

Appellants' Exhibit 2

With Attachment A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON
	)	PLEAS FIFTEENTH
COUNTY OF Horry	)	JUDICIAL CIRCUIT
	)	C/A NO. 2009-CP-26-10523
Elizabeth A. Crotty and James K. Orzech,)	
	)	RE: AUGUST 30TH HEARING
Plaintiffs,	)	PLAINTIFFS' MEMORANDUM
	)	IN OPPOSITION TO
vs.	)	DEFENDANT'S PROPOSED
	)	ORDER AWARDING
Windjammer Village of Little River, South Carolina, Property Owners' Association, a South Carolina Eleemosynary Corporation,	)	DEFENDANT EVEN MORE
	)	TAXABLE COSTS PURSUANT
Defendant.	)	TO RULE 54(e) SCRPC
)	

TO: THE HONORABLE STEVEN H, JOHN & ATTORNEY
KENNETH R. MOSS, COUNSEL FOR DEFENDANTS

Defendants' Attorney Kenneth Moss informed us that the Court has scheduled a 'Rule to Show Cause Hearing' in the above case for August 30, 2012 at 9:00am. His stated purpose for asking for the Hearing is to determine whether or not you will sign a new Order awarding him even more taxable costs pursuant to Rule 54(e).

This memorandum and attachment are Plaintiffs' responses to Moss' proposed Order in a case we thought was closed in February 2012. Please be advised that we no longer retain Richard Lovelace, so we will represent ourselves at this Hearing *per se*.

On June 22-23, 2011, you as the Presiding Judge of the Fifteenth Judicial Circuit heard our case and Defendants' counterclaims. You decided that:

- Defendant WJV POA could not tear up the 'Paved Driveway' and turn it into a park and that the same law applies to the mailbox-circle. The Injunction we initiated in the first place was made permanent, so on that point: **We prevailed.**
- Plaintiffs were precluded from using the 'Paved Driveway' for anything except picking up our mail from our cars, so on that point: **WJV prevailed.**
- Defendants could not recover attorney fees or costs, so again: **We prevailed.**

Also at a Hearing on April 21, 2010, which was part of this case, Judge Hyman found Defendant WJV POA to be in Contempt of Court for violating the Court's Temporary Restraining Order (TRO), so here again: **We prevailed.**

At the Trial nothing was said that gave any indications that:

1. Guests could not come to our home; access from the 'Paved Driveway' and park on our property;
2. Service or Emergency Vehicles (such as from our propane-gas supplier, pest-control or tree services, plumbing and electrical contractors, delivery companies such as *UPS* or *Fedex*, ambulances and fire trucks) could not have access to our home via the 'Paved Driveway;' or
3. That contract restriction would apply to anyone other than Plaintiffs Crotty and Orzech, not to be inflicted upon any potential buyer or future owner.

The 'Final Order' signed on August 5, 2011, made the TRO permanent, saving the access road, ordered us not to access our property from it, but *somehow* all of those crippling restrictions in the above paragraph mysteriously appeared, likely inserted by the assigned author, Defendant's attorney Kenneth Moss.

Consequently on October 6, 2011, attorney Richard Lovelace filed a Motion for Reconsideration on our behalf, pursuant to Rule 59(e), to reverse that part of the Order barring emergency and service vehicles from accessing our home from the 'Paved Driveway,' but attorney Lovelace refused to challenge any other provision, except to

protect us against Defendant's claim for attorney fees and costs (below). Nonetheless, those reconsiderations cost us yet another \$5,000 in attorney fees to Lovelace.

On August 15, 2011, attorney Moss had filed an 'Affidavit of Attorney's Fees and Costs' and a 'Post-Trial Motion for Attorney's Fees and Costs,' pursuant to SC Rules of Civil Procedure Rule 54, specifically citing Rule 54(d), as follows:

(d) Costs. Except when express provision therefore is made either in a statute or in these rules, costs shall be allowed as of course to the **prevailing party** unless the court directs otherwise. ...

According to the Final Order, **both sides partially prevailed**, so we do not comprehend why Moss had standing to ask us to pay Defendant's costs. We too had taxable costs, but our former attorney advised us that we could not collect them, since we only partially prevailed.

At the Hearing on February 12, 2012,

1. Plaintiffs' Motion for Reconsideration, again permitting service and emergency vehicles to use the 'Paved Driveway,' was affirmed: **We prevailed.**
2. Defendant's Motion for Attorney Fees was denied, but it was awarded taxable costs, despite the fact that: **Plaintiffs and Defendants each partially prevailed.**

In Moss' "Affidavit of Attorney's Fees and Costs," there were many discrepancies. For example, he documented only \$1,152.23 in "additional charges," but in his narrative he had alluded to over \$8,000 in other professional fees and costs that the POA *somehow* had incurred, for which he neither sought reimbursement nor provided any itemization or proof that they existed and were related to this case. Then in the final Order stamped on February 27th the award increased *somehow* to \$1,933.24 -- **an inflation of \$781.01 or 68%** for no apparent reason.

We have asked attorney Moss for an invoice and for the underlying receipts for whatever costs he expects us to pay, but our reasonable request was sternly rebuffed. Absent any receipts or other documentation, perhaps Mr. Moss can explain at the upcoming Hearing how these unsubstantiated, inflating, and seemingly bogus numbers were inserted into the Order that were inconsistent with his "Affidavit of Attorney's Fees and Costs" under consideration at the February 2012 Hearing. Where is his proof?

On June 27, 2012, attorney Moss sent us an undated, unstamped email attachment of a proposed 'Order Awarding Taxable Costs Pursuant to Rule 54(e) SCRCF' now asking for **\$3,168.24** from us for costs to be decided upon at the August 30th Hearing. That represents **an increase of \$2,016.01 or 275% inflation** from his original request in February 2012. Again Moss provided us none of the underlying receipts for any of these items, without which we cannot validate his claim.

In that proposed 'Order' that he expects you as a Circuit Judge to sign, he states,

"... The costs incurred are supported by receipts and the Affidavit of Defendant's counsel (Moss), and the receipts and the Affidavit of Angela Marcotte¹ (WJV POA's Board and Office Secretary), which were attached to Defendant's Post-Trial Motion for Attorney's Fees and Costs Filed August 15, 2011."

However, when Plaintiff Orzech asked WJV POA's Treasurer, a Certified Public Accountant, to provide him with copies of receipts for items listed in Moss' proposed 'Order' of June 2012, including POA Secretary Marcotte's supporting Affidavit; as well as Moss' Affidavit dated August 15, 2011, she could not produce them, explaining that reimbursement receipts for legal costs are directly sent to and collected by the Association's attorney, Moss, and not by the POA.

¹ Angela Marcotte is a named Defendant in Plaintiffs' pending lawsuit (Crotty and Orzech vs. Cotcamp et al.), Civil Action No. 2010-CP-26-5929.

If the POA Secretary provided an Affidavit, including receipts that went into Moss' accounting, how is it that the POA Treasurer had no knowledge of them? That calls into doubt the veracity of Ms. Marcotte's (sworn) Affidavit, which we have never seen. Perhaps Mr. Moss can produce Marcotte's questionable Affidavit and underlying receipts on August 30th to help the Court sort out these seemingly incongruous claims.

Further, Moss' proposed 'Order' of June 2012 is replete with errors. For starters, the costs that Moss claimed were not supported by receipts. The discrepancies between Moss' June 2012 proposed 'Order' and his August 2011 'Affidavit of Attorney's Fees and Costs' are flagrant. (See Attachment #1.) For example:

- There are seven (7) items totaling \$698.66, which he claimed in both documents; we wonder *if* he intended to double charge us.
- There are eleven (11) items totaling \$453.57, which Moss claimed only on his August 2011 Affidavit that do not appear on his June 2012 proposed 'Order.'
- There are sixteen (16) items totaling \$2,114.50 listed on the June 2012 proposed 'Order' not appearing on the August 2011 Affidavit.

Moss also noted on his Aug. 2011 'Affidavit of Attorney's Fees and Costs' that his total billing to WJV in the fiscal year (July 2010 – June 2011) was \$40,099, of which the POA paid \$19,217 by July 1, 2011, leaving a balance due carried into the next fiscal year of \$20,882. However, in the 'actual budget' published in its Annual Report for the July 2011 through June 2012 fiscal year, the Association reported spending just \$1,236 in Legal Fees, returning \$23,764 to reserves, and apparently not paying Moss. One then must ask whether or not Moss' claim of about \$40,000 for us to pay, if so ordered, was fictitious; but the \$19,000+ that Windjammer POA actually paid was the true charge?²

Meanwhile, Defendant WJV POA filed a Counterclaim for precisely \$40,000 in attorney fees in our pending Civil Action No: 2010-CP-26-5929, despite the facts that

² Moss and the WJV POA tried this maneuver on us before; this is the voice of experience speaking.

attorney Nistad is being paid by the WJV Insurance Company and that this case is ongoing. We wonder if this is a ruse to circumvent your February 2012 decision; with Moss expecting us to pay his denied legal fees from this case through cross-billing the pending civil litigation, of which he is not directly involved. Perhaps Moss can address this matter too on August 30th.

Strange things are happening here that we hope will be sorted out at the upcoming Hearing. In any event, how can we be asked to pay for any cost for which there is such questionable accounting and no verifiable receipts?

Finally, we staunchly maintain that Defendant WJV POA is not entitled to any costs at all, because **we prevailed more often**, and especially in the **most important matter** that forced us to initiate this litigation in the first place – **The Injunction** to save the ‘Paved Driveway’ -- **We Prevailed**. They prevailed only partially in just some of their counterclaims, for which our former attorney did not warn us about; did not prepare us for; and did not effectively defend us against.

For all of the above well-documented reasons, we pray that you not only will reject Defendant’s new proposed Order for even more taxable costs, but also you will rescind that part of your Order stamped on February 27, 2012, allowing Defendant to recover any costs at all, at the Hearing on August 30th.

Respectfully submitted,

Per Se Plaintiffs


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

2148 Gamecock Circle
Little River, SC 29566
Tel: (843) 281-2299

Little River, South Carolina
August 6, 2012

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Plaintiffs’ Memorandum in Opposition
To Defendant’s Proposed Order Awarding
Defendant Even More Taxable Costs
Pursuant to Rule 54(e) SCRCP

C/A No. 2009-CP-26-10523

Attachment #1

This attachment includes:

- A. Attorney Moss' proposed 'Order Awarding Taxable Costs Pursuant to Rule 54(e) SCRPC' c. June 27, 2012.
- B. Attorney Moss' 'Affidavit of Attorney's Fees and Costs' dated August 15, 2011, pages 12 and 13.
- C. Windjammer Village of Little River, POA, Profit & Loss Budget vs. Actual for July 2011 through June 2012.
- D. Letter dated August 1, 2012, from Windjammer Village POA Treasurer Melissa Basehoar, CPA, to James Orzech, regarding her lack of any documentation in support of attorney Moss' Award pursuant to Rule 54(e).

The seven (7) items totaling \$698.66, which he claimed in both documents, are color-coded in yellow.

The sixteen (16) items totaling \$2,114.50 listed on the June 2012 proposed Order not appearing on the August 2011 Affidavit are color-coded in green.

The eleven (11) items totaling \$453.57, which Moss claimed only on his August 2011 Affidavit that do not appear on his June 2012 proposed Order are color-coded in blue.

Moss' balance due going into fiscal year (July 2011 – June 2012) and WJV POA's Annual Report of budgeted and actual expenses for Legal Fees that year are color-coded in magenta.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Elizabeth A. Crotty and James K. Orzech,

Plaintiffs,

vs.

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

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2009-CP-26-10523

**ORDER AWARDING TAXABLE
COSTS PURSUANT TO RULE 54(e),
SCRCP**

A hearing was held before me on February 13, 2012, on Defendant's Post-Trial Motion for Attorney's Fees and Costs Pursuant to Rule 54, SCRCP. Plaintiffs Elizabeth A. Crotty and James K. Orzech were present with their counsel, Richard Lovelace, Esq.; Defendant's representative, Cindy Dassoulas, was present along with counsel for Defendant, Kenneth R. Moss, Esq. After hearing argument from both counsel, this Court awarded the Defendant its taxable costs pursuant to Rule 54(e), compelling each of the Plaintiffs, jointly and severally, to pay the costs incurred by the Defendant in defending this action. The costs incurred are supported by receipts and the Affidavit of Defendant's counsel, and receipts and the Affidavit of Angela Marcotte, which were attached to Defendant's Post-Trial Motion for Attorney's Fees and Costs filed on August 15, 2011.

I. Costs Pursuant to Rule 54(e)(2):

Consent Order for Substitution of Counsel filed 09/08/10	\$ 25.00
Notice of and Motion to Consolidate, filed 10/12/10	\$ 25.00

C/A No. 2009-CP-26-10523

Notice of and Motion to Compel Inspection, filed 11/01/10	\$ 25.00
Notice of and Motion for Leave to Amend Pleadings, filed 11/01/10	\$ 25.00
Defendant's Motion for Continuance, filed 11/10/10	\$ 25.00
Motion to Compel Discovery Responses, filed 12/15/10	\$ 25.00
Post-Trial Motion for Attorney's Fees and Costs, filed 08/15/11	<u>\$ 25.00</u>
Subtotal	\$ 175.00
 2. <u>Costs Pursuant to Rule 54(e)(4):</u>	
Subpoena to Roseanne Pazoga for Deposition, issued 01/07/11	\$ 31.50
Copy charge for documents produced by Roseanne Pazoga in response to Subpoena <i>duces tecum</i> , 02/02/11	<u>\$ 40.00</u>
Subtotal	\$ 71.50
 3. <u>Costs Pursuant to Rule 54(e)(5):</u>	
Witness Subpoena to Elizabeth A. Crotty, issued 02/07/11	\$ 54.91
Witness Subpoena to James Orzech, issued 05/27/11	<u>\$ 53.67</u>
Subtotal	\$ 108.58
 4. <u>Costs Pursuant to Rule 54(e)(6):</u>	
Payment to court reporter Jerry S. Mabry for depositions ¹ of Elizabeth Crotty, James Orzech, and Charles Nill, 07/01/10	\$ 502.35
Payment to FedEx Kinkos for copies of plats and Plaintiffs' Architectural plans, 08/03/10 (Defendant's Trial Exhibit No. 21 and various other exhibits incorporating plats	\$ 24.85
Fees paid to investigator for research of County records, 08/16/10	\$ 75.00
Copy of attorney Roger Roy's file, 08/17/10	\$ 170.00
Copies of Horry County Code Enforcement records, (Defendant's Trial Exhibits No. 25 and 36), 08/17/10	\$ 20.00
Transcription fee paid to court reporter Melissa Decker for excerpt of 09/12/02 POA Architectural Committee Report (Defendant's Trial Exhibit No. 23); 08/24/10	\$ 76.00

¹ Scaled copies of the deposition transcripts for both Plaintiffs was presented at trial and made a part of the Court record. The deposition transcripts were used to by Defendant to impeach the testimony of both Plaintiffs.

Harry S. Bruton for survey of the property (Defendant's Trial Exhibit Nos. 3 and 3A), 11/11/10	\$ 500.00
Enlarged copy/mounting cost for Aerial of Windjammer Village and Plaintiffs' property (Defendant's Trial Exhibit No. 2), and Survey by Harry S. Bruton (Defendant's Trial Exhibit No. 3A), 11/11/10	\$ 150.42
Copy of transcript of 11/03/09 hearing on Temporary Injunction, paid to court reporter Grace Hurley, 11/20/10	\$ 42.25
Enlarged copy/mounting of plat recorded in Plat Book 159 at Page 70, Records of Horry County (Defendant's Trial Exhibit No. 1), 11/26/10	\$ 16.35
Appearance fee for testimony of Harry S. Bruton, Surveyor, regarding Defendant's Trial Exhibits No. 3 and 3A, 06/29/11	\$ 450.00
Court reporter Melissa Decker for deposition testimony of Roseanne Pazoga, ² 02/04/11	\$ 752.94
One (1) copy of each of the following Defense Exhibits used at trial not itemized above: Nos. 3, 3A, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 23, 24, 27, 28, 29, 30, 31, 33, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 55, 56, 57, 59, 60, and 61 [220 pgs. x \$0.15/pg. = \$33.00]	\$ 33.00

Subtotal **\$2,813.16**

TOTAL COSTS **\$3,168.24**

THEREFORE, I FIND the costs enumerated above are just and proper; and the Plaintiffs are liable, jointly and severally, for payment of these costs to Defendant within sixty (60) days of the date of this Order.

IT IS SO ORDERED!

Steven H. John, Presiding Judge
Fifteenth Judicial Circuit

_____, South Carolina

_____, 2012

² Ms. Pazoga was listed in Plaintiffs' discovery responses as a witness. Copies of Plaintiffs' discovery responses dated January 4, 2011 were filed with the Clerk of Court on May 31, 2011 and are included in the Court's file. Further, via electronic mail dated May 16, 2011, counsel for Plaintiffs provided a witness list indicating Ms. Pazoga would testify as a witness for the Plaintiffs.

	<u>Hrs/Rate</u>	<u>Amount</u>
8/14/2011 Review and revision of draft motion and draft affidavits prepared by Ms. Dassoulas.	0.75 200.00/hr	150.00
6/24/2011 Transcribe tape of Judge John's ruling; telephone calls, email to G. Nistad; telephone conference with K. Moss and G. Nistad; review of documents referenced in Judge John's ruling; email to WJV POA Board Members	4.60 70.00/hr	322.00
6/27/2011 Emails to K. Moss	0.20 70.00/hr	14.00
6/30/2011 Telephone conference with C. Nil and L. Holcombe	0.20 70.00/hr	14.00
8/12/2011 Preparation of Petition for Fees and Costs	1.30 70.00/hr	91.00
8/13/2011 Draft Affidavits and work on Petition for Fees and Costs; review file; work on file	6.00 70.00/hr	420.00
For professional services rendered	373.82	\$38,948.79
Additional Charges :		
8/16/2010 Advance of fees paid to investigator for research of county records.		75.00
8/10/2010 Admin Fee		100.00
8/17/2010 Copying cost from Horry County Code Enforcement		20.00
10/4/2010 Copying cost.		2.10
Postage		0.44
11/1/2010 Courier fee.		30.00
Advance of motions filing fees.		50.00
Postage and copies		2.50
11/3/2010 Copying cost.		1.20
11/20/2010 Transcript of 11/03/09 hearing, payment to Grace L. Hurley, Check #5834		42.25
11/27/2010 Advance of costs at Office Depot for report dividers and for sheet protectors.		176.33
Copying cost (color copies).		16.00
1/7/2011 Witness fee- Roseanne Pazoga		31.50

	<u>Amount</u>
2/2/2011 Copying cost, copies of all documents delivered by Rosanne Pozoga.	40.00
12/15/2010 Advance of motion fee to Clerk of Court.	25.00
2/7/2011 Advance of witness fee to Elizabeth Crotty, In connection with trial subpoena.	54.91
6/16/2011 Courier fee, Memorandum of Law	35.00
6/29/2011 Advance of fees to Harry F. Bruton & Associates.	450.00
Total additional charges	<u>\$1,152.23</u>
Total amount of this bill	<u>\$40,099.02</u>
Accounts receivable transactions	
11/24/2010 Payment - thank you.. Check No. 206	(\$5,000.00)
12/12/2010 Credit applied for office supplies kept by firm.	(\$92.44)
12/15/2010 Payment - thank you. Check No. 2148	(\$3,847.94)
2/11/2011 Payment - thank you. Check No. 209	(\$2,018.08)
5/11/2011 Payment - thank you. Check No. 210	(\$1,973.33)
7/1/2011 Payment - thank you. Check No. 211	(\$6,285.00)
Total payments and adjustments	<u>(\$19,216.79)</u>
Balance due	<u><u>\$20,882.23</u></u>

Village of Little River, P
Profit & Loss Budget vs. Actual
July 2011 through June 2012

	Actual	Budget	\$ Over Budget
Ordinary Income/Expense			
Income			
501 - Assessments	307,043.07	307,128.00	-84.93
503 - Amercements			
503a - Gate Fines and Penalties	1,195.62	2,100.00	-904.38
503 - Amercements - Other	2,494.80	2,000.04	494.76
Total 503 - Amercements	3,690.42	4,100.04	-409.62
504 - Interest	1,720.96	2,000.04	-279.08
506 - Social Committee Income	2,175.00	1,500.00	675.00
510 - Contractor and Initiation Fees	4,013.02	2,000.04	2,012.98
511 - Entry Cards	1,242.00	399.96	842.04
512 - Certificate of Assessments	800.00	500.04	299.96
519 - Miscellaneous Income	1,167.30	99.96	1,067.34
Total Income	321,851.77	317,728.08	4,123.69
Expense			
800 - Electricity	17,424.44	21,000.00	-3,575.56
801 - Water	2,818.65	3,500.04	-681.39
802 - Propane	365.51	500.04	-134.53
805 - Insurance	23,766.80	26,000.04	-2,233.24
807 - Time Warner Cable	2,752.26	2,799.96	-47.70
808 - Accounting	5,600.00	6,300.00	-700.00
809 - Legal Fees	1,235.62	24,999.96	-23,764.34
6150 - Depreciation Expense	10,880.69		
6240 - Miscellaneous	64.89		
8000 - Maintenance			
803 - Recycling	1,658.88	2,499.96	-841.08
804 - Garbage	17,799.11	17,000.04	799.07
811 - Gate Maintenance	4,500.00	4,500.00	0.00
812 - Building	2,850.72	3,000.00	-149.28
813 - Streets			
813a - Street Paving	64,622.38	40,857.96	23,764.42
813 - Streets - Other	4,656.01	5,000.04	-344.03
Total 813 - Streets	69,278.39	45,858.00	23,420.39
814 - Grounds	7,739.25	9,999.96	-2,260.71
815 - Pool Contract	7,065.00	8,499.96	-1,434.96
816 - Pool Maintenance and Chemicals	8,163.45	9,999.96	-1,836.51
818 - Equipment	5,941.33	6,000.00	-58.67
820 - Pier and Boat Ramp	1,138.85	2,000.04	-861.19
821 - Tennis and Basketball Courts	614.67	999.96	-385.29
823 - Brush and Leaves	11,068.05	12,000.00	-931.95
Total 8000 - Maintenance	137,817.70	122,357.88	15,459.82
822 - Beautification	4,528.78	6,200.04	-1,671.26
8100 - Salaries			
824 - Office	18,263.75	20,700.00	-2,436.25
825 - Maintenance	31,852.50	38,000.04	-6,147.54

August 1, 2012

Dear James Orzech:

This letter is to explain why I cannot help you with your request for vendor bills submitted by Ken Moss that were included on the "order awarding taxable costs pursuant to Rule 54(e) SCRCP". I am the treasurer for Windjammer Village and although I have seen interim draft bills from Ken Moss that Windjammer Village has made payments on, no final bill has been approved by Ken Moss's office to official submit to Windjammer Village. The reimbursements receipts included in Ken Moss's draft bill are his property and I have no authority to collect this information from him, as I do not handle his bookkeeping or taxes. Im sorry for any inconvenience, but this information will have to be collect directly from Ken Moss and not Windjammer Village.

Thank you again.

Regards,

M. Basehoar, CPA

Melissa Basehoar, CPA