

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

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MAR 15 2013
SC Court of Appeals

Windjammer Village Property
Owners' Association

Respondent,

v.

Elizabeth A. Crotty and
James K. Orzech

Pro Se Appellant.

INITIAL BRIEF OF APPELLANT

EAC James K. Orzech

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

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(B) STATEMENT OF ISSUES ON APPEAL

Given the recent horrific events in Newtown, Connecticut, *Pro Se* Appellants Elizabeth A. Crotty and James K. Orzech freely admit that by comparison, our long-standing dispute with the Windjammer Village of Little River, Property Owner's Association (Respondent) over access and parking rights to our home seems frivolous. Further, we acknowledge that our plight is of no interest to anyone other than us, least of all to any other resident of Windjammer Village *or* to the Judges on the South Carolina Court of Appeals. However, we *are* law-abiding citizens who have spent much of our adult lives defending our nation and its freedoms overseas in uniform *and* this matter *is* of great consequence to us, because of personal *access* and resale value of our property.

Moreover, our plight is emblematic of a cosmic, unresolved legal issue in South Carolina, relating to the vast overreach of POA/HOA Boards into the lives of citizens, beyond the limits of their Covenants and outside the normal reach of the Law, without any reasonable or attainable Checks and Balances. Since the POA/HOA Boards act as the Executive, Legislative and Judicial branches of their quasi-governmental structures, they often become petty, despotic and corrupt, albeit at a micro-local level. Any member challenging their authority soon becomes the target of a vendetta, as we have in Windjammer Village. Most subjects complain bitterly over an injustice and then simply suffer the consequences, all the time praying that the Board simply will not notice them again. Few have the courage and persistence, as we do, to stand up to tyranny and to pay the price of carrying on the fight through the Courts.

Our Document: “RE: AUGUST 30TH RULE TO SHOW CAUSE HEARING: PLAINTIFFS’ MEMORANDUM REQUESTING THAT THE COURT RE-VISIT THE FINAL ORDER IN THE NAME OF JUSTICE,” with attachments A-F, hereby referred to as Plaintiffs’ 8/23 Memo, which the lower Court accepted as a “Motion Pursuant to Rule 60(b), SCRCP,” was a forlorn appeal for **Justice** from beleaguered, aggrieved citizens, who at that time of writing had no knowledge of Rule 60(b). We discovered that Rule just days before the Hearing – too late to revise our Memorandum into the prescribed format, but nonetheless, according to Judge John, it spoke directly to the same legal concern, namely the ultimate attainment of **Justice** – arguably the very reason that the Laws and the Courts exist in the first place.

We were seizing upon an unexpected opportunity presented to us when Defendant’s (now Respondent’s) attorney belatedly reopened the case (Civil Action #2009-CP-26-10523) with a Motion, demanding even more in legal costs from us. When Judge John agreed to hear the Defendant’s new Motion more than a year after his ‘Final Order’ (Ending Action), recorded August 5, 2011, Court of Common Pleas, Fifteenth Judicial Circuit, he effectively reopened the door for us, too, to submit our own Motion.

Appellant James K. Orzech sincerely believes that Judge Steven H. John was conscientiously acting in the interest of **Justice** by declaring in his 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*)" dated September 14, 2012, that Plaintiffs’ 8/23 Memo must be recorded as a “Motion Pursuant to Rule 60(b),” precisely so that it could be appealed,

if we were smart enough and tenacious enough to figure it out. There seems to be no other logical reason.

Now it is in the hands of the South Carolina Court of Appeals to sort out the central issues in this case, not resolved at the Trial or in the subsequent Hearings, prime among them are the **Propositions** that:

- (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 Trial, at which their property rights would be 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 answered without the prospect of continuing litigation, should be overturned?

(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 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 October 13, 2009, the remaining four Directors voted to send a 'Mail-In Ballot' to the Membership for the purposes of (1) Removing Pazoga from the Board outright, and (2) Taking out the *access* road in front of our home, known as the 'Paved Driveway,' expressly to deny us the physical means for our automobiles to reach those *parking* spots, under the guise of turning the *access* road, along with the adjoining 'Mailbox Island,' into a so-called 'Garden/Park.'

Temporary Injunction

After the POA's Board denied all of our attempts to rebut the measures and the misrepresentations on the 'Mail-In Ballot,' 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' with the Court of Common Pleas, seeking a 'Temporary Injunction,' protecting our

property rights against our POA illegally tearing out this vital *access* road to and in front of our home.

The Honorable Larry B. Hyman, Jr., Presiding Judge of the 15th Judicial Circuit, Court of Common Pleas, pursuant to our ‘Verified Complaint,’ granted an ORDER FOR TEMPORARY INJUNCTION 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 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 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 by which Plaintiffs took title, without any limitation as to directional use, notwithstanding any physical posting to the contrary.”

The matter of the ‘Temporary Injunction’ went before the Honorable Benjamin H. Culbertson on November 4, 2009. 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) dated November 4, 2009, Court of Common Pleas, Fifteenth Judicial Circuit, by consent of both

Counsel, continuing it in full force and effect in accordance with its terms, pending an outcome of a 'Merits Hearing.'

On November 17, 2009, the POA announced that the ballot measures to remove Rosanne Pazoga from the Board of Directors and to take out the 'Paved Driveway' passed, but thanks to the 'Temporary Injunction' the *access* road was spared.

Contempt of Court

At the POA Board Meeting on March 16, 2010, the Windjammer Village POA Board of Directors (Charles Nill, William Fongeallaz, Frank Spehr and Barbara Tanner, presiding), in defiance of Judge Hyman's and then Judge Culbertson's written Injunction, once again fined both Plaintiffs Crotty and Orzech **\$100** each. The Defendant POA then sent two letters 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 24th attorney Lovelace filed a PETITION FOR ORDER AND RULE TO SHOW CAUSE with four Exhibits, dated March 24, 2010, Court of Common Pleas, Fifteenth Judicial Circuit, asking for a Contempt of Court Hearing, citing Judge Hyman's Order for 'Temporary Injunction' and Judge Culbertson's 'Consent Order,' which read,

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“... 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, 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 starting on **June 22, 2011**, fourteen months later, we, Elizabeth Crotty and James Orzech, fully enjoyed the use of our home without fear of the constant, ferocious, debilitating and deliberate infliction of emotional suffering, imposed by the Windjammer Village POA, its Board Members and surrogates, over *access* and *parking*, thanks to Judge Hyman’s ‘Temporary Injunction.’

In **June 2010**, Defendants’ attorney, Roger Roy, filed Counterclaims with attorney Lovelace to Plaintiffs’ ‘Verified Complaint,’ and then in **September 2010**, Kenneth R. Moss replaced Roy, as Defendant’s attorney.

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 Windjammer Village Property Owners' Association from ever removing the *access* road in front of our home, and Defendants' counterclaims.

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 Order in November 2009, as to whether or not to make the 'Temporary Injunction' permanent; (2) Defendants' counterclaims were anything other than their arguments against that Injunction; and (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.

Judge John granted us the Injunction, citing that the removal of that *access* road, which was shown on the Plat at the time Ms. Crotty purchased the 'B00' property, would violate South Carolina law. However, in response to the Defense's counterclaims, he forever denied us the right to *access* the *parking* spots in our yard near the front door from the 'Paved Driveway' *access* road.

In the Judge's verbal statement from the Bench on June 23rd he discounted all of the injustice we had endured for so many years 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 designated Defendants' attorney to draft his 'Final Order,' guaranteeing that Moss would twist his 'Verbal Orders from the Bench' to vastly favor his clients, just as he had done in another case involving us in 2004.

The 'Final Order'

On August 5, 2011, The Honorable Steven H. John issued his FINAL ORDER, which varied significantly from his 'Verbal Orders from the Bench,' strongly to the detriment of Plaintiffs/Appellants Crotty and Orzech. Although the Judge affirmed the Injunction against Defendant Windjammer Village POA from removing the 'Paved Driveway' *access* road to the 'B00 House,' the current owners of the 'B00 House,' their guests, service providers, contractors, heirs and assigns could never use it, despite the fact that it was built over thirty years ago expressly to service the old Bathhouse. Although the *access* and *parking* restrictions claimed by the POA had not been recorded in the deed, *somehow* the usual law on this matter singularly did not protect Plaintiffs, who were deemed to be 'not innocent' purchasers. The photographic evidence that Plaintiffs provided of discriminatory enforcement of parking practices within WJV, directed only against them, *somehow* did not rise to some legal standard. It was ruled that the POA's Board had the ability to make the 'Paved Driveway' one-way, but ignored the fact that the POA Board never acted on doing so, a point not brought up by our attorney. The Court declared that it would send a Memorandum on these rulings to the County Registrar of Deed, ensuring that these restrictions become a matter of record. Additionally, the Judge stated that nothing in his 'Final Order' spoke to Ms. Crotty's rights under the 'Americans with Disabilities Act,' and by inference to any other similar State or Federal statutes, such as the 'Fair Housing Act.'

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), SCRPC,

dated August 12, 2011, in the Court of Common Pleas, Fifteenth Judicial Circuit, to reverse: (1) that part of the Court's 'Final Order' 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, requiring that a 'Recording Memorandum' be filed with the Office of the Horry County Registrar of Deeds. However, attorney Lovelace refused our requests to challenge any other provision 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.'

On February 13, 2012, a 'Motions Hearing,' pursuant to **Rule 59(e)**, SCRCPP, was held before the Honorable Steven H. John, presiding Judge, Court of Common Pleas, Fifteenth Judicial Circuit for Civil Action #2009-CP-26-10523. We, as Plaintiffs, sought reconsideration of the Court's 'Final Order' filed August 5, 2011, as to the impact of the 'Final Order' on: (1) Public safety providers and contractors and/or other service providers, utilizing the 'Paved Driveway,' and (2) The provision in the Court Order, requiring that a 'Recording Memorandum' be filed with the Office of the Registrar of Deeds. Further, Defendant Windjammer Village POA requested that the Court award it attorney's fees and costs. The Court filed its ORDER UPON PLAINTIFFS' MOTION FOR RECONSIDERATION PURSUANT TO RULE 59(e), SCRCPP, dated February 27, 2012, Court of Common Pleas, Fifteenth Judicial Circuit, in which it ruled that:

1. "Nothing in the Court's 'Final Order' 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 "does properly restrict 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, filed February 27, 2012, Court of Common Pleas, Fifteenth Judicial Circuit, The Honorable Steven H. John, Presiding. Once these Orders were delivered, Plaintiffs 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 and refusal 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. The Defendant also wanted to be awarded *even more* taxable costs pursuant to **Rule 54(e)**. On August 6, 2012, *Pro Se* Plaintiffs Elizabeth Crotty and James Orzech submitted their PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S PROPOSED ORDER AWARDING DEFENDANT EVEN MORE TAXABLE COSTS

PURSUANT TO RULE 54(e) SCRCP,” hereby referred to as “Plaintiffs’ 8/6 Memo,” arguing that Defendant’s claims for additional Costs were questionable and discrepancy-ridden,

Then on August 23rd, Plaintiffs 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,” hereby referred to as “Plaintiffs’ 8/23 Memo,” 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.”

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*)" dated September 14, 2012. However, the Judge rejected each of Plaintiffs’ points. Judge John also ordered Plaintiffs to pay Defendant the Costs already assigned within ninety days, which we then paid, but did not award the Defendant any additional Costs.

The Appeals Process

On October 18, 2012, we, now as *Pro Se* Appellants, served a NOTICE OF INTENT TO APPEAL 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*)" dated September 14, 2012. 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 K. Orzech filed his RETURN TO MOTION TO DISMISS, while noting that *Pro Se* Appellant Elizabeth A. 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 4th. Then on December 4th Appellants filed a MOTION TO EXTEND TIME to December 4th for their RETURNS and *Pro Se* Appellant Crotty filed her RETURN TO MOTION TO DISMISS.

By December 2nd Respondent Windjammer Village POA, through its attorney Kenneth R. 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 then filed their RETURN TO RESPONDENT'S MOTION TO STRIKE on December 19, 2012, rebutting Defendant's objections.

Then on **February 11, 2013**, the Court of Appeals notified *Pro Se* Appellants Elizabeth A. Crotty and James K. Orzech, and Respondent's attorney Kenneth Roy Moss, by letter without comments 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.”

(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' 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** 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,**' 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 would lower 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 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*.
- 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, which ultimately was decided against the POA in the South Carolina 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 in 1998, involving any requirement that the buyer first must build a costly *long* '**private 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' 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 Contract of Sale.
- For at least the prior thirty years while the bathhouse was in daily use, residents of this former trailer park routinely parked near the *entrance* to the old bathhouse to use its toilets, showers, mail and laundry facilities, *accessing* it from either the Little River Drive or the Gamecock Circle direction, along a circular ‘Paved Driveway’ without any objection from the POA.
- When Ms. Crotty signed the Sales Contract 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).
- 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*.’
- The sale closed in **July 2002**, with Elizabeth A. Crotty receiving a ‘Title to Real Estate,’ showing no ‘Deed Restrictions’ involving *access* and/or *parking*.
- Unlike for ‘James R. Hackert’ in **1998**, 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 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,' which was to be her sole *access* to the property and the only place she could *park* -- One of Appellants' grounds for making this Appeal.

- There was no provision in the Sales Contract she signed to build such a *long* 'private driveway,' 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 heavily forested.
- Then in **2005**, the property passed from Elizabeth A. Crotty to Appellants 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,' 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 with 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, confusing the word *enter*, which does not appear in the Sales Contract, with the word *access*, which does.
- That choice of words results in vastly different interpretations of where we can and cannot *park* – one of our grounds for making this Appeal.
- So began five more years of continuously stressful disputes with the POA over *parking* near Appellants’ front door, as opposed to *parking* only on the so-called *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.
- On **July 4, 2007**, Appellants posted a protest letter (Plaintiffs’ 8/23 Memo, Attachment F) 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 acting Board president came over to her and assaulted her, punching Ms. Crotty right in the chin.
- 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.

- Just before Thanksgiving **2008**, Ms. Crotty was admitted to the *Bay Point 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 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 23rd, 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 intimidate 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 of July 2009 (Defendant's Exhibit #5) 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, on Attachment #2, page 2, paragraph 6a: 'Parking in Windjammer Village' states,

“Vehicles of residents and their guests must be parked on their lot or in designated parking spaces.”

- Both Appellants are dues-paying Members of the POA, owning between them five lots in WJV and paying \$210 per month in POA dues. That most certainly guarantees them full privileges, including the unrestricted use of all common properties.
- Further, 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 February 2009 to escape the daily POA-induced trauma, she visits there every day to use her home office, computer and sunroom. She steadfastly continued *to park* lawfully in her *own* front yard, despite the outrage of the Windjammer Village POA’s ongoing vendetta against both Appellant Orzech and her.
- 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 in public at the monthly Windjammer Village POA Board meeting on August 18, 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 documented disabilities, in candid and shockingly cynical ways.
- 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,’ 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.
- Its true purpose was to prevent Appellants from *accessing* the *parking* spots near their front door, contrary to guarantees in the Sales Contract 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 countless 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 Legal Brief.

ARGUMENTS 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), SCRCF, 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 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.' Please see Plaintiffs' 8/23 Memo attachment F.

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" and its distinct but inconvenient meaning, just like in *Newspeak*.

According to the *Merriam-Webster Dictionary* (1996 Edition), 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."

The **2002** Sales Contract 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*' front door. 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 wrong.

Please see Plaintiffs' 8/23 Memo attachment E.

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 Plaintiffs' 8/23 Memo (pp. 5-7 'The English Language') for a concise statement of our take 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,' as well as the very rationale for having a Court of Appeals in the first place.

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) Decision, and by inference its FINAL ORDER in this case, based on the Court's improper interpretation of the English Language, which lead directly to a basic misunderstanding of the sense of the Contract, and thereby, an erroneous decision.

ARGUMENTS 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 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 direction for over thirty years.

Further, as we clearly stated in Plaintiffs’ 8/23 Memo, there was absolutely no reference in the **2002** Sales Contract (attachment A) with the POA to any requirement that Ms. Crotty first must build a *long* ‘private driveway’ from Gamecock Circle on her property through densely forested land, to be used as her (and subsequently our) sole means of *access* and *parking*, thereby denying her any right to utilize the ‘Paved Driveway’ (see Plat) *access* road if front of her new home.

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 *long* ‘private driveway’ and used it.

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.**’ 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 Appeal.

As it turned out, Ms. Crotty signed a Sales Contract without any such clause in it, 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 still insists that, because in its opinion we should have built such a long ‘private driveway’ instead of a garage with a *short* ‘private driveway’ and did not do so years ago, *somehow* we forfeited any right *to park* in our front yard, as nearly all residents of Windjammer Village do. Please see our ‘Photo Album of Parking in Windjammer Village.’

Unbeknownst to us until well after the June 2011 Trial, there in fact had been discussions involving a *long* 'private 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 was a memo (attachment **D**) 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 it was presented to the lower Court by the Defendant's attorney Moss at the Trial as evidence.

Unlike for Mr. Hackert, the POA never informed Ms. Crotty, prior to the purchase in 2002, about any such a requirement. That 1998 agreement 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' persisted with the POA's Board, who then for nine more horrific years 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 (Plaintiffs' 8/23 Memo, Attachment C), as well as in its 'Mail-In Ballot' package, mailed out to all of our neighbors, out-of-state residents and

homeowners in Windjammer Village, the following false and libelous disinformation, 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' 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.

The Hackert memo in attorney Moss' Trial Exhibit Book, identified as Defendant's Exhibit #12 (Plaintiffs' 8/23 Memo, Attachment **D**), stated that in October **1998**,

"... Both bidders (Hackert and Richard Gherri) have indicated ... that they lowered their bids (for the B00 property) 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 and in their package mailed to voters, *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 could never *access* our home and *park* near our front door, as part of their ongoing vendetta against us.

It was all a big mistake followed by big lies!

Now in the name of JUSTICE, we pray that the South Carolina Court of Appeals will strike down the FINAL ORDER, because it wrongfully restricts Appellants' property rights, based at least partially on Respondent Windjammer Village POA's brazen misrepresentation of the truth in Court.

ARGUMENTS 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 Trial, at which their property rights would be 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 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, to make the Temporary Injunction permanent – not a two-day Trial, at which our vital interests and 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 defend our positions in Court.

At the Trial, his 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' 8/23 Memo (pp. 7-17 and 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.

Through attorney Lovelace, we then filed a Motion for Reconsideration, objecting to the part of the FINAL ORDER that forbade Emergency and Service Vehicle from utilizing the 'Paved Driveway' to service our home. We also challenged that provision in the FINAL ORDER, requiring that a 'Recording Memorandum' 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* for our guests, and us, 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,' and awarded Defendant Costs.

It should be noted that the only reason that our attorney Lovelace filed a Motion for Reconsideration is that we, as 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, plus another Fixed Fee for the Contempt of Court proceedings against our Defendant POA, and yet another Fixed Fee for representing us at the Motion-for-Reconsideration Hearing and for defending us against Defendant's demands for attorney Fees and Costs. That is all 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, apparently not expecting to do so. If we had been informed of the gravity of this situation, we would have been pleased to retain him to defend us and we would have participated wholeheartedly in preparing our own defense, as we are doing now *pro se*, with many supporting documents and insights.

Quite to the contrary, Defendant's attorney Moss, to his great credit, had prepared a 1.5-inch thick loose-leaf notebook entitled Defendant's 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 the attorney Moss had provided for attorney Lovelace, but which he had not shown to us, his clients, prior to the Trial. The only reason we even saw later it is because Appellant Orzech took it off the table in the Courtroom after the Trial. Our side had no such organized collection of Exhibits at the Trial to counter those of the Defendant POA, despite the fact that we do possess a large number of documents that could have countered Defendant's claims.

Consequently, at the Trial, Moss' EXHIBITS went unchallenged, while his witnesses spun one myth after another before the Judge. Consequently, the Court's FINAL ORDER 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 great esteem. However, he:

- Did not alert us that Defendant's Counter-Claims were any more than just arguments against granting the Injunction *or* that we were walking into a Trial over *access* and *parking*, not just a 'Merits Hearing' to make a Temporary Injunction permanent.
- Refused to fully listen to our story or to study the material we provided him before the Trial, enough to understand the complex history inherent in defending our interests in this dispute against the POA.
- Did not take the issues brought out in Defendant's Counter-Claims 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 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 grant us a new Trial.

ARGUMENT 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 continuing litigation, should be overturned?”

(a) THE VERBAL 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 using the ‘Paved Driveway’ for anything except picking up our mail from our cars.
3. The Judge had denied Defendant’s request for costs and attorney fees.

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

4. Guests 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, 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 should be filed with the Office of the Registrar of Deeds, so that the FINAL ORDER 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, in our opinion, virtually worthless in the re-sale market.

However, all three of those crippling restrictions (#4, #5 and #6 above), not even mentioned at the Trial in Judge John's summation VERBAL ORDER FROM THE BENCH, which we audio-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 for him, simply wrote those punishing clauses into it on behalf of his clients, for vengeance, and the Judge accepted them, contrary to the input of our attorney. From our perspective, all of this happened completely behind closed doors in a smoke-filled room, and certainly not in the bright sunlight 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 farm out his work to an opposing attorney, our long-time bitter adversary, whose clients we consider to be proven enemies, after enduring an entire decade of their ferocious vendetta against us, even including assault and battery against Ms. Crotty and the false arrest of Dr. Orzech? (2) 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; ...”? (3) If the opposing attorney gets to write the verdict against you, why did we bother with a Judge and a Trial in the first place? (4) How can this practice possibly be consistent with the Rule of Law and due process of law? Don’t the Judges have enough administrative support to write their own decisions? (5) How can this have happened to us in America?

(b) Hurricane Irene

Late on Friday evening, **August 27, 2011**, an ancient *Loblolly Pine* fell on the ‘B00 House’ during *Hurricane Irene*, whose aftermath rendered the FINAL ORDER, 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, but he did not agree and 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 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 Motions for Reconsideration had been filed, the FINAL ORDER 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 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 on our behalf prior to Hurricane *Irene*, objecting to the part of the blatantly unworkable provisions in the FINAL ORDER 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, requiring that a RECORDING MEMORANDUM 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, but only at a substantial premium, amounting to hundreds of dollars per package over time, for 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 that is so deleterious to us and our property's value now could make it into the FINAL ORDER, and ultimately be delivered to the Registrar of Deeds in Horry County on May 15, 2012, to become a permanent stain upon the Title to our home?

(d) Unintended Consequences

As Hurricane *Irene* so rudely demonstrated, the FINAL ORDER 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 ago expressly to service it. When the Judge decided that the 'Paved Driveway' *access* road to the 'B00 House' could not be removed, in the very next breath he decreed that, even though it would stay, we only could use it to pick up our mail from our cars. That logic exposed a basic lack of understanding of the situation on the ground in Windjammer.

There is no mention of automobiles and parking in the **2002** Sales Contract – none at all. Yet its controversial clause: “It is further agreed that access to this property shall be from Gamecock Circle,” *somehow* is 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, even along the ‘Paved Driveway.’ How can that be inferred from the words 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 Motorcycle? What if that Motorcycle has a sidecar? What if one of us becomes no longer ambulatory? Can we use a wheel chair to get from our car in the *short* ‘private driveway’ to our front door over the ‘Paved Driveway?’ What about our elderly or disabled guests? Remember that the FINAL ORDER says that we only can use the ‘Paved Driveway to pick up our mail. What if that wheelchair is motorized? Many residents of Windjammer drive around the Village in Golf Carts. We actually may want to get one someday too. Could we then *access* our property on that Golf Cart, using the ‘Paved Driveway?’ Could we then *park* it near our front door? Where is the line?

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 is simply too vague for us to understand. It is unworkable, as Hurricane *Irene* so rudely demonstrated just 24 days after it was signed. We pray that the Court of Appeals will strike it down and then make Judge Hyman’s Temporary Injunction Final, just exactly what Appellants thought was going to happen in Judge Culbertson’s ‘Merits Hearing’ we expected in June 2011.

(E) CONCLUSIONS

Respectfully, we believe that the Circuit Court erred in issuing a FINAL ORDER 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 Document. As *Pro Se* Appellants, we do not even pretend to be knowledgeable of the Law in South Carolina. After all we have been through, especially now taking on the task drafting an Initial Brief for the Court of Appeals, we have gained even more respect for your profession. In our opinion, the Honorable Steven H. John conscientiously heard the case presented to him and made the best decisions that he could. We are honored that the Courts in South Carolina would devote so much time and effort to this case. Thank you.

Nonetheless, we both are well-educated citizens who have a tremendous stake in the outcome of this case. We believe that we have exposed so many fundamental problems with the FINAL ORDER that it should be overturned.

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 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 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 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 strike down the FINAL ORDER (Ending Action) recorded August 5, 2011, in the Court of Common Pleas, The Honorable Steven H. John, Fifteenth Judicial Circuit, in Civil Action #2009-CP-26-10523; and instead grant permanent status to the ORDER FOR TEMPORARY INJUNCTION dated October 28, 2009, The Honorable Larry B. Hyman, Jr., Court of Common Pleas, Fifteenth Judicial Circuit.

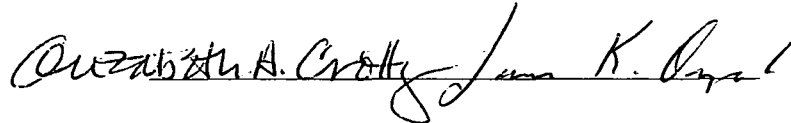
Further we request that the RECORDING MEMORANDUM dated May 15, 2012, filed with the Office of the Registrar of Deeds for Horry County be ordered removed.

If that proves not to be possible, we request that the FINAL ORDER, except for the Injunction against the removal of the 'Paved Driveway' be reversed and that we be granted the opportunity for a new Trial, this time with proper representation.

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

Respectfully submitted,

Pro Se Appellants



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March 13, 2013

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SC Court of Appeals