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S.C. SUPREME COURT

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Fax Cover:

C. Holmes, M.D.

P O Box 187

Sullivans Island, SC 29482-0187

843.883.3010

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable ALJ Durden

App. Case No. 2024-001706
COA App. Case No. 2023-001552

J.K. Holmes and C.C. Holmes,

Petitioners,

v.

Chas. Cty. Assessor,

Respondent.

REPLY

ADDITIONAL INTERVENING QUESTION PRESENTED

Intervening Question:

V. Whether the lower appellate court lacks jurisdiction and/or abuses discretion by entering the October 22, 2024, decision, copy attached, pending resolution of the petition for a writ of certiorari thereby undercutting appearance of a disinterested court.

FACTS

Significantly and materially, there is intervening change after the petition herein is filed on October 8, 2024. Though jurisdiction is vested in the superior appellate court, the lower appellate court entered unauthorized October 22, 2014, decision denying timely abeyance pending resolution of the petition herein. Specifically, the lower appellate court's denial of abeyance effectively continues the Court of Appeals' pattern and practice of improper procedural default of taxpayers meritorious appeals by right in violation of State Constitutional provisions, *infra*, in violation of Legislative intent and the letter and spirit of S.C. Code § 1-23-610, S.C. Code § 12-60-2530, and others, in violation of the SCACR, and in violation of fundamental fairness. That unauthorized denial lacks jurisdiction and is void/voidable which is hereby requested. Jurisdiction can be raised at any time. Petition for a writ of certiorari is respectfully requested. Moreover, request to vacate/void denial of abeyance in the lower appellate court pending resolution in this Honorable Court is respectfully submitted. Unauthorized lower appellate court substitution of parties with impermissible sua sponte ex parte summary dismissal of taxpayers appeal by right cannot pass Constitutional muster and is capable of repetition, capable of escaping review, incapable of vindication on appeal and undercuts appearance of a disinterested court.

Further, without being disagreeable, there is disagreement with the other side's statement of issues and case. Additional facts pertinent to the matter before this Honorable Court are as follows. Timely objection to the tax collector's assessment was entered. The tax collector reassessed even higher without explanation thereby undercutting reliability of the tax collector's differing appraisals by the same appraiser for the same point in time. The taxpayers appealed to the Board supported by multiple experts including appraiser and professional engineer. Objections include the BAA decision on its face fails to comply with statutory authorization and taxpayer protections in S.C. Code § 12-60-2530. Timely appeal to the Administrative Law Court is denied without adequate explanation for

meaningful review. But for lack of compliance with statutory mandates for taxpayer protections, the outcome should and would be different in the public interest and in favor of the taxpayers. The taxpayers are prejudiced thereby. The Legislature intended to provide and the letter and spirit of the applicable statutes, including S.C. Code § 12-60-2530, provide for taxpayer protections and fundamental fairness in taxpayers appeals by right. The Legislature mandated statutory protections knowing that lack of fundamental fairness breeds unrest. In fact, that is what led to the birth of this great nation. But for lack of statutory compliance, lack of fundamental fairness, and/or denial of substantial Constitutional rights, the outcome should and would be in favor of the taxpayers. In the public interest, overreaching attempts by a single individual to sua sponte ex parte summarily dismiss meritorious taxpayer appeals by right without adequate, if any, factual basis, without compliance with Constitutional and statutory mandates or due process, and without adequate explanation for meaningful review cannot pass State or Federal Constitutional muster.

Out of nowhere, the ministerial clerk of court sent an "Ad Hoc By Clerk" letter without notice, without explanation, and without citation to authority, unreasonably questioning the taxpayers employment and threatening improper procedural default of the taxpayers appeal by right. See Appendix. To the extent the unequal treatment is influenced in whole or in part by discrimination against a protected class, that conduct is against public policy and the taxpayers object. Objecting to ministerial clerk's overreaching attempts in violation of the SCACR to dismiss taxpayers appeals by right, the taxpayers motioned the lower appellate court. The ministerial clerk of court's next power grab is to entice a single individual lower appellate court judge to engineer sua sponte ex parte summary dismissal of the taxpayers objection before the Board, the taxpayers appeal before the ALC, and the taxpayers lower appellate court appeal by right without notice to the adversely affected taxpayers, without opportunity to respond, without adequate explanation, and without citation to authority. Many attorneys, if not the majority, and most members of the general public may be unfamiliar with the SCACR. The record reflects abundant examples of a ministerial clerk taking unfair

advantage of that fact, bending/misrepresenting the rules as a trap for the unwary to evade the merits, failing to comply with the SCACR, changing contact information without notice to adversely affected parties in the middle of appeal without authorization, entering/threatening improper procedural default, failing to forward fee paid motions/petitions to the lower appellate court for interpretation of law, and failing a ministerial clerk's solemn oath and sworn duty to facilitate appeals with even-handedness, transparency, and fundamental fairness as well as multiple examples of what a ministerial clerk could and/or would do and is capable of, when she thinks no one is looking. The taxpayers reserve, preserve, and do not waive any rights, privileges, or protections. Pursuant to S.C. Code § 1-23-380, the taxpayers are owners of undivided interest who are aggrieved and recognized as proper parties below without objection. S.C. Code § 1-23-310(5). The term "party" is defined as each person named or admitted as a party below, as in this case, and as captioned in the proceedings below. To the extent there is ambiguity, the rule of lenity supports the position of the taxpayers. To the extent the tax collector or one of the six (6) or more taxpayer-funded, tax collector attorneys telegraphed direct or indirect ex parte contact without copying the taxpayers or filing motion to dismiss, that conduct is unprofessional and opposing counsel waived any objection in the proceedings below. Each of the taxpayer-funded, tax collector attorneys is requested to forward copies of all contact with the ALC and appellate courts in this matter. Pursuant to Rule 240(j), SCRCF, dismissal by a single individual herein is timely appealed, however, the proper legal standard, *de novo*, is not applied. S.C. Code § 14-8-220. Overworked and underpaid lower appellate court judges may not be neutral decision makers regarding S.C. Code § 14-8-220 and/or its statutorily mandated *de novo* appeal of sua sponte ex parte summary dismissals of taxpayer appeals by right. But for application of the improper legal standard, the outcome should and would be in favor of the taxpayers, not the tax collector. Lack of uniformity in the lower appellate court's interpretation and/or application of S.C. Code § 14-8-220 is capable of repetition, capable of evading review, and incapable of vindication on appeal. To the extent there is ambiguity, the rule of lenity supports appeal by right by the taxpayers. Pursuant to S.C. Code § 14-8-220, ambiguity

regarding the proper legal standard on Rule 240(j), SCACR, appeal in the lower appellate court is a denial of State Constitutional substantial rights:

Art. 1, § 23. Provisions of Constitution mandatory.

The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms. (1970 (56) 2684; 1971 (57) 315.)

Art. I, § 22. No person “shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard ... and he shall have in all such instances *the right to judicial review.*” (Emphasis supplied.)

Art. 1, § 2. Religious freedom; freedom of speech; right of assembly and petition.

The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and *to petition the government or any department, including the matter herein, for a redress of grievances.* (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Art. 1, § 3. Privileges and immunities; due process; equal protection of laws.

The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property, *including taxpayers’ appeal by right*, without due process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Art. 1, § 4. Attainder; ex post facto laws; impairment of contracts; titles; effect of conviction.

No bill of attainder, ex post facto law, *no law impairing the obligation of contracts*, nor law granting any title of nobility or hereditary emolument, shall be passed, and no conviction shall work corruption of blood or forfeiture of estate. (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Art. 1, § 14. Trial by jury; witnesses; defense.

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; *to be confronted with the witnesses* against him; to have compulsory process for obtaining witnesses in his favor, and *to be fully heard* in his defense by himself or by his counsel or by both. (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Art. V, § 8. Election of members of Court of Appeals.

The members of the Court of Appeals shall be elected by a joint public vote of the General Assembly for a term of six years and shall continue in office until their successors shall be elected and qualify. In any contested election, the vote of each member of the General Assembly present and voting shall be recorded. Provided, that for the first election of members of the Court of Appeals, the General Assembly shall by law provide for staggered terms. (1985 Act No. 9.)

Art. V, § 9. Jurisdiction of Court of Appeals; binding effect of Supreme Court decisions.

The Court of Appeals shall have such jurisdiction as the General Assembly shall prescribe by general law. The decisions of the Supreme Court *shall bind the Court of Appeals as precedents.*

(1985 Act No. 9.) (Emphasis supplied.)

Art. V, § 16. Compensation of Justices and judges; practice of law and dual office holding. The Justices of the Supreme Court and the judges of the Court of Appeals and Circuit Court *shall each receive compensation for their services to be fixed by law, which shall not be diminished during the term.* They shall not, while in office, engage in the practice of law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions except in the militia, nor shall they be allowed any fees or perquisites of office. Any such Justice or judge who shall become a candidate for a popularly elected office shall thereby forfeit his judicial office. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.) (Emphasis supplied.)

S.C. Code § 14-8-220

Power of Court and judges to administer oaths and writs; **appeal.** The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** (Emphasis supplied).

S.C. Code § 14-8-80

By statute, the Legislative intent, letter, and spirit of the law *require at least three judges to constitute a quorum of the Court of Appeals for interpretation of the law, to decide appeals, and for disposition of taxpayer appeals by right.* The concurrence of a majority of the judges is necessary to decide appeals and there is *no statutory authority* for a single individual's overreaching sua sponte ex parte summary dismissal of taxpayers' appeal by right herein. S.C. Code § 14-8-80. (Emphasis supplied.)

Accordingly, a writ of certiorari is respectfully requested.

DISCUSSION

As a threshold matter, the six (6) or more taxpayer-funded, tax collector attorneys fail to comply with Rule 242, SCACR. Specifically, Rule 242 provides in pertinent part: “The return SHALL include an argument on each question.” Rule 242(f), SCACR (emphasis supplied). The record reflects there is no argument on each question. Pursuant to Rule 240(e), SCACR, the failure of a party to comply with Rule 242, SCACR, and to timely file a return which includes an argument on each question may be deemed consent by the six or more tax collector attorneys to the writ of certiorari. Accordingly, petition for a writ of certiorari is respectfully requested. In the alternative, in the best interests of tax-paying citizens of this great State, the six (6) or more taxpayer-funded, tax collector attorneys could be given an opportunity to address each question.

Further, pursuant to Rule 220(c), SCACR, the appellate court may affirm the ALC ruling regarding the ALC’s determination of the proper parties to the taxpayers appeal by right “upon any ground(s)” including based on limited scope of review herein. Rule 220(c), SCACR. The review must be confined to the record. S.C. Code § 1-23-380(5). The term “party” is defined as each person named or admitted as a party below, as in this case. S.C. Code § 1-23-310(5). The appellate court may not substitute its judgment for the judgment of the ALC on the issue of proper parties herein. Pursuant to S.C. Code § 1-23-380, the scope of review is based on the substantial evidence rule: Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency’s finding. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). In addition, a party has the right to choose his representative. *See Sabella v. SC ABC Comm’n*, 289 S.C. 400, 346 S.E.2d 530 (Ct. App. 1986). It is respectfully submitted the overreaching attempt by the lower appellate court to substitute/reconfigure/frame taxpayers appeal by right is a violation of the State Constitution, the SCACR, and/or the lower appellate court’s scope of authority/review. Accordingly, a writ of certiorari is respectfully requested.

ADDITIONAL INTERVENING QUESTION

V. Whether the lower appellate court lacks jurisdiction and/or abuses discretion by entering the October 22, 2024, decision, copy attached, pending resolution of the petition for a writ of certiorari thereby undercutting appearance of a disinterested court.

Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. Significantly and materially, there is intervening change after the petition herein is filed on October 8, 2024. Though jurisdiction is vested in the superior appellate court, the lower appellate court entered unauthorized October 22, 2014, decision denying timely abeyance pending resolution of the petition herein. Specifically, the lower appellate court's denial of abeyance effectively continues the Court of Appeals' pattern and practice of improper procedural default of taxpayers meritorious appeals by right in violation of State Constitutional provisions, *supra*, in violation of Legislative intent and the letter and spirit of S.C. Code § 1-23-610 and others, in violation of the SCACR, and in violation of fundamental fairness: That unauthorized denial lacks jurisdiction and is void/voidable. Jurisdiction can be raised at any time. Petition for a writ of certiorari is respectfully requested. Moreover, request to vacate/void denial of abeyance in the lower appellate court pending resolution in this Honorable Court is respectfully submitted.

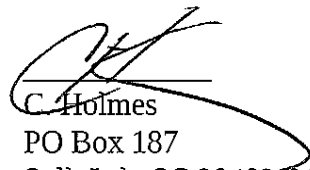
Unauthorized lower appellate court substitution of parties with impermissible sua sponte ex parte summary dismissal of taxpayers appeal by right by a single individual in violation of S.C. Code § 14-8-220 cannot pass Constitutional muster and is capable of repetition, capable of escaping review, incapable of vindication on appeal, and undercuts appearance of a disinterested court. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998).

See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

CONCLUSION

WHEREFORE petitioner prays this Court issue a writ of certiorari.

Respectfully submitted,


C. Holmes
PO Box 187
Sull. Isd., SC 29482-0187
843.883.3010

The South Carolina Court of Appeals

James Kevin Holmes and C. Collie Holmes, Petitioners,

of whom C. Collie Holmes is the Appellant,

v.

Charleston County Assessor, Respondent.

Appellate Case No. 2023-001552

ORDER

On September 30, 2024, Appellant filed a motion to hold this appeal in abeyance pending the supreme court's resolution of a petition for writ of certiorari. Respondent filed a return, opposing Appellant's motion. After careful consideration, we deny Appellant's request to hold the appeal in abeyance.



FOR THE COURT

Columbia, South Carolina

cc:

Cynthia Holmes

Natalie Armstrong Ham, Esquire

Bernard E. Ferrara, Jr., Esquire

Marc Graylynn Belle, Esquire

Kevin Michael DeAntonio, Esquire

Andrew LaRoche Hethington, Esquire

FILED
Oct 22 2024



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 4, 2023

Ms. Cynthia E. Collie, Esquire
PO Box 187
Sullivan's Island SC 29482

Re: James K. Holmes v. Charleston County Assessor
Appellate Case No. 2023-001552

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

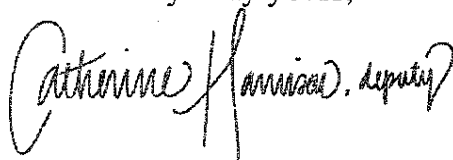
James Kevin Holmes and C. Collie Holmes, Appellants,

v.

Charleston County Assessor, Respondent.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in cursive script that reads "Catherine Hamrick, deputy". The signature is written in black ink and is positioned above the typed name "CLERK".

CLERK

cc: James K. Holmes, Esquire
Natalie Armstrong Ham, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 30, 2024

Ms. Cynthia E. Collie, Esquire
PO Box 187
Sullivan's Island SC 29482

Re: James K. Holmes v. Charleston County Assessor
Appellate Case No. 2023-001552

Dear Counsel:

The Court has received your email response indicating you are retired. You must clarify, within five (5) days from the date of this letter, whether you are a retired member of the bar who may not engage in the practice of law in South Carolina as set forth by Rule 410, SCACR.

Very truly yours,

A handwritten signature in cursive script that reads "Jenny A. Kitchings".

CLERK

cc: James K. Holmes, Esquire
Natalie Armstrong Ham, Esquire
Bernard E. Ferrara, Jr., Esquire
Marc Graylynn Belle, Esquire
Kevin Michael DeAntonio, Esquire
Brittney Marie Darnell, Esquire

The South Carolina Court of Appeals

James Kevin Holmes and C. Collie Holmes, Appellants,

v.

Charleston County Assessor, Respondent.

Appellate Case No. 2023-001552

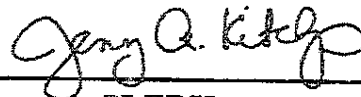
The Honorable Deborah Brooks Durden
Trial Court Case No. 2022ALJ170398CC

ORDER

The Court has received your correspondence dated February 4, 2024, in which we construe as a motion for extension of time to reply to our January 30, 2024 letter. The time for filing a reply is hereby extended until February 12, 2024.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

cc:

James K. Holmes, Esquire
Cynthia E. Collie, Esquire
Natalie Armstrong Ham, Esquire
Bernard E. Ferrara, Jr., Esquire
Marc Graylynn Belle, Esquire
Kevin Michael DeAntonio, Esquire
Brittney Marie Darnell, Esquire

FILED
Feb 07 2024

The South Carolina Court of Appeals

James Kevin Holmes and C. Collie Holmes, Appellants,

v.

Charleston County Assessor, Respondent.

Appellate Case No. 2023-001552

ORDER

On April 16, 2024, this court ordered Cynthia E. Collie, Esquire, to respond to the following inquiries:

- (1) Is Ms. Collie a retired member of the bar who may not engage in the practice of law in South Carolina?
- (2) Who represents Ms. Collie for this appeal?
- (3) Who represents James K. Holmes, Esquire for this appeal?

On April 26, 2024, Ms. Collie responded that she "is retired from taking clients," that she is self-represented, and that "[o]n information and belief, [James K. Holmes, Esquire] is self-represented." We note Mr. Holmes did not sign the notice of appeal and has not signed any other pleadings concerning the appeal. Therefore, we dismiss James K. Holmes, Esquire, from this appeal. See Rule 267(b), SCACR ("A document filed with the appellate court shall be signed by the lawyer or the self-represented litigant filing the document.")



FOR THE COURT

Columbia, South Carolina

FILED
May 30 2024

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable Deborah Brooks Durden

COA App. Case No. 2023-001552

J.K. Holmes and C.C. Holmes,

Appellants,

v.

Chas. Cty. Assessor,

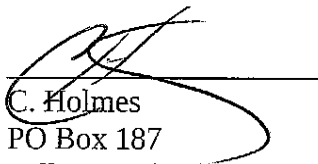
Respondent.

PROOF OF SERVICE

I certify that a true copy of the above document was served upon the respondents by regular first class mail postage pre-paid on this date at this address:

*Chas. Cty. Atty.
4045 Bridge View Dr.
North Chas., SC 29405*

Dated 11.7.24


C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010