisions could possibly been made in this case.

Since there was absolutely no evidence presented before the referee during the truncated hearing, it is impossible that he could rule against me based on a preponderance of the evidence.

My seventh amendment rights of the U. S, Constitution were violated.

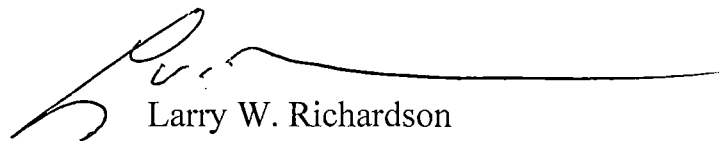
At no point during all of the proceedings against me was I ever presented the opportunity to demand my trial by jury.

The Constitution of the State of South Carolina was not followed.

Article 1, Section 4 of the Constitution of South Carolina clearly states that,
“and no conviction shall work corruption of blood or forfeiture of estate.”.

CONCLUSION

1. That the ruling of the Special Referee be reversed or thrown out entirely.
2. That my \$5,593.00 be returned as soon as possible, and that I be provided written documentation that I can not be forced to be a member of any HOA.
3. If it is thrown out instead of being reversed I want my opportunity to present my case before a jury.



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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPECIAL REFEREES REPORT ORDER FOR JUDGMENT
AND JUDGMENT OF FORECLOSURE AND SALE

Court of Common Pleas
Douglas M. Zayicek, Special Referee

Case No. 2019-CP-26-03015

Larry W. Richardson, Appellant,

v.

Ashford Subdivision Homeowners'
Association, Inc., Respondent.

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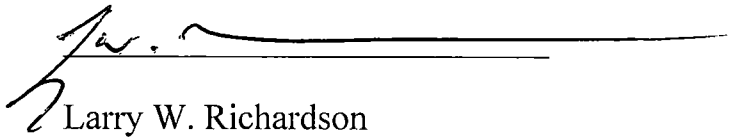
DEC 10 2019

SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the [INITIAL] BRIEF OF APPELLANT DATED
December 10, 2019, by depositing a copy of it in the United States Mail,
postage prepaid, on December 10, 2019 addressed to their Attorney of record
Elizabeth J. Saraniti, Post Office Box 14737, Surfside Beach, South Carolina
29587-4737.

December 10, 2019



Larry W. Richardson

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Document submitted by Appellant Larry W. Richardson, 303 Tapscott St,
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FedEx Express Package US Airbill

8125 8730 3580

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1644

Express Package Service

Package size up to 112 lbs. For full details see FedEx.com

1 From

Date: 12-11-19

Sender's Name: [Redacted]

Company: [Redacted]

Address: [Redacted]

City: [Redacted] State: CA ZIP: 94101

Next Business Day

FedEx First Overnight

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2 or 3 Business Days

FedEx 2Day A.M.

FedEx 2Day

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2 Your Internal Billing Reference

3 To

Recipient's Name: [Redacted]

Company: [Redacted]

Address: [Redacted]

City: [Redacted] State: CA ZIP: 94101

5 Packaging

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FedEx Pak

FedEx Box

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Other

6 Special Handling and Delivery Signature Options

Saturday Delivery

No Signature Required

Direct Signature

Indirect Signature

4 Hold/Weekday

Hold/Weekday

Hold/Saturday

5 Payment Method

Recipient

Third Party

Credit Card

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