

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

68128

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

Ralph P. Stroman, Special Referee

CASE NUMBER 2009-CP-26-3596

Ronald Jarmuth, Appellant,

v.

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

RECEIVED

APR 22 2013

SC Court of Appeals

APPELLANT'S MOTION TO LIMIT THE RECORD ON APPEAL

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

**Henrietta U. Golding
2411 Oak Street; Suite 206
Myrtle Beach, SC 29577-3164
843-444-1107
Attorney for Respondents**

1. Appellant hereby moves for an order of this Court limiting the Record on Appeal to

(a) The Complaints, Answers, and Replies as amended;

(b) The Trial Exhibits as listed in the Transcript;

(c) Additional Documents set before the judicial officer at trial but not listed as exhibits by the contract court reporter;

(d) The Rule 16 Lists of Exhibits and Witnesses presented to the Court and exchanged by the parties;

(e) The Pre-Trial Deposition Transcripts from the depositions held by Order of Court to be used at trial in lieu of or to supplement trial testimony which were filed with the Clerk of Court for use at trial;

(f) Orders, Pleadings and other documents for the period beginning with the June 13, 2012 Order of Reference (to the Special Referee) and ending with the Special Referee's Order of Recusal dated October 17, 2012, which includes the final order dated September 10, 2012 following the August 8 – 10, 2012 trial before the Special Referee;

But excluding reproduction of duplicate copies of documents in those categories so that only one copy of any particular document is reproduced.

(g) The trial transcript.

2. The Authority is SCRAP Rules 209 (b) which provides that "A party shall not include any matter in his designation which is not relevant to the appeal" and SCRAP Rule 210 (c) which provides that "The Record shall not, however, include matter which was not presented to the lower court" and "the portion of a pleading

showing verification or service shall not be included”.

3. Nature of Appeal.

a. The appeal is addressed solely and exclusively at the conduct of the trial, the events surrounding the formulation of the final order, and the final order itself, with objections perpetuated by on – the – record objections at trial and post – trial objections perpetuated in pleadings filed by Appellant prior to the recusal of the Special Referee.

b. There is no cross – appeal.

c. The final order was written, word for word, in it’s entirety by Respondent’s counsel.

4. Germane facts.

a. By consent Order of Court dated May 17, 2012 (Exhibit A), all parties agreed that all motions and pre-trial issues known at that time had been disposed of, to include discovery disputes, motions for summary judgment, and all objections of record of any sort.

b. The only documents available to the Special Referee in formulating the final order were at most the trial exhibits and post – trial briefs and proposed final orders.

(1) At trial the only documents the Special Referee had before him were the exhibit books provided by Appellant and Respondent, and additional documents presented at trial (including poster board size). At trial the Special Referee had no

other documents from the case (Exhibit C¹).

(2) The only case documents that the Special Referee had during the period between the trial and entry of the final order was a CD which purportedly had reproductions of some of the trial exhibits, plus briefs of the parties which were supposed to summarize what was presented at trial and proposed final orders. The actual contents of the CD are unknown as the CD is not in the possession of the Clerk of Court and was never made available for inspection by the parties. The court reporter was not a judicial employee but was instead a contract individual retained by Defense / Respondent Counsel (over Appellants' written objections) and that contract employee illegally removed the trial exhibits from the court house immediately after trial, without the permission or knowledge of the Clerk of Court, without verbal authorization of the Special Referee as reflected in the transcript, and without a written order of the Special Referee. The contractor kept the trial exhibits at her house until January 23, 2013 (Exhibit B²), more than four months after the entry of the final order. She had no means of scanning the oversize exhibits and those exhibits were apparently not on the "mystery" CD purportedly provided the Special Referee.

(3) The Special Referee never had any other pleading or document related to the case, neither before, during, nor after the trial. Appellant made a written request to the Clerk of Court for copies of any "sign out" documents

¹ Appellant's November 16, 2012 email to Clerk of Court requesting to inspect and copy the receipts or logs perpetuating what material, if any, were released by the Clerk of Court to the Special Referee. This email is a listed item in the case docket.

² Clerk of Court's Receipt for Material turned over to the Clerk of Court by the contract court reporter on January 23, 2013. This is a listed item in the case docket.

relating to the removal of any case document from the immediate custody of the Clerk of Court. By phone call in response, Appellant was told that no such “release” document exists. Because of a prior mysterious disappearance of the case file in 2011, the entire case file was kept inside the Clerk of Court’s personal office where she could actually see it.

(4) The Special Referee never took judicial notice of any document not contained in the trial exhibits or deposition transcripts.³ This is evidenced by the fact that the transcript does not report him saying that he sua sponte had or was going to do so, and the final order never asserts that anything in that order was obtained through the judicial notice mechanism. SCRE 201(e) requires that the parties be notified that judicial notice be given when a court proposes to or has taken judicial notice of facts and of law.

(e) Opportunity to Be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

In Tricounties Bank v Superior Court of Fresno County, the Court of Appeals (of California, Case F055084, October 20, 2008) held that the “notice” and “opportunity to be heard” sections of the Rules of Evidence

provides that when a trial court „ proposes to [take judicial notice] do so (i.e., on its own motion), and the matter is of “substantial consequence to the determination of the action,” the court *must* “afford each party reasonable opportunity” to present “information relevant to (1) the propriety of taking judicial notice of the matter and (2) the tenor of the matter to be noticed.”

³ The trial transcript relates that the Special Referee instructed the parties not to read the pre-trial deposition transcripts into the record, the Special Referee saying that he knows how to read and will consult the transcripts on his own.

The Court noted further that

that process should not be equated with conducting an extra-judicial investigation of disputed and disputable questions of fact in the case.

which would constitute a violation of judicial ethics and is prohibited.

In Vent v State of Alaska the Appellate Court noted that when courts take judicial notice of documents in it's own records they

typically take judicial notice of facts such as whether a "prior suit was filed, who the parties were, and so forth. These are indeed facts not subject to reasonable dispute.

Since the Special Referee never stated that it intended to take judicial notice or that it had taken judicial notice of material which could be inferred from documents outside the trial exhibits and since the final order never claimed that any facts originated from or had a basis in anything but the trial exhibits, there is no need to reproduce any of the pleadings or orders prior to the Order of Reference. In addition, the exhibits relating to the pre-trial pleadings have duplicates in the trial exhibits themselves so anything which might be inferred from the pre-trial copies can be inferred from the trial exhibits.

c. The trial exhibits and pleadings contain many duplicate copies of the same documents amounting to thousands of pages.

(1) Respondent's set of trial exhibits almost totally duplicate Appellant's trial exhibits, and are believed to be second generation copies of the same documents provided by Appellant in discovery. Examples: Respondent Exhibits A through I ("eye") are Appellant Exhibits 453, 451, 454, 458, 459, 460, 463, 470 and 001. Both parties included the covenants, amendments to the covenants, and bylaws as exhibits together with copies of board minutes, Architectural Review Board

applications and decisions, planning commission documents, and county road “dedication” documents. These amount to several hundred pages. Where there is no counterpart Appellant and Respondent trial exhibit, Appellant will, of course, reproduce a copy of the “unique” Respondent trial exhibit.

(2) Almost every pre-trial pleading contained copies of the covenants, amendments and bylaws, and a cursory examination of the pre-trial record revealed a dozen copies of these, amounting to over a thousand pages of these alone. On one pleading, Respondent’s response in opposition to summary judgment (the order denying it not being on appeal) Respondent / Defense Counsel included TWO copies of every one of those documents. In the various pre-trial motions there are likewise numerous copies of the same Architectural Review Board application documents. All these documents are present in the trial exhibits. In another document filed by Respondent / Defense Counsel, which was never served and which was not a pleading, but which is somehow in the case docket, Respondent provided a thick book (more than a foot thick) reproducing EVERY page pleading and order filed through that date. None of those pre-trial pleadings and orders should matter since, by Consent Order, those matters were disposed of with finality and the pleadings themselves were not seen by the Special Referee.

(3) There is no useful purpose in reproducing extra copies of the same documents and the Appellate Court should not require reproduction of redundant copies of the same documents.

d. No Order following a pre-trial hearing made findings of fact or conclusions of law which carried over to the trial. The pre-trial hearings generally

consisted of a few minutes and those related to motions for summary judgment were denied without argument based on the court's determination that the issues involved questions of fact which should be resolved at trial.

5. **Appellant and Respondent's Rule 16 Documents.** These are not listed in the docket of the case nor in the list of exhibits as recorded by the contract court reporter but the trial transcript reflects that they were put before the Special Referee to support an objection that the Respondent / Defense Attorney was conducting a "trial by ambush" in that defense trial exhibits included a very large number of documents never provided in discovery and provided only in the opening minutes of the trial. This is perpetuated in Appellant's "Motion to Amend or for a New Trial ..." filed on September 19, 2012 thus these are relevant to Appellant's argument that the final order depended on Defense Exhibits which were not properly before the trial court.

6. **Conclusion.** Appellant therefore moves for an Order stating:

a. **The record on appeal shall consist of**

(1). **The Complaints, Answers, and Responses as amended;**

(2) **The Orders, Pleadings and other documents with dates beginning with the Order of Reference dated June 13, 2012 and ending with the Order of Recusal dated October 17, 2012;**

(3) **Deposition Transcripts taken for use at trial;**

(4) **Trial Transcript;**

(5) **Exhibits and other documents set before the Special Referee at Trial;**

(6) **The Rule 16 documents.**

b. The reproduction of the record on appeal shall exclude printing the duplicates of any document, as well as certificates of service or verifications when on a separate page.

A handwritten signature in black ink, appearing to read 'Ronald Jarmuth', with a long horizontal line extending from the end of the signature.

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

Ronald Jarmuth

vs.

The International Club

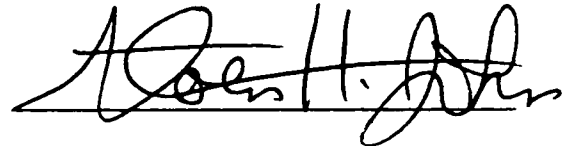
PLAINTIFF(S)

DEFENDANT(S)

**ORDER
DISPOSITION OF MOTIONS**

Pursuant to the motions hearing held on May 16, 2012 and the agreement of the parties, the Court declares that all outstanding motions in the above matter have been disposed of as of the below date.

IT IS SO ORDERED.



**The Honorable Steven H. John
Chief Administrative Judge
Court of Common Pleas**

May 16, 2012 CONWAY, SC

Ronald Jarmuth, Pro Se

ATTORNEY(S) FOR PLAINTIFF

Henrietta Golding, Esq.

ATTORNEY(S) FOR DEFENDANT

Exhibit A

COC Exhibit #1714

RECEIPT FOR EXHIBITS

CASE NO. 2009CP2603596
PLANTIFF Ronald Turnuth
DEFENDANT International Club Homeowners Association
DATE TRIAL STARTED: August 8, 2012

JUDGE Special Referee - Ralph Straman
PLTF'S ATTY. Pro Se.
DEF'D ATTY. Henrietta Gokling
DATE TRIAL ENDED: August 10, 2012

Received of Sharon Brock, Court Reporter for the above case, these exhibits:
Prestige Court Reporting

				This space for Clerk of court's use	
1.	<u>Plaintiff's Exhibits 1-759 with exceptions as listed</u>				
2.	<u>see attached index for descriptions</u>				
3.	<u>As follows:</u>				
4.	<u>Notebook # 1 - Exhibits 1-138</u>			<u>Box # 1</u>	
5.	<u>Notebook # 2 - " 200-267</u>			<u>" "</u>	
6.	<u>Notebook # 3 - " 300-399</u>			<u>" "</u>	
7.	<u>Notebook # 4 - " 400-414</u>			<u>" "</u>	
8.	<u>and 449-471</u>			<u>" "</u>	
9.	<u>Notebook # 5 - Exhibits 500-539</u>			<u>" "</u>	
10.	<u>Notebook # 6 - " 540-567</u>			<u>" "</u>	
11.	<u>* Note on index - Exhibits 568-571</u>			<u>" "</u>	
12.	<u>See attachment A for description</u>				
13.	<u>Notebook # 7 - Exhibits 600-614</u>			<u>Box # 2</u>	
14.	<u>and " 620-635</u>			<u>" "</u>	
15.	<u>and " 640-649</u>			<u>" "</u>	
16.	<u>and " 700-709</u>			<u>" "</u>	
17.	<u>and " 750-759</u>			<u>" "</u>	
18.	<u>* Note Exhibit # 750. CD in back of</u>			<u>" "</u>	
19.	<u>Notebook # 7</u>				
20.					

This 23 day of January, 2013.

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HORRY COUNTY CLERK OF COURT

By: Melaine Higgins-Ward

Exhibit B

RECEIPT FOR EXHIBITS

CASE NO. 2009CP2603546 JUDGE Special Referee - Ralph Stroman
 PLAINTIFF Ronald Jarmuth PLTF'S ATTY. Pro Se
 DEFENDANT: International Club DEF'D ATTY. Hennietta Golding
 HOMEOWNERS ASSOCIATION
 DATE TRIAL STARTED: August 2, 2012 DATE TRIAL ENDED: August 10, 2012

Received of Sharon Brock, Court Reporter for the above case, these exhibits:

		This space for Clerk of court's use
1.	Defendants Exhibit:	
2.	1 st clip - Exhibits 1-25	Box # 2
3.	2 nd clip - " 26-70	" "
4.	3 rd clip - " 71-107	" "
5.		
6.	Exhibit # 108 - Deposition Transcript of Pyle	Box # 2
7.		
8.		
9.	4 th clip - Exhibits A-J	Box # 2
10.		
11.		
12.	Box # 3 - Sealed Transcript	
13.		
14.	Clerk of Court Exhibit # 1	Box # 2
15.	Order dated 12-18-12	
16.	* Back of expandable folder	
17.		
18.		
19.		
20.		

This 23 day of January, 2013

HORRY COUNTY CLERK OF COURT

By: Melaine Higgins-Ward

RE: Exhibits and Case File from 2009-CP-26-3596 Jarmuth v IHOA

From: **Ronald Jarmuth** (ronaldjarmuth@hotmail.com)
Sent: Fri 11/16/12 6:20 AM
To: Melanie Huggins (hugginsm@horrycounty.org)
Bcc: Ern Reynolds (ern_reynolds@verizon.net)

- 1. I am requesting to examine (at the Courthouse) the exhibit books that were set before the special referee on August 8 for the trial, as well as the exhibits admitted at trial. It has been approximately 100 days since the trial and they have not been available for inspection because they were not in the custody of the clerk of court.**
- 2. I am requesting to know who had possession of what parts of the case materials (and when), specifically including the pre-trial depositions filed by me for trial, from August 8th through now. I think that anyone who took possession of anything from the case file anywhere except the immediate custody of the Clerk of Court was required to sign such items out and back in.**

Thank you.

**Ron Jarmuth, Plaintiff Pro Se
Jarmuth v IHOA 2009-CP-26-3596**

Exhibit C