

1 STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS NONJURY  
 2 COUNTY OF Horry ) (09-CP-26-10523)  
 3 )  
 4 ELIZABETH A. CROTTY and )  
 5 JAMES K. ORZECH )  
 6 )  
 7 VERSUS ) TRANSCRIPT OF RECORD  
 8 )  
 9 )  
 10 WINDJAMMER VILLAGE, et al ) August 30, 2012  
 11 ) Conway, S. C.  
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B E F O R E:

HONORABLE STEVEN H. JOHN, Judge.

A P P E A R A N C E S:

ELIZABETH A. CROTTY, Pro se  
 JAMES K. ORZECH, Pro se

KENNETH R. MOSS, ESQ.  
 ATTORNEY FOR DEFENDANTS

DIXIE COX EUBANK  
 CIRCUIT COURT REPORTER  
 FIFTEENTH JUDICIAL CIRCUIT

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I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
MOTIONS				3

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
P-1	E-mail communication (3 pages)		45
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1 (THE FOLLOWING TAKES PLACE ON AUGUST 30, 2012.)

2 THE COURT: All right. This is (2009-CP-26-10523). It  
3 is entitled Elizabeth A. Crotty and James K. Orzech,  
4 Plaintiff, versus Windjammer Village of Little River, South  
5 Carolina Property Owners Association, a South Carolina  
6 eleemosynary corporation.

7 In this matter previously the Court issued a Final Order  
8 in this matter after a lengthy hearing on -- it was signed  
9 August 3rd, 2011, filed with the Clerk of Court August 5th,  
10 2011.

11 Shortly thereafter counsel on -- I believe on both  
12 sides, filed a Motion for Reconsideration. The Court had  
13 immediately scheduled the hearing after being notified of the  
14 motion. There was some delay in the Court being notified of  
15 the motion, but once the Court was notified I set a hearing.  
16 Unfortunately the counsel for the Plaintiffs, Elizabeth A.  
17 Crotty and James A. Orzech, was temporarily suspended from the  
18 practice of Law by the South Carolina Supreme Court, requiring  
19 the Court to delay a hearing. After that -- after that  
20 suspension was lifted by the Supreme Court the Court scheduled  
21 the motions, had the hearing on those matters, and that was on  
22 February 13th, 2012. The Court held that hearing on the  
23 Motion for Reconsideration pursuant to Rule 59(E). The Court  
24 issued it's Order dated February 22nd, 2012, filed with the  
25 Clerk of Court February 27, 2012.

1           Also on that same date the Court issued an Order dated  
2 February 22nd, 2012, and again filed with the Clerk of Court  
3 February 27, 2012, regarding denying Defendants' request for  
4 attorneys fees, but allowing the Defendants to recover it's  
5 costs in this matter.

6           Sometime thereafter the counsel for the Defendant,  
7 Windjammer Village, requested action of this Court to hold a  
8 hearing as to why the Plaintiffs should not be held in  
9 contempt of Court for failure to abide by the terms of the  
10 Order denying Defendants' request for attorneys fees, but  
11 allowing Defendants to recover costs.

12           In -- that was dated, let's see, April 30th, 2012.  
13 Again; there was some delay, but the Court set a hearing for  
14 today, today being August 30th, 2012, to hear that particular  
15 matter.

16           After that was commenced the Plaintiffs caused to be  
17 sent to the Court a document, and it is dated August 23rd,  
18 2012, dated August 23rd, 2012, entitled "Plaintiffs'  
19 Memorandum Requesting that the Court Revisit the Final Order  
20 in the Name of Justice". It states that a copy went to the  
21 Court and opposing counsel. I cannot find where it was filed  
22 with the Clerk of Court. The Clerk of Court has no  
23 recordation of this.

24           Mr. Moss, did you receive a copy of it?

25           **MR. MOSS:** Yes sir. I actually received two

1 Memorandums, Your Honor, neither of which I believe to be  
2 filed, but I received two, and the first I received was -- I  
3 think it was August the 6th, and the second one was the one  
4 you just referred to, but I have received two different  
5 Memorandums and they are not exactly ---

6 **THE COURT:** Well, then you got one that the Court did  
7 not get. All right, so I got the one dated August 23rd, and  
8 that is the one that I have received and reviewed.

9 Now, obviously those matters should have been filed with  
10 the Clerk of Court. Even though the parties have failed to do  
11 so I will still address them. The -- I'm going to take up the  
12 matter regarding the "Plaintiffs' Memorandum Requesting that  
13 the Court Revisit the Final Order in the Name of Justice". It  
14 is, again, dated August 23rd, 2012. It appears to have, from  
15 the arguments, three grounds, one labeled "New Evidence", that  
16 the Plaintiffs state that they were not aware of until after  
17 the -- their trial in June of 2001, that led to the Order of  
18 the Court dated August 3rd, 2011, and filed with the Clerk of  
19 Court August 5th, 2011. The second ground being "Confusion at  
20 Trial", that they state brought about by the improper  
21 interpretation of the words "access from and entrance", and  
22 three, the ineffective representation of their counsel at the  
23 time.

24 As to those three matters I need to address several  
25 things. The first one appears to be - and the Court will take

1 it as such - as a motion under Rule 60(B)(2), which allows for  
2 the Court to review a previous Order based upon new evidence.

3 Now, there's also, in Rule 60(B)(2), a requirement that  
4 the matter be heard within one year of the original order.  
5 Going to the exact language of Rule 60(B) it lists that, "On  
6 motion and upon such terms as are just the Court may relieve a  
7 party or it's legal representative from a final judgment order  
8 or proceeding for the following reasons...", and then it has  
9 listed several reasons, number two being newly discovered  
10 evidence by due diligence which, by due diligence, could not  
11 have been discovered in time to move for a new trial under  
12 Rule 59(B), which obviously the Court has already heard that  
13 motion under Rule 59(B), as I previously indicated.

14 Now, regarding Rule 60, if you move under Rule 60(B),  
15 under "New Evidence", there are certain grounds that must be  
16 observed. Regarding "New Evidence", "The moving party must  
17 establish that the newly discovered evidence will probably  
18 change the result if a new trial is granted, has been  
19 discovered since trial, could not have been discovered before  
20 the trial, is material to the issue, and five, is not merely  
21 cumulative or impeaching."

22 All right, the only -- or the -- first, there's a  
23 problem with this motion. First -- and it's not really  
24 labeled a motion but I'm taking it as such. The Court issued  
25 it's Order on August 3rd, 2011. It was filed with the Clerk

1 of Court August 5th, 2011. This request of the Plaintiffs --  
2 and again, it's only labeled "Plaintiffs' Memorandum  
3 Requesting that the Court Revisit the Final Order in the Name  
4 of Justice", so I'm not sure that it's in a proper form, but  
5 just setting that aside, it is dated - and certainly the Court  
6 could not have received it, and did not receive it before  
7 August 23rd, 2012. That is more than one year after the  
8 signing and filing of the Order, therefore, the Motion under  
9 Newly Discovered Evidence is not proper, and cannot be heard  
10 by the Court.

11 Even if that was not such the case I have reviewed the  
12 written filing, and find all the attachments thereto, all the  
13 arguments set forth therein, and find them violative of the  
14 newly discovered evidence Rule, as I just stated. It is clear  
15 from their arguments that the matters could have been  
16 discovered by due diligence, either by themselves or the  
17 counsel, prior to that hearing in June of 2011, therefore it  
18 is not proper on that ground.

19 The other matter set forth, number two, the "Confusion  
20 at Trial Brought About by an Improper Interpretation of the  
21 Words Access from or Entrance" are matters that could have  
22 been raised at the Rule 59 hearing. The -- they were not  
23 raised. Further, they were matters that could have been  
24 appealed from -- from the Order to the Appellate Courts, such  
25 not being the case the Court will not address those as them

1 not being proper at this time.

2 Number Three, the ineffective representation is not a  
3 matter for this Court. It is for another action, or another  
4 forum. There are other avenues that the matter, if it is an  
5 issue, can be raised, but it is not for this Court at this  
6 time, and therefore I will not address that particular issue,  
7 therefore the Court respectfully declines, under the grounds I  
8 just set forth, to address the issues set forth in  
9 "Plaintiffs' Memorandum Requesting that the Court Revisit the  
10 Final Order in the Name of Justice."

11 I will be handing this document to the Clerk of Court  
12 for filing with the Clerk of Court since apparently it has  
13 never been filed with the Clerk of Court.

14 Mr. Moss, I want you to do an order to that effect,  
15 forward it to me within ten days of today's date.

16 MR. ORZECH: May we speak, Judge?

17 THE COURT: I'll be glad for you to, yes.

18 MR. ORZECH: Okay. Regarding the, you know, first of  
19 all, the due diligence we ---

20 THE COURT: I'm sorry -- and I appreciate it, sir. Are  
21 you under some physical disability?

22 MR. ORZECH: No sir.

23 THE COURT: Then you must stand.

24 MR. ORZECH: Okay. Fine. Excuse me.

25 THE COURT: That's all right.

1           **MR. ORZECH:** All right, well, first of all, with  
2 getting you the paperwork where I've gone through the Clerk of  
3 Courts, I called your office and spoke with your people  
4 several times, and called you and asked, and they said send it  
5 directly to the Judge, so that's what we did.

6           **THE COURT:** Sir ---

7           **MR. ORZECH:** Okay.

8           **THE COURT:** I'm -- I understand that you communicated  
9 with our office. We told you that we cannot give you advice,  
10 and that was our instructions to you.

11          **MR. ORZECH:** Okay.

12          **THE COURT:** You cannot -- and the Court cannot give  
13 instructions to anyone as to what to do. When you assume  
14 representation of yourself you are deemed to know the rules,  
15 therefore, that is not an excuse.

16          **MR. ORZECH:** Okay. Regarding the due diligence, we --  
17 when we were represented by Mr. Lovelace he very effectively  
18 represented us for the things he represented us for, but he  
19 did not do anything to counter this claim about parking, which  
20 was absolutely vital to us. We -- we took the -- he never  
21 showed us the -- Mr. Moss's evidence book before the trial,  
22 and the only reason we got it is, I took it off the table  
23 after, and didn't look at it for several months, and then I  
24 found out, and put that together, that -- because they had  
25 been claiming that we had a requirement to build a long

1 driveway. That was argued in the court, and it turns out that  
2 was actually, in fact, a requirement that was for somebody  
3 named James Hackert four years before ours, so they -- you  
4 know, if your ruling here goes then they will have gotten away  
5 with imposing on us a contract with somebody else that was  
6 never signed, four years prior to when we got involved with  
7 it. That would be, in my view, injustice.

8           **THE COURT:** And I appreciate -- I appreciate that, sir,  
9 but all that documentation was in existence. It's not that  
10 that documentation came up out of the air after the hearing of  
11 June 11. As you indicated, it was in existence. Okay. It  
12 could have been discovered by proper discovery procedures  
13 prior to the June, 2011, hearing, by a proper request for  
14 production of documents, by a proper search for documents.  
15 That's what we talk about in due diligence. The document  
16 existed. It was in the records. The fact that your attorney  
17 did not use it, or your attorney did not discover it, or you  
18 did not discover it, that is not the issue. The issue is,  
19 could it have been done using due diligence, using proper  
20 procedure, using proper practice. Yes, it could have been  
21 because it existed. It clearly existed because you did, as  
22 you state, you got it from the opposing counsel at, or right  
23 after the time of trial. It was in existence long before the  
24 trial. The fact that it wasn't discovered is not the point;  
25 it could have been done. Unfortunately it was not done, but

1 that does not excuse the due diligence requirement. That's  
2 what I'm saying.

3 **MR. ORZECH:** Okay, and regarding the language, as I  
4 pointed out on the -- in the paper that we wrote, the -- we  
5 have been arguing with the POA ad nauseam for nine years now  
6 over the contract, and the words -- wording in the contract in  
7 the English language. We looked it up in the dictionary - we  
8 both have advanced degrees - during the trial here. And Mr.  
9 Lovelace didn't even notify us that we were in a trial. We  
10 thought we were coming here just for a hearing about the  
11 injunction. That's how ineffectively we were represented, so  
12 we never looked through the evidence book or anything, but he  
13 didn't have that argument with them.

14 We were furiously writing him notes about that, but you  
15 know, the contract says access from, but if you read my logic  
16 there, access from means, you know, from the initial starting  
17 point, where entrance means actually the point of entry, and  
18 the two words cannot be used interchangeably, so it was  
19 strictly -- it was just simply an error, you know, caused by  
20 the confusion that Mr. Moss sung by using those -- those two  
21 words interchangeably, and our attorney didn't -- even though  
22 we were writing him notes to the effect, didn't challenge, so  
23 if this -- if this stands then we will be, not only following  
24 a contract that was made for somebody else four years earlier,  
25 but also we will be following one that goes contrary to the

1 English language in the actual contract, and that is, you  
2 know, we -- you know, we, granted, are not attorneys, but that  
3 -- we are citizens, but that does not seem fair on the face of  
4 it to, you know, to have a contract in which it is -- you  
5 know, is being enforced with the improper usage of the English  
6 language as we show there. You know, it -- you know, that's -  
7 - and our attorney, Mr. Lovelace, did a wonderful job with  
8 what he did a wonderful job on, but he did not charge us for,  
9 or even mention that we were coming here to a trial on -- in  
10 June of 2011, so we had to recover after that, you know, and  
11 do his job, and we are also doing a civil suit, so we've been  
12 doing a lot of stuff in the due diligence list, so we didn't  
13 have that.

14 You know, they, in November of 2009, passed a Referendum  
15 to remove the paved driveway, which we filed for an  
16 injunction, and you granted the injunction because they -- it  
17 was in violation of the Law, and the argument that they used  
18 in their ballot that they sent out, and also in their  
19 newsletter that they sent out to everybody, that they wouldn't  
20 let us rebut, was that Ms. Crotty was given Three Thousand  
21 Dollars to build the long driveway. That is not true, and it  
22 was a lie; that was fraud, because they knew that Three  
23 Thousand Dollars was offered to James Hackert in 1998, and the  
24 requirement to build a long driveway was made of James Hackert  
25 in 1998, and it was not made of her. They put that in their

1 official publications, their ballot and in their newsletter,  
2 to get that injunction, and you, yourself, ruled the  
3 injunction was illegal, so they not only misused the English  
4 language, they fraudulently claimed that a contract to  
5 somebody else was, you know, was made on us. We didn't -- we  
6 have no idea when that was going on, reading that in the  
7 newsletter, how they ever came up with Three Thousand Dollars  
8 to build the long private driveway. The only -- we had no  
9 idea they -- we asked them where do you get that. We -- they  
10 wouldn't give it to us, and we, you know, we finally found it  
11 months after the trial when -- you know, when I finally  
12 started looking through Mr. Moss's evidence book which I took  
13 off the desk and, you know, getting ready for the civil case  
14 and saw this, oh, my God, somebody named James Hackert and  
15 also Robert Gherri, were required, when they were going to buy  
16 it, in 1998, to do that.

17 Now, they have a bunch of old boys here at Windjammer.  
18 There's a couple of them sitting here who were around in 1998,  
19 and remember that. And when -- you know, when it came time --  
20 when Ms. Crotty bought it an entire year went by after she  
21 bought it before one of their eighty-year-old Architectural  
22 Committee Chairman who was around in 1998 - Ms. Crotty did not  
23 even live in Windjammer Village until late 1999, and didn't  
24 know anything about it, but the "good ole boys" there knew  
25 about that, but they had it mixed up in their minds; they

1 thought it was -- applied to her too. They didn't go through  
2 the nicety that that was intended for someone else four years  
3 earlier, or five years earlier at the time; they went  
4 through -- you know, they kind of recalled something about a  
5 long driveway, and immediately start imposing that on her. I  
6 was overseas defending my Country in Bosnia at the time,  
7 representing my Country in Bosnia, and they -- you know, they  
8 pulled that off and they've been -- we've asked many times.  
9 Every time she asked about it they were very abusive to her;  
10 they've been abusive to us for the entire nine years, and the  
11 only time we found out about the long driveway, where that  
12 came from, was after -- you know, months after the trial  
13 when -- when we went through this huge -- humongous book,  
14 getting read for the civil case, so I understand the rules,  
15 and you've pointed out the rules, Rule 60, and I've got a copy  
16 of it right here. You know, the Rules -- you know, the Rules  
17 guarantee that an unjust contract will be enforced on us for  
18 the rest of our lives. I don't -- I don't know. Is that the  
19 way it works here in South Carolina? I don't think it should,  
20 if it does, but, you know, this was an obvious error, an  
21 obvious fraud, and a misinterpretation of the English  
22 language, and trying to impose a contract on us -- on someone  
23 else four years earlier because the "good ole boys" remembered  
24 that, and they were abusive to Ms. Crotty when she tried to  
25 get clarification on that in 2003.

1           We can produce documents -- we don't have them here, but  
2 we can produce documents, when she asked about long driveway,  
3 why do I have to build a long driveway, and the abusive -- the  
4 abusiveness she had, so maybe we didn't have due diligence in  
5 finding it out, according to this Rule, but we've been trying  
6 to find that out in 2003 when they first started doing that,  
7 and we were trying to find that out in 2009 when they  
8 published in their newsletter, and put it in their ballot in  
9 their "Kangaroo court" election, so we had -- you know, we've  
10 been "ruker gookered" the whole time by the "good ole boys",  
11 and we just found that out, and I -- you know, I -- between us  
12 we have sixty-two years of service to our Country, and we want  
13 this to be done with justice, and find a way in the Rules to  
14 do that, Your Honor, please.

15           **THE COURT:** All right, I -- and I appreciate that. All  
16 right. The -- let's just go over one thing real quick that  
17 you said. The Court did issue a Temporary Injunction, and you  
18 said it was because of violation of the Rules. Under the  
19 Rules for Temporary Injunction one of the main guidances for  
20 temporary injunction is to preserve, pending a final hearing,  
21 the status quo, means that you don't have any changes until  
22 you have a final hearing. That is one of the main goals of a  
23 temporary injunction. That is why a Temporary Injunction was  
24 issued in this matter, to keep the matter as it was, without  
25 any changes, pending a final hearing, not for a violation of

1 the Rules. There is no ruling by the Court, in a temporary  
2 injunction, on merits of the case. As I said, the main goal  
3 is to preserve the status quo. That's what happened in the  
4 Temporary Injunction.

5 Now, regarding your arguments here, assuming them to be  
6 true, assuming them to be correct, you've got several  
7 problems. One, they should have been raised in the Rule 59(E)  
8 Motion. Now, you are saying you didn't discover them till  
9 after. Well, the Rule 59(E) motion wasn't filed till after  
10 the Order was issued. As I indicated, there was an  
11 extraordinarily long delay between the filing and when we had  
12 the actual hearing because of Mr. Lovelace's temporary  
13 suspension. There was more than plenty of time to amend the  
14 Rule 59(E) Motion, or at the time of the Rule 59(E) Motion in  
15 February of this year to bring up all these matters. You  
16 certainly had all this information in February of this year;  
17 no question about that from what you've said, so, you could  
18 have brought it up at that time; you didn't. Okay. Now, more  
19 an a year after the original Order you say I discovered this  
20 information after that hearing. Again, more than a year has  
21 transpired regarding this, quote, newly discovered evidence,  
22 so you've got the problem of, you are violating Rule 60(B) for  
23 newly discovered evidence, and again, I've reviewed  
24 everything. And your arguments are exactly what you have put  
25 in your document that I'm going to have the Clerk of Court

1 file, the one that's dated August 23rd, 2012. They are the  
2 same arguments. I'm just saying, the documentation that you  
3 are talking about, all that information was available, and  
4 could have been presented in the June, 2011 hearing. Why it  
5 wasn't, that's not the issue; it could have been done; it was  
6 not, therefore, it's not newly discovered evidence. All  
7 right. So, that's what I'm telling you.

8 So I would appreciate it -- also, the other -- the last  
9 thing is, you could have appealed; you could have filed an  
10 appeal to the Appellate Courts regarding my Order of August  
11 3rd, 2011, filed with the Clerk of Court on August 5, 2011.  
12 Y'all did not do that, therefore, what is in that Order is  
13 now, since it has been more than a year, the law of the case,  
14 since there is no appeal; it is the law of the case,  
15 therefore, your arguments are not properly legally founded; I  
16 cannot hear them, even assuming, even if I assume all the  
17 things you tell me to be true, I cannot hear them for the  
18 reasons I have just set forth. They are not proper now before  
19 this Court. All right.

20 MR. ORZECH: Yes sir.

21 THE COURT: I appreciate what you are telling me, but  
22 they are not now proper before this Court.

23 MR. ORZECH: Thank you. Sir, I have some comments from  
24 Ms. Crotty, if you don't mind.

25 THE COURT: Yes sir.

1           **MR. ORZECH:**   We -- when we filed our Motion for  
2           Reconsideration we found out -- we found out we could do that  
3           from another attorney, just by talking with him and had to go  
4           to Lovelace to get him to do it, because he was our attorney.  
5           We asked him to file a motion for reconsideration about this  
6           too, but he wouldn't do it, and he was our attorney, and we  
7           are -- you know, we are just citizens. We are not, you  
8           know, -- you know, we are not -- you know -- you know, our  
9           attorney did not do that.

10           **THE COURT:**   And I appreciate -- I appreciate what you  
11           are telling me.

12           **MR. ORZECH:**   So, you know, we -- now that Mr. Moss has  
13           reopened the case, I think that this is an appropriate point  
14           to say that he's ---

15           **THE COURT:**   No, it's not reopening the case. He's  
16           asking the Court to order compliance with what I previously  
17           ordered; it's not reopening the case. But be that as it may,  
18           any complaints you have against your former counsel in this  
19           matter, today is not the proper for them -- forum for those.  
20           There are other avenues you can pursue, if you so choose to do  
21           so, either administratively, or in the -- regarding a filing  
22           of an action, but they are not now proper before me at this  
23           time. They are not grounds to go behind the Court's Order of  
24           August 3rd -- dated August 3rd, file August 5, 2011. They are  
25           not grounds to go behind that Order. You may have a cause of

1 action; you may have an administrative complaint against your  
2 former counsel, but that's not reason for this Court to change  
3 my previous Order. It's a totally different issue and forum  
4 for that.

5 **MR. ORZECH:** Okay. One last point, Your Honor. When  
6 we did file for the Motion for Reconsideration, and then a  
7 tree fell on our house a year ago yesterday. Okay. We got --  
8 we took upon ourselves to put service vehicles, tree removal  
9 vehicles in the paved driveway, and we thought we were in  
10 violation of the Court Order and we did it for emergency  
11 purposes. Mr. Lovelace advised us that, no, that Court Order,  
12 when you file a Motion for Reconsideration, is not in effect  
13 until after the Motion for Reconsideration, so I must ask, why  
14 is the August, 2011, date the date we are working here against  
15 and not the February, 2012, date in which we are within a  
16 year, because at least from what Mr. Lovelace told us, that  
17 Order was stayed until after the Motion for Reconsideration  
18 was filed, and the date from which the thing was final was  
19 actually in February of 2012, according to what Mr. Lovelace  
20 had told us, Your Honor.

21 **THE COURT:** I appreciate what you are saying. The  
22 Court respectfully declines to make comments on advice you  
23 received from your attorney, either it's propriety or  
24 correctness. I refuse to comment upon that.

25 **MR. ORZECH:** Okay. One last thing, Your Honor, is

1 there any other -- any other grounds in which we could do this  
2 because we are -- you know, this is a tragedy for us, not --  
3 you know, we are growing old. We are -- you know, we have  
4 to -- we have to -- every time I haul a load of groceries to  
5 the front door it's like scoring a forty-seven yard touchdown.  
6 You know, I'm sixty-six; I'm getting older. I'm in good  
7 shape. Ms. Crotty already can't do that. You know, this is  
8 like a -- almost a death sentence; we can't live in that  
9 house, how are we going to do it, you know, that -- and it's  
10 all because of an error, and fraud, and misinterpretation of  
11 the English language, and on and on and on, now it's not  
12 correctable. How is that -- how can that possibly be, and ---

13 **THE COURT:** Sir, I appreciate -- you are asking me to  
14 give you legal advice. I cannot do that. I can't give  
15 Windjammer legal advice. That is not my job. I am  
16 prohibited, by my Rules, from giving legal advice to any party  
17 that can appear before me; I can't tell you what to do. If --  
18 I can't even tell you that you might have another avenue.  
19 That's telling you what to do; I cannot do that. I am  
20 prohibited from doing that. You either must, if you decide to  
21 represent yourself, do the proper research, examine the rules,  
22 have a proper understanding of the Rules, or get competent  
23 legal advice from an attorney. I cannot tell you what to do.  
24 I cannot indicate to you whether or not you have an avenue or  
25 not. I cannot do that. I am sorry, but I am prohibited from

1 doing so. I'm sorry.

2 MR. ORZECH: Ms. Crotty, do you have anything?

3 (MR. ORZECH AND MS. CROTTY CONSULT WITH ONE ANOTHER OFF  
4 THE RECORD.)

5 MR. ORZECH: We requested documents from them before  
6 and we never got that document, so -- years before, so ---

7 THE COURT: Well, again ---

8 MR. ORZECH: ---You know, that's a smoking gun. That's  
9 what they, you know, said -- I guess, so they have imposed  
10 somebody else's contract on us; they've misinterpreted the  
11 English language, and we had a lawyer. We didn't cover that,  
12 and we -- and we are -- just have to have our lives ruined  
13 because of that ---

14 THE COURT: I'm not saying that, and I'm not telling  
15 you that. What you have presented to me I am accepting, for  
16 won't of a better word, even though it may not be in a proper  
17 form, a Rule 60(B) Motion. You labeled it on three grounds.  
18 Okay. You put forth three grounds in your written  
19 documentation that you have filed -- well, not even filed.  
20 You sent it to me. I'll have the Clerk of Court file it.  
21 Those three grounds again were, new evidence you weren't aware  
22 of, confusion at trial brought about by improper  
23 interpretation of the words "access from and entrance", and  
24 the ineffective representation of our former attorney. I have  
25 addressed those three issues. If there are any other issues

1 they are not before me. Okay. If there are any other issues  
2 that are not in these three, that you have put in this  
3 document, they are not before me; I cannot hear them. I am  
4 not telling you whether or not you have an ability to bring  
5 them to the Court's attention. That's for you to discover, or  
6 get advice, but I'm telling you, I have ruled on the three  
7 matters that you have brought before me, and given you the  
8 reasons why I respectfully decline to grant your relief on  
9 those three matters. Again, if there's other issues you have  
10 not brought them to me in the proper form, and I cannot  
11 address them.

12 All right, sir. The best I can tell you.

13 Again, Mr. Moss, regarding that document dated August  
14 23rd of 2012, and the issues raised therein, you've heard the  
15 Court's ruling more than once on all the issues, I want you to  
16 do a proposed order to that effect within ten days of today's  
17 date.

18 **MR. MOSS:** Certainly, Your Honor.

19 **THE COURT:** Thank you very much.

20 **MR. MOSS:** The -- the only question I would have about  
21 that is, in the beginning of the hearing you recited the whole  
22 lengthy procedural history. Will you require that in the  
23 proposed order?

24 **THE COURT:** Yes sir. I want the whole procedural  
25 history set forth in the order. I think it's part of the

1 issues that need to be set forth. Yes sir.

2 MR. MOSS: Thank you.

3 THE COURT: All right. I'm sorry. You need to state  
4 your name for the record. I know you to be Mr. Orzech, but  
5 the Court Reporter needs for you to state your full name,  
6 please sir.

7 MR. ORZECH: My name is Dr. James K. Orzech.

8 THE COURT: All right, and you spell your last name,  
9 O.r. ---

10 MR. ORZECH: O.r.z.e.c.h..

11 THE COURT: ---Z.e.c.h.?

12 MR. ORZECH: Yes sir.

13 THE COURT: All right. Very good.

14 MR. ORZECH: And also, Your Honor, I've got the  
15 document you didn't get that I can present to you right now,  
16 but this is, you know, our -- we spent a lot of time going  
17 through Mr. Moss's request for more money, and, you know, this  
18 is a very damning thing, so I shall bring this up to you right  
19 now if you want.

20 THE COURT: Well, I'll be glad to look at it and see if  
21 the Court can consider it. I don't know if I can, but I'll be  
22 glad to receive it from you.

23 All right, this document is labeled - which the Court  
24 has never seen before - "August 30th Hearing, Plaintiff's  
25 Memorandum in Opposition to Defendant's Proposed Order

1       awarding Defendant Even More Taxable Costs Pursuant to Rule  
2       54(E), S.C.R.C.P." It is dated August 6, 2012.

3               Is that the document that you referred to, Mr. Moss?

4       **MR. MOSS:**    Yes, Your Honor. I received that.

5       **THE COURT:**   All right. You received that from Ms.  
6       Crotty and Mr. Orzech; is that right?

7       **MR. MOSS:**    I received it, I think, from Mr. Orzech, but  
8       I understood it to be on behalf of both of them.

9       **THE COURT:**   Right. But anyway, that's the point I was  
10       making, you got it from the Plaintiff's; correct?

11       **MR. MOSS:**    That's correct.

12       **THE COURT:**   All right, sir, so you did. The Court has  
13       never seen it before.

14               Have you had a chance, Mr. Moss, to review it and look  
15       through it?

16       **MR. MOSS:**    I have, Your Honor, and it's ---

17       **THE COURT:**   Well, my next question is then, what we are  
18       going to go into now is your request that the Plaintiffs be  
19       held in contempt of Court for failure to abide by the Court's  
20       previous Order whereby I denied your request for attorney's  
21       fees, but allowed a recovery of costs, so that's what we are  
22       going to go into.

23               I'm assuming in your arguments then you will be able to  
24       address whatever points the Plaintiffs have made in their  
25       August 6, document.

1           **MR. MOSS:**    Yes, Your Honor.

2           **THE COURT:**   All right.  Very good.  All right, let's  
3 proceed with that then.

4           So, with that, Mr. Orzech, even though -- and Ms. Crotty  
5 -- even though the Court has never received this I'm going to  
6 allow it, and Mr. Moss will address it, and then y'all can  
7 address it.  All right.  Thank you very much.

8           Go ahead, sir.

9           **MR. MOSS:**    First, Your Honor, and briefly, I do not  
10 want to take the time to refute any -- at length, any of the  
11 allegations, but I do think I -- to avoid any tacit admission  
12 being made, the Windjammer Village Property Owners Association  
13 and myself would take great issue with the notion and  
14 representation there was any fraud upon this Court, or fraud  
15 upon the Plaintiffs, and so there is certainly a defensible  
16 material we could offer but won't do at this time ---

17           **THE COURT:**   Well, I appreciate the arguments about  
18 fraud.  Again, those matters have never been raised properly  
19 to the Court, all right.  They are not in proper form, or set  
20 forth properly in anything before this Court at this time, so  
21 I'm not addressing them ---

22           **MR. MOSS:**    Thank you.

23           **THE COURT:**    ---Because they are not before me.

24           **MR. MOSS:**    With respect to our motion, when -- when you  
25 have an Order awarding the party costs it's a judgment, and in

1 this case the Order was served upon Attorney Lovelace as the  
2 attorneys for the Plaintiffs before he gave any indication  
3 that he had withdrawn - and by the way, there's no order  
4 relieving him that I'm aware of - but it was served upon him  
5 in due course.

6 And then I received communication from Attorney Lovelace  
7 that I should correspond directly with the Plaintiffs, and I  
8 have tried to do that by e-mail. And there's a couple of ways  
9 we can pursue this issue of non-payment. One, obviously, is  
10 what we did, we could seek an Order and Rule to Show Cause,  
11 which is one way that I thought would be least burdensome to  
12 my clients, and also least burdensome to the Plaintiffs. The  
13 other alternative would have been to seek supplemental  
14 proceedings, where we would ask the Court to give us  
15 permission to go out and obtain all their financial  
16 information and all their -- bring them into court and have  
17 them testify about what they own, very invasive procedure, and  
18 given the relatively low amount of the judgment, I was trying  
19 to use the least invasive and least cost approach, and so I  
20 filed a motion seeking an Order and Rule to Show Cause.

21 Your Administrative Law Clerk at the time advised me  
22 that the Court was not going to sign the draft Order and Rule  
23 to Show that I presented with my motion, but that we would  
24 have a hearing today to see if the Court would sign that  
25 order.

1           Now, an Order and Rule to Show Cause is probably not the  
2 most appropriate vehicle if we were just trying to collect a  
3 money judgment. But in this case I do believe there is  
4 communications and conduct that evidence some contempt of this  
5 Court's Order. And I would appreciate the opportunity to hand  
6 Your Honor four e-mails, copies of four e-mails,  
7 communications that I've had with Mr. Orzech, primarily ---

8           **THE COURT:** All right, sir.

9           **MR. MOSS:** ---And I think they will give you some  
10 indication of that. And one of the things that is raised is  
11 exactly this issue about me trying to file a motion seeking  
12 even more costs. It's not a factual representation to the  
13 Court of what has been sought, it's not -- clearly not in my  
14 motion, and it's not even in what the written e-mail tells Mr.  
15 Orzech what we are doing here today. So ---

16           **THE COURT:** Have those marked by the Court Reporter  
17 first, please, if you will.

18           **MR. MOSS:** I will. There are four. Would you like  
19 them marked individually or as one?

20           **THE COURT:** I would probably -- best for ease of use to  
21 mark them separately.

22           **MR. MOSS:** Okay. And my trial exhibits went one  
23 through sixty, so would it be appropriate to start at sixty-  
24 one?

25           **THE COURT:** Well, this is a new proceeding, regarding a

1 request for enforcement of the Court's previous Order, so I  
2 don't think it's necessary to continue with the old numbers.

3 **MR. MOSS:** Okay. Thank you.

4 (FOUR E-MAILS MARKED DEFENDANTS' EXHIBITS 1 THROUGH 4.)

5 **MR. MOSS:** Your Honor, I have handed, for the record, a  
6 copy to the Plaintiffs.

7 Your Honor, I handed Plaintiff's number -- or  
8 Defendant's Numbers 1, 2, 3 and 4, a copy of which I have  
9 handed to the Plaintiffs.

10 They are copies of e-mail communications that I have had  
11 with the Plaintiffs, primarily Mr. Orzech. Although I have  
12 also included Ms. Crotty in the communications I don't recall  
13 I ever received a reply from her.

14 **THE COURT:** All right. Thank you.

15 All right, Mr. Orzech and Ms. Crotty, y'all have copies  
16 of, and know about these particular e-mails?

17 **MR. ORZECH:** Yes sir.

18 **THE COURT:** All right. Very good. Therefore, the  
19 Court is going to allow them to use that the -- for argument  
20 purposes in this motion.

21 If you will give me a minute to let me review them,  
22 please.

23 All right. Go ahead, Mr. Moss.

24 **MR. MOSS:** Thank you, Your Honor.

25 Your Honor, it's obvious that the Plaintiffs are aware

1 of the Order - the Order has been served upon them - they  
2 received the Order, and what these -- what they've asked for,  
3 of both me, and also the Treasurer of the Association are, the  
4 details, the specifics about the information from which you  
5 made your Order. We don't have it. As I -- as alluded to  
6 them in the e-mails - I believe it's Defendant's Number 3 - I  
7 don't know how the Court came to the decision it came to with  
8 respect to cost. I only know what we asked for, and I have  
9 prov -- I provided that information about what we asked for,  
10 and Your Honor did not award everything that we asked for, and  
11 as you didn't explain that which you awarded and that which  
12 you did not award, we can't answer the question to the  
13 Plaintiffs. We only know that you have an Order which we  
14 believe should be complied with. And the notion that we  
15 should have to send an invoice for those to be paid is, in my  
16 opinion, some evidence of contempt for this Court.

17 In response to that you've got a Memorandum that says  
18 that I had committed fraud upon the Court, my clients have,  
19 and that the Court and I don't understand the English  
20 language. That, I think, is evidence of contemptuous attitude  
21 toward this Court.

22 Now we've had a -- you know, a lengthy litigation  
23 period. We had a day and a half trial. You've made an Order.  
24 I respect it. We ask that the Plaintiffs respect it. We  
25 certainly could send over a motion and ask for a supplemental

1 proceedings order, which would allow me to drag the Plaintiffs  
2 in and put them under oath and examine them about all their  
3 assets. We know they own three houses between them in  
4 Windjammer. We don't know what else they have, so we don't  
5 think financial ability is a reason that they haven't paid  
6 this Order. We believe they haven't paid this Order because  
7 they have contempt for this Court, and so my motion was simply  
8 to seek an order and rule to show cause to have them come in  
9 and explain to the Court why it is they haven't paid these  
10 fees, and what it is that they have a problem with, in lieu of  
11 becoming very invasive about their private personal  
12 information, so I chose this remedy. I hope the Court  
13 understands my motives, and I hope the Court agrees with me  
14 that it's a less invasive and less costly avenue to pursue a  
15 Nineteen Hundred Dollar judgment as opposed to supplemental  
16 proceedings.

17 I don't believe that the Plaintiffs have any intention  
18 of paying this unless compelled to do so by the Court, and I  
19 think the e-mails, you know, pretty much evidence all that  
20 needs to be expressed. I'll be happy to answer any questions  
21 you have.

22 **THE COURT:** All right. I have no further -- or have  
23 any questions at this point in time.

24 All right, Ms. Crotty or Mr. Orzech, the Defendants have  
25 asked the Court to enforce it's prior Order whereby I ordered

1 y'all to pay cost in this matter. Through that they are  
2 asking the Court to hold you in contempt of Court for failure  
3 to abide by the terms of the Order. I would be glad, and  
4 would welcome any comments that you have regarding their  
5 arguments as to whether or not the Court should hold you in  
6 contempt of Court for failure to abide by the terms of the  
7 prior Order.

8 Ms. Crotty, is there anything you would like to say to  
9 me, Ma'am?

10 **MR. ORZECH:** I'll take the lead, Your Honor ---

11 **THE COURT:** All right. That's very good. Then you can  
12 sit down, Ms. Crotty.

13 **MR. ORZECH:** Okay. I appreciate the comments from Ms.  
14 Crotty since we are both pro se. Okay. And we worked on --  
15 have you had a chance to look at the letter we wrote to you,  
16 because that was very well researched. We sent it to your  
17 office as your ---

18 **THE COURT:** Are you talking about the August 6th  
19 letter?

20 **MR. ORZECH:** August 6, letter, yes. I don't have a  
21 copy in front of me, Judge. You have my only copy ---

22 **THE COURT:** Well then I'll give it -- I'll give it back  
23 to you if you need it to make your arguments. I'll be glad  
24 for you to ---

25 **MR. ORZECH:** Would you please take a moment to look at

1 it.

2           **THE COURT:** Okay. And then I'll give it back to you  
3 and you can -- I'll still need it back because it's going to  
4 have to be filed with the Clerk of Court as part of the  
5 proceedings.

6           All right. If you will just hold on a second. You can  
7 have a seat. Thanks.

8           All right. Madame Bailiff, you want to hand this  
9 document back to Mr. Orzech, please.

10           All right, Mr. Orzech, be glad to hear any arguments  
11 that you have, sir.

12           **MR. ORZECH:** Yes sir, Your Honor. You've just read  
13 what we have here, and I -- you know, first of all, we've  
14 known about the Order, and we have been asking Windjammer  
15 Village, through every means we have, and you know, to provide  
16 us with the underlying receipts for the Nineteen Hundred  
17 Dollars, because no way we would look at any of the things he,  
18 Mr. Moss, filed in Court that add up to Nineteen Hundred and  
19 Twenty-Two Dollars and some Cents, so we -- and that number  
20 was inflated from the original figure that appeared in his  
21 original request, you know, by what I said was, you know, the  
22 original -- the original cost he provided to the Court that  
23 were decided on -- in February of this year, were Eleven  
24 Hundred and Fifty-Two Dollars and Twenty-Three Cents. Okay.  
25 You gave him the Order to write and he -- or somehow it got

1 written in, Nineteen Hundred Dollars and Thirty-Three Dollars  
2 and Twenty-Four Cents, an inflation of Seven Hundred Eighty-  
3 One Dollars and Sixty-Eight ---

4 **THE COURT:** Let me interrupt you for a ---

5 **MR. ORZECH:** ---No explanation.

6 **THE COURT:** All right. Let me interrupt for one thing.  
7 The Defendant, Windjammer Village, at the hearing, and in the  
8 filings that they had filed with the Court, and sent to your  
9 attorney at that point in time, had asked for costs that far  
10 exceeded the amount that I actually awarded, okay, and the  
11 evidence they presented to the Court at the time of the  
12 hearing, what they were asking for far exceeded the amount  
13 that I actually ordered, so let's be correct about what  
14 actually occurred in their request. The requests that they  
15 made - and I think you have a copy of a proposed, or even the  
16 proposed Order that they forwarded to us, to the Court - far  
17 exceeds the amount that I actually ordered, so let's be  
18 factually correct when you make your arguments.

19 All right, proceed on.

20 **MR. ORZECH:** Okay. Well, I respectfully -- from the  
21 documentation I have in here I'll have to stand by my point.  
22 They asked for Eleven Fifty-Two Twenty-Three, and got Nineteen  
23 Thirty-Three Twenty-Four, and they didn't ask for vastly more  
24 than that, and we don't know where those -- we can't get  
25 numbers to add up to that. We've asked a very reasonable

1 thing, okay, provide us with the underlying receipts for what  
2 we are paying for, okay, if nothing else we can write it off  
3 on our income tax, maybe, or whatever, if we have a receipt  
4 for it, but it -- you know, who would pay a bill with some  
5 random number that isn't documented. I don't know.

6 Okay. So then -- now Mr. Moss comes forward again  
7 with -- to talk about paying it. First of all, our attorney,  
8 Mr. Lovelace, told us to not -- you know, not to pay it to  
9 rather be put on our -- as a lien on our property. That was  
10 his legal advice. But we are -- you know, we would try to pay  
11 it. We are not in as good a financial condition as can be.  
12 We are retirees, on fixed incomes, and we have tremendous  
13 expenses. It's just the hiring of Mr. Lovelace for other --  
14 previous things as, you know, we can barely make ends meet at  
15 our house, the blue house is, I would think, almost worthless  
16 on the resale market with the restrictions on it now, so --  
17 and the other house is mortgaged up to the hilt to - it's  
18 under water - to finance the blue house, and I thought I could  
19 sell that for more, so we are -- we are on very dicey economic  
20 conditions. Nineteen Hundred Twenty-Two Dollars, or whatever,  
21 is very hard for us to pay. We are (unintelligible).

22 Further, Mr. Moss then sends this new one, and asking  
23 for Three Thousand One Hundred Sixty-Eight Dollars and Twenty-  
24 Three Cents. That's an increase of Two Thousand and Sixteen  
25 Dollars and One Cent, or a two hundred seventy-five percent

1 inflation from the original one. Okay. Once again, no -- he  
2 had a list, but there were no underlying documents.

3 Then I went to the Treasurer of the Association and  
4 asked her, you know, the -- I guess Windjammer Village front  
5 office, or to get a lawyer would not do it, so I asked the  
6 Treasurer - and of course, Ms. Crotty and I are members of the  
7 Association. We are entitled to get these records, whether  
8 it's part of the court proceeding or not, even if they  
9 weren't, we are entitled to get these records.

10 We wrote a letter to Melissa Basehoar who is a CPA - and  
11 I think I included that in that package you've got - and she  
12 said that the Association doesn't give those, those things.

13 Mr. Moss, in his appeal now, said the Association has a  
14 sworn Affidavit from the office secretary stating that. Well,  
15 we don't have a copy of that. And that is in direct  
16 contradiction of what the Treasurer says, so the office  
17 secretary is also the Association's secretary, and the  
18 Association's Treasurer have contradictory information to us.  
19 One says that those records exist, and has an Affidavit, a  
20 secret Affidavit apparently, that we can't get either through  
21 Windjammer or from their attorney, and I don't know if he's  
22 presented that to the Court - I doubt it - you know, so these  
23 are very, very murky, murky costs.

24 So then we found the two documents that Mr. Moss  
25 presented. There are several items totaling Six Hundred

1 Ninety-Eight Dollars and Sixty-Six Cents which he claimed in  
2 both items, and we asked the question, we wonder if he's  
3 double-charging us for those. There are eleven items totaling  
4 Four Hundred Fifty-Three Dollars and Fifty-Seven Cents that  
5 Moss claimed only on the August, 2011 document, and there are  
6 sixteen items totaling Two Thousand One Hundred Fourteen  
7 Dollars and Fifty Cents which he claimed only in the 2012  
8 document. I call that flagrant discrepancies.

9 Now, are -- we are being asked to just, you know,  
10 without receipts, with things that are full of holes, which  
11 possibly are fraudulent because the two officers of the  
12 Association disagree entirely on the existence of these  
13 records, which we are not allowed to get - or is the Court  
14 going to ask us about that?

15 Then finally, we showed that also at that hearing Mr.  
16 Moss asked for his legal fees, and altogether, with the legal  
17 fees and those -- that Fifteen Hundred Dollars which was a  
18 small part of it - he asked for Forty Thousand Dollars and  
19 Ninety-Nine Cents and you denied him legal fees.

20 At the annual meeting that just happened in July the  
21 Treasurer, who is a CPA, Melissa Basehoar, came up with a list  
22 of what was paid, and in that fiscal year, after Mr. Moss was  
23 paid, you know, the initial part and he wanted the -- he was  
24 paid Nineteen Thousand Two Hundred Seventeen Dollars, and then  
25 he would have asked -- he asked for another Twenty Thousand

1 Eight Hundred Eighty-Two, plus that Nineteen Thousand to come  
2 to us, almost Forty Thousand Dollars. We found out in the  
3 Annual Report which we have here as an attachment, that for  
4 that year, rather than paying Mr. Moss, they had Twenty-Five  
5 Thousand Dollars allotted for legal fees, and they returned  
6 virtually all of it to the Treasury. They only paid One  
7 Thousand Two Hundred Thirty-Six Dollars in legal fees that  
8 year. They returned Twenty-Three Thousand Seven Hundred  
9 Sixty-Four Dollars in their reserves, and they did not pay Mr.  
10 Moss the remainder of what he claimed he was owed. So I asked  
11 the question, were Mr. Moss's figures fictitious. Okay, you  
12 can read whatever you want into fictitious, but why didn't  
13 Windjammer Village pay him that if the Court did not make us  
14 pay him that, and that was a valid thing? Why, those were  
15 fictitious. How do we know they are fictitious? They tried  
16 that exact same maneuver on us once before. I was -- they  
17 brought me to a trial, a criminal trial, and I won the  
18 defense. It was a superfluous thing, but we went to the Court  
19 and I was acquitted. And then Windjammer Village, even after  
20 I was acquitted, tried to get their legal fees from me, and I  
21 refused, and they finally agreed in their -- in their Board  
22 Meeting not to charge me legal fees, and Mr. Meaders, who is  
23 here, argued against that, and he was so angry he resigned  
24 from the Board after that, but then they were overheard and we  
25 recorded it, that, oh, we don't have to pay that, we'll pay --

1 Moss charged us much less than that; that was an inflated  
2 figure. So Mr. Moss, twice now, is playing with two sets of  
3 books, you know; the set of books he's trying to get the Court  
4 to pay, or the -- the losing side, like us, to pay, and the  
5 real set of books which he actually charges Windjammer Village  
6 if he can't get that. That is what I would consider fraud.

7 So, we -- yes. Yes. And also the same -- they did the  
8 same thing with Mr. Crotty's assault, you know, with trying to  
9 get legal fees. The woman was assaulted and they tried to get  
10 legal fees out of her and we -- you know, and those were --  
11 those were amped up, and what the Association paid was less,  
12 so there's a trend here of -- of flagrantly -- just flagrant  
13 discrepancies, and utterly fatuous charges against us, and we  
14 have a very reasonable request, to see these -- these so-  
15 called receipts from this, and I respectfully request that  
16 once they actually produce receipts that we have another  
17 hearing with you, and you review these, because they won't  
18 give us the receipts, and we have a very strong case that they  
19 are -- you know, they are playing loose and fast with the  
20 truth here, and trying to get the money out of us under the  
21 guise of a Court Order from you, and that's -- that's very  
22 disrespectful to you, Your Honor, I think.

23 Further we -- you know, this Forty Thousand Dollars  
24 suddenly showed up as legal fees in the civil suit we have,  
25 and there's a motion that's to be heard by the Court on

1       September 18th. It's going to have to be - and before Judge  
2       Hyman - it's going to have to be changed because I have  
3       surgery on that day, so I'm sending a motion in and -- to  
4       change that. Mr. Nistad is in favor of -- you know, will not  
5       oppose that. But in any case, they have a motion to be  
6       awarded Forty Thousand Dollars in legal fees that suddenly  
7       showed up in there. Well, Forty Thousand Dollars is very  
8       similar to Forty Thousand and Ninety-Nine Dollars, and Mr.  
9       Nistad is being paid by the insurance company, not by  
10      Windjammer Village. So we think that Mr. Moss is trying to  
11      slip through the back door with this to get his Forty Thousand  
12      Dollars out of us, that you denied him, under legal grounds  
13      through the civil case, and you know, so there's -- I wrote in  
14      here, strange things are happening here, and we hope will be  
15      sorted out at the upcoming hearing. In any event, how can we  
16      be asked to pay for any cost for which there is questionable  
17      accounting, and no verifiable receipts. So there -- that is  
18      our -- that is our case, Your Honor. If -- you know, if  
19      there's -- I guess the other -- the one last thing is, we  
20      recently had mediation in the civil case, okay. The mediation  
21      not only failed, but the negotiations are going on, and one of  
22      the ---

23               **THE COURT:** All right. All right. Well, you need to  
24      stop. You need to stop.

25               **MR. ORZECH:** Okay. Yes sir.

1           **THE COURT:**   Regarding mediation, I'm sure the mediator,  
2           at the time, told you that, except for the results of the  
3           mediation, anything that is said, anything that takes place  
4           during mediation cannot be, and shall not be used in any court  
5           proceeding. The reason for that is to encourage the parties  
6           to freely express themselves, without repercussion, and to be  
7           able to advance the possibility of resolving issues,  
8           therefore, matters, except for a result in mediation, cannot  
9           be used as grounds for any further proceedings or arguments in  
10          court, therefore, do not do so.

11                        Thank you very much.

12           **MR. ORZECH:**   I won't say it, but ---

13           **THE COURT:**   I appreciate it, because you are not  
14          allowed to.

15           **MR. ORZECH:**   Okay.

16           **THE COURT:**   Thank you, sir.

17           **MR. ORZECH:**   They published the mediation results in  
18          their --- in their Report ---

19           **THE COURT:**   Well, be that as it may, that's not  
20          important. I'm just telling you what's before me now. All  
21          right. Now, again, except for results, except for results.  
22          That, obviously, can be made public.

23           **MR. MOSS:**    May I, Your Honor?

24           **THE COURT:**    Yes sir.

25           **MR. MOSS:**    The mediation is not in this case. There's

1 another civil case.

2           **THE COURT:** I don't want to talk about the mediation in  
3 another case. Okay.

4           **MR. MOSS:** I wasn't going to bring up the mediation. I  
5 wasn't even there.

6           **THE COURT:** Good. Great.

7           **MR. MOSS:** I'm not an attorney ---

8           **THE COURT:** Well, let's not talk about it then. Let's  
9 talk about whatever else he said.

10           **MR. MOSS:** While I'm not involved in the other case my  
11 understanding of the Forty Thousand Dollars he asserted are  
12 costs in both cases.

13           **THE COURT:** Mr. Moss ---

14           **MR. MOSS:** That's pleadings. Don't tell me about the  
15 other case, please. All right. Don't tell me about the other  
16 case. That's not why we are here. Talk about your motion,  
17 your request of the Defen -- I'm sorry, Plaintiffs, Elizabeth  
18 A. Crotty and James K. Orzech be held in contempt of court for  
19 failure to abide by the Court's previous Order of February of  
20 2012.

21           **MR. MOSS:** With respect to any argument that would  
22 pertain to attorney fees it's irrelevant. We asked for them,  
23 the Court denied them; it's not before you. We haven't asked  
24 for an order and rule to show cause because they haven't paid  
25 attorneys fees because you didn't order attorneys fees to be

1 paid, and so any questions they may have about my billing on  
2 attorneys fees, in my opinion, are irrelevant.

3 Now, I certainly can respond to those allegations that I  
4 have ---

5 **THE COURT:** I don't need for you to do so.

6 **MR. MOSS:** With respect to the cost issue, which the  
7 Court did order, when we filed a motion, post-trial motion  
8 seeking cost and fees, in August of 2011, there were many  
9 receipts attached to an Affidavit of Angela Marcotte, who  
10 works in the office at Windjammer, and so they've been  
11 provided.

12 Now, again, I don't know what of the cost Your Honor  
13 awarded and what of the costs Your Honor did not award, and so  
14 I can't answer that question, but there are more than enough  
15 receipts that are attached, in the record, which the  
16 Plaintiffs would have, to satisfy a Nineteen Hundred Dollar  
17 award.

18 In addition, I wasn't the original attorney for the HOA  
19 in this case, and therefore I don't have all the costs  
20 associated with the case that Attorney Roy would have had.  
21 When we sought fees and costs in the initial motion we  
22 included checks that were paid to Mr. Roy, and we also  
23 included the information that I had accrued. Some of these  
24 costs were paid directly by the Association. Some of these  
25 costs were paid by me as an advancement, and the Association

1 reimbursed me for that.

2 I would submit to you that regardless of the answer that  
3 these Plaintiffs get they will not be satisfied; they will  
4 challenge and question, but here's the -- the reality is, this  
5 is not a Rule 59 motion to revisit your Order, and if there  
6 were I wouldn't be timely. They haven't paid what you ordered  
7 after all the information that was presented to you and you  
8 allowed whatever you allowed, and I think these e-mails and  
9 these arguments, and this Memorandum evidence that they  
10 challenge this Order; they challenge the authority of this  
11 Court to review the evidence and make a decision, and they  
12 just don't want to pay it.

13 Now, I don't believe financial hardship is the reason  
14 they haven't made arrangements to pay Nineteen Hundred  
15 Dollars. The fact is, all these questions that Mr. Orzech has  
16 expressed about my billing practices, my e-mails, he hasn't  
17 asked me. You've seen the e-mail correspondence, and I've  
18 sent him what we asked for. He's not replied and said, can  
19 you tell me about this, would you provide me anything about  
20 this. That has not happened. Instead, he wanted this day in  
21 court so he could in, I guess, and try to smear me, or just  
22 delay the inevitable, but the fact is, there is contempt for  
23 this Court's Order because they are not complying. In regards  
24 to the information given to them, it's not going to make any  
25 difference, and respectfully we would ask -- honestly, from

1 your Clerk's e-mail my understanding was the purpose of  
2 today's hearing was to decide whether or not you were going to  
3 sign the Order and Rule to Show Cause. I think this Court has  
4 made a decision that you will use this hearing to determine  
5 whether or not they should be held in contempt, which is not  
6 exactly what I was expecting when I came in here, but it's the  
7 same issue; they haven't paid it; they don't want to pay it,  
8 and they are not going to pay it unless this Court intervenes.

9 **THE COURT:** Thank you very much.

10 I -- Mr. Crotty -- I appreciate it. We've had  
11 arguments, re-arguments. If you've got a point just very  
12 briefly, please.

13 **MR. ORZECH:** We have other e-mails here where we did  
14 ask Mr. Moss for the receipts, and we can make those part of  
15 the record too.

16 **THE COURT:** I'll be glad for you to do so. Have them  
17 marked with the Court Reporter.

18 **MR. ORZECH:** Okay. Fine.

19 And also, the other argument we had was reading Rule 54,  
20 is it, the costs are awarded to the prevailing party. We  
21 prevailed on the injunction, which was the initial thing. We  
22 prevailed on the contempt of court, we prevailed on many, many  
23 more things that are enumerated in my write-up here, which I  
24 will give back to you, so Mr. Lovelace, when he was our  
25 attorney, said -- you know, told us that they can't collect

1 costs because both sides partially prevailed. Some how this  
2 was read in the decision that their side prevailed, but, you  
3 know, let them try to tear out the paved driveway or, you  
4 know, and they have a contempt of court too. You know, we had  
5 to pay our attorney an extra, you know, several Thousand  
6 Dollars to bring them to court for contempt of court because  
7 of things they did during this Temporary Restraining Order  
8 which violated that, so that was part of this case, so there  
9 are very -- there are several things that we prevailed, and we  
10 have more things that we prevailed than they did, and I'll --  
11 let me -- may I approach the bench and give you back our  
12 paper?

13 **THE COURT:** Hand that to the Bailiff, but if you want  
14 to give those e-mails to the Court Reporter I'll be glad for  
15 you to do so. Do you have those e-mails you want marked?

16 Hand the Bailiff the document you wanted to give back to  
17 me, please.

18 **MR. ORZECH:** Take those back, and then this one is  
19 added, okay.

20 **THE COURT:** All right.

21 **MR. MOSS:** Your Honor, I would ask for copies of those  
22 as well.

23 **THE COURT:** Okay. Don't mark on the things that you  
24 want the ---

25 **MR. ORZECH:** That's our e-mail requesting an invoice,

1 and I didn't look at the date or anything. That was when I  
2 asked for it ---

3 THE COURT: Okay. It seems to be more than one page --  
4 please stop, Mr. Crotty, so I can -- Mr. Orzech, please.

5 MR. ORZECH: Yes.

6 THE COURT: It appears to be more than one page. Do  
7 you want both pages to be part of the exhibit?

8 MR. ORZECH: May I look at it?

9 THE COURT: Yes sir. Hand it back to Mr. Orzech.

10 MR. ORZECH: Your Honor ---

11 THE COURT: Stop. Stop, please. Look at the document.  
12 Do you want both pages to be made part of the exhibit?

13 MR. ORZECH: Yes.

14 THE COURT: All right. Great.

15 Madame Bailiff, hand that document to Mr. Moss so he can  
16 look at it, please.

17 MR. MOSS: Thank you, Your Honor, these -- I've seen  
18 these. They appear to be the same ones we marked just a few  
19 minutes ago.

20 THE COURT: All right. Very good. All right. Thank  
21 you.

22 And those are Plaintiff's Exhibit Number 1.

23 (E-MAILS MARKED PLAINTIFFS' EXHIBIT NUMBER 1.)

24 THE COURT: All right, regarding the issue of the  
25 requests for a Rule to Show Cause, Ms. Crotty and Mr. Orzech,

1 the Court issued an Order denying Defendant's request for  
2 attorney fees, but allowing Defendants to recover it's costs  
3 on February 22nd, 2012, filed with the Clerk of Court on  
4 February 27, 2012, a copy of which was delivered to you. It  
5 is an Order of the Court; it is a directive of the Court based  
6 upon the Court's examination of the Rules of Civil Procedure,  
7 the underlying case that I heard in June of 2011, and the  
8 Motion filed for costs, and as I have indicated to you before,  
9 there was some delay. We had that hearing in June, I issued  
10 the Order in August. On September 7, 2011, I wrote Mr. Moss  
11 and Mr. Lovelace a letter telling them that, for some reason I  
12 was examining the file and found that Mr. Moss had filed, on  
13 August 5, 2011, a Motion for Attorneys fees and Costs, and Mr.  
14 Lovelace had filed a Motion for Reconsideration on August  
15 12th, 2011. The only reason I found either of them is  
16 because, for some other reason I was examining the file.  
17 That's how I got notice of it. Because of that I set a  
18 hearing. I told them that we were going to have a hearing on  
19 November 1, 2011. That was when, or in that interim then that  
20 Mr. Lovelace got temporarily suspended and I had to delay the  
21 hearing until February of 2012. That's when I held a hearing  
22 on both of those, and that's the result of the two Orders that  
23 I issued.

24 You had time after the February Order, that I just  
25 talked about, to file a Rule 59 motion for reconsideration;

1 none was filed. You had an opportunity to file an appeal to  
2 the Appellate Courts regarding my Order; none was filed. This  
3 is the final order of the Court. I expect compliance with  
4 that Order. I will not tolerate non-compliance with the  
5 Order. I will not, at this point in time, hold you, Ms.  
6 Crotty, and you, Mr. Orzech, in contempt of Court. I'm going  
7 to reserve that. I am going to give you ninety days from  
8 today to comply with that Order, that is, to pay the costs.  
9 Should you fail to do so I am allowing Defendant's counsel to  
10 file a sworn affidavit with this Court indicating non-  
11 compliance with my directives today.

12 And Mr. Moss, you are going to do an order that reflects  
13 this, what I'm saying right now.

14 If you do not comply with the Court's Order, what I'm  
15 telling you right now, you will be subject to the contempt  
16 powers of the Court, that is, one year in the Department of  
17 Corrections, three hundred hours of community service, a fine  
18 which can be purged upon you complying with the Court's order.  
19 I am not telling you what the order will be, or what I will  
20 do; I'm telling you, it is available to the Court. If you  
21 want to find out, don't comply with my order.

22 I am giving you a direct order, you will comply with my  
23 Order. It is not the order of the Defendant; it is not the  
24 result of any matters that they have cooked up. I have  
25 examined, and been control of these proceedings and the issued

1 Orders, reviewed the documents; I issued an Order. You will  
2 comply with that Order, or you will be subject to the contempt  
3 powers of this Court. I don't want there to be any  
4 misunderstanding.

5 Despite the disagreement you may have with the  
6 Defendants, that's not what we are here about. I told you to  
7 do something; you will do it, or you will suffer the  
8 consequences. I don't want there to be any misunderstanding,  
9 or anything to be unclear. I am giving you ninety days from  
10 today's date to comply with the Order. Should you fail to do  
11 so you will then be subject to the contempt powers of the  
12 Court.

13 Thank you very much.

14 Mr. Moss, do an order that reflects that. Thank you  
15 very much.

16 **MR. MOSS:** Thank you, Your Honor. The only ---

17 **THE COURT:** These proceedings are at end.

18 **MR. MOSS:** The only question I have about the order,  
19 Your Honor, is, will you be reserving jurisdiction, or is  
20 there any ---

21 **THE COURT:** No. I am going to be reserving  
22 jurisdiction. It is my Order; I will take care of that.

23 Thank you very much.

24 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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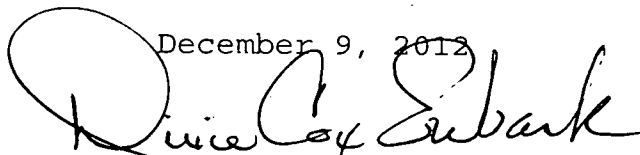
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the **MOTION HEARING** of the captioned case, relative to appeal, in the **30th day of August, 2012.**

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

December 9, 2012



DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Steven H. John, Presiding Judge

---

Case No. 2009-CP-26-10523

**Appellate Case No. 2012-213287**

---

Elizabeth A. Crotty and James K. Orzech ..... *Appellants,*

v.

Windjammer Village of Little River, South Carolina,  
Property Owners' Association, a South Carolina  
Eleemosynary Corporation ..... *Respondent.*

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**AFFIDAVIT OF KENNETH R. MOSS**

---

PERSONALLY APPEARED BEFORE ME, Kenneth R. Moss, Esquire, who  
being duly sworn, does hereby state and affirm as follows, having actual knowledge of  
all matters set forth herein:

1. I am the attorney of record for the Respondent, Windjammer Village of  
Little River, South Carolina, Property Owners' Association (hereinafter "Defendant or  
"Respondent"), and I am familiar with all matters surrounding this action.

2. The trial of the underlying action was held on June 22–23, 2011 before the Honorable Steven H. John in Horry County, South Carolina. The Court’s Final Order was signed on August 3, 2011, filed with the Clerk of Court on August 5, 2011 and served upon Appellant’s counsel on August 5, 2011.

3. Thereafter, post-trial motions were timely filed and a hearing was held on February 13, 2012 on Plaintiffs’ Motion for Reconsideration Pursuant to Rule 59(e), and Defendant’s Post-Trial Motion for Attorney’s Fees and Costs. On February 22, 2012, the Court signed its “Order Upon Plaintiffs’ Motion for Reconsideration,” and its “Order Denying Defendants’ Request for Attorney’s Fees But Allowing Defendant’s to Recover Its Costs.” Both Orders were filed with the Clerk of Court on February 27, 2012. The Court’s February 22, 2012 “Order Denying Defendants’ Request for Attorney’s Fees But Allowing Defendant’s to Recover Its Costs” instructed the Plaintiffs to tender payment to the Defendant in the amount of \$1,933.24.

4. On April 30, 2012, on behalf of the Defendants, I filed a request for hearing on a Motion for an Order and Rule to Show Cause for Plaintiffs’ failure and refusal to comply with the Court’s “Order Denying Defendants’ Request But Allowing Defendant’s to Recover Its Costs” dated February 22, 2012 and filed February 27, 2012.

5. On or about August 6, 2012, Plaintiffs’ served upon me a copy of their document entitled “Re: August 30, 2012 Hearing Plaintiffs’ Memorandum in Opposition to Defendant’s Proposed Order Awarding Even More Taxable Costs Pursuant to Rule 54(e) SCRPC.”

6. On or about August 24, 2012, Plaintiffs' served upon me a copy of their document entitled "Re: August 30th Rule to Show Cause Hearing: Plaintiffs' Memorandum Requesting That the Court Re-Visit the Final Order in the Name of Justice."

7. Plaintiffs' Memoranda had not been filed with the Clerk of Court and, therefore, were not accompanied by the requisite Motion Cover Sheet and filing fee.

8. On August 30, 2012, a hearing was held before the Honorable Steven H. John upon Defendant's Motion for an Order and Rule to Show Cause for Plaintiffs' failure and refusal to comply with the Court's February 22, 2012 "Order Denying Defendants' Request But Allowing Defendant's to Recover Its Costs." Plaintiffs' confirmed they had received copies of the Court's Orders dated February 22, 2012, but had not complied with the Court's Order because they had not been provided a full accounting and/or the underlying receipts supporting the \$1,933.24 they had been ordered to pay by the Court.

9. At the August 30, 2012 hearing, Plaintiffs Elizabeth A. Crotty and James K. Orzech requested they be permitted to hand up to the Honorable Steven H. John their Memorandum entitled "Re: August 30th Rule to Show Cause Hearing: Plaintiffs' Memorandum Requesting That the Court Re-Visit the Final Order in the Name of Justice," dated August 23, 2012 (hereinafter "Plaintiffs' Memorandum"). After confirming that I had received a copy of the Plaintiffs' Memorandum, Judge John accepted Plaintiffs' Memorandum and inquired of the Plaintiffs if they intended the

Memorandum to be a Rule 60(b), *SCRCP* motion. Plaintiffs' confirmed that was their intent.

10. After confirming the Plaintiffs had not filed either of the aforementioned Memoranda with the Clerk of Court, Judge John requested the Clerk of Court staff member present do so at the conclusion of the hearing.

11. Judge John spent the better part of one hour listening to Plaintiffs' arguments in support of their Memorandum and explaining to them in great detail why Plaintiffs' Memorandum could not be considered by the Court.

12. The Court's "Order Upon Defendant's Motion for an Order and Rule to Show Cause" and "Order Upon Plaintiffs' August 23, 2012 Memorandum Requesting that the Court Re-Visit the Final Order in the Name of Justice (*Court accepted as a Rule 60(b), SCRCP Motion*)" were signed by Judge John on September 14, 2012 and filed with the Clerk of Court on September 18, 2012. The Court's "Order Upon Plaintiffs' August 23, 2012 Memorandum Requesting that the Court Re-Visit the Final Order in the Name of Justice (*Court accepted as a Rule 60(b), SCRCP Motion*)" is the subject matter of this appeal.

13. Appellants served their Notice of Intent to Appeal the Trial Court's "Order Upon Plaintiffs' August 23, 2012 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.

14. At the time Plaintiff filed their Notice of Appeal, Plaintiffs were fully informed that Plaintiffs' Memorandum, considered by the Trial Court as a Rule 60(b)

motion, had been denied because it was filed more than one year after the non-discretionary time limit pursuant to Rules 60(b)(1)–(3), *SCRCP*, and that even if the Trial Court could accept as true all of the arguments asserted in Plaintiffs' Memorandum, their arguments were not legally founded.


15. Appellants filed their Initial Brief and Designation of Matter on Appeal on March 13, 2013.

16. On March 25, 2013 this Honorable Court granted Respondent additional time to file and serve its Initial Brief and Designation of Matter in response to Respondent's March 15, 2013 Petition, making Respondent's Initial Brief and Designation of Matter due on or before May 13, 2013.

**FURTHER AFFIANT SAYETH NOT!**

Respectfully submitted,

**WRIGHT, WORLEY, POPE, EKSTER  
& MOSS, PLLC**



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Little River, South Carolina

April 29, 2013

SWORN TO AND SUBSCRIBED

Before me this 29 day of April, 2013.



Notary Public for South Carolina

My Commission Expires: 12/30/22