No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RONALD JARMUTH

Petitioner

v.

THE INTERNATIONAL CLUB HOMEOWNERS ASSOC., INC.

Respondent

On Petition for a Writ of Certiorari to the United State Court of Appeals for the Fourth Circuit

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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December 18, 2018 *** Counsel of Record**

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1335

RONALD JARMUTH,

Plaintiff - Appellant,

v.

THE INTERNATIONAL CLUB HOMEOWNERS ASSOCIATION, INC.,

Defendant - Appellant,

and

STATE OF SOUTH CAROLINA; HORRY COUNTY COURT OF COMMON PLEAS,

Defendants.

Appeal from the United States District Court for the District of South Carolina, at Florence. R. Bryan Harwell, District Judge. (4:16-cv-00242-RBH)

Submitted: August 30, 2018
Decided: September 13, 2018

Before DUNCAN, KEENAN, and THACKER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

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Ronald Jarmuth, Appellant Pro Se. Henrietta U. Golding, Alicia Eleanor Thompson, MCNAIR LAW FIRM, PA, Myrtle Beach, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Ronald Jarmuth appeals the district court's orders adopting the magistrate judge's recommendation and granting the International Club Homeowners Association, Inc.'s motion to dismiss Jarmuth's civil action on the basis of res judicata and denying Jarmuth's motion for reconsideration. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Jarmuth v. The Int'l Club Homeowners Ass'n, Inc.*, No. 4:16-cv-00242-RBH (D.S.C. Mar. 27, 2017; Mar. 12, 2018). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED
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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA FLORENCE DIVISION

Ronald Jarmuth,	**)**	**Civil Action**
	)	**No.: 4:16-cv-00242-RBH**
Plaintiff,	**)**	
	)	
v.	**)**	**ORDER**
	)	
The International Club Homeowners Association, Inc.,	**)**	
	)	
Defendant.	**)**	
	)	

Plaintiff, proceeding pro se, brought this action against his homeowners association, Defendant International Club Homeowners Association, Inc. ("ICHOA"). Pending before the Court is Defendant's [ECF No. 45] motion to dismiss for failure to state a claim. The motion is before the court with the Report and Recommendation [ECF No. 68] of Magistrate Judge Thomas E. Rogers, III filed on January 23, 2017.[1] The Magistrate Judge recommended that Defendant's motion to dismiss be granted because Plaintiff's claims were barred by the doctrine of res judicata. Plaintiff timely filed objections [ECF No. 71] to the Magistrate Judge's Report and Recommendation on February 7, 2017. Defendant filed a reply to Plaintiff's objections [ECF No. 73], and Plaintiff filed a sur-reply.

[ECF No. 74].

Standard of Review

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. Mathews v. Weber, 423 U.S. 261, 270–71 (1976). The Court is charged with making a de novo

FN-1: This matter was referred to Magistrate Judge Rogers pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2).

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determination of those portions of the R & R to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The right to de novo review may be waived by the failure to file timely objections. Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982). The Court need not conduct a de novo review when a party makes only "general and conclusory objections that do not direct the [C]ourt to a specific error in the [M]agistrate's proposed findings and recommendations." Id. Moreover, in the absence of objections to the R & R, the Court is not required to give any explanation

for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983). However, in the absence of objections, the Court must "'satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Rule 12(b)(6) Standard

When deciding a motion to dismiss made under Federal Rule of Civil Procedure 12(b)(6), the Court must accept all well-pled facts alleged in the complaint as true and draw all reasonable inferences in the plaintiff's favor. Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 253 (4th Cir. 2009). A complaint must state a "plausible claim for relief" to survive a 12(b)(6) motion to dismiss. Walters v. McMahen, 684 F.3d 435, 439 (4th Cir. 2012) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009)). The Court will not dismiss the plaintiff's complaint so long as he provides adequate detail about his claims to show he has a "more-than-conceivable chance of success on the merits." Owens v. Baltimore City State's Attorneys Office, 767 F.3d 379, 396 (4th Cir. 2014) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "Once a claim has been

stated adequately, it may be supported by showing any set of facts consistent with the

allegations in the complaint." Twombly, 550 U.S. at 563. A complaint will survive a motion to dismiss if it contains "enough facts to state a claim to relief that is plausible on its face." Id. at 570. However, when a plaintiff's assertions "amount to nothing more than a 'formulaic recitation of the elements' " of a cause of action, the Court may deem such allegations conclusory and not entitled to an assumption of veracity. Iqbal, 556 U.S. at 681 (quoting Twombly, 550 U.S. at 555).

Discussion

Plaintiff asserts in his amended complaint that he brings this action to: 1) enjoin and remedy alleged retaliation against him by Defendant International Club Homeowners Association, Inc. ("ICHOA") for filing a housing discrimination claim on August 27, 2009 with the South Carolina Human Affairs Commission, as provided for under 42 U.S.C. §§ 3611, 3613 and 3617; and 2) to obtain Declaratory Judgments as to the mutual rights and obligations between Plaintiff and Defendant pursuant to 28 U.S.C. § 1343(a)(3) and S.C. Code Ann. § 15-53-30. [Amended Complaint, ECF No. 21, at ¶ 1].

Litigation between Plaintiff and ICHOA has been ongoing since April 7, 2009, when Plaintiff filed a state court action against the ICHOA asserting the same declaratory judgment actions as the Complaint in this case. The Magistrate Judge's Report and Recommendation adequately sets forth the

lengthy procedural history of the state court actions between Plaintiff and ICHOA, which the Court incorporates herein by reference. See [Report and Recommendation, ECF No. 68, pgs. 2-6]. The Magistrate Judge found that Plaintiff's claims in the present case were barred by the doctrine of res judicata or claim preclusion. As to Plaintiff's retaliation claim, the Magistrate Judge found that Plaintiff could have asserted the present FHA retaliation claim in his December 20,

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2011 state court answer and counter-claim. As to Plaintiff's claim for declaratory relief, the Magistrate Judge found that Plaintiff was seeking to have this Court make declarations regarding the application of various laws to issues already decided by the state courts. Ultimately, the Magistrate Judge concluded that because all of Plaintiff's claims in the present case were "available" to him in the prior state court litigation, his present claims are barred by the doctrine of res judicata or claim preclusion.

Plaintiff filed rather lengthy objections to the Magistrate Judge's Report and Recommendation challenging the Magistrate Judge's interpretation of the facts. Plaintiff also argues that his FHA retaliation claim was unavailable to him during the prior state court litigation because there were insufficient facts in the record for Plaintiff to establish standing to sue and insufficient facts to plead an FHA

retaliation claim. Finally, with the regard to Plaintiff's request for declaratory relief, Plaintiff argues the claims are not barred because the requested federal declaratory judgments arise from post-2012 legal opinions which are adverse to the conclusions of law stated in the final order, arise from internal contradictions of law stated in the state court final order, or conflict with statutory law. The question for this Court is whether the claims in the present case arise out of the same transaction or series of transactions as the claims resolved in the prior judgment. See Pittston Co. v. United States, 199 F.3d 694, 704 (4th Cir. 1999).

To support his argument that insufficient facts existed to establish standing and plead an FHA retaliation claim, Plaintiff relies on alleged harassment by two HOA board members, Cartman and Fletcher, that took place after the state court proceedings ended. However, Cartman and Fletcher are not parties to this case and Plaintiff has failed to set forth sufficient facts to state a plausible claim that Cartman and Fletcher were acting as agents or on behalf of the ICHOA when

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they allegedly damaged Plaintiff's irrigation system, threw hypodermic needles on his lawn, and threw eggs at Plaintiff's car. The only alleged retaliatory conduct set forth in Plaintiff's amended complaint that could arguably be attributed to the ICHOA is that the

ICHOA retaliated against Plaintiff by seeking to collect attorney's fees and Architectural Review Board fines, which were awarded in the prior state court action. Therefore, the Court will not consider Plaintiff's allegations of harassment by Cartman and Fletcher when determining whether the claims in the present case arise out of the same transaction or series of transactions as the prior state court action.

From a review of the entire record, including Plaintiff's amended complaint [ECF No. 21], ICHOA's amended answer and counter claim in the state court case [ECF No. 45-13], Plaintiff's answer to ICHOA's counter-claim in the state court case [ECF No. 45-4], and the final order in the state court case [ECF No. 45-16], it is clear that Plaintiff, through the instant action, is attempting to collaterally attack or re-litigate the state trial judge's award of attorney's fees and assessment of Architectural Review Board fines. Plaintiff's FHA retaliation claim was available to Plaintiff in December of 2011 when he filed his answer and counter-claim to ICHOA's counter-claim. In the present case, Plaintiff "seeks to enjoin the IHOA Defendant from collecting the $7356 [2] it seeks from Plaintiff which is actually retaliation." [Amended Complaint, ECF No. 21]. In his December 20, 2011 answer and counter-claim, Plaintiff alleged that ICHOA's "Counter-Complaint," which sought attorney's fees, costs, and Architectural Review Board fines, was "filed to harass the Plaintiff and for other improper purpose." [Plaintiff's answer and counter-claim, ECF No. 45-4]. The Court agrees

with the Magistrate Judge that "[t]he harassment and improper purpose allegations raised by

FN 2 - The final order in the state court action awarded ICHOA $5,000.00 in attorney's fees and $2,326.00 in Architectural Review Board fines.

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the Plaintiff in his 'counterclaim,' which the state court allowed as an amendment to his complaint, is the same argument he relies on here with respect to his retaliation claim." [Report and Recommendation, ECF No. 68, at 11]. Plaintiff's FHA retaliation claim is barred by the doctrine of res judicata or claim preclusion because Plaintiff's claim - that the ICHOA was retaliating against him in its efforts to obtain attorney's fees and Architectural Review Board fines - was available to him during the prior state court action.

As to his request for declaratory relief, Plaintiff's argues that res judicata does not apply because either: 1) there was no actual adjudication answering some of the questions actually posed; 2) there have been ensuing legal opinions offering a different conclusion than that offered by the special referee; or 3) the state court final order, itself, introduced questions about the legal rights and obligations between the parties which were not present before the order.

As to Plaintiff's first point, Plaintiff argues res judicata does not apply because declaratory questions that were raised in the prior state court action were not answered. As to Plaintiff's second point, Plaintiff argues that res judicata does not apply because legal opinions issued after the final order call some of the state trial judge's findings into question. As to the third point, Plaintiff contends the final order itself muddied the water and raised new questions regarding the rights and obligations of the parties. Again, Plaintiff is attempting to litigate or re-litigate issues or claims that were available to the Plaintiff in the prior state court action. The Magistrate Judge provided a detailed comparison between the declaratory relief sought in the instant case with the issues addressed in the trial judge's final order in the prior state court action. In this case, Plaintiff seeks a declaratory judgment regarding: 1) voting lists; 2) Plaintiff's membership in the ICHOA; 3) the requirement to pay assessments; 4) parking restrictions; and 5) the proper entity. Each of Plaintiff's requests for declaratory relief in

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this case arise out of the same transaction or series of transactions as the prior state court action and was addressed in some form or fashion in the state court final order. "Res judicata ensures finality of decisions." Brown, 442 U.S. at 131. The prior state court action resulted in a final decision on the merits, the

parties are identical, and the claims in this matter are based upon the same causes of action involved in the earlier proceeding. The claims were available to Plaintiff in the prior litigation. See Brown v. Felsen, 442 U.S. 127, 131 (1979) ("Res judicata prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceed."). Therefore, Plaintiff's claims for declaratory relief in this case are barred by the doctrine of res judicata or claim preclusion.

Conclusion

Having reviewed the record and applicable law, the court agrees with the recommendations of the Magistrate Judge and finds that the Magistrate Judge correctly applied the law to the facts of this case. The court has reviewed Plaintiff's objections and finds that they are without merit. The court overrules Plaintiff's objections and adopts and incorporates by reference the Report and Recommendation [ECF No. 68] of the Magistrate Judge.

Accordingly, Defendant's [ECF No. 45] motion to dismiss for failure to state a claim is GRANTED. This case is hereby DISMISSED with prejudice. Plaintiff's [ECF No. 50] motion to disqualify McNair Law Firm and Plaintiff's [ECF No. 53] motion to compel HOA Attorney to Use U.S. Post Office Counter Service to Serve Pleadings are DENIED as MOOT.

IT IS SO ORDERED.

March 27, 2017
Florence, South Carolina

s/ R. Bryan Harwell
R. Bryan Harwell
United States
District Judge

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

RONALD JARMUTH,	**)**
Plaintiff,	**) No.: 4:16-cv-0242-**
	) RBH-TER
vs	**)**
THE INTERNATIONAL CLUB HOMEOWNERS ASSOCIATION, INC,	**) REPORT AND RECOMMENDATION**
Defendant.	**)**

I. INTRODUCTION

Plaintiff, who is proceeding pro se, claims that Defendant retaliated against him for filing a housing discrimination claim. Presently before the court is Defendant's Motion to Dismiss (Document # 45). Because Plaintiff is proceeding pro se, he was warned pursuant to Roseboro v. Garrison, 528 F.3d 309 (4th Cir. 1975), that failure to respond to the Motion to Dismiss could result in dismissal of his claims. Plaintiff timely filed a Response (Document # 48), to which Defendant filed a Reply (Document # 49). At the direction of the court, the parties provided supplemental briefing (Documents # 64, 65, 66). All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(e) and (g), DSC. Because Defendant's Motion is dispositive, this Report and Recommendation is filed for review by the district judge.

II. PLAINTIFF'S ALLEGATIONS

Plaintiff asserts in his amended complaint that he brings this action

a. **To enjoin and remedyretaliation against him by Defendant International Club Homeowners Association, Inc. ("IHOA") for filing a housing discrimination claim on August 27, 2009 with the South Carolina Human Affairs Commission, as provided for under 42 USC 3611, 3613, and 3617; and**

b. **to obtain Declaratory Judgments as to the mutual rights and obligations between Plaintiff and Defendant pursuant to 28 USC 1343(a)(3) and SC Code Annotated 15-53-30.**

Am. Compl. ¶ 1. Plaintiff argues that Defendant retaliated against him by obtaining and attempting to collect a judgment against him for attorneys' fees and costs in a state court action arising from Plaintiff's 2009 complaint filed with the South Carolina Human Affairs Commission (SCHAC). Am. Compl. ¶¶ 4-7. Plaintiff also seeks numerous declaratory judgments regarding the applicability of various state statutes, Advisory Opinions of the South Carolina Attorney General, and Defendant's rules and covenants. Am. Compl. pp. 12-18.

Defendant argues that this action is simply Plaintiff's attempt to avoid the judgments already rendered in two state

lawsuits in 2009 and 2010. Defendants argue that Plaintiff's claims are barred by the doctrine of res judicata and that Plaintiff's Amended Complaint fails to allege facts sufficient to state a claim upon which relief may be granted.

III. PREVIOUS STATE COURT ACTIONS

On April 7, 2009, Plaintiff filed an action against the Association (the 2009 case), as well as related Defendants, asserting the same declaratory judgment actions as the Complaint in this case. 2009 Complaint (Ex. 1 to Def. Motion). Several amendments to the Complaint were filed asserting additional causes of action. 2009 Amended Complaint (Ex. 2 to Def. Motion); 2009 Pl. Counterclaim (Ex. 3 to Def. Motion); Order adding Counterclaim to Complaint (Ex. 4 to Def. Motion). The Association filed a counterclaim seeking attorneys' fees and expenses "associated with the defense of the action" on May 13, 2009, as the Association incurred an insurance deductible in connection with defending the action. 2009 Answer to Complaint (Ex. 5 to Def. Motion); Insurance deductible Payable to McNair (Ex. 6 to Def. Motion).

Thereafter, Plaintiff filed an application with the Architectural Review Board (ARB) for a swing set. Swing Set Application (Ex. 7 to Def. Motion). The Association sent a Notice of Disapproved Request for the swing set due to its proposed location. Disapproval of Application (Ex. 8 to Def. Motion). In response,

and while the 2009 Case was pending, Plaintiff filed the SCHAC Complaint challenging the Association's denial of his application based on allegedly discriminatory practices. At issue in the SCHAC matter was whether the Association properly denied the application in accordance with the Declaration and Bylaws in an evenhanded and non-discriminatory manner. McNair was hired to defend the SCHAC Complaint by the Association's insurance carrier, and the Association incurred a deductible. Insurance Deductible Payable to McNair. (Ex. 9 to Def. Motion). On January 11, 2010, SCHAC determined that there was no reasonable cause for Plaintiff's Complaint. SCHAC letter (Ex. 10 to Def. Motion).

After Plaintiff was unsuccessful in the proceeding before SCHAC, Plaintiff filed the 2010 Case challenging the Association's authority to enforce the architectural restrictions in the Declaration against his property and the denial of his swing set application on October 12, 2010. 2010 Complaint (Ex. 11 to Def. Motion). The Association filed an amended answer and counterclaim on October 24, 2011, seeking a declaratory judgment that Plaintiff is subject to the Declaration pursuant to S.C. Code Ann. 15-53-10 et seq. and a breach of the Declaration claim seeking damages related to fines incurred, injunctive relief, and attorneys' fees and costs. 2010 Answer and Counterclaim (Ex. 12 to Def. Motion). On December 20, 2011, Plaintiff filed an answer to the counterclaim

and asserted his own "counterclaim" against the Association, in which he alleged that the Association's counterclaim was a violation of the South Carolina Frivolous Proceedings Act because it was filed for the purpose of harassing Plaintiff and for other improper purposes. Pl. Answer and Counterclaim (Ex. 3 to Def. Motion). The Association moved to strike the counterclaim, but the court ordered that it be added as an amendment to Plaintiff's complaint. Order (Ex. 4 to Def. Motion).

The Consolidated Cases were tried without a jury before special referee Ralph Stroman from August 8, 2012, through August 12, 2012. At the trial, the Association presented evidence, through Freiboth's direct examination testimony, that it paid two insurance deductibles in the amount of $2,500.00, for a total of $5,000.00, to McNair in connection with its enforcement of the Declaration against Plaintiff. Excerpts of Record on Appeal pp. 2761-2774 (Ex. 13 to Def. Motion). In addition, the president of the Association testified that the attorneys' fees were paid in the form of deductibles in connection with the 2009 Case and the SCHAC matter. Id. The Association's checks to McNair were admitted into evidence as Defendants' Exhibits 62 and 79. The Association also admitted the Swing Set Application, the Disapproval of Application, and the SCHAC letter into evidence to rebut Plaintiff's testimony that the Association's denial of the application was improper and as proof of the

Association's efforts to enforce the Declaration against Plaintiff. Plaintiff cross examined the president of the Association regarding the payment of the deductibles, the denial of his swing set application, and whether the recovery of the deductibles by the Association was proper. Plaintiff also argued that the Association's counter claim was a violation of the Frivolous Proceedings Act. Excerpts of Record on Appeal pp. 828-32; 944-50; 979-98 (Ex. 14 to Def. Motion; Ex. 39 to Def. Suppl. Brief).

The 2012 Final Order held in favor of the Defendants on all counts and awarded the Association attorneys' fees in the amount of $5,000.00 and the fines levied for the unapproved improvement on his property line in the amount of $2,326.00. Final Order (Ex. 15 to Def. Motion). Post-Trial Motions were filed by Plaintiff on September 19, 2012, challenging various finding in the Final Order, including the award of attorneys' fees and the judgment against Plaintiff for the fines.

Pl. Post-Trial Motions (Ex. 16 to Def. Motion). The judge denied the Post-Trial Motions, Order denying Post-Trial Motions (Ex. 17 to Def. Motion), and Plaintiff filed a Notice of Appeal of the Final Order with the South Carolina Court of Appeals on April 3, 2013. Notice of Appeal (Ex. 18 to Def. Motion).

Plaintiff extensively briefed numerous issues in his appellate brief, including the issues of whether the lower court erred in 1) awarding attorneys' fees upon the grounds that

one of the insurance deductibles was paid in connection with the SCHAC matter, 2) awarding the Association a judgment for the fines rendered, 3) declaring his property subject to the Association's governing documents and the Association's authority, and 4) finding that the Association did not violate the governing documents or the South Carolina Non-Profit Corporation Act. Pl. Appellate Brief (Ex. 19 to Def. Motion). The South Carolina Court of Appeals denied Plaintiff's appeal and affirmed the Final Order in the Unpublished Opinion No. 2015-UP-111. Unpublished Opinion (Ex. 20 to Def. Motion). Plaintiff filed a petition for Rehearing on March 12, 2015 (Ex. 21 to Def. Motion) and Contempt Motions on March 17, 2015 against Freiboth counsel, whom represent the Respondents in the appeal. Contempt Motions (Exs. 22, 23 to Def. Motion). The petition for rehearing sets forth grounds that the trial court improperly awarded the attorneys' fees to the Association. Respondents' Return to Motion for Rehearing (Ex. 24 to Def. Motion); Pl. Reply to Return of Defendants (Ex. 25 to Def. Motion). Plaintiff's petition for rehearing was denied by the South Carolina Court of Appeals on April 24, 2015. Order Denying Petition for Rehearing (Ex. 26 to Def. Motion).

On May 12, 2015, Plaintiff filed a Petition for Writ for Certiorari with the South Carolina Supreme Court appealing the Unpublished Opinion. Petition for Writ of Certiorari (Ex. 27 to Def. Motion). The Supreme Court denied Plaintiff's Petition for Writ (Ex. 28 to Def.

Motion) and the remittitur was issued on January 21, 2016. Upon the issuance of the remittitur, Plaintiff filed his Rule 60(b) Motion dated January 22, 2016, the amended Rule 60(b) Motion dated February 1, 2016 (Exhibit 30), and a Motion to Dismiss the Association's counterclaim dated March 11, 2016 (Exhibit 31) seeking to set aside the judgment against him. (Exs. 29-31 to Def. Motion). The formal order denying the Motion to Dismiss was filed on June 6, 2016, (Ex 32 to Def. Motion), and Plaintiff filed a notice of appeal that appears to be currently pending before the South Carolina Court of Appeals (Ex. 33 to Def. Motion).

IV. STANDARD OF REVIEW

Defendant seeks dismissal of Plaintiff's claims pursuant to Rule 12(b)(6), Fed.R.Civ.P. A Rule 12(b)(6) motion examines whether Plaintiff has stated a claim upon which relief can be granted. The United States Supreme Court has made clear that, under Rule 8 of the Federal Rules of Civil Procedure, the complaint must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face. See Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). The reviewing court need only accept as true the complaint's factual allegations, not its legal conclusions. Iqbal, 556 U.S. at 678; Twombly, 550 U.S. at 555.

Expounding on its decision in Twombly, the United States Supreme Court stated in Iqbal:

> **[T]he pleading standard Rule 8 announces does not require "detailed factual allegations," but it demands more than an unadorned, the defendant-unlawfully-harmed-me accusation. A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement."**
>
> **To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 677-78 (quoting Twombly, 550 U.S. at 555, 556, 557, 570) (citations omitted); see also Bass v. Dupont, 324 F.3d 761, 765 (4th Cir.2003).**

Res judicata is an affirmative defense and is treated as a basis for dismissal under Rule 12(b)(6). See Davani v. Va. Dept. of Trans., 434 F.3d 712, 720 (4th Cir. 2006). A court may consider matters of public record such as documents from prior . . . court proceedings in

conjunction with a Rule 12(b)(6) motion." Walker v. Kelly, 589 F.3d 127, 139 (4th Cir. 2009). A court may also ". . . take judicial notice of facts from a prior judicial proceeding when the res judicata defense raises no disputed issue of fact." Andrews v. Daw, 201 F.3d 521, 524 n.1 (4th Cir. 2000).

V. DISCUSSION

"Res judicata is applied to prevent the re-litigation of claims, and thus prevent the unsettling of a prior judgment, whether by increasing or decreasing the award or by reversing the result." Heckert v. Dotson, 272 F.3d 253, at 258 (4th Cir. 2001). As stated by the Fourth Circuit,

> **Under the res judicata principles, a prior judgement between the same parties can preclude subsequent litigation on those matters actually and necessarily resolved in the first adjudication. The doctrine of res judicata encompasses two concepts: 1) claim preclusion and 2) issue preclusion, or collateral estoppel. The rules of claim preclusion provide that if the later litigation arises from the same cause of action as the first, then the judgement in the prior action bars litigation 'not only of every matter actually adjudicated in the earlier case, but also of every claim that might have been presented.' However issue preclusion is more narrowly drawn and**

applies when the later litigation arises from a different cause of action between the same parties. Issue preclusion operates to bar subsequent litigation of those legal and factual issues common to both actions that were 'actually and necessarily determined by a court of competent jurisdiction in the first litigation.' Thus, while issue preclusion applies only when an issue has been actually litigated, claim preclusion requires only a valid and final judgement."

Orca Yachts, L.L.C. v. Mollicam, Incorporated, 287 F.3d 316, 318 (4th Cir. 2002)(internal citations omitted).

Claim preclusion bars the re-litigation of claims that were raised or could have been raised in prior litigation. However, it does not apply to all claims that were raised or could have been raised in the prior litigation. Claims are barred "only when three elements are satisfied: 1) the prior judgement was final and on the merits, and rendered by a court of competent jurisdiction in accordance with the requirements of due process; 2) the parties are identical, or in privity, in the two actions; and 3) the claims in the second matter are based upon the same cause of action involved in the earlier proceeding." Pittston Co. v. United States, 199 F.3d 694, 704 (4th Cir. 1999) (internal citations omitted). The doctrine bars litigation of all claims or defenses that were

available to the parties in the previous litigation, regardless of whether they were asserted or determined in the prior proceeding. Brown v. Felsen, 442 U.S. 127, 131, 99 S.Ct. 2205, 60 L.Ed.2d 767 (1979); Meekins United Transp. Union, 946 F.2d 1054, 1057 (4th Cir.1991). In the present case, all three elements of res judicata, or claim preclusion, are satisfied.

It is undisputed that the prior judgments at issue were final, on the merits, and rendered by a court of competent jurisdiction. It is further undisputed that both Plaintiff and Defendant were parties in the previous actions. The issue here is whether the claims in the present case are based upon the same cause of action involved in the previous cases. "[T]he appropriate inquiry to determine whether causes of action are identical for claim preclusion purposes is whether the claim presented in the new litigation 'arises out of the same transaction or series of transactions as the claim resolved in the prior judgment.'" Pittston, 199 F.3d at 704. "The expression 'transaction' in the claim preclusion context 'connotes a natural grouping or common nucleus of operative facts.'" Id. (citing Restatement (Second) of Judgments § 24 cmt. b). It is appropriate to consider causes of action as identical for claim preclusion purposes when they are related "in time, space, origin, or motivation, and [when] taken together they form a convenient unit for trial purposes." Id.

1. Retaliation

Plaintiff alleges that Defendant retaliated against him for filing a complaint of discrimination with the SCHAC by seeking attorneys' fees and costs in the state court actions as well as a fine levied for the unapproved improvement on Plaintiff's property line. He alleges that attorneys' fees were retaliatory because they were not attorneys' fees at all, but insurance deductibles payable to the attorney, nor were they related to the 2009 complaint as set forth by Defendant but instead related to the SCHAC investigation. He also alleges that the fine sought by Defendant was never actually assessed against Plaintiff. Am. Compl. ¶ 4(d). Plaintiff previously made these arguments in his post-trial motions and subsequent appeal in support of his claim that the award of the fees and costs and fine was improper, and both the trial court and the appellate court found that the award of fees, costs, and fines was proper. See Pl. Post Trial Motions, Order Denying Post-Trial Motions, Pl. Appellate Brief, and Unpublished Opinion. (Exs. 16, 17, 19, 20).

Plaintiff has not previously alleged that Defendant acted in retaliation in seeking these fees, costs, and fines. However, his claim arises out of the same transaction or series of transactions as the claims resolved in the prior judgment. "Claims may arise out of the same transaction or series of transactions even if they involve different harms or different theories or measurements of relief." Harnett v.

Billman, 800 F.2d 1308, 1314 (4th Cir.1986). Res judicata applies even though the claims asserted in the first suit are different than the claims asserted in the second suit, so long as they arise out of the same transaction or series of transactions. As explained by the Fourth Circuit:

> **Were we to focus on the claims asserted in each suit, we would allow parties to frustrate the goals of res judicata through artful pleading and claim splitting given that "[a] single cause of action can manifest itself into an outpouring of different claims, based variously on federal statutes, state statutes, and the common law."**

Pueschel v. U.S., 369 F.3d 345, 355 (4th Cir.2004) (quoting Kale v. Combined Ins. Co. of Am., 924 F.2d 1161, 1166 (1st Cir.1991)).

An exception to this "same transaction or series of transactions" rule arises when the new claim did not "exist" at the time of the earlier case such the parties lacked a full and fair opportunity to litigate it. See Union Carbide Corp. v. Richards, 721 F.3d 307, 315 (4th Cir.2013) (citing Taylor v. Sturgell, 553 U.S. 880, 892, 128 S.Ct. 2161, 171 L.Ed.2d 155 (2008)). Two scenarios give rise to this exception: (1) when a new statute provides an independent basis for relief that did not exist at the time of the prior action,[1] or (2) when "a new factual

1 This exception is not at issue here.

development give rise to a fresh cause of action." Id. Here, Plaintiff's retaliation claim did not exist at the time he initially filed his complaints because it arises out of Defendant's counterclaim in the 2010 action seeking attorney's fees, costs, and fines.[2]

However, Plaintiff had the opportunity to add a retaliation claim during the course of the litigation, and his failure to do so is fatal here:

> **[Res judicata] requires a plaintiff to join all claims together that the plaintiff has against the defendant whenever during the course of the litigation related claims mature and are able to be maintained. Thus, even if an additional claim does not mature until well after the initial complaint has been filed, the plaintiff nevertheless must seek to amend the complaint to add additional claims as a compulsory claim when the additional claim can be brought.**

Stone v. Dep't of Aviation, 453 F.3d 1271, 1278–79 (10th Cir.2006). Defendant filed its counterclaim seeking the attorney's fees and costs on October 24, 2011. See 2010 Answer and Counterclaim (Ex. 12 to Def. Motion). On December 20, 2011, Plaintiff filed an answer to

2 Plaintiff argues that the retaliation claim was not "ripe" until the court ruled on the counterclaim and entered a judgment. However, the alleged retaliatory act was not dependent upon some action by the court. This argument is without merit.

the counterclaim and asserted his own "counterclaim" against the Association, in which he alleged that the Association's counterclaim was a violation of the South Carolina Frivolous Proceedings Act because it was filed for the purpose of harassing Plaintiff and for other improper purposes. Pl. Answer and Counterclaim (Ex. 3 to Def. Motion). The harassment and improper purpose allegations raised by Plaintiff in his "counterclaim," which the state court allowed as an amendment to his complaint, is the same argument he relies on here with respect to his retaliation claim. Thus, Plaintiff had the opportunity to raise his retaliation claim along with this Frivolous Proceedings Act claim and failed to do so.[3] **Therefore, his attempt to raise the claim here is barred.**

In sum, despite Plaintiff's artful pleading that the fees, costs and fines were retaliatory, the propriety of the award of those fees, costs, and fines has been adjudicated and cannot be raised again here.[4]

3 Plaintiff argues that the Frivolous Proceedings Act claim was based upon the fines, not the attorney's fees and costs. However, the issue is not whether Plaintiff actually raised the retaliation claim, but whether he had the opportunity to raise it and failed to do so

4 **Plaintiff also raises some allegations of retaliation by Jay Cartman, a member of the ARB, whom Plaintiff named in his SCHAC complaint. Plaintiff alleges that Cartman drove a stake into Plaintiff's irrigation system**

2. Declaratory Judgments

Defendant argues that all of the declaratory judgment issues raised in the present complaint have also been adjudicated, even though they may be presented slightly differently here than in the previous cases. Each "demand for declaratory judgment" is discussed below, along with language from the Final Order or Post Trial Order addressing the same issue.

*** Declaratory Judgment Regarding Voting Lists**

> **Amended Complaint: Voter lists must be provided to the members of the Association with email addresses and phone numbers and the IHOA has no discretion in providing such information. p. 12, ¶ 10(a)(1)-(2).**
>
> **Final Order: "Plaintiff failed to state a good faith basis for his request for the voting list as required by the Act. According to his email, he requested the list to "communicate with fellow homeowners" after he filed his complaint**

and threw hypodermic needles onto his lawn. Am. Compl. pp. 5-6; ¶ 4(c). He also alleges that William Fletcher, the IHOA Board Treasurer threw eggs on Plaintiff's vehicles and property. Am. Compl. p. 8, ¶ 4(d)(7). These individuals are not parties to this action

in the 2009 Lawsuit. His request was not specific and did not provide the reason for communicating with fellow members; as a result, it was properly denied." p. 24, § 8 (Ex. 15 to Def. Motion).

*** Declaratory Judgments Regarding Plaintiff's Membership**

Amended Complaint: "Demand for Declaratory Judgment that the February 3, 2014, Advisory Opinion of the Attorney General of South Carolina is correct and should be taken as case law specifically that SC Code Sec. 33-31-620(a) provides that Plaintiff has an absolute right to resign from the IHOA Defendant and that subsection (b) provides that subsequent to resignation Plaintiff has no further financial obligations to the IHOA Defendant incorporated under South Carolina Code Title 33 Chapter 31 (SC Non-Profit Corporation Act), where the Attorney General wrote that "non-profit corporations must follow the law." p. 13, ¶ 10(b).

"Demands for Declaratory Judgment that S.C. Code Sec. 33-31-601 holds that plaintiff never was a member of the IHOA Defendant because the Act pre-empts provisions of the covenants allegedly running with Plaintiff's land and pre-empts the IHOA Defendant's bylaws which mandates involuntary membership based on where Plaintiff lives." p. 13, ¶

10(c).

Post-Trial Order: "At the February 4, 2013 hearing, Plaintiff argued that the Declaration's requirement that all homeowners within the International Club be members of the HOA violates the South Carolina Non-Profit Corporation Act, S.C. Code Ann. § 33-31-620 stating that members may resign at any time. The Plaintiff may resign from the HOA at any time by selling his International Club property. Because the Plaintiff has the ability to resign, the Declaration is not in violation of the South Carolina Non-Profit Corporation Act." pp. 7-8, ¶¶ 20-21 (Ex. 16 to Def. Motion).

*** Declaratory Judgments Regarding Assessments**

Amended Complaint: "Demands for a Declaratory Judgment that SC 33-31-612, Member's liability to third parties, applies to Plaintiff's relationship with the IHOA Defendant and means that Plaintiff cannot be forced to pay assessments which are, on their face, to pay the IHOA Defendants contractual obligations to the IHOA Defendant's vendors." p. 13, ¶ 10(d).

"Demands for Declaratory Judgment that it is <u>not</u> a proper covenant running with the land but instead a voidable personal service contract or obligation not meeting the statute of frauds that (1)

Plaintiff must purchase goods or services, specifically cable tv and garbage collection, from the HOA Defendant, and also join and pay for membership in the IHOA Defendant's Amenity Center, which membership is not open to all members of the IHOA; (2) Plaintiff must pay money to the IHOA to maintain the county owned shoulders of country roads running through the subdivision and likewise roads outside and not even close to the subdivision; (3) Plaintiff must pay money to the IHOA Defendant to maintain IHOA property in which Plaintiff has no equity interest–such as ponds and open space–not used by Plaintiff; (4) Plaintiff maintain the county owned shoulders of the countyowned road adjacent to Plaintiff's property which is outside the property line. pp. 15-16, ¶ 10(g).

"Demand for Declaratory Judgment that the IHOA Defendant cannot force Plaintiff to pay for goods or services—specifically use of the Amenity Center—that, Plaintiff cannot use because of a handicap cognizable under the Federal Americans with Disabilities Act. . . Plaintiff is unable to sue the exercise equipment . . . and the . . . swimming pool because of mechanical and respiratory injuries suffered by plaintiff in the '9-11 attack'." p. 17, ¶ 10(i).

"Demand for Declaratory Judgment that

the South Carolina Horizontal Property Act, Title 27 Chapter 31, provides no authority for the IHOA Defendant to force Plaintiff to pay assessments to the IHOA Defendant to maintain the Amenity Center and other facilities." p. 18, ¶ 10(k).

Final Order: "Plaintiff's claim that the Defendant HOA misspent funds stems from his argument that the Defendant HOA maintains property he does not own. . . the Defendant HOA has the authority to maintain property that it does not own to ensure that the Community as a whole has a consistent appearance, including property of adjacent owners and property within Horry County's right of way." p. 39, ¶ 16 (Ex. 15 to Def. Motion).

"Plaintiff argues that the assessments used to pay for cable services and waste management are invalid, because the services do not touch and concern the land. As a matter of law, covenants for payment of annual assessments for the operation of property owners associations are covenants running with the land. . . Because the assessments have a beneficial effect on the owners' properties, the assessments touch and concern the land and are enforceable." p. 19, ¶ 6(a) (Ex. 15 to Def. Motion).

". . . Plaintiff contends that he is not obligated to pay the assessments for the

Amenity Center. This contention is without merit because, as a member of the Community, he is subject to the Declaration. Whether he uses or does not use the Amenity Center is not a factor in determining his obligation to pay assessments." p. 17, ¶ 5 (Ex. 15 to Def. Motion).

*** Declaratory Judgment Regarding Parking Restrictions**

Amended Complaint: "Demand for Declaratory Judgment the IHOA Defendant's covenants or IHOA rules cannot limit Plaintiff's free use of the streets running through the development that were incorporated into the Horry County public road system by dedication. p. 16, ¶ 10(h).

Final Order: ". . . Plaintiff argued that the dedication and conveyance precludes the Defendant HOA from enforcing Section 7.25. The dedication documents references plats that show the roads. . . The plat specifically states that the property on the plat, including International Club Boulevard "are subject to all rights and restrictions of record", which include the covenants contained in the Declaration. . . I find that the streets within the Community were dedicated subject to the Declaration and all amendments thereto." p. 22, ¶7(a) (Ex. 15 to Def. Motion).

*** Declaratory Judgment Regarding Proper Entity**

> **Amended Complaint: "Demand for Declaratory Judgment that the Covenants which allegedly run with Plaintiff's property do not subject Plaintiff and the IHOA Defendant to any mutual rights and obligations because— (1) those covenants name "The Murrells Inlet Golf Plantation Association, Inc. ("MIGPA"). . . (2) an alternative HOA arguably named "The International Club Association" ("ICA") in Amendment 1 to the covenants. . . is likewise the IHOA Defendant. . ." p. 17, ¶10(j).**
>
> **Final Order: "At trial, the Plaintiff contended that the Defendant HOA is not the entity entitled to manage the affairs of the Community, for the Defendant HOA is not named in the Declaration. I find this claim to be without merit. The Defendant HOA's Articles of Incorporation were submitted to the Secretary of State by the Community's Developer, and the Developer caused the First Amendment to be filed which changed the name of the Defendant HOA to its present name . . . Having reviewed the Declaration, together with the amendments, as well as the Defendant HOA's Articles of Incorporation, I find that the Defendant HOA is the proper legal entity designated under the**

Declaration." p. 11, ¶ 1 (Ex. 15 to Def. Motion).

For the same reasons discussed above with respect to Plaintiff's retaliation claim, each of Plaintiff's requests for declaratory judgment are barred by the doctrine of res judicata because they arise out of the same transaction or series of transactions. Plaintiff is essentially asking the court to make declarations regarding the application of various laws to issues already decided by a court or courts of competent jurisdiction. Even if Plaintiff's claims here were not raised in the same manner or for the same relief as the previous cases, they are still barred. As stated above, the res judicata doctrine bars litigation of all claims or defenses that were available to the parties in the previous litigation, regardless of whether they were asserted or determined in the prior proceeding. Brown, 442 U.S. at 131.[5]

5 Plaintiff also seeks a declaratory judgment related to whether the fine awarded was actually assessed. Specifically, Plaintiff seeks declaratory judgments that any action taken by the board that is not reflected in the minutes is void. Am. Compl. p. 14-15, ¶ 10(e)-(f). He alleges that this issue "directly affects the IHOA Defendant's claim that is Board of Directors decided that Plaintiff had violated the Use Restrictions AND that the IHOA Defendant's Board had imposed a fine on Plaintiff." Id. This, too, is barred by res judicata for the same reasons discussed with

In sum, Plaintiff's present case is simply an attempt to re-litigate issues already decided or that could have been raised and decided in previous cases. Therefore, Plaintiff's claims are barred by the doctrine of res judicata and dismissal is appropriate.

VI. CONCLUSION

For the reasons discussed above, it is recommended that Defendant's Motion to Dismiss (Document # 45) be granted and this case be dismissed in its entirety.[6]

s/Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge

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respect to Plaintiff's retaliation claim.
6 **Subsequent to the filing of the present Motion to Dismiss, Plaintiff filed a Motion to Disqualify (Document # 50) Alicia Thompson, Henrietta Golding, and McNair Law Firm from representing Defendant in this matter because they "will be subject to deposition, document discovery, and testimony at trial because they are uniquely situated to have first-hand knowledge of matter in litigation and are uniquely in possession of relevant and admissible documents which they are also uniquely situated to be able to authenticate." Pl. Motion p. 1. Because dismissal of Plaintiff's claims is appropriate at this stage in the litigation, i.e., before discovery and trial, Plaintiff's motion will be moot.**

January 23, 2017
Florence, South Carolina

The parties are directed to the important information on the following page.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Ronald Jarmuth ,	)	**Civil Action**
	)	**No.: 4:16-**
Plaintiff,	)	**cv-00242-**
	)	**RBH**
	)	
	)	
v.	)	**ORDER**
	)	
The International Club	)	
Homeowners	)	
Association, Inc.,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the Court on Plaintiff's [ECF No. 78] Rule 60(b)(6) motion for reconsideration of the Court's Order adopting the Magistrate Judge's Report and Recommendation and dismissing this case. While Plaintiff brings the motion under Rule 60(b)(6), the motion could also be construed as a timely Rule 59(e) motion to alter or amend a judgment. Accordingly, the Court will consider the motion under both Rule 59(e) and Rule 60(b)(6). For the reasons stated below, the Court denies Plaintiff's motion for reconsideration.[1]

1 **Under Local Civil Rule 7.08 (D.S.C.), "hearings on motions may be ordered by the**

On March 27, 2017, the Court entered an Order adopting the Report and Recommendation of the Magistrate Judge and dismissed this case with prejudice on the basis of res judicata or claim preclusion. Specifically, the Court found Plaintiff's FHA retaliation claim was barred by the doctrine of res judicata or claim preclusion because Plaintiff's claim - that the Defendant International Club Homeowners Association ("ICHOA") was retaliating against him in its efforts to obtain attorney's fees and Architectural Review Board fines - was available to him during the prior state court action. To the extent Plaintiff attempted to claim FHA retaliation based on alleged harassment by Cartman and Fletcher, the Court held that Cartman and Fletcher were not parties to this case and there were insufficient facts to state a plausible claim that Cartman and Fletcher were acting as agents or on behalf of the ICHOA when they allegedly damaged Plaintiff's irrigation system, threw hypodermic needles on his lawn, and threw eggs at Plaintiff's car. The Court also found that Plaintiff's claim for declaratory relief was barred by res judicata or claim preclusion because the claims were available to Plaintiff in the prior state court litigation.

Court in its discretion. Unless so ordered, motions may be determined without a hearing." Upon review of the briefs, the Court finds that a hearing is not necessary.

Motions to alter or amend under Rule 59 are not to be made lightly: "[R]econsideration of a previous order is an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 59.30[4] (3d ed.). The Fourth Circuit has held such a motion should be granted for only three reasons: (1) to follow an intervening change in controlling law; (2) on account of new evidence; or (3) "to correct a clear error of law or prevent manifest injustice." *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993) (emphasis added). Rule 59 motions "may not be used to make arguments that could have been made before the judgment was entered." *Hill v. Braxton*, 277 F.3d 701, 708 (4th Cir. 2002) (emphasis added). Nor are they opportunities to rehash issues already ruled upon because a litigant is displeased with the result. See *Tran v. Tran*, 166 F. Supp. 2d 793, 798 (S.D.N.Y. 2001).

Rule 60(b)(6) is a catchall provision which allows a court to grant relief from a final judgment where there is "any other reason justifying relief from the operation of the judgment." Fed.R.Civ.P. 60(b)(6). This relief, however, may only be granted in situations involving extraordinary circumstances. *Ackermann v. United States*, 340 U.S. 193, 202 (1950); *Dowell v. State Farm Fire and Cas. Auto Ins. Co.*, 993 F.2d 46, 48 (4th Cir.1993).

"Res judicata prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding." *Brown v. Felsen*, 442 U.S. 127, 131 (1979). Claims are barred "only when three elements are satisfied: 1) the prior judgement was final and on the merits, and rendered by a court of competent jurisdiction in accordance with the requirements of due process; 2) the parties are identical, or in privity, in the two actions; and 3) the claims in the second matter are based upon the same cause of action involved in the earlier proceeding." *Pittston Co. v. United States*, 199 F.3d 694, 704 (4th Cir. 1999). "[T]he appropriate inquiry to determine whether causes of action are identical for claim preclusion purposes is whether the claim presented in the new litigation 'arises out of the same transaction or series of transactions as the claim resolved in the prior judgment.'" *Pittston*, 199 F.3d at 704.

Plaintiff argues that the ICHOA's demand for attorneys' fees and Architectural Review Board fines in the prior state court action constitutes FHA retaliation and that his FHA retaliation claim was unavailable to him in the prior state court action. The state court awarded the ICHOA $5,000.00 in attorneys' fees and Architectural Review Board fines in the amount of $2,326.00. Despite Plaintiff's claims that the demand for attorneys' fees and Architectural Review Board fines constituted

FHA retaliation, the propriety of the award of those fees and fines has been adjudicated by a court of competent jurisdiction and cannot be raised again here. Moreover, the FHA retaliation claim was available in the prior state court action in that Plaintiff claimed in the prior state court action that the request for attorneys' fees and fines was a form of harassment. Plaintiff's claim of FHA retaliation in this case is nothing more than an attempt to collaterally attack the state court's award of attorneys' fees and Architectural Review Board fines. Therefore, Plaintiff's FHA retaliation claim is barred by the doctrine of res judicata.

Plaintiff alleges that on September 30, 2010, Cartman (a member of the ICHOA Architectural Review Board and one of Plaintiff's neighbors) drove a stake into Plaintiff's lawn irrigation system. Plaintiff also alleges that on November 16, 2010, Cartman threw a number of used hypodermic needles onto Plaintiff's yard. Because these alleged incidents occurred more than five years before this action was filed, Plaintiff's claim of FHA retaliation based on Cartman's alleged actions is barred by statute of limitations. See 42 U.S.C. § 3613. This claim is also barred by the doctrine of res judicata because the claim was available to Plaintiff during the pendency of the state court action. Finally, Plaintiff's amended complaint fails to state a plausible claim that Cartman, who is also Plaintiff's neighbor, was acting as an agent or on behalf of the ICHOA when he allegedly threw used

hypodermic needles onto Plaintiff's yard or drove a stake into Plaintiff's lawn irrigation system.

Plaintiff also alleges that Fletcher, the ICHOA Board Treasurer and one of Plaintiff's neighbors, drove past Plaintiff's house and threw eggs at Plaintiff's property. The amended complaint states: "On November 13, 2014, Plaintiff's video surveillance cameras caught what Plaintiff believes is William Fletcher, the IHOA Board Treasurer, driving past Plaintiff's driveway and throwing eggs at Plaintiff's vehicle and property. On January 29, 2016, more eggs were thrown at Plaintiff's vehicle and property but this time the individual was apparently aware of the surveillance cameras and hid behind a hedge while throwing." [Amended Complaint, ECF No. 21 at 8].

As to the eggs thrown on January 29, 2016, Plaintiff's Amended Complaint indicates that he does not know the identity of the individual who threw eggs on that date. Accordingly, Plaintiff cannot maintain an FHA retaliation claim against the ICHOA based on that incident.

With respect to the eggs thrown on November 13, 2014, Plaintiff cannot state a plausible FHA retaliation claim as to that incident because too much time has elapsed

between the alleged protected activity (filing a complaint with SCHAC in 2009) and the alleged retaliatory act (throwing eggs in 2014). To state a claim for retaliation under the FHA, Plaintiff must establish that (1) he was engaged in protected activity; (2) ICHOA was aware of that activity; (3) ICHOA took adverse action against him; and (4) a causal connection exists between the protected activity and the asserted adverse action. *Hall v. Greystar Mgmt. Servs., L.P.*, 637 Fed. Appx. 93, 98 (4th Cir. 2016) (unpublished). The five-year gap between the alleged protected activity and retaliatory act is far too remote to establish a causal connection. See *Hooven-Lewis v. Caldera*, 249 F.3d 259, 278 (4th Cir. 2001) ("A six month lag is sufficient to negate any inference of causation."); *Pepper v. Precision Valve Corp.*, 526 F. App'x 335, 337 (4th Cir. 2013) (finding ten-month lapse insufficient to establish causation) (unpublished); *Richmond v. ONEOK, Inc.*, 120 F.3d 205, 209 (10th Cir. 1997) (three—month period insufficient); *Hughes v. Derwinski*, 967 F.2d 1168, 1174-1175 (7th Cir. 1992) (four—month period insufficient).

Plaintiff's amended complaint also fails to state a plausible claim that Fletcher, who is also Plaintiff's neighbor, threw eggs at Plaintiff's property while acting as an agent or on behalf of the ICHOA.

Plaintiff requests that he be allowed to amend his complaint to add Cartman and

Fletcher as parties to this litigation. However, Plaintiff has already been permitted to amend his complaint during this case; and, as discussed above, any further amendment to add Cartman and Fletcher as parties would be futile. Plaintiff's request to amend at this late date, after the case has been dismissed with prejudice, is denied.

Finally, with respect to Plaintiff's claim for declaratory relief, as indicated in this Court's Order dismissing this case, each of Plaintiff's requests for declaratory relief in this case arise out of the same transaction or series of transactions as the prior state court action. See [Report and Recommendation, ECF No. 68 at 11-14]. Each request for declaratory relief was addressed in some form or fashion in the state court final order. It is evident from Plaintiff's voluminous filings that he is simply attempting to collaterally attack an adverse state court judgment.

In conclusion, Plaintiff's claims in this case are barred by the doctrine of res judicata or claim preclusion. Plaintiff has failed to establish an adequate basis for relief under either Rule 59(e) or 60(b)(6). Accordingly, Plaintiff's [ECF No. 78] motion for reconsideration is DENIED.

IT IS SO ORDERED.

March 12, 2018
Florence, South Carolina

s/ R. Bryan Harwell
R. Bryan Harwell
United States
District Judge

STATE OF SOUTH CAROLINA	**) IN THE COURT) OF COMMON) PLEAS FIFTEENTH**
COUNTY OF HORRY	**) JUDICIAL CIRCUIT) CIVIL ACTION) No. 2009-CP-26-3596**
Ronald Jarmuth,	**)**
Plaintiff,	**)**
VS .	**)**
The International Club Homeowners Association, Inc. and Rosemary Toth and , Diehl & Assoc. Inc	**) FINAL ORDER) DISMISSING) PLAINTIFF'S) CLAIMS) (AND AWARDING) JUDGMENT) AGAINST THE K.A.) PLAINTIFF) IN THE ANIOUNT OF) $7,326.00 AND) GRANTING) INJUNCTIVE RELIEF**
Defendants	

(Page 2)

FILNDINGS OF FACT

26. Since 2006, the Plaintiff submitted applications to the ARB for a variety of matters. He sought approval, and obtained approval, for planting a palm bed, installing an

outside bench, and a flower bed. In July 2009, Plaintiff applied for the installation of a swing set to be placed on the side of his house. The ARB denied this request in August 2009 for the application proposed that the swing set to be installed on the side of Plaintiffs home and visible to the street. As a result of this denial, Plaintiff filed a discrimination claim with the South Carolina Human Affairs Commission contending that the Defendant HOA discriminated against him due to his foster children. This discrimination claim was dismissed by the South Carolina Human Affairs Commission when it issued its determination of no reasonable cause on December 11, 2009.

(Page 10)

30. The Defendant HOA has paid $5,000.00 to the McNair Law Firm in attorneys' fees to seek Plaintiffs compliance with the Declaration.

CONCLUSIONS OF LAW

(Page 46)

24. Plaintiff is indebted to the Defendant HOA in the amount of $7,326.00.

Due to the Plaintiff's contesting the enforceability of the Declaration, including the Bylaws, the Defendant HOA paid $5,000.00 to the McNair Law Firm. Declaration Section 13.4, specifically provides that should the Defendant HOA employ legal counsel to enforce the Declaration, Bylaws or its Rules and Regulations, the owner shall pay the attorneys fees incurred by the Defendant HOA.

"The general rule is that attorney's fees are not recoverable unless authorized by contract or statute." Seabrook Island Property Owners Assoc. v. Berger, 365 S.C. 234, 238, 616 S.E.2d 431, 434 (Ct.App. 2005). Where there is a contract, the award of attorney's fees is left to the discretion of the trial judge. Menne v. Keowee Key Prop. Owners' Ass'n, 368 S.C. 557, 569, 629 S.E.2d 690, 696-97, (2006). A provision contained in restrictive covenants allowing for the recovery of attorney's fees is enforceable. Queen's Grant II Horizontal Property Regime, 368 S.C. at 375, 628 S.E.2d at 920.

"There are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained." Menne, 368 S.C. at 569, 629 S.E.2d at 697.

Clearly, the $5,000.00 that the Defendant HOA seeks to recovery from the Plaintiff is reasonable. This action has lasted over 3 years and much discovery has taken place. The trial lasted 3 full days with court starting each day at 9:00 a.m. and ending each day between 5:00 to 6:00 p.m. The issues raised by the Plaintiff were numerous. I conclude that Plaintiff should pay the Defendant HOA the sum of $5,000.00.

As to the ARB fines, as of August 8, 2012, the Plaintiff owes $2,326.00 to the Defendant

HOA. As stated hereinabove, the ARB has the authority to assess these fines. Therefore the Defendant HOA shall have judgment against the Plaintiff in the amount of $7,326.00.

...

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ORDERED, ADJUDGED, and DECREED:

(a) All Plaintiffs claims against the Defendants are dismissed with prejudice;

...

(c) The Defendant HOA shall have judgment against the Plaintiff in the amount of $7,326.00.

IT IS SO ORDERED

/s/ Ralph Stroman
The Honorable Ralph P. Stroman
Horry County Special Referee

Conway, South Carolina
Dated: September 10, 2012

STATE OF SOUTH CAROLINA	**) IN THE COURT) OF COMMON) PLEAS FIFTEENTH**
COUNTY OF HORRY	**) JUDICIAL CIRCUIT) CIVIL ACTION) No. 2009-CP-26-3596**
Ronald Jarmuth, Plaintiff, VS . The International Club Homeowners Association, Inc. and Rosemary Toth and , Diehl & Assoc. Inc Defendants	**)) DEFENDANTS' THE) INTERNATIONAL) CLUB HOME -) OWNERS ASSOC) INC'S AND) ROSEMARY TOTH'S) AMENDED ANSWER) TO COMPLAINT AND) FIRST AMENDMENT) TO COMPLAINT) AND COUNTERCLAIM)))**

(Page 1)

SEVENTEENTH DEFENSE AND SECOND COUNTERCLAIM

49. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, and Sixteenth Defenses are incorporated herein and made a part and

parcel hereof.

50. The Defendant HOA is a non-profit corporation organized under and existing by virtue of the laws of the State of South Carolina.

51. Upon information and belief, the Plaintiff, Ronald Jarmuth, is a citizen and resident of the State of South Carolina.

52. Upon information and belief, the Plaintiff, Ronald Jarmuth, owns Lot 12 of the Pebble Creek at the International Club ("Property").

53. The Property is located in Horry County, South Carolina, and this Court has jurisdiction over both the Property and the parties to this action.

54. As the owner of the Property, the Plaintiff is subject to the Governing Documents.

55. The provisions of the Governing Documents provide that the Defendant HOA governs the International Club subdivision.

56. Section 7.2 of the Declaration provides:

> **"Prior Review of All Plans. No building, structure, fence, sidewalk, wall, drive, exterior lighting, painting, landscaping, or other improvement ...shall be commenced, erected, or maintained upon any portion of the**

Subdivision, nor shall any exterior addition or change be made until the plans and specifications ...showing the grading, filling nature, kind, size, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to the harmony of the exterior design and location in relation to the surrounding structures and topography by the Developer. ..Provided however, that upon Developer's selling of not less than 3,650 of the Units in the Subdivision, this right of approval shall be transferred to an Architectural Review Board of the Association."

(page 8)

57. The Architectural Review Board for the Defendant HOA holds the architectural review rights pursuant to the Governing Documents. All Owners within the International Club apply to the Architectural Review Board for approval of plans and specifications for improvements constructed within the International Club.

58. The Defendant HOA enacted Architectural Guidelines in 2005 and has amended them from time to time.

59. Upon information and belief, the Plaintiff applied to the Architectural Review Board for approval of improvements on several occasions, and the Plaintiff's plans and specifications were approved.

60. Upon information and belief, the Plaintiff constructed a brick wall on the Property without obtaining the approval of the Defendant HOA or the Architectural Review Board.

61. The Defendant HOA, through its Architectural Review Board, sent notice to the Plaintiff that he violated the Governing Documents and the Architectural Guidelines by constructing improvements on the Property without approval from the Architectural Review Board and that the violation subjected him to fines.

62. Thereafter, the Plaintiff applied to the Architectural Review Board for approval of the brick wall and a fence, as well as a flower bed and edging.

63. Pursuant to Section 7.4 of the Declaration:

> **"Fences. No fences whatsoever shall be erected or allowed to remain in the Subdivision except privacy patio fences or walls approved by the Developer and the Architectural Review Board in their sole discretion may require ...No fences shall be permitted which obstruct the view of any stream or other body of water, golf courses or recreational amenity when viewed from inside any other Unit, or which interfere with the playing of golf on any nearby golf course or with the use of any Recreational**

Amenity."

(Page 9)

64. The Architectural Review Board approved the Plaintiff s request for the flower bed and edging and denied the Plaintiff s request to construct the fence and wall, because the proposed construction violated the Governing Documents and the Architectural Guidelines and did not comply with the general scheme of development for the International Club.

65. The Architectural Review Board also demanded that the brick wall be removed from the Property within fifteen (15) days or he would be subject to monthly fines in the amount of One Hundred and 00/100 ($100.00) Dollars.

66. Upon information and belief, the Plaintiff paid a fine for constructing the brick wall in the amount of Fifty and 00/100 ($50.00) Dollars imposed by the Defendant HOA under protest several weeks later and threatened to sue the Defendant HOA.

67. Although the Plaintiff s application for the fence and the brick wall were denied and the Defendant HOA directed the Plaintiff to remove the brick wall, the Plaintiff failed and refused to remove the brick wall constructed.

68. The brick wall is a continuing violation of the Governing Documents and the Defendant HOA's Architectural Guidelines, and the

Plaintiff has been fined accordingly.

69. Moreover, the Plaintiff has failed and refused to acknowledge the validity of the Governing Documents, the Architectural Guidelines, and the authority of the Defendant HOA and the Architectural Review Board to enforce the same.

70. Pursuant to the provisions of the Governing Documents, Plaintiff is responsible for paying assessments, fines, late fees, interest and other related charges to the Defendant HOA.

71. Provisions of the Governing Documents further provide that if the Plaintiff does not pay the assessments, fines or other related charges, Plaintiff is responsible for all costs of collection, including reasonable attorney's fees, that are incurred by the Defendant HOA.

(Page 10)

72. The Plaintiff, as owner of the Property, was and is assessed regular assessments, fines, late fees, interest and other related charges. As of August 26, 2011, the Plaintiff owes One Thousand One Hundred Thirty Two and 00/100 ($1,132.00) Dollars plus the costs of collections for his continuing violation of the brick wall, which the Plaintiff has not paid despite due demand being made upon him to pay said assessments and fines.

73. The Plaintiff, as current owner of the

Property, continues to incur fines, fees and additional related charges throughout the pendency of this case during his continued ownership of the Property.

74. As a direct and proximate result of the Defendant HOA pursuing collection of these fees and costs, Defendant HOA has and will continue to incur attorney's fees and costs.

75. Plaintiff breached the terms of the Governing Documents and the Architectural Guidelines, and therefore, the Defendant HOA is entitled to a judgment in an amount to be determined by this Court, together with costs and attorney's fees incurred in bringing this action as well as an order requiring the Plaintiff to comply with the Governing Documents and the Architectural Guidelines and to remove the brick wall from the Property.

(Page 11)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Ronald Jarmuth	)	**Civil Action No.**
	)	4:16-CV-242-RBH-TER
	)	
Plaintiff	)	
	)	**AMENDED**
and	)	**COMPLAINT**
	)	
Alan Wilson, Attorney General of South Carolina	)	
	)	
Third Party Plaintiff	)	
	)	
V.	)	
	)	
International Club Homeowners Association, Inc.	)	
	)	
Defendant	)	
_____	)	

If allowed by statute, do you wish to have a trial by jury NO

I. PREVIOUS LAWSUITS

A. Have you begun other lawsuits in state or federal court dealing with the <u>same facts</u> involved in this action.

No. <u>No prior litigation was filed about retaliation for filing a housing discrimination claim</u>. However, litigation in the Horry County Court of Common Pleas exists concerning the same defendant but other causes of action which arose and terminated prior to the retaliation.

B. If your answer to A is Yes, describe the lawsuit in the space below.

1. Parties in the previous lawsuit:
Plaintiff: Ronald Jarmuth
Defendants: International Club Homeowners Association, Inc. (IHOA); Rosemary Toth; Henrietta Golding.

2. Court: Horry County Court of Common Pleas

3. Docket No: 2009-CP26-3596

4. Name of Judge to whom case was assigned:
Ralph P. Stroman (Special Referee)

5. Status of Case: Petition for Writ of Certiorari to Supreme Court Denied.
Remitter issued by Court of Appeals.
Pending SCRAP Rule 60 (b)(2) and (3) Motion to Vacate Because of Fraud, Misrepresentation, or other Misconduct of Defendant.
Pending Motion in Contempt of Defendant because of

Perjury, Misrepresentation, and Fabricated Evidence.

6. Date Lawsuit was filed: April 7, 2009.

7. Date of Disposition: January 21, 2016.

C. Do you have any other lawsuit pending in the federal court in South Carolina? No.

II. PARTIES.

A. Name of Plaintiff: Ronald Jarmuth
Address: 249 Pickering Drive; Murrells Inlet, SC 29576

B. Name of Third Party Plaintiff: Hon. Alan Wilson, S.C. Attorney General
Address: SC Attorney General ; 1000 Assembly Street; Room 519; Columbia, SC 29201

C. Name of Defendant: International Club Homeowners Association, Inc. ("IHOA")
Address: c/o Registered Agent; K.A. DIEHL & ASSOC; 1174 HWY 17 BYPASS S; MURRELLS INLET SC 29576

III. VENUE

Venue is proper in this District pursuant to 28 USC 1391 (b) and in this Division pursuant to Local Rule 3.01 since both Defendants do business in this District.

IV. STATEMENT OF CLAIM:

1. This action is brought by the Plaintiff Ronald Jarmuth:

a. To enjoin and remedy retaliation against him by Defendant International Club Homeowners Association, Inc. ("IHOA") for filing a housing discrimination claim on August 27, 2009 Exhibit A with the South Carolina Human Affairs Commission, as provided for under 42 USC 3611, 3613 and 3617; and

b. to obtain Declaratory Judgments as to the mutual rights and obligations between Plaintiff and Defendant pursuant to 28 USC 1343(a)(3) and SC Code Annotated 15-53-30. [1]

2. This Court has Subject Matter jurisdiction pursuant to 28 USC 1331, 28 USC 1343, and supplemental jurisdiction under 28 USC 1367 to address any related issue not clearly a federal right or privilege. Additional inherent jurisdiction if present pursuant to 42 U.S. Code § 3617 which over-rides the judicial doctrine of prudence as to the retaliation issue.

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1 **"Any person interested under a deed, ... written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the instrument, statute, ... and obtain a declaration of rights, status or other legal relations thereunder."**

The federal declaratory judgment issue likewise over-rides the doctrine of prudence given an actual dispute exists personally involving the Plaintiff and the IHOA Defendant.

3. Alan Wilson, the Attorney General of South Carolina, is present as a third party plaintiff because he is a necessary and indispensable party. As a Third Party Plaintiff he has standing to Brief on the Declaratory Judgment issues which relate to questions of the applicability of the South Carolina Non-Profit Corporation Act to the rights and obligations of Plaintiff and the IHOA Defendant to each other and to the effect or lack of effect of certain covenants on Plaintiff's property and on the effect if any of the covenants on the mutual rights and obligations of the Plaintiff and the IHOA Defendant.

The Attorney General is also responsible to assure the uniform and regular enforcement of those statutes which relate to the recording of deeds to property and of covenants which affect rights to property. The meaning and applicability of the South Carolina Non-Profit Corporation Act ("The Act"), SC Code 33-31 et seq, is a real issue in controversy between Plaintiff and the IHOA Defendant; the Attorney General has issued several advisory opinions relating The Act to HOAs which if translated into a Declaratory Judgment will resolve all the matters between the Plaintiff and the IHOA - because the Attorney General's published

opinions [2] hold that correct application of The Act means that Plaintiff can not be forced to join or remain a member of the IHOA, mooting all of the IHOA's financial demands on Plaintiff and any control the IHOA and it's Bylaws and pseudo-governmental processes (to which Plaintiff objects) has on him.

The relief that Plaintiff seeks relating to this is for the United States District Court for the South Carolina District as a "pseudo state court" acting under state law as well as the Federal Declaratory Judgment Act to grant Declaratory Judgments. Plaintiff seeks that the Declaratory Judgment questions be sent to the South Carolina Supreme Court as Certified Questions of Law from this court.

Retaliation for Filing a Housing Discrimination Claim

4. The IHOA Defendant is demanding that Plaintiff pay the IHOA Defendant the Defendant's cost in obtaining legal assistance to respond to an investigation by the South Carolina Human Affairs Commission regarding a claim by Plaintiff that the IHOA Defendant had discriminated against Plaintiff on the basis of age or family status by refusing to allow Plaintiff to erect a swing set for Plaintiff's children.

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2 SC Attorney General Opinions February 3, 2014 Exhibit B and June 26, 2013 Exhibit C.

a. On August 27, 2009 Plaintiff filed a housing discrimination claim Exhibit A with the SC Human Affairs Commission ("The Commission"). Plaintiff had requested that the IHOA's Architectural Review Board ("ARB") approve a swing set for Plaintiff's children in a side yard of Plaintiff's residence. Mr. Jay Cartman, a member of the IHOA's ARB" and the – neighbor adjacent to where the swing set was to be built, stated that Cartman would assure that the ARB would never approve the swing set because Cartman "hates kids and their noise".[3] The ARB, with Cartman voting, disapproved the swing set. [4]

b. On August 31, 2009 The Commission initiated it's investigation of the matter. It ultimately took no action on the matter Exhibit A.

c. However, after Plaintiff filed the discrimination claim which specifically naming Cartman acting as an IHOA ARB official and which quoted him, Cartman began harassing Plaintiff. On September 30, 2010 Cartman was photographed Exhibit D driving a stake into Plaintiff's lawn irrigation system. On November 16, 2010 when Plaintiff saw Cartman throw a number of used hypodermic needles [5]

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3 **Cartman never denied saying this.**
4 **The IHOA Covenants and architectural guidelines explicitly permit swing sets.**
5 **Plaintiff recognized the needles as those used by Cartman's wife, Yvonne, for insulin injections.**

onto Plaintiff's yard where Plaintiff's children played, Plaintiff took photos Exhibit E of the needles and called the Horry County Police to dispose of same and to make an official police report. The incident was repeated several times and the police were again called.

d. Retaliation -- Attempts by IHOA Defendant to collect the IHOA's housing discrimination investigation costs from Plaintiff, as well as other phony costs which are really retaliation.

(1) On August 8, 2012 the IHOA Defendant produced two checks totaling $5000 (one dated October 15, 2009 Exhibit F and the other dated June 9, 2010 Exhibit G) which the IHOA Defendant claimed was it's attorney fees related to Plaintiff's April 7, 2009 Complaint Exhibit H against the IHOA in the Horry County Court of Common Pleas to undo an alleged Covenant Use Restriction violation. The IHOA President William Freiboth testified as much under oath Exhibit P. The IHOA Defendant demanded Plaintiff pay that $5,000. Other than the check and Freiboth's testimony, no supporting evidence was provided.[6] The IHOA Defendant has not collected that money but at this moment is still trying to collect it – the conduct is on-going.

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6 **The IHOA Defendant's General Ledgers demanded by Plaintiff were never produced.**

(2) In August, 2014 Plaintiff obtained the IHOA Defendant's 2009 and 2010 General Ledgers and the minutes of the IHOA Board meetings for 2009 through 2011. Both checks Exhibit F and Exhibit G had been made out to "McNair Law Firm".

(3) Per the minutes of the November 10, 2010 IHOA Board meeting Exhibit I, page 4, "Lawsuits", three new lawsuits were filed against the IHOA in 2010, in addition to Plaintiff's 2009 Complaint and another lawsuit in 2009 by the Villas Condominium Association.

(4) The IHOA 2009 General Ledger Exhibit J revealed that the IHOA's October 15, 2009 check Exhibit F which the IHOA's President swore was related to the 2009 civil action was actually the IHOA's deductible to McNair Law to handle the SC Human Affairs Commission investigation. This is proof positive that the IHOA Defendant is retaliating against Plaintiff to force him to pay the IHOA's cost of dealing with a discrimination investigation. This is explicitly prohibited by federal law and gives rise to Plaintiff's retaliation claim in this court. The IHOA's insurance policy from Travelers C&S Co. of America, policy no. 104460344 Exhibit L covered all the IHOA's costs of litigation with Plaintiff in the Horry County Court of Common Pleas without deductible, as is further evidenced by the IHOA's 2009 Exhibit J and 2010 General Ledgers Exhibit K, "Legal Expenses".

(5) Per the IHOA's 2010 General Ledger Exhibit K and it's November 10, 2010 board minutes Exhibit I, the second $2500 check was related to one of the (other) three lawsuits filed against the IHOA Defendant in 2010. While the sworn testimony of IHOA President Freiboth Exhibit P denominated it as enforcement of covenants through the 2009 lawsuit, it was in fact an attempt to extort even more money from Plaintiff in retaliation for the housing discrimination claim.

(6) On August 8, 2012 the IHOA Defendant also demanded that Plaintiff pay them an additional $2356 which William Freiboth Exhibit P, the IHOA President, swore was the fine that the IHOA Board had assessed at it's November 20, 2010 meeting Exhibit I where he swore the IHOA Board had made a finding that Plaintiff had violated the Covenant Use Restrictions. In August, 2015 the minutes of that meeting became available [7] from the IHOA's website (together with the General Ledgers). The November 10, 2012 IHOA Board Minutes Exhibit I showed that Freiboth lied under oath and that the IHOA Board never made any finding that Plaintiff had violated the covenants nor did the IHOA Board assess a fine. Through this date the IHOA never actually sent Plaintiff a notice or letter that the IHOA Board had made a covenant violation finding and assessed a fine. The $2356, mentioned for the first time on

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7 It had been demanded in discovery but never produced.

August 8, 2012 is nothing more that retaliation against Plaintiff for filing the housing discrimination claim.

(7) On November 13, 2014 Plaintiff's video surveillance cameras caught what Plaintiff believes is William Fletcher, the IHOA Board Treasurer, driving past Plaintiff's driveway and throwing eggs at Plaintiff's vehicles and property Exhibit M. On January 29, 2016 Exhibit N more eggs were thrown at Plaintiff's vehicles and property, but this time the individual was apparently aware of the surveillance cameras and hid behind a hedge while throwing.

(8) Both the money demands and the damage to Plaintiff's property constitute retaliation prohibited by 42 U.S. Code § 3617, 42 U.S. Code § 3631 which defines it as a federal crime, and 42 U.S. Code § 3613 which provides this Plaintiff a Civil Cause of Action for injunctive and other relief .

(9) Plaintiff seeks preliminary and permanent injunctive relief in the matter of retaliation. Plaintiff seeks to enjoin the IHOA Defendant from collecting the $7356 it seeks from Plaintiff which is actually retaliation; and any other remedies and penalties, including punitive damages as deemed appropriate by this Court. In addition, if the IHOA Defendant is successful in collecting any of that $7356 before this Court acts to prevent it, Plaintiff seeks recovery of that money as direct damages.

e. Likelihood of success.

(1). Plaintiff is likely to succeed on the merits against the IHOA Defendant, because the Defendant IHOA's 2009 General Ledger Exhibit J, Legal Expenses, relates that the first $2500 was spent responding to the housing discrimination investigation; because the Defendant IHOA's 2010 General Ledger Exhibit K relates that the second $2500 was not spent in relation to any case involving both Plaintiff and Defendant – despite Defendant's claim to the contrary; and because the Defendant's May 5, 2010 Board of Directors Minutes Exhibit O relate that Section 13.4 of the IHOA's Bylaws must and would be followed and the Defendant IHOA's November 10, 2010 Exhibit I Board Minutes are silent as to Plaintiff – don't record any imposition of fines.

(2). "Irreparable harm in the absence of preliminary relief," Plaintiff asserts that the "irreparable injury" prong does not apply in this instance. The federal enabling statute 42 U.S. Code § 3613 which provides the authority for injunctive relief does not state a requirement that a Plaintiff show the possibility of irreparable harm.

(3) The balance of equities tips in Plaintiff's favor as to the granting of injunctive relief. It is the public policy to encourage persons to report instances of housing discrimination. It is against the public policy for the target of a housing discrimination claim to retaliate in any way against a person

making such a claim, whether or not the claim is ultimately sustained. The Defendant will suffer no harm by being denied being able to collect said sums of money, temporarily or permanently, since the Defendant's budget does not depend on said money. The non-monetary retaliation, attempted or successful damage to Plaintiff's vehicles or property, is in itself criminal and no person acting in concert with Defendants can assert a lawful right to such conduct.

(4) An injunction is in the public interest. The conduct to be enjoined, both the money and non-monetary aspects, are criminal as defined by the above stated federal statutes.

Preliminary Injunction

5. Plaintiff seeks a Preliminary Injunction as stated supra:

a. enjoining the IHOA Defendant and any person acting in concert with it from harassing Plaintiff and from taking any further action to collect money (no matter how labelled) which is in fact retaliation for filing a housing discrimination claim; [8] and

b. enjoining the IHOA Defendant from any act or demand towards Plaintiff predicated upon Plaintiff being a member of the IHOA, until such time as a Declaratory Judgment is

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8 **Such conduct being in clear violation of 42 USC 3617.**

rendered which holds that the South Carolina Non-Profit Corporation Act, SC Code Annotated 33-31-601(b) (Admission) [9**] and 33-31-620 (Resignation) [**10**] does not apply to the IHOA Defendant which was chartered pursuant to that Act. Plaintiff reminds this Court that the S.C. Attorney General has issued two advisory opinions, cited supra, which hold that these two provisions do in fact apply to the IHOA Defendant and thus this Plaintiff is likely to prevail on this matter. During the pendency of this matter, until a Declaratory Judgment is obtained as to the applicability of SC Code 33-31-601 and 33-31-620 to this Plaintiff and this IHOA Defendant, Plaintiff is willing as a condition of this injunctive relief to pay what would have been monthly assessments to the IHOA Defendant into the Court or even into the IHOA Defendant's attorney fiduciary account acting for this Court.**

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9 **"No person may be admitted as a member without his consent."**

10 **"A member may resign at any time."**

IV. RELIEF

1. Temporary and Permanent Injunctive relief to prevent the IHOA Defendant and any other acting together with it from

a. Attempting to collect funds which Plaintiff asserts are actually retaliation for filing a Housing Discrimination Claim;

b. Exercising any dominion over Plaintiff – enjoining the Defendant IHOA from attempting to enforce any obligation it asserts Plaintiff owes the IHOA Defendant.

2. Declaratory Judgments as to the matters cited supra which define the mutual rights and obligations between Plaintiff and the IHOA Defendant.

3. Recovery of any money (as direct damages) which Plaintiff is forced to pay Defendant prior to this Court making a determination that said money was demanded in fact as retaliation for filing a housing discrimination claim.

4. Punitive damages relating to the IHOA Defendant retaliating for filing a housing discrimination claim in an amount to be determined by the Court, which Plaintiff suggests should be a multiplier of the amounts the Defendant IHOA has fraudulently demanded.

5. Such other relief as the Court deems fit and proper.

I declare under penalty of perjury that the forgoing is true and correct.

Signed this 12th day of February, 2016

/s/ Ronald Jarmuth

Signature of Party Responding

EXHIBITS

August 25, 2009

HOUSING DISCRIMINATION COMPLAINT

CASE NUMBER: DAF-7

1. Complainants

Ronald Jarmuth 249 Pickering Drive; Murrells Inlet, SC 29576

2. Other Aggrieved Persons

Angela Jarmuth, Wife; 249 Pickering Drive Murrells Inlet, SC 29576

Briona Spraker, Daughter; 249 Pickering Drive Murrells Inlet, SC 29576

Anne Spraker, Daughter; 249 Pickering Drive Murrells Inlet, SC 29576

Kyrstin Spraker, Daughter; 249 Pickering Drive Murrells Inlet, SC 29576

3. The following is alleged to have occurred or is about to occur: Discriminatory terms, conditions, privileges, or services and facilities.

4. The alleged violation occurred because of: Familial status.

5. Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):

249 Pickering Drive; Murrells Inlet, SC 29576

6. Respondent(s)

Jay Cartman, ARB Member; International Club Homeowners Association, Inc.; c/o KA Diehl & Associates, Inc.; 11740 Hwy 17 Bypass MWTClls Inlet, SC 29576

John Bianchi, Chairman; ARB, International Club Homeowners Association, Inc. c/o KA Diehl & Associates, Inc.; 11740 Hwy 17 Bypass MWTClls Inlet, SC 29576

7. The following is a brief and concise statement of the facts regarding the alleaed violation:

I have children under the age of 18; therefore, I belong to a class of persons whom that act protects from discrimination. I requested approval of a child's swing set to be erected on the right side of my house. On August 5, 2009, the Architectural Review Board denied my request, stating ·The installation of a swing set on the side of a home which is visible to the street and infringes on other homeowner's enjoyment of their property is prohibited." I contend that the reason given is pretextual in that other residents have objects erected in their yards that arc visible to the street. I believe that my neighbor and Board member, Jay Cartman., acted inhis capacity as a Board member and used his influence to sway the Board to reject my request because I believe that he does not want children near his home. I

therefore believe that I am being discriminated against on the basis of familial status, in violation of the Fair Housing Act.

8. The most recent date on which the alleged discrimination occurred: August 5, 2009.

9. Types of Federal Funds Identified: None.

10. The acts alleged in this complaint, if proven, may constitute a violation of the following:

Section 804b or f of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

Please sign and date this form:

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct

/s/ Ronald Jarmuth August 26, 2009
Ronald Jarmuth

N 0 T E : HUD WU.,L FURNISH A COPY OF THIS COMPLAINT TO THE PERSON OR ORGANIZATION AGAINST WHOM IT IS FILED.

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY
15TH JUDICIAL CIRCUIT

Ronald Jarmuth	**Civil Action**
Plaintiff	**2009-CP26-3596**
v.	**Plaintiff's Answer to**
International Club Owners Assoc Inc	**Counter-Claim and**
Defendant	**Counter-Claim By Plaintiff**

...

4. C-Dcf denies and rejects the allegation ... that the Defendant HOA governs the International Club subdivision asserting instead that the Murrells Inlet Golf Plantation Association, Inc (MIGPA) is the HOA which properly governs the PUD per the legally effective covenants. ...

5. C-Def denies the allegation of paragraph 28 that "Section 7.2 of the Declaration provides for anything, since said Section was "waived" by the First Amendment to the Covenants ... .

6. C-Def denies and rejects the allegations of paragraph 29, since those allegations depend on the legally non-existent Section 7.2 of the Covenants.

...

9. C-Def denies the allegations ... that C-Def

"constructed a brick wall on the Property

without obtaining the approval of the Defendant HOA or the Architectural Board"

C-Def asserts that there is no "brick wall" upon the property and that the lawn edging was explicitly applied for and approved as "red brick edger's for both (the area upon which a fence would ultimately be erected, which did not happen, and in the flower bed, which was built. C-Def asserts that the landscape drawing overlaying a survey of the property, which was submitted as required, depicted a line of "Brick Edging" running from the curb to C- Det's rear property line. Said Brick-Edging was approved by C-Pl's ARB thus C-Pl is complaining about the erection of a line of Brick Edging which C-Pl approved and calling it a "Fence" because the "Fence" was not approved - disregarding that neither a wall nor a fence was ever built.

...

20. As to the allegations of paragraph 44, C-Def denies the capacity of C-Pl HOA to exercise any right granted by the Covenants.

...

COUNTER - CLAIM BY PLAINTIFF

33. Plaintiff asserts a compulsorily counter - claim as required ...

34. Through the service on April 13, 2009 of Plaintiff s Complaint ... Defendants have been on actual notice of the deletion of those provisions of the Covenants upon which

Defendants depend for the filing of their Counter - Complaint. Since at least 2006 the Defendants have posted that First Amendment to the Covenants on it's web-site and have referred to it on numerous occasions. The knowing assertion of rights through a Counter - Complaint which rights were obviously deleted years prior to the assertion of those rights constitutes a Frivolous Proceeding as defined by the South Carolina Frivolous Civil Proceeding Sanctions Act,...

35. The (HOA) Counter - Complaint was filed to harass the Plaintiff and for other improper purpose, in further violation of the South Carolina Rules of Ethical Practice applicable to Defense Counsel.

/s/ Ronald Jarmuth

FILED: October 23, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1335
(4: 16-cv-00242-RBH)

RONALD JARMUTH,
Plaintiff - Appellant,

v.

THE INTERNATIONAL CLUB HOMEOWNERS ASSOCIATION, INC.,
Defendant - Appellant,

and

STATE OF SOUTH CAROLINA; HORRY COUNTY COURT OF COMMON PLEAS,
Defendants.

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Duncan, Judge Keenan, and Judge Thacker.

For the Court

/s/ Patricia S. Connor. Clerk