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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Stonewall Jackson Kimball, Special Circuit Court Judge

Case No 2014-CP-46-1425
Appellate Case No 2014-002578

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JAN 13 2015
S.C. SUPREME COURT

Ryan Powell,

Appellant,

v

Amy Boheler d/b/a York County Auditor,
Beth Latham d/b/a York County Treasurer, and
Robert Kiser d/b/a York County Delinquent Tax Collector,
each in their individual and official capacities,

Respondents

Certificate of Service

I certify that I have served on all Respondents the Initial Brief of Appellant and Designation of matter to be included in the record on appeal by and through their attorney of record by First Class Mail with proper postage affixed on the date below shown addressed to W, Keith Martens of HAMILTON, MARTENS, BALLOU & CARROLL, LLC, P O Box 10940, Rock Hill, SC 29731

January 10, 2015


Ryan Powell, Appellant
c/o 25056 Timberlake Drive
Fort Mill, South Carolina
(919) 400-6339

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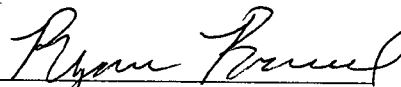
Respondents

Designation of Matter to be Included in the Record on Appeal

- 1 Complaint (including exhibits attached to it)
- 2 Respondents' Motions to Dismiss
- 3 Appellants' Response to Respondents Motion to Dismiss
- 4 Appellants' Rule 59 Motion to Alter or Amend, pgs 3-4
- 5 Transcript of hearing of Motions to Dismiss, pgs 13, 15-16, 20-21, 24-26, 29
- 6 June 25, 2014 Order dismissing action
- 7 October 23, 2014 Order denying motion to alter or amend

I certify that this designation contains no matter which is irrelevant to this appeal

January 10, 2015


Ryan Powell, Appellant
c/o 25056 Timberlake Drive
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INITIAL BRIEF OF APPELLANT

Ryan Powell, Appellant
c/o 25056 Timberlake Drive
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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE	2
Nature of the Case	2
Statement of Pertinent Facts	2
Course of Proceedings	3
STANDARDS OF REVIEW	4
ARGUMENT	5
I Because S C Code of Laws § 12-37-610 is the statute that lays the liability for taxes and assessments on real property, and not S C Code of Laws § 12-37-210, it was error for the trial judge to find that Ryan is liable for taxes and assessments on his land simply because his land is within the boundaries of South Carolina and conclude therefore that Ryan's case is <i>entirely frivolous</i>	5
i S C Code of Laws § 12-37-610 is the statute that lays the liability for taxes and assessments on <i>real property</i> and since Ryan did not record a deed then he is not liable for any taxes or assessments on his land	7
ii S C Code of Laws § 12-37-210 does NOT lay a liable for taxes and assessments on land so it was error for the trial judge to find that Ryan's land is liable simply because it is within the boundaries of South Carolina	8
iii It is not even possible for S C Code of Laws § 12-37-210 or ANY other statute to lay an <i>involuntary</i> liability for taxes and assessments on Ryan or his land, without him having to record his deed, without violating all the following laws, legal principles, and Constitutional prohibitions	12
1 It would be void for violating Article 1 Section 10 of the Constitution of the United States	12
2 It would violate the very definition of <i>debt</i>	13
3 It would be utterly impossible for the tax assessors and collectors to administer without requiring the recording of a deed	14
4 It would force landowners into commerce	16
5 It would violate a man's rights to exist and own property free of any tax	17
6 It would be void for violating multiple provisions of the Constitutions of the State of South Carolina and of the United States	19
II Because the Revenue Procedures Act does not divest the circuit court of subject matter jurisdiction it was error for the trial judge to dismiss Ryan's claims finding that the circuit court is without subject matter jurisdiction	21
i The RPA does not divest the circuit court of the subject matter jurisdiction to hear tort claims	22
ii The RPA does not even apply to Ryan or his claims	24
III Because Ryan did not bring his claims under the Tort Claims Act against any <i>governmental entity</i> it was error for the trial judge to substitute " <i>York County</i> " for the Defendants/Respondents	26
IV Because Ryan brought his claims against the Respondents in their individual capacity for actions alleged to have been taken outside the scope of their official duties	

it was error for the trial judge to dismiss all of Ryan's claims with prejudice based on his finding that Respondents have <i>sovereign immunity</i>	28
i The Tort Claims Act does not even apply to an action brought against agents of a <i>governmental entity</i> in their individual capacity for actions alleged to have been taken outside the scope of their official duty	29
ii It was premature to even consider whether the Respondents were acting within the scope of their official duties	31
V Because Respondents failed to demonstrate any defects in the individual causes of action in their Rule 12 (b)(6) motions it was error for the trial judge to find that Ryan failed to allege facts sufficient to state a valid claim	32
i Because the Respondents did not demonstrate any defects in Ryan's "breach of contract" cause of action, it was error for the trial judge to find that it "must fail as a matter of law"	33
VI Because the facts found by the trial judge are not based on the record all the findings are unsupported and all the conclusions of law based on those unsupported findings are erroneous	35
VII Because the trial judge does not have the authority to find that Ryan's mother is engaged in the "unauthorized practice of law" or interfere in the obligations of their contract it was error for him to disallow her from providing Ryan "assistance of counsel"	38
i The Supreme Court of South Carolina does not have the authority to create a rule that requires any person to first obtain <i>approval</i> in order to exercise rights guaranteed to him by the Constitutions	39
CONCLUSION	42

TABLE OF AUTHORITIES

Cases	
Aldridge v Rutledge, 269 S C 475, 238 SE 2d 165	15
Almeida-Sanchez v United States, 413 U S 266 (1973)	20
Ashwander v Tennessee Valley Authority, 297 U S 288 (1936)	8
Bayle v South Carolina Dept of Transp , 542 SE 2d 736 (Ct App 2001)	29
Berkeley County School District v South Carolina Department Of Revenue, 679 SE 2d 913, 383 SC 334 (SC Sup Ct 2009)	10
Botta v Scanlon, 288 F 2d 504, 506 (1961)	11
Boumediene v Bush	17
Brackenbrook, LP v County of Charleston, 602 SE 2d 39 (SC Sup Ct 2004)	23
Bridges v Wyandotte Worsted Co , 243 S C 1, 132 S E 2d 18 (1963)	5
Brookfield Co v Stuart, 234 F Supp 94, 99 (U S D C , Wash D C 1964)	30
Busse v Commissioner of Internal Revenue, 479 F2d 1143	9
Cooper v O'Conner, 99 F 2d 133	28
Donohue v Ward, 298 S C 75, 378 S E 2d 261 (Ct App 1989)	16
Dove v Gold Kist, 314 S C 235, 442 S E 2d 598 (1994)	22, 23
Downs v Bidwell, 182 U S 244 (1901)	20
Economy Plumbing & Heating Co , Inc v United States, 470 F 2d 585 (US Court of Claims 1972)	24, 25, 26
Fields v J Haynes Waters Builders, Inc , 376 S C 545, 564, 658 S E 2d 80, 90 (2008)	5

Frazier v Badger, 603 SE 2d 587	31
Frierson v Watson 371 S C 60 636 S E 2d 872 (2006)	36
Griswold v Connecticut, 381 U S 479 (1965)	17
Hagar v, Reclamation Dist #108, 111 U S 701	13
Hale v Henkel, 201 U S 43 at 47 (1905)	20, 41
Hambrick v GMAC Mortg Corp , 634 SE 2d 5 (Ct App 2006)	39
Hamdan v Rumsfeld, 548 U S 557 (2006)	17
Hanselmann v McCardle, 242 SE 2d 421 (Supreme Ct 1978)	31
Hurtado v California 110 US 516	41
In re Unauthorized Practice of Law Rules, 422 SE 2d 123 (Supreme Court 1992)	40
I'On, L L C v Town of Mt Pleasant, 338 S C 406, 411, 526 S E 2d 716, 719 (2000)	4
Julliard v Greenman, 110 U S 421 (1884)	13
Linder v Ins Claims Consultants, Inc , 560 SE 2d 612 (Sup Ct 2002)	39
McCullar v Estate of Campbell, 672 SE 2d 784	22, 23
Medellin v Texas	17
Moore v Benson, 700 SE 2d 273 (2010)	5
Moriarty v Garden Sanctuary Church of God, 341 S C 320, 534 S E 2d 672 (2000)	4
Munaf v Geren	17
Nelson v QHG of South Carolina Inc , 580 SE 2d 171 (2003)	32
O'Conner v Board of Ed of School Dist 23 , 449 U S 1301 (1980)	35
Osborne et al v Vallentine, 196 S C 90, 12 S E 2d 856 (1941)	16
Page v Winter, 126 SE 2d 570 (SC Supreme Ct 1962)	29
Prestwick Golf Club, Inc v Prestwick Ltd P'ship, 331 S C 385, 389, 503 S E 2d 184, 186 (Ct App 1998)	34
Redfield v Fisher, 292 P page 819 (1930)	18
SC Dept Hwys & Pub Trans v Balcome, 345 SE 2d 762 (SC Ct App 1986)	19
Shayne of Miami, Inc v Greybow, Inc , 232 S C 161, 167, 101 S e 2d 486, 489 (1957)	34
Smalls v Weed, 293 S C 364, 360 S E (2d) 531 (Ct App 1987)	5
South Carolina v United States, 199 U S 437, 448 (1905)	20
Southern Glass & Plastics Co v Kemper, 732 SE 2d 205 (Ct App 2012)	31, 34
Spence v Spence, 628 SE 2d 869 (SC Sup Ct 2006)	5, 33
Spreckles Sugar Refining Co v McClain, 192 US 397 (1904)	11
State v Pavelich, 150 Wash 411, 273 P 182 (1928)	41
Taylor v Jennings, 233 S C 600, 106 S E 2d 391 (1958)	15
U S v Lee, 106 U S 196 (1882)	29
Unisys Corp v SC Budget & Control Bd , 551 SE 2d 263 (SC Supreme Court 2001)	12
Wade v Berkeley County, 529 SE 2d 743 (2000)	29
Ward v State, 538 SE 2d 245 (2000)	20, 21, 23
Yick Wo v Hopkins , 118 U S 356 (1886)	18

Statutes

S C Code of Laws § 12-24-10 (a)	16
S C Code of Laws § 12-28-110 (35)	10
S C Code of Laws § 12-37-210	1, 5, 6, 8, 9, 10, 11, 12, 16, 20
S C Code of Laws § 12-37-610	1, 5, 6, 7, 8

S C Code of Laws § 12-49-10	14
S C Code of Laws § 12-60-3390	23
S C Code of Laws § 12-60-80	22, 23
S C Code of Laws § 15-78-10 et seq	26, 27, 29, 30, 31
S C Code of Laws § 15-78-20 (b)	30
S C Code of Laws § 15-78-20 (d)	31
S C Code of Laws § 15-78-200	30
S C Code of Laws § 15-78-30	27
S C Code of Laws § 15-78-70 (b)	30
S C Code of Laws § 15-78-70 (c)	27, 28
S C Code of Laws § 16-5-60	35
S C Code of Laws § 40-5-80	41

Other Authorities

16 Am Jur 2d, Sec 362	19
70 Am Jur 2nd Sec 50, VII Civil Liability	29
Blacks Law Dictionary, 2 nd ed	14, 18
Black's Law Dictionary, 6th ed	8
Universal Declaration of Human Rights	19

Rules

Rule 12 (b)(1) SCRCF	22, 24
Rule 12 (b)(6) SCRCF	22

Constitutional Provisions

Amendment IV of the Bill of Rights	21
Amendment IX of the Bill of Rights	40
Amendment V of the Bill of Rights	21
Amendment VI of the Bill of Rights	40
Amendment VII of the Bill of Rights	21
Amendment XIII of the Bill of Rights	20
Article 1 Section 10 of the Constitution of the United State	12, 13, 40
Article 6 Clause 2 and 3 of the Constitution of the United States	34
S C Const art I, 1	18
S C Const art I, 10	21
S C Const art I, 13(a)	21
S C Const art I, 3	21
S C Const art I, 4	40

STATEMENT OF ISSUES ON APPEAL

- I Did the trial court err by finding Appellant is liable for taxes and assessments on his land under SC Code of Law § 12-37-210 and therefore his claims are *entirely frivolous*, when the correct liability statute is S C Code of Laws § 12-37-610 and according to it, Appellant is clearly NOT liable?
 - i Is S C Code of Laws § 12-37-610 the statute that lays the liability for taxes and assessments on real property?
 - ii OR is S C Code of Laws § 12-37-210 the statute that lays a liable for taxes and assessments on real property?
 - iii Is it even possible for S C Code of Laws § 12-37-210, or any other statute, to lay an *involuntary* liability for taxes and assessments on Appellant or his land, without him having to record his deed, without violating many laws, legal principles, and Constitutional prohibitions?
- II Did the trial court err by dismissing Appellant's action finding that the circuit court does not have subject matter jurisdiction over Appellant's tort claims?
 - i Does the Revenue Procedures Act affect the subject matter jurisdiction of the circuit court to hear or decide tort claims?
 - ii Does the Revenue Procedures Act even apply to Appellant or his case?
- III Did the trial court err by substituting "*York County*" for the named Respondents when Appellant's claims were not brought under the Tort Claims Act against a "*governmental entity*"?
- IV Did the trial court err by finding Respondents have sovereign immunity from Appellant's claims that he brought against them in their individual capacity for actions alleged to have been taken outside the scope of their official duties?
 - i Does the Tort Claims Act even apply to an action brought against agents of a governmental entity in their individual capacity for actions alleged to have been taken outside the scope of their official duty?
 - ii Was it premature to even consider whether the Respondents were acting within the scope of their official duties during a pre-answer motion hearing?
- V Did the trial court err by dismissing Appellant's claims with prejudice when Respondents failed to demonstrate Appellant did not allege facts sufficient to state a valid claim?
 - i Did Respondents demonstrate any defects in Appellant's "breach of contract" cause of action that could support its dismissal "as a matter of law"?

- VI Did the trial court err by making findings of fact that are not supported by the record and conclusions of law based on those unsupported findings?
- VII Did the trial court err by finding that Appellant's mother is engaged in the "unauthorized practice of law" or disallowing her from providing Appellant "assistance of counsel"?
- 1 Does the Supreme Court of South Carolina have the authority to create a rule that requires any person must first obtain "approval" in order to exercise a right guaranteed to them by the Constitution?

STATEMENT OF THE CASE

Nature of the Case

This case raises novel issues of first impression. The key issues in this case involve whether Appellant, Ryan Powell ("Ryan" hereinafter) is liable for any taxes on his land when he did not record a deed for his land and whether or not county tax collectors are authorized to non-judicially take property owned by one person to pay the debt owed by another person. Ryan has a right to demand the State do its duty to protect his property. Therefore, after Respondents ignored Ryan's three notices informing them that they were acting wrongly, outside their authority, and criminally, Ryan had no other choice but to pursue a legal remedy. Accordingly, Ryan brought a common law action against Respondents in their individual capacity for damages they caused while acting outside the scope of their official duties and also in their official capacity for the issuance of a writ of mandamus to compel Respondents to do their ministerial duty to correct their false and fraudulent records that are facilitating their continuing attempts to non-judicially take Ryan's property for someone else's debt.

Statement of Pertinent Facts

On December 20, 2012 San Juan Holdings, a private, unregistered trust (hereinafter "SJH"), sold and assigned all rights, title, and interest in their land to Ryan [complaint #11, pg 3] On that same day the trustee for SJH executed and recorded into the land records of York County Register of Deeds a Notice of Sale and Transfer evidencing the existence of an instrument transferring ownership of their property to a private unnamed man [complaint #12, pg 3, complaint exhibit A] Ryan intentionally did not record a deed with York County Register of Deeds for his land [complaint, #18, pg 3] Respondents refused to do their official duties to update their records to show that SJH's property had changed ownership [complaint #11 pg 3] Instead Respondents created void and unenforceable executions, levies, notices of levy, and then attempted to auction off Ryan's property in the name of one that they knew was not the true owner of Ryan's property [complaint #16-34, pgs 3-6] Respondents took these actions in spite of the multiple notices they had received evidencing the change in ownership of Ryan's land and multiple notices showing their actions were both criminal and outside their jurisdiction and statutory authority [complaint, #16 pg 3, #25 pg 4, #30 pg 5, #74 pg 11, #81-82 pg 12]

Course of Proceedings

On April 30, 2013 Ryan filed his common law action into the 46th judicial circuit court Before Respondents answered Ryan's claims, they filed motions to dismiss and to substitute the Defendants On June 19, 2014 during the hearing of Respondents' motions the trial judge concluded that Ryan is liable to pay the tax debt of the previous owner of his property simply because his land is on the soil of the land mass commonly called South Carolina and that since Ryan is liable to pay the debt of the previous owner his

claims are entirely frivolous. After finding Ryan's land can be taken for someone else's debt, the trial judge found that the South Carolina Revenue Procedures Act divests the circuit court of subject matter jurisdiction to hear Ryan's common law claims. Notwithstanding those conclusions, the trial judge then proceeded (by his own determination without subject matter jurisdiction) to order that "York County" be substituted for the three named Respondents. Then the trial judge dismissed all of Ryan's claims with prejudice concluding the Tort Claims Act bars Ryan's claims.

None of the facts that Ryan alleged in his complaint, verified under penalty of perjury, were ever contested by Respondents; in fact, they raised the affirmative defense of "*sovereign immunity*" thereby admitting all facts alleged in Ryan's complaint.

Ryan timely filed and served a Rule 59 SCRPC motion to alter or amend the June 25, 2014 order dismissing his claims. Ryan's motions were heard on October 16, 2014. The trial judge denied Ryan's motions to alter or amend and that final order was entered on October 23, 2014. Ryan received written notice of its entry on October 25, 2014. The notice of appeal for this case was served on Respondents and filed in the trial court on November 21, 2014. The notice of appeal was filed into the appellate court on December 1, 2014. A transcript was timely ordered and received by Ryan on December 13, 2014.

STANDARDS OF REVIEW

Being this case involves many diverse errors, this court will be called upon to use the following three different standards of review depending on the issue raised:

1. In a case raising a novel question of law, the appellate court is free to decide the question with no particular deference to the lower court. I'On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 411, 526 S.E.2d 716, 719 (2000). The issue of interpretation of a statute is a question of law for the court. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000). This Court undertakes a de novo review of all issues of law, and is free to decide matters of

law with no particular deference to the trial court Fields v J Haynes Waters Builders, Inc., 376 S C 545, 564, 658 S E 2d 80, 90 (2008) The question of subject matter jurisdiction is a question of law Bridges v Wyandotte Worsted Co., 243 S C 1, 132 S E 2d 18 (1963)

- 2 “In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory. Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action”, Spence v Spence, 628 SE 2d 869 (SC Sup Ct 2006) [internal citations omitted]
- 3 “[W]hen reviewing an action at law, the appellate court will not disturb the judge's findings of fact as long as they are reasonably supported by the evidence”, Moore v Benson, 700 SE 2d 273 (2010)

ARGUMENT

- I **Because S.C. Code of Laws § 12-37-610 is the statute that lays the liability for taxes and assessments on real property, and not S.C. Code of Laws § 12-37-210, it was error for the trial judge to find that Ryan is liable for taxes and assessments on his land simply because his land is within the boundaries of South Carolina and conclude therefore that Ryan's case is *entirely frivolous*.**

Standards of Review #1 - Novel question of law – *de novo* review

“[A]ny legislation which is in derogation of common law must be strictly construed and not extended in application beyond the clear legislative intent”, Smalls v Weed, 293 S C 364, 360 S E (2d) 531 (Ct App 1987)

Whether or not Ryan is liable for taxes on his land is the key issue of his case. For if Ryan is liable then he could not have been damaged by agents doing their jobs collecting a debt he owes, Ryan would be a taxpayer who is required to use the South Carolina Revenue Procedures Act (“RPA” hereinafter), and Ryan's case would indeed be frivolous. **But, on the other hand,** if Ryan is **NOT** liable then Ryan would have been wronged by Respondents collecting a debt from a person who does **NOT** owe them a debt (i.e., a non-taxpayer), Ryan could **NOT** even use **RPA** if he wanted to as it can only

be used by *taxpayers*, and Ryan case would be meritorious so he would be entitled to damages for Respondents wrongs

Respondents argued in their motion to dismiss that S C Code of Laws § 12-37-210 is the statute that lays a liability for taxes and assessments on all land found within the geographic boundaries of South Carolina and therefore Ryan's land is liable for the taxes and assessments that Respondents are charged with collecting [motion to dismiss, pg 4 #10] Ryan argued that it is S C Code of Laws § 12-37-610, and only that statute, that lays a liability on persons who record their deeds with the Register of Deeds in the county wherein their property is located [Resp to MTD, pgs 15-17 #11] and since Ryan has not recorded a deed [Complaint, pg 3, #18] then clearly he is not liable so his property cannot be non-judicially taken by Respondents to satisfy someone else's debt

Even though the trial judge agreed that Ryan is **not liable** for the taxes at issue [transcript pgs 24 line 25 to pg 25 line 1] he then decided that Respondents can and will nonetheless **take Ryan's property** if Ryan doesn't pay the debt someone else owes the Respondents [transcript, pg 25 line 3-13] The trial judges' conclusions are impossible as liable means likely to be harmed¹ **If** Ryan can lose his land for someone else's debt then he is "*likely to be affected or harmed*" so by the very definition of liable, the trial judge found Ryan is liable to pay someone else's debt¹ This proves the trial judge's conclusions are entirely erroneous as one cannot be simultaneously not liable and liable for a debt

Nonetheless, since this is a novel issue of first impression that this Court must decide *de novo*, Ryan will show that Respondents' theory that S C Code of Laws § 12-37-210 is the statute that makes Ryan, or his land, liable is clearly erroneous and that

¹ Definition of liable from Merriam-Webster's dictionary - "*legally responsible for something, likely to be affected or harmed by something, likely to do something*"

instead it is S C Code of Laws § 12-37-610 that lays the liability for taxes and assessments on *real property* and since Ryan did not record a deed for his land then he is not liable

- i **S.C. Code of Laws § 12-37-610 is the statute that lays the liability for taxes and assessments on *real property* and since Ryan did not record a deed then he is not liable for any taxes or assessments on his land.**

The trial judge and Respondents' attorneys outright denied that whether Ryan recorded a deed or not has any effect whatsoever on the issue of his liability [transcript, pg 25 line 1-13] Whether or not Ryan recorded a deed is not only important to the issue of his tax liability - it is the ONLY fact that matters when determining his tax liability For how can Respondents administer Ryan's property (Ryan's recorded deed) if York County Register of Deeds is not holding Ryan's property (Ryan's recorded deed)? The mere pretense is absurd

S C Code of Laws § 12-37-610 is the ONE and ONLY statute that makes any person liable for the payment of taxes and assessments on their *real property* -

S C Code of Laws § 12-37-610 "Persons liable for taxes and assessments on real property

Each person is liable to pay taxes and assessments on the real property that, as of December thirty-first of the year preceding the tax year, he owns in fee, for life, or as trustee, as recorded in the public records for deeds of the county in which the property is located, or [a situation that is clearly not applicable] "

The title of S C Code of Laws § 12-37-610 alone shows that this is THE statute that lays a liability for the taxes at issue in this case S C Code of Laws § 12-37-610 clearly states that the only persons the legislature has made liable for the taxes and assessments on their *real property* are those persons who record their "*in fee, for life, or as trustee*" deeds in *the public records for deeds* (Register of Deeds) in the county wherein their

property is located Under the cannon of statutory construction "*Inclusio unius est exclusio alterius* " since S C Code of Laws § 12-37-610 states it ONLY lays a tax liability onto owners who have recorded their deeds then that is the only situation where a person has been made liable and all other situations not listed are not included, see -

"Inclusio unius est exclusio alterius The inclusion of one is the exclusion of another The certain designation of one person is an absolute exclusion of all others This doctrine decrees that where law expressly describes [a] particular situation to which it shall apply, an irrefutable inference must be drawn that what is omitted or excluded was intended to be omitted or excluded", Black's Law Dictionary, 6th ed

The unopposed, verified under penalty of perjury, allegations in the complaint show Ryan is the "absolute owner" of his land [complaint, #1, pg 1] and that he did not record a deed [complaint, #18, pg 3] so when those facts are applied to the clear and unambiguous language of S C Code of Laws § 12-37-610 it leads to the undeniable and singular conclusion that Ryan is not liable for the payment of any taxes or assessments on his land

- ii **S.C. Code of Laws § 12-37-210 does NOT lay a liable for taxes and assessments on land so it was error for the trial judge to find that Ryan's land is liable simply because it is within the boundaries of South Carolina.**

Everything about *this State* depends upon voluntary agreement The very threshold entrée into *this State* is voluntary agreement, see Ashwander v Tennessee Valley Authority, 297 U S 288 (1936) Even becoming a "*property taxpayer*" is purely voluntary as there is no statutory requirement mandating one must record his deed

In denial of the unquestionable voluntary nature of transacting business with *this State* and in denial of S C Code of Laws § 12-37-610 clearly professing to be **THE** liability statute, Respondents in their motion to dismiss frivolously raised S C Code of Laws § 12-37-210 as the statute that lays an *involuntary* tax on Ryan's **land** [MTD, pg 4,

#10] However to come to that interpretation Respondents first rewrote the actual language of S C Code of Laws § 12-37-210 to make it comport to their idea of who (or under their interpretation WHAT) **should** be liable for the taxes at issue [MTD, pg 4, #10]

Pertinent part of actual Statute - "All real property in this State shall be subject to taxation",

As misinterpreted by Respondents - All land within the boundaries of South Carolina is liable for a tax

The trial judge agreed with Respondents and accepted their interpretation [transcript pg 20 lines 7-16]

"Courts have no power to rewrite legislative enactments to give effect to their ideas of policy", Busse v Commissioner of Internal Revenue, 479 F2d 1147 (7th circuit 1973)

While it is clear that a judge has no authority to rewrite a legislatively created statute to fit his "*ideas of policy*", the trial judge's rewriting S C Code of Laws § 12-37-210 is clearly error because as Bill Clinton, the former president of US Inc, famously stated during grand jury testimony pertaining to his affair with Monica Lewinski - "*It depends on what the meaning of the word 'is' is*"! While the public laughed at that remark, all those learned in the law knew that what Mr Clinton was stating was absolutely correct. For being an attorney himself, Mr Clinton knew quite well that every jot and tittle, comma, or word in the law has a very specific reason for being there, that reason being to create a very precise and very limited meaning.

In the statutory language of S C Code of Laws § 12-37-210, "land" does not mean the same thing as "real property", "in" does not mean the same thing as "within", "this State" does not mean the same thing as "the boundaries of South Carolina", and "subject

to taxation” does not mean the same thing as “liable for a tax” Therefore, the meaning of S C Code of Laws § 12-37-210 had to have been **drastically** changed from what the legislature’s intention was in passing that statute to what the Respondents and the trial judge’s conclusions were

For example let’s analyze just the substituting the terms “*in this State*” with “*within the borders of South Carolina*” There is never a need to define a term in a statute UNLESS the statute writers want the term to mean something other than what it would mean in ordinary language² Since the term “*in this State*” (or “*this State*” or “*State*”) has NOT been defined in Chapter 37 of Title 12 it’s meaning must be found in ordinary language and **cannot mean** “*within the borders of South Carolina*” because if it did mean that, the statute writers would have had to include that specific definition to give that term that exact meaning as they **had to do** in S C Code of Laws § 12-28-110 (35)

See S C Code of Laws § 12-28-110 “Definitions As used in this chapter

(35) “In this State” means the area within the borders of South Carolina including all territories within the borders owned by or added to the United States of America ”

As more evidence that “*in this State*” cannot mean “*within the borders of South Carolina*” one only needs to consider **all the words** in S C Code of Laws § 12-37-210, instead of leaving out all the non-applicable words

Actual language of S C Code of Laws § 12-37-210 [with **emphasis** added] -

“All real and personal property in **this State**, personal property of residents of **this State** which may be kept or used temporarily out of **the State**, with the intention of bringing it into **the State**, or which has been sent out of **the State** for sale and not yet sold, and all moneys, credits and investments in bonds, stocks, joint-stock

² “Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning ” Berkeley County School District v South Carolina Department Of Revenue, 679 SE 2d 913, 383 SC 334 (SC Sup Ct 2009)

companies or otherwise of persons resident in **this State** shall be subject to taxation ”

Looking at the entire sentence of S C Code of Laws § 12-37-210 it becomes quite clear that “*this State*” and “*the State*” obviously refer to two different things. Notice in the actual language when it refers to an area of land the term “**the State**” [the territory] is used and when it refers to some body corporate the term “**this State**” [the corporation] is used. So when considering the language of the entire statute it is clear the “*this State*” is indeed a body corporate and not a territory or land mass. Therefore, according to S C Code of Laws § 12-37-210 the *real property* has to first be “in” the corporation (books and records) to become subject to taxation.

Next, if S C Code of Laws § 12-37-210 is the statute that lays a tax liability on all owners of land then the language of the statute itself is overbroad and void for vagueness as it does not state that any person is liable, who is liable, or when and how they become liable. All tax laws **MUST** lay the liability on some person as only a conscience being has the ability to read and execute the law, contract for debts, earn currency to pay their contractual debts, etc. and clearly S C Code of Laws § 12-37-210 does not create a liability on any person, see -

“Moreover, even the collection of taxes should be exacted only from persons upon whom a tax liability is imposed by some statute”, Botta v Scanlon, 288 F 2d 504, 506 (2nd circuit 1961)

“Keep in mind the well settled rule that the citizen is exempt from taxation unless the same is imposed in clear and unequivocal language, and that where the construction of a law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid”, Spreckles Sugar Refining Co v McClain, 192 US 397 (1904)

Finally, and most importantly, if S C Code of Laws § 12-37-210 is the liability statute, there would need to be evidence in the record to support a finding that Ryan’s

land is *real property* and that it is *in this State* But there is no evidence in the record that could support either finding Without any evidence in the record to support Respondents' creative theory it was clearly error for the trial judge to agree with that creative theory and find Ryan (or his land) is liable and therefore Ryan's claim are *entirely frivolous*

- 111 **It is not even possible for S.C. Code of Laws § 12-37-210 or ANY other statute to lay an *involuntary* liability for taxes and assessments on Ryan or his land, without him having to record his deed, without violating all the following laws, legal principles, and Constitutional prohibitions.**

It is beyond dispute that all law is contract and contract is the law, for if this was not true then men would become involuntary slaves to the government corporations that men created to protect their rights and property Therefore, as clearly demonstrated below, there is absolutely no way that any statute lays an *involuntary* liability onto all land within the boundaries of South Carolina without the owner needing to enter into a contract with *this State* by recording his deed If such theory was even possible it would violate many laws, legal principles, mandatory provisions of the Constitution of *this State*³ and of the United States and holdings of the appellate courts of *this State* and the United States as proven by the following

- 1 **It would be void for violating Article 1 Section 10 of the Constitution of the United States.**

Article 1 Section 10 of the Constitution of the United States restricts *this State* to demanding all **INVOLUNARY** contribution to it to be made **only** in gold and silver Coin Despite ignorant supposition to the contrary, this constitutional restriction on *this State* is most definitely still binding and in effect today

³ "The State Constitution is a limitation upon and not a grant of power to the General Assembly", Unisys Corp. v SC Budget & Control Bd., 551 SE 2d 263 (SC Sup Ct 2001)

Many erroneous case law citations claiming that Federal Reserve Notes are legal tender for transactions with the States are based on cases between individuals or between the Federal Government and an individual where the US Supreme Court specifically ruled on the legal tender requirements for those situations in Julliard v Greenman, 110 U S 421 (1884). However the Julliard v Greenman decision did **NOT** address the issue of what a State may demand as legal tender for payment to it. That decision was made a few months later (and never overruled or reexamined) by the same court in the case of Hagar v Reclamation District #108, 111 U S 701 (1884) in which the US Supreme Court ruled as follows

"The acts of Congress making the Notes of the United States Legal Tender **do not apply to involuntary contributions** in the nature of taxes or assessments exacted under State laws, **but only to debts** in the strict sense of the terms, that is, to **obligations founded on contracts**, express and implied, for the payment of money ", [emphasis added]

Since the taxes and assessments on Ryan's land is, according to Respondents and the trial judge, an **INVOLUNTARY** contribution and not a contractual obligation, then under Hagar and Article 1 Section 10 of the Constitution of the United States, *this State* **MUST** demand its payment be made only in gold and silver Coin. But this has not been done and **cannot be done** as there is no gold or silver Coin in general circulation to pay such an involuntary contribution! Hagar **PROVES** that the taxes and assessments on *real property* in *this State* is a CONTRACTUAL **debt** and is not and can not be an **involuntary** contribution. Obviously it is the recording of the owner's deed (implied contract) that allows *this State* to demand payment of the resulting contractual **debt** be paid in a currency other than gold or silver Coin!

2 It would violate the very definition of *debt*.

The taxes and assessments on *real property* at issue in this case has been declared by the legislature of *this State* to be a *debt*, see -

S C Code of Laws § 12-49-10 “All taxes, assessments and penalties legally assessed **shall be considered and held as a debt** payable to the State by the person against whom they shall be charged”, [**emphasis** added]

However, there is no such legal concept as a non-contractual *debt* as all *debt* is, by **definition**, based on an agreement – expressed or implied! So where in the record is evidence of a contract - expressed or implied where Ryan agreed to be liable for any so called *debt* on his land?

DEBT - “A debt is a sum of money **due by contract** It is most frequently due by a certain and **express agreement**, which fixes the amount, independent of extrinsic circumstances But it is not essential that the **contract** should be express, or that it should fix the precise amount to be paid Ordinarily, it imports a sum of money arising **upon a contract, express or implied** Under the legal-tender statutes, it seems to import **any obligation by contract, express or implied**, which may be discharged by money through the voluntary action of the party bound The legal acceptance of debt **is a sum of money due by certain and express agreement** ”, Blacks Law Dictionary, 2nd ed

This **PROVES** that all taxes and assessments on *real property* in *this State* is a **CONTRACTUAL** debt and is not and can not be an **involuntary** contribution

3 **It would be utterly impossible for the tax assessors and collectors to administer without requiring the recording of a deed.**

If liability for taxes and assessments on *real property* is NOT dependent on the recording of a deed, then how could the Respondents ever know the names and addresses of the actual/true owners of the *real property*? The actual/true owner's names and addresses are obviously needed for the Respondents to send them assessments, bills, and notices and to legally lien, levy, seize or sell their *real property*

The appellate courts of *this State* have steadfastly held that the listing, assessment, execution, levy, and sale **MUST** be made in the name of the true owner This

requirement ensures that only the true owner, those who have recorded their deeds, can have their *real property* taken for their debt (i.e., contractual obligation) and the tax collectors can only KNOW their name IF the true owners have recorded their deeds. This proves that the Respondents do NOT have the authority to take Ryan's property in someone else's name (for someone else's debt), despite the trial judge's erroneous conclusions to the contrary, and when Ryan attempted to bring these cases to the attention of the trial judge during the hearing of Respondents' motion to dismiss, Ryan was shut down cold -

Ryan - " *it is thus seen that the execution must issue against the true owner of the property*" [transcript, pg 26 lines 5-13]

Trial judge - "Alright Mr. Powell, I've heard enough, you may have a seat" [transcript, pg 26 lines 14-15]

The following four cases all declare that the law of *this State* mandates that the Respondents must list, assess, execute, levy, and sell property ONLY in the name of the true owner, which in this case has not been done and can not be done without Ryan recording a deed -

"It is a common assumption that a tax execution is issued against the property, such is not the case, it is issued against the defaulting taxpayer. All taxes, assessments and penalties legally assessed shall be considered and held as a debt payable to the State by a party against whom the same shall be charged." "And the taxes may be made out of any property the taxpayer has It is thus seen that the execution must issue against the true owner of the property", *Taylor v. Jennings*, 233 S C 600, 106 S E 2d 391 (1958),

"Tax execution is not issued against the property, it is issued against the defaulting taxpayer. Statute is explicit that land shall be listed and assessed and levied on and sold in the name of the true owner" *Aldridge v. Rutledge*, 269 S C 475, 238 S E 2d 165,

"Failure to give the required notice is a fundamental defect in the tax proceedings which renders the proceedings absolutely void. The requirement of that the levy, advertisement and sale must be made in the name of the true owner"

“Tax sale under an execution issued against one who is not the owner of the land is void” Donohue v Ward, 298 S C 75, 378 S E 2d 261 (Ct App 1989),

“Assessment, levy and execution and sale must be made in name of true owner” Where owner of property dies after January 1, it is proper that assessment was issued in name of decedent since lien attached at the beginning of the fiscal year. However, the levy, advertisement and sale should be made in the name of the devisees because they were the owners at the time thereof” “Due process of law requires some sort of notice to a landowner before he is deprived of his property”, Osborne et al v Vallentine, 196 S C 90, 12 S E 2d 856 (1941)

Should the Respondents argue that this is the reason why every land owner is **required** to record their deeds then where is the statute that creates such a legal requirement? The only statute that speaks about the recording of deeds declares that it is a **privilege**⁴. So how can one statute declare it to be a **privilege** and then another, presumably S C Code of Laws § 12-37-210 require the recording of deeds but without stating that such is a requirement? If there is a requirement to record one's deed it **MUST** be stated in a statute in clear and unequivocal language. Further, since all contracts must be entered into voluntarily to be valid and enforceable, the actual/true owner must voluntarily record his deed or else the resulting contract/agreement would be null and void so the legislature can not create a statute that forces people to contract with *this State* by recording their deeds.

The mere pretense that a tax liability can be laid on a person *involuntarily*, without a contract and then administered without the liable person being legally required to supply their names and addresses to the tax administrators is utterly ridiculous and lacks any legal, logical, or historical support!

4 It would force landowners into commerce.

⁴ S C Code of Laws § 12-24-10 (a) “ a recording fee is imposed for the **privilege** of recording a deed”

As shown above all dealings with *this State* is, and must be, voluntary. Thus any statute that would compel a person into commerce against his will is not only the *antithesis* of the very essence of *this State*, but it is also in violation of the US Supreme Court's holding in Griswold v. Connecticut, 381 U S 479 (1965) where that court held that no State can compel any person into commerce.

The issues in Griswold involved the State of Connecticut forcing the commercial activity of creating babies onto married couples by making it "*a crime for any person to use any drug or article to prevent conception*". The US Supreme Court held that even married couples who have voluntarily entered into a marriage license agreement with the State cannot be **compelled** to create babies. Hence, criminalizing the use of contraceptives egregiously invades the right to **NOT** engage in commerce, even where there's a license to do so. In other words, to criminalize the use of contraceptives is to compel commercial activity (creating babies). What the US Supreme Court in Griswold teaches is that no State may compel anyone to engage in **ANY** type of commercial activity¹. Compelled commerce has another name, it's called tyranny.⁵ Those who want to volunteer into a maritime law based contract and give away their property certainly have the free will to do so, but Ryan hasn't volunteered and he cannot be forced into the admiralty jurisdiction without a contract agreeing to such, nor can he be forced into commerce to pay a non-consensual, non-contractual, commercial debt.

5 It would violate a man's rights to exist and own property free of any tax.

⁵ Some of the gravest challenges facing this nation, which is teetering at the edge of the abyss into tyranny, have recently been decided. See Hamdan v. Rumsfeld, 548 U S 557 (2006), Boumediene v. Bush, ___ U S ___ (No. 06-1195, decided 12 June 2008), Munaf v. Geren, ___ U S ___ (No. 06-1666, decided 12 June 2008), Medellin v. Texas, ___ U S ___ (No. 06-984, decided 25 March 2008). In each case, tyranny has been the issue, and each time, tyranny has been overruled.

"All political power is vested in and derived from the people only" – S C Const art I, 1 That means if a man doesn't have the political power to tax or take a fellow man's property, and he does not, then he could never delegate that nonexistent political power to his representative to do that which he himself cannot do In other words, a man's representative can never create a law to do anything that a man by himself could not do as all political power is derivative from the people and their inherent powers However, a man **DOES** have the political power to tax and control his own creations so that derived power can be, and is, used by the legislature of *this State* to tax **its creations** (e g , corporations) These concepts have been clearly upheld by the highest courts in the land -

Redfield v Fisher, 292 P page 819 (OR Sup Ct 1930) – "an individual, unlike a corporation, is not subject to tax for the mere privilege of existing, and owning property, which are natural rights"

Yick Wo v Hopkins , 118 U S 356 (US Sup Ct 1886) - "Sovereignty itself is, of course, not subject to the law, for it is the author and source of law, but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable on any country where freedom prevails, as being the essence of slavery itself"

The following descriptions of property shows that property is the bundle of rights pertaining to a thing which includes "*the unrestricted right of use, enjoyment and disposal*" of the thing

PROPERTY " The right of property is that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of **any other individual in the universe** ", Blacks Law Dictionary, 2nd ed (1910)

"The right to property is not *ex gratia* from the legislature, but *ex debito* from the Constitution It is sometimes characterized judicially **as a sacred right, the**

protection of which is one of the most important objects of government " 16
Am Jur 2d, Sec 362

"Property in a thing consists not merely in its ownership or possession, but in the unrestricted right of use, enjoyment and disposal ", SC Dept Hwys & Pub Trans v Balcome, 345 SE 2d 762 (SC Ct App 1986)

According to Respondents and the trial judge, Respondents have the right to, *inter alia*, trespass on Ryan's land, post threatening notices on his land, possess his land, seize his land, advertise his land for sale, sell his land, keep the proceeds of the sale, and kick Ryan off his land [transcript, pg 25 line 3-13] Or in other words, since Ryan allegedly does not have the right to exclude Respondents from interfering with his land then his land is, by definition, **NOT** his property! But if that is so, then how did Ryan's land become his property when he paid for it, completed the contract with the seller for it, took delivery of the title agreement on it, took possession of it, but then somehow, magically, without him recording a deed, his property is NO LONGER HIS PROPERTY?

In an international document signed by the United States in 1948, named the "*Universal Declaration of Human Rights*", the civilized world declared in Article 17 of that document that "**Everyone has the right to own property**". The trial judge's ruling declares to the contrary, "Everyone, **BUT** the people living on the soil within the boundaries of South Carolina, has the right to own property" The trial judge, by his ruling, rolled back 150 years of history in this nation and declared that Ryan is but a slave who cannot own property, for prior to the civil war **only** a slave could not own property, for a slave was property!

6 It would be void for violating multiple provisions of the Constitutions of the State of South Carolina and of the United States.

"It will be an evil day for American Liberty if the theory of a government outside supreme law finds lodgment in our constitutional jurisprudence No higher duty

rests upon this Court than to **exert its full authority to prevent all violations of the principles of the Constitution**", Downs v Bidwell, 182 U S 244 (US Sup Ct 1901)

"The individual may stand upon his constitutional Rights His Rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the Constitution ", Hale v Henkel, 201 U S 43 at 47 (US Supreme Court 1905)

"The Constitution is a written instrument As such, its meaning does not alter That which it meant when it was adopted, it means now", State of South Carolina v United States, 199 U S 437, 448 (1905)

"It is clear, of course, that no act of Congress can authorize a violation of the Constitution", Almeida-Sanchez v United States, 413 U S 266 (1973)

If S C Code of Laws § 12-37-210 (or any other statute) creates an *involuntary* liability for taxes and assessments on Ryan or his land then it would violate six (6) of Ryan's unalienable rights that are specifically protected to him by the Constitutions of the State of South Carolina and of the United States The legislature, a creation of the State Constitution, has no authority to pass any statute that violates any provision of the Constitution that created it, and no judicial officer who has sworn an oath to uphold those Constitutions has the authority to interpret any statute in such a way as to render any of them unconstitutional⁶

The decision of the trial judge finding that Ryan is liable simply because his land can be found on the soil in some geographical area violates the following six (6) natural rights of Ryan that are specifically protected to him by the State and federal Constitutions

- a) Ryan's Right to not be involuntarily enslaved (Amendment XIII of the Bill of Rights)

⁶ "More importantly, we will not construe a statute to do that which is unconstitutional Mitchell v Owens, 304 S C 23, 402 S E 2d 888 (1991) (statutes are presumed to be constitutional and will be construed so as to render them valid)". Ward v State, 538 SE 2d 245 (2000)

- b) Ryan's Right to due process of law before taking his property (S C Const art I, 3 and Amendment V of the Bill of Rights)
- c) Ryan's Right to not have his private property taken for private use without his consent⁷ (S C Const art I, 13(a))
- d) Ryan's Right to not have his private property taken for public use without just compensation being first paid to him⁸ (S C Const art I, 13(a) and Amendment V of the Bill of Rights)
- e) Ryan's Right to not have his house unreasonably seized (S C Const art I, 10 and Amendment IV of the Bill of Rights)
- f) Ryan's Right to a trial by jury of his common law claims (Amendment VII of the Bill of Rights)

Clearly all the taxing statutes pertaining to *real property* that allows all these violations to occur are either unconstitutional and therefore void **OR** when the landowner records his deed he agrees to be bound by the taxing statutes in lieu of his constitutional protected rights. Of course it is the latter as no man's constitutional protected rights can be **taken** from him, without due process of law, but since everyone has freedom to contract they absolutely have the right and ability to contract away any right they have.

As Ryan has not entered into any contract or agreement waiving any of his unalienable rights specifically protected to him by the State and federal Constitutions and since all statutes must be construed so as to render them valid under the mandatory provisions of the constitutions as stated in Ward v State supra, then clearly the Respondents theories and the trial judge's conclusions are erroneous.

II Because the Revenue Procedures Act does not divest the circuit court of subject matter jurisdiction it was error for the trial judge to dismiss Ryan's claims finding that the circuit court is without subject matter jurisdiction.

⁷ It would be impossible to determine what the use of Ryan's stolen land would be put to until a particular *successful bidder* buys it and then puts it to some use, which could be either public or private.

⁸ See fn #7

Standards of Review #1 - Subject Matter Jurisdiction is an issue of law, *de novo* review required

“[S]ubject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong”, Dove v Gold Kist, 314 S C 235, 442 S E 2d 598 (1994)

“Tort suits are within the circuit court's jurisdiction Here, on its face, this complaint alleges a tort and therefore is not subject to dismissal for lack of subject matter jurisdiction”, McCullar v Estate of Campbell, 672 SE 2d 784 (SC Sup Ct 2009)

Respondents made two similar motions for dismissal of Ryan's claims alleging that the **RPA** somehow prohibits the circuit court from hearing Ryan's claims Respondents first dismissal motion was under Rule 12 (b)(1) SCRCF because allegedly the **RPA** is the “exclusive remedy” that Ryan has available to him so therefore the **RPA** divests the circuit court of subject matter jurisdiction to hear Ryan's claims [MTD, pgs 1-2 #1-#5] Respondents second dismissal motion was under Rule 12 (b)(6) SCRCF because allegedly Ryan's "*entire complaint is barred by the exclusive provisions of S C Code of Laws § 12-60-80*" which allegedly gives the circuit court the authority to dismiss Ryan's claims *with prejudice* [MTD, pg 3 #3] Ryan disagreed with these two motions in his Response to Respondents Motion to Dismiss [Resp to MTD, pgs 6-7, #2]

i **The RPA does not divest the circuit court of the subject matter jurisdiction to hear tort claims.**

As utterly redundant, intermingled, and frivolous as those two motions are, it seems Respondents were really trying to disguise the issue of "*failure to exhaust administrative remedies*" as the two above mentioned motions hoping Ryan would fall for their deception (fraud) and pursue an inapplicable administrative process while his statute of

limitations ran out as the **RPA** clearly has nothing at all to do with subject matter jurisdiction -

“If a **taxpayer** brings a circuit court action when she should have pursued administrative remedies under the Act, the circuit court "shall dismiss the case without prejudice " **§ 12-60-3390** (2000 and Supp 2003) ", Brackenbrook, LP v County of Charleston, 602 SE 2d 39 (SC Sup Ct 2004) [**emphasis** added]

“The doctrine of exhaustion of administrative remedies is generally considered a rule of policy, convenience and discretion, rather than one of law, and is not jurisdictional. Thus, the failure to exhaust administrative remedies goes to the prematurity of a case, **not subject matter jurisdiction...** if the matter may be waived, it cannot involve subject matter jurisdiction”, Ward v State supra [**emphasis** added]

As shown in Brackenbrook under S C Code of Laws § 12-60-3390 (not S C Code of Laws § 12-60-80 the statute that Respondents erroneously alleged gives the trial court the authority to dismiss Ryan's case - [MTD, pg 3 #3]) if a matter can be waived, it cannot involve subject matter jurisdiction.

It is well settled law that subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong, Dove v Gold Kist, supra. Ryan's complaint alleges several torts and the circuit court clearly has jurisdiction to hear tort claims, so therefore according to McCullar v Estate of Campbell supra Ryan's tort claims are “*not subject to dismissal for lack of subject matter jurisdiction*”

Ryan raised McCullar during oral argument of Respondents' hearing of their motions to dismiss [transcript, pg 15, line 18-24] showing that the circuit court did indeed have subject matter jurisdiction and also Ward v State [transcript, pg 16, line 19-23] showing that the alleged issue was not one of subject matter jurisdiction but an issue of *exhaustion*. Ignoring McCullar and Ward, the trial judge decided that the circuit court

did not have subject matter jurisdiction over Ryan's tort claims when he ruled "*to the extent it challenges the authority of York County to tax Plaintiffs real property or to collect those taxes from Plaintiff, this court lacks subject matter jurisdiction to adjudicate Plaintiffs claims*", [Order, pg 3, Rule 12(b)(1) para 1, Order pg 4 #3]

Although that finding misstates the actual facts of the case (see argument #VI below), there is **NO** extent of Ryan's claims that do **NOT** pertain to the authority of Respondents to extort money from Ryan by blackmailing him to pay someone else's debt or lose his property to Respondents non-judicial taking (theft) So what "subject matter jurisdiction" did the trial judge supposedly retain to make multiple findings of facts and conclusions of law and make two other decrees [order, pg 4 #1-2] **after** he found that the circuit court didn't have subject matter jurisdiction over Ryan's tort claims? Ryan objected to this decision in his Rule 59 motion asking the trial judge to either amend his order to remove his dismissal for want of subject matter jurisdiction or remove the other two decrees [MTAA, pgs 3-4, #5] because either the circuit court has the authority to hear Ryan's tort claims or it does not, it cannot be *kinda sorta* somewhere in the middle The trial judge denied Ryan's Rule 59 motion [denial order, pg1] The trial judge's dismissing Ryan's claims under Rule 12 (b)(1) SCRPC for want of subject matter jurisdiction was clearly error and must be reversed

11 **The RPA does not even apply to Ryan or his claims.**

The **RPA** only applies to *taxpayers* (persons liable) and NOT to non-taxpayers (persons **not** liable) Ryan could not even use the **RPA** if he had wanted to since he is not a *taxpayer* nor are his claims covered by the **RPA** Although Economy Plumbing & Heating Co., Inc v United States pertains to a Federal Income Tax issue, and not to a

state *real property* tax issue, it clearly demonstrates that the tax laws, and their associated administrative procedures, apply only to taxpayers liable under those tax laws and not to non-taxpayers. Economy dealt with a non [federal income] taxpayer who had some of his property seized by the IRS for someone else's debt [similar to this case] and Economy attempted to use the administrative procedures outlined for taxpayers to get a refund. The US Court of Claims found, *inter alia*, that since Economy was a non-taxpayer they could not use the "benefits" of the administrative tax procedures to get a refund, they instead had to bring an action at law for "*money had and received*" to get their money back. See Economy Plumbing & Heating Co., Inc v United States, 470 F 2d 585 (Court of Claims 1972) -

"All *taxpayers* who have overpaid their taxes are within this system and must follow the appropriate procedures and regulations, including the timely filing of claims for refunds for overpayment of taxes, if they are to have the benefits of the system. On the other hand, persons *who are not taxpayers* are not within the system and can obtain no benefit by following the procedures prescribed for taxpayers, such as the filing of claims for refunds. For example, there have been many cases where parties have sued to enjoin the assessment or collection of their moneys to pay the taxes of another, notwithstanding Section 263 of the Internal Revenue Code of 1939 (26 U S C § 3653 (1952 ed)) that provided that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court ". The courts have allowed these suits because the parties filing the suits were not taxpayers and were outside the revenue system of which the above statute is a part. See *Long v Rasmussen*, 281 F 236 (D Mont 1922), *Rothensies v Ullman*, 110 F 2d 590 (3d Cir 1940), *Raffaele v Granger*, 196 F 2d 620 (3d Cir 1952), and *Bullock v Latham*, 306 F 2d 45 (2d Cir 1962). In *Long v Rasmussen*, the court said

* * * They [the revenue laws] relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. * * *
* [*Id* 281 F at 238]

In other cases suits have been filed by nontaxpayers whose property has already been taken to pay the taxes of others, without filing claims for refund, and such suits have been allowed against the Collector or District Director of Internal Revenue in actions similar to the old action in assumpsit for money had and

received, even though lacking in statutory authority In *Stuart v Chinese Chamber of Commerce*, *supra*, the court said

Under the circumstances here recited it is obvious the appellees [whose property had been seized by the IRS to pay the taxes of another] are not taxpayers in the strict sense of the word, and therefore they do not come within the orbit of the income tax laws here invoked * * * * *

The appellees could not have maintained a suit for refund as could a taxpayer from whom a tax had been illegally collected, their only recourse was to bring suit to recover possession of the property of which they claimed to be owners

The above cases are illustrative of the proposition that a nontaxpayer is outside the administrative system set up for the collection of a refund of overpaid taxes, and is not required to file a claim for refund to recover money taken from him to pay the taxes of another ”

Economy says everything that needs to be said on this issue Ryan is clearly a non-taxpayer (as demonstrated in argument I above), even though he paid someone else's debt under protest to keep his property from being stolen from him, so the "benefits" available only to taxpayers under the **RPA** clearly do not apply to Ryan or to his case Therefore any motion to dismiss or limit Ryan's action based on any "remedy" alleged to be available to Ryan or restriction alleged to limit Ryan's case under the **RPA** is inapplicable to Ryan and to his case

III Because Ryan did not bring his claims under the Tort Claims Act against any governmental entity it was error for the trial judge to substitute “York County” for the Defendants/Respondents.

Standards of Review #1 - construction of statutes is a question of law – *de novo* review

The trial judge ordered the substitution of “York County” for the three named Respondents under the alleged authority of the S C Code of Laws § 15-78-10 et seq also known as the Tort Claims Act (“TCA” hereinafter) [order, pg-4, #1] But to make that order the trial judge misconstrued the actual language of S C Code of Laws § 15-78-70

(c) that Respondents alleged allows him to make such a substitution. Since Ryan did not bring his common law action under the provisions of the TCA nor did he name as a party defendant any "governmental entity", S C Code of Laws § 15-78-70 (c) is clearly inapplicable to Ryan's claims [Resp to MTD, pgs 12-13, #8] See -

S C Code of Laws § 15-78-70 (c) "On or after January 1, 1989, **a person, when bringing an action against a governmental entity under the provisions of this chapter shall** name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant ", [emphasis added]

S C Code of Laws § 15-78-30 – "Definitions (d) "Governmental entity" means the State and its political subdivisions "

What the trial judge seems to have done was ignore the first sentence of S C Code of Laws § 15-78-70 (c) which sets the context for the rest of that statute paragraph, i e , *"a person, when bringing an action against a governmental entity under the provisions of this chapter shall "* which then describes a situation where the governmental entity is being sued but only an agent's name is known so when the governmental entity becomes identifiable by name it is to be substituted for the named agent. Obviously this paragraph speaks of a situation that in no way applies to the facts of this case. The trial judge ignored that first sentence of S C Code of Laws § 15-78-70 (c) and then he cherry picked the second sentence out of that inapplicable paragraph and used it as the basis for his substitution order. That clearly was an error of statutory construction.

Assuming arguendo that the trial judge was correct and S C Code of Laws § 15-78-70 (c) is applicable to Ryan's action, there is absolutely NO allegations in the complaint that could support his finding that *"Each of the Defendants named in Plaintiff's suit is an*

employee of York County” in order to substitute that entity for the named Defendants in Ryan’s action. Ryan’s complaint clearly alleges that the Respondents are “*taxing and collection agents for the private company named "County of York"*” [complaint, #3, pg 1] and Respondents did not refute that allegation so if any entity could be substituted (and it cannot) it would have to have been “County of York” and **NOT** “York County”

To conclude what the trial judge concluded S C Code of Laws § 15-78-70 (c) would have to read something like this “*On or after January 1, 1989, all agents of all governmental entities have absolute immunity for any action they ever take because no agent of any government entity can ever be sued again in this State. If any person attempts to sue any agent of a governmental entity in their individual capacity, the trial judge shall remove the individually named agent and put in the name of any governmental entity the trial judge chooses to take their place*” Amazingly this is exactly what the trial judge interpreted S C Code of Laws § 15-78-70 (c) to mean and then decreed exactly that to happen [Order, pg 4 #1]!

IV Because Ryan brought his claims against the Respondents in their individual capacity for actions alleged to have been taken outside the scope of their official duties it was error for the trial judge to dismiss all of Ryan's claims with prejudice based on his finding that Respondents have sovereign immunity.

Standards of Review #1 - construction of statutes is a question of law – *de novo* review

“There is a general rule that a ministerial officer who acts wrongfully, although in good faith, is nevertheless liable in a civil action and cannot claim the immunity of the sovereign. There is also a general rule that if any officer — ministerial or otherwise - acts outside the scope of his jurisdiction and without authorization of law, he is liable in an action for damages for injuries.”, Cooper v O'Conner, 99 F 2d 135 (U S D C , Wash D C 1938)

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance, with impunity. All the officers of the government,

from the highest to the lowest, are creatures of the law are bound to obey it " "It is the only supreme power in our system of government, and every man who, by accepting office participates in its functions, is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes on the exercise of the authority which it gives ", U S v Lee, 106 U S 196 (1882)

"Its [the common law] guiding star has always been the rule of right and wrong, and in this country its principles demonstrate that there is in fact, as well as in theory, a remedy for all wrongs", Page v Winter, 126 SE 2d 570 (SC Sup Ct 1962),

The trial judge barred Ryan's action against the Respondents stating Ryan's claims are "*barred by the Tort Claims Act*" [transcript pg 29 lines 5-10] because Respondents allegedly have "*sovereign immunity*" [order, Rule 12(b)(6) para #2, pg 3] for their actions under the alleged authority of the TCA and then he dismissed all of Ryan's claims [Order, pg 4, #2] However, to make that finding and conclusion the trial judge misconstrued the statutes in the TCA which do not even apply to an action brought against agents of a *governmental entity* in their individual capacity for actions alleged to have been taken outside the scope of their official duty

- 1 **The Tort Claims Act does not even apply to an action brought against agents of a *governmental entity* in their individual capacity for actions alleged to have been taken outside the scope of their official duty.**

" an officer may be held liable in damages to any person injured in consequence of a breach of any of the duties connected with his office The liability for nonfeasance, misfeasance, and for malfeasance in office is in his '**individual**', not his official capacity ", 70 Am Jur 2nd Sec 50, VII Civil Liability

"We hold § 15-78-70(d) does not bar Wade's action against the County under the Tort Claims Act Wade's claim against Pierce was **not** under the Tort Claims Act It was an action against Pierce as an **individual** facing personal liability", Wade v Berkeley County, 529 SE 2d 743 (2000), [**emphasis added**],

"The TCA removes the common law bar of sovereign immunity in certain circumstances", Bayle v South Carolina Dept of Transp, 542 SE 2d 736 (Ct App 2001)

" an officer who acts in violation of the Constitution ceases to represent the government ", Brookfield Co v Stuart, 234 F Supp 94, 99 (U S D C , Wash D C 1964),

Ryan did not bring his common law action under the TCA nor did he bring his action against any "governmental entity" Ryan's action was brought against Respondents in their **individual capacity** with personal liability for allegations of their *ultra virus* and criminal actions that they took that were outside "*the scope of their official duty*" [Resp to MTD, pgs 13-14 #9] and therefore the TCA does not even apply to Ryan's action

The trial judge totally ignored the actual language of the TCA which clearly shows that it ONLY **gives** sovereign immunity to *governmental entities* and employees or agents of those entities when they are acting *within the scope of their official duties* Therefore, when such employees or agents are proven to have **NOT** acted *within the scope of their official duties* they have no immunity and become personally liable See the following controlling statutes from the TCA that clearly prove this -

S C Code of Laws § 15-78-20 (b) "The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents **except as provided in Section 15-78-70(b)**

S C Code of Laws § 15-78-70 (b) "Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude "

S C Code of Laws § 15-78-200 "Notwithstanding any provision of law, this chapter, the "South Carolina Tort Claims Act", is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty"

Ryan also relied upon an additional ground for his action against Respondents under a contract that he has with them so the TCA is also **not** applicable according to

S C Code of Laws § 15-78-20 (d) “*Nothing in this chapter affects liability based on contract*” [Resp to MTD, pgs 13-14, #9] Although Ryan alleged all the essential elements of a valid and binding contract in his complaint, the trial judge found in a footnote in his order that there was no valid and binding contract alleged⁹ Even if this tribunal finds the alleged contract is not valid or binding, it was a secondary ground for denying *sovereign immunity* to Respondents under the TCA and not the sole basis

- ii **It was premature to even consider whether the Respondents were acting within the scope of their official duties.**

Whether or not Respondents were acting *within the scope of their official duties* is an issue of fact that must be determined during the trial by the trier of facts, which in this case is a jury [Resp to MTD, pgs 14-15 #10] since the complaint is not required to have the level of detail needed to make such findings during any pre-trial motion See -

“Immunity under the statute is an affirmative defense that **must be proved by the defendant at trial**”, Frazier v Badger, 603 SE 2d 587 [**emphasis added**], and

“We believe the demurrer was properly denied The scope of immunity, if any, enjoyed by appellants **is a critical issue which should be decided at trial rather than by demurrer**”, Hanselmann v McCardle, 242 SE 2d 421 (SC Sup Ct 1978) [**emphasis added**]

Further as stated in Frazier v Badger supra, it is the Defendants' (Respondents) burden to prove that they have immunity and proof is not the mere reciting of a legal conclusion by their attorney that they have *sovereign immunity* No, they must enter evidence showing that they have authority to take all the actions that Ryan's complaint alleges they had no authority to take Since the complaint alleges all actions that Respondents took in this matter were *ultra virus*, outside of their jurisdiction, and most of their actions constitute “*actual fraud, actual malice, intent to harm, and/or a crime*”

⁹ See Argument V 1 below for a full briefing on this issue

involving moral turpitude” Respondents have a fair amount of evidence that needs to be entered into the record to dispute all Ryan's allegations in order to prove they have immunity

V **Because Respondents failed to demonstrate any defects in the individual causes of action in their Rule 12 (b)(6) motions it was error for the trial judge to find that Ryan failed to allege facts sufficient to state a valid claim.**

Standards of Review #2 - The reviewing court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief

“[T]he trial judge may dismiss the claim if the **defendant demonstrates** the plaintiff has failed "to state facts sufficient to constitute a cause of action" in the pleadings filed with the court. If the facts and inferences drawn from the facts alleged on the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper”, Nelson v. QHG of South Carolina Inc., 580 SE 2d 171 (2003)

Respondents moved to dismiss Ryan's claims based on a multitude of similar, overlapping, and mostly frivolous grounds. One of the grounds for dismissal was Respondents motions to dismiss the individual causes of action alleging they are defective in some mostly unspecified manner. For instance, as the basis for dismissal of five (5) of the causes of action, Respondents only concluded, without demonstrating any defects, that Ryan failed to allege facts sufficient to state a valid claim [MTD, pg 3, #4, #5, #6, #7, #9]. Ryan attempted to rebut Respondents motions even though there was so little "demonstration" of any specific defects to actually address [Resp to MTD, pgs 2-3 #3-6, 7-11 #3-6]. Notwithstanding, the trial judge found that “*Plaintiff fails to allege any facts that would entitle him to relief*”, [order, Rule 12(b)(6) S C R P, para 1] and then dismissed all of Ryan's nine (9) causes of actions “*with prejudice*” [Order, pg 4, #2,]

It seems that the trial judge's dismissal may have been solely based on his finding that Ryan's claims are "*barred by the Tort Claims Act*" [transcript pg 29 lines 5-10] and the "exclusive remedy" of the Revenue Procedures Act and not on any analysis of the individual causes of actions. However, since the motions for dismissal of individual causes of action was made by Respondents and may possibly be used to sustain the dismissal of one or more of Ryan's claims then this court is required to undertake the same standard of review of the complaint as the trial judge allegedly undertook. Further, if this court does find any defects in the complaint it must give Ryan an opportunity to amend his complaint to cure any defects found, upon remand of the case [Resp to MTD, pgs 10-11, #6]

"James F. Flanagan, *South Carolina Civil Procedure* 95 (2d ed. 1996) (party who loses a motion to dismiss **normally is given the right to amend the complaint to cure the defect**). When a plaintiff is not given the opportunity to file and serve an amended complaint, but is left with no choice but to appeal after dismissal of her case with prejudice, an appellate court which affirms the dismissal may modify the lower court's order to find the dismissal is without prejudice", Spence v. Spence, 628 SE 2d 869 (SC Sup Ct 2006) [**emphasis added**]

- i **Because the Respondents did not demonstrate any defects in Ryan's "breach of contract" cause of action, it was error for the trial judge to find that it "must fail as a matter of law".**

The only individual cause of action that the trial judge specifically determined was defective was Ryan's "breach of contract" cause of action. "*Plaintiff has failed to allege any facts by which this court could conclude or infer that he entered into an enforceable contract with York County, or with any of the individuals named as defendants in Plaintiff's lawsuit. Thus, the cause of action must fail as a matter of law*", [order, pg 4, footnote #1]. This finding by the trial judge was based entirely on the Respondents "**demonstration**" of the following defects in Ryan's pleadings: "*Plaintiff has failed to*

allege sufficient facts to state a cause of action for breach of contract" [MTD, pg 3 #6] and they failed to raise any additional defects during their hearing of that motion. Notwithstanding a total lack of "**demonstration**" of any actual defect, an analysis of the complaint will show that Ryan alleged Respondents' offer to contract [Complaint pg 10, #71], Ryan's acceptance of that offer [Complaint pg 11, #74], and valuable consideration [Complaint pg 10, #72 - 73], all the necessary elements of a valid and binding contract [Complaint pg 11, #75 - 76] See -

"The necessary elements of a contract are an offer, acceptance, and valuable consideration. A valid offer identifies the bargained for exchange and creates a power of acceptance in the offeree", Southern Glass & Plastics Co v Kemper, 732 SE 2d 205 (Ct App 2012)

"Valuable consideration may consist of "some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other" Prestwick Golf Club, Inc v Prestwick Ltd P'ship, 331 S C 385, 389, 503 S E 2d 184, 186 (Ct App 1998)

A benefit to the promisor or a detriment to the promisee may provide sufficient consideration for a contract Shayne of Miami, Inc v Greybow, Inc, 232 S C 161, 167, 101 S e 2d 486, 489 (1957)

The Oath of office is a quid pro quo contract (U S Const Art 6, Clauses 2 and 3) in which the oath taker pledges to undertake the responsibility to not violate the rights of the people that are specifically protected by the United States and State Constitutions in return for consideration (wages, perks, benefits). Respondents' promised responsibility provides a benefit to the recipient of that pledge creating a valid contract when the offer is accepted, see Prestwick Golf Club, Inc supra. If Ryan was a "*citizen*" of *this State* then that citizenship contract would contractually bind him to the Respondents' responsibility as co-citizens. But Ryan has not entered into a citizenship contract so Respondents would have no responsibility specifically to Ryan should Respondents fail

to uphold their oath¹⁰ Since the Constitutions do not give or grant any rights to the people (or citizens) but instead places limitation on the actions of officers and officials of the government, Ryan needed to accept the Respondents' offers to bind them to their responsibilities and provide Ryan the benefit of protecting his rights

VI **Because the facts found by the trial judge are not based on the record all the findings are unsupported and all the conclusions of law based on those unsupported findings are erroneous.**

Standards of Review #3 - are the findings "reasonably supported by the evidence"?

Without any affidavits, testimony, or even an answer entered into the record, the complaint is the only thing in the record that the trial judge can rely upon to make his findings of facts Further since all facts alleged in the verified complaint must be presumed to be true at the pre-answer stage of the proceedings¹¹, the trial judge was without any discretion to dispute any of the allegations in the complaint The following findings in the June 25, 2014 order are not based on the complaint and therefore constitute an error of law The trial judge refused to amend any of his findings when he denied Ryan's Rule 59 motion to amend [MTAA, pg 3, #3] [denial order, pg 1] Accordingly this Court must reverse the following unsupported findings and conclusions of law based on these unsupported findings -

- a) "*Plaintiff was acting "pro se"*, [order, pg 1, para 1] The complaint alleges that Ryan brought his common law claims as a "one of the people" [complaint, pg 1, #1] not as a legislatively created fiction in an admiralty action Fictions must be represented because they cannot speak Men need no representation

¹⁰ See S C Code of Laws § 16-5-60 "Any citizen who shall be hindered, prevented or obstructed in the exercise of the rights and privileges secured to him by the Constitution and laws of the United States or by the Constitution and laws of this State or shall be injured in his person or property because of his exercise of the same may claim and prosecute "

¹¹ "facts that have yet been denied or contradicted by countervailing affidavits or evidence, must be accepted as true", O'Conner v Board of Ed of School Dist 23, 449 U S 1301 (1980)

- b) *“Plaintiffs complaint and legal memoranda read like a doctrinal manifesto It is a rambling presentation of twisted, disconnected and inapplicable legal theories that contradicts all statutory and case law governing the issues presented”,* [order, Summary of Plaintiffs Claims, para 2] This is an unnecessary, untrue, and malicious finding that shows the disposition of the trial judge who made it Ryan’s “legal theories” are **ALL** based only on the statutes, case law, and constitutional laws of this State and of the United States
- c) *“It challenges the right and authority of the County to assess and collect ad valorem property taxes on realty, as well as the owner's obligation to pay those taxes”,* [order, Summary of Plaintiffs Claims, para 2] Ryan NEVER challenged the collection of “ad valorem taxes on realty” further he never challenged the owner’s obligation to pay their taxes, he only challenged the collection of a debt from a person who does not owe the debt being collected
- d) *“Plaintiff contends that York County cannot assess taxes against his real property, which is a conclusion unrelated to any personal liability for the taxes”,* [order, Summary of Plaintiffs Claims, para 3] Ryan NEVER contended that York County ever “assess taxes against his real property” as Ryan never claimed to own any real property and as far as Ryan is aware, York County has never assessed any taxes against him or his land
- e) *“in York County”,* [order, Summary of Plaintiffs Claims, para 3] Complaint never states Ryan’s land is “in York County” [a corporation] but that his land it is “on York county” [the soil in a geographical area] [complaint #1, pg1]
- f) *“The Complaint alleges that Plaintiff is the owner of a parcel of real property”,* [order, Summary of Plaintiffs Claims, para 4] Complaint never alleges any such fact and alleges only that Ryan is the absolute owner of land [complaint #1, pg1]
- g) *“Nevertheless, the trust remains the record owner of the property”,* [order, Summary of Plaintiffs Claims, para 4] This fact is contrary to the law and is problematic for Respondents for it demonstrates that they have failed to do their official duties¹² to keep their records accurate They have evidence in their possession that shows the trust not only does NOT own the property at issue in this case but also that the trust does NOT even exist How can a person that doesn’t exist receive notice, pay a debt, or own anything?
- h) *“According to Plaintiff, the York County Tax Assessor generated and sent a tax bill for 2012 taxes to the dissolved trust, which the trust did not pay”,* [order, Summary of Plaintiffs Claims, para 5] Complaint never states any such facts and Ryan

¹² Respondents were bound by the notice showing the existence of an instrument transferring ownership of Ryan’s land FROM the trust, so the trust cannot still be listed in Respondents records as the owner and if it is that is evidence of their failure to do their official duties See Frierson v Watson 371 S C 60 636 S E 2d 872 (2006) - “[O]ne who already has notice of the existence of any instrument will be bound by such notice whether the instrument is recorded or not”

would have no knowledge or concern with what the "Tax Assessor" or the "dissolved trust" did or did not do as such actions, if taken, did not involve Ryan or his property

- i) *"Each of the defendants named in Plaintiffs suit is an employee of York County"*, [order, Substitution of Party Defendant, para 1] Complaint never alleges that Respondents are "employee[s] of "York County" and in fact alleges that the Respondents act as agents for the "County of York" [complaint, #3, pg 1]
- j) *"each of the defendants was sued for acts undertaken on behalf of the County"*, [order, Substitution of Party Defendant, para 1] Complaint never alleges any such fact and in fact alleged that ever act the Respondents took in this matter were all outside the scope of their official duties as they were never given the authority to trespass on, take possession of, advertise for sale, or auction off property that belongs to a person who does not owe them a debt
- k) *"There is no issue of fact presented that any named Defendant was acting outside the scope of his or her official duties as employees of the County"*, [order, Substitution of Party Defendant, para 1] The complaint alleged that ever act the Respondents took in this matter were all outside the scope of their official duties as they were never given the authority to trespass on, take possession of, advertise for sale, or auction off property that belongs to a person who does not owe them a debt Further it is Respondents burden to prove they have immunity and they entered no evidence to prove anything that could sustain this finding
- l) *"Plaintiff also alleges that York County's employees committed various torts in issuing a notice of levy against his real property"*, [order, Rule 12(b)(6) S C R P , para 1] Complaint never alleges any such thing and in fact alleges that the notice of levy was issued against the previous owner and his *real property*, [complaint, #29-31, pg 5]
- m) *"Plaintiff fails to allege any facts that would entitle him to relief"*, [order, Rule 12(b)(6) S C R P ; para 1] Complaint alleges that ever act the Respondents took in this matter were all outside the scope of their official duties as they were never given the authority to collect a debt from a person who does not owe them a debt Therefore, every act Respondents took in this matter caused Ryan damages and he is entitled to compensation for those damages
- n) *"Plaintiff has failed to allege that Defendants took any action not ". . . expressly or impliedly authorized by law . in their efforts to enforce the tax laws of the County and the State" "Further, every act that Plaintiff has alleged to be actionable clearly relates to the " assessment or collection of taxes or special assessments or enforcement of tax laws "*, [order, Rule 12(b)(6) S C R P , para 5] This is just a restatement of the findings above Complaint clearly alleges that Respondents were acting outside the scope of their official duties and the tax laws do NOT give the Respondents authority to collect a debt from a person who does not owe them a

debt and instead gives them tools to abate or diminish any damage they might do during their collection attempts but Respondents refused to use those tools

- o) *"I find and conclude that Plaintiff has alleged no facts to support any legitimate claim against York County, or against any of the individuals named, under any theory of liability"*, [order, Rule 12(b)(6) S C R P , para 5] Although this is both a finding and a conclusion of law, there are no facts in the complaint that could support this conclusion. This is also a restatement of the above errors. See #j, - #n above.
- p) *"Plaintiffs breach of contract action appears to be an attempt by Plaintiff to circumvent the Tort Claims Act. However, Plaintiff has failed to allege any facts by which this court could conclude or infer that he entered into an enforceable contract with York County, or with any of the individuals named as defendants in Plaintiffs lawsuit. Thus, the cause of action must fail as a matter of law"*, [order, pg 4, footnote #1] Other than speculation, there is no way the trial judge could have determined Ryan's motive for entering into a contract with the Respondents. Further, Ryan did allege all the essential elements of a valid and binding contract, see argument V 1 above.
- q) *"Plaintiffs claims are entirely frivolous"*, [order, Rule 12(b)(6) S C R P , para 5] This finding/conclusion is not based on the complaint and is also entirely false as covered in depth in argument #I above.

VII Because the trial judge does not have the authority to find that Ryan's mother is engaged in the "unauthorized practice of law" or interfere in the obligations of their contract it was error for him to disallow her from providing Ryan "assistance of counsel".

Standards of Review #1 - Novel question of law – *de novo* review

At the onset of the hearing of Respondents' motions to dismiss, Ryan's mother attempted to assist Ryan. The trial judge *sua sponte* shut Ryan's mother down, threatened her with contempt and a felony charge, and found that she was engaged in the *"unauthorized practice of law"* [transcript pg 13 line 24 to pg 15 line 8]. This action of the trial judge removed Ryan's "assistance of counsel" from him, without any notice, thereby prejudicing him during that hearing. To add insult to injury the trial judge then denied Ryan's motion to continue the hearing until he could add his mother to the

complaint as a co-plaintiff so that she could speak at the hearing [transcript, pg 21 lines 11-15]

The Supreme Court of South Carolina is the only entity with the subject matter jurisdiction to make a finding that any person is "*engaged in the unauthorized practice of law*" - "We find the circuit court lacked jurisdiction to determine whether Ditech engaged in the unauthorized practice of the law", Hambrick v GMAC Mortg Corp, 634 SE 2d 5 (Ct App 2006) Assuming *arguendo* that the trial judge had the jurisdiction to determine that Ryan's mother was engaged in the *unauthorized practice of law*, how is it that Respondent's attorneys have to have a "license" to "practice law" when presenting their case, but to perform that **exact same** activity, Ryan doesn't need a "license"? The end result for both parties is the exact same - both parties present their cases The **ONLY** difference is that Respondent's attorneys are being paid to engage in a line of commerce "*for profit or hire*" in *this State* and *this State* has an obligation to protect the *public* from those persons who sell their legal services to the *public*, therefore attorneys are regulated by the SC Supreme Court, see -

"Our duty to regulate the legal profession is not for the purpose of creating a monopoly for lawyers, or for their economic protection, instead, it is to protect *the public* from the potentially severe economic and emotional consequences which may flow from the erroneous preparation of legal documents or the inaccurate legal advice given by persons untrained in the law Indeed, protection of the public is our "paramount concern" in these matters ", Linder v Ins Claims Consultants, Inc., 560 SE 2d 612 (SC Sup Ct 2002)

But the people who are **not** engaged in any commercial activity of selling legal services to the *public* cannot be regulated by the legislature or by the SC Supreme Court

- i **The Supreme Court of South Carolina does not have the authority to create a rule that requires any person to first obtain *approval* in order to exercise rights guaranteed to him by the Constitutions.**

Before *this State* was established those people providing “assistance of counsel” needed no license to do so, those people utilizing “assistance of counsel” to prosecute or defend their own cases needed no leave of court to do so as these activities were recognized as natural, inherent rights of the people protected to them by the federal and State constitutions. Amendment VI of the Bill of Rights specifically allows “assistance of counsel” for criminal cases and Amendment IX of the Bill of Rights specifically recognizes that there are many other rights not enumerated in the constitution that are still retained by the people which includes the people's right to utilize “assistance of counsel” to prosecute their own common law claims. Article 1 Section 10 of the federal Constitution specifically restricts the States from interfering with the obligation of contracts as does S C Const art I, 4.

Notwithstanding these constitutional restrictions, the Supreme Court of South Carolina, in its **order - In re Unauthorized Practice of Law Rules**, 422 SE 2d 123 (Sup Ct 1992) - created a requirement that “any individual” must first obtain “*approval*” (permission) to exercise his right to prosecute his own case as he sees fit which absolutely includes his right to use “assistance of counsel” if he so chooses, see -

“First, we recognize the validity of the principle found in S C Code Ann § 40-5-8 (1986) any individual may represent another individual before any tribunal, if (1) **the tribunal approves of the representation** and (2) the representative is not compensated for his services”, In re Unauthorized Practice of Law Rules, 422 SE 2d 123 (Supreme Court 1992), [**emphasis added**]

This requirement applies not only to any individual (including people like Ryan who are not subjects of this State) but also to any kind of action which includes common law actions. This requirement is not only in derogation of the common law but violates the federal and State constitutions and conflicts with the language of S C Code of Laws §

40-5-80¹³ that does NOT require any “*approval*” by a judge before a “*citizen*” can prosecute or defend their own cases which includes their right to utilize “assistance of counsel” if they see fit. The courts have no authority to rewrite legislation or to diminish rights of the people, especially those rights protected to them by the Constitutions. Further according to Hale v Henkel Ryan's rights protected to him by the Constitution can only be taken by due process of law in accordance with the Constitution, see -

“The state cannot diminish rights of the people”, Hurtado v California 110 US 516 (1884)

“The court has no authority to abrogate by rule a right guaranteed by the constitution”, State v Pavelich, 150 Wash 411, 273 P 182 (1928), and

“The individual may stand upon his constitutional Rights. His Rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the Constitution”, Hale v Henkel, 201 U S 43 at 47 (US Sup Ct 1905)

So how does Ryan being required to beg a judge for permission to exercise rights that are specifically protected to him by the Constitutions in order to receive assistance from his mother satisfy the duty of this Court to protect the *public* by regulating the *legal profession*? Does anyone honestly believe Ryan needs protection from his mother? Certainly the courts have a right to regulate the *commercial activities* of any attorney who has sworn allegiance to the court (verbal contract) and are using the courts for *profit or hire* but it cannot overstep the constitutional limitations on it by interfering with the peoples rights to contract for “assistance of counsel” should they so choose

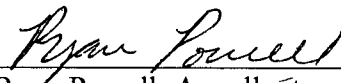
¹³S C Code Ann § 40-5-80 “*This chapter may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires*”

CONCLUSION

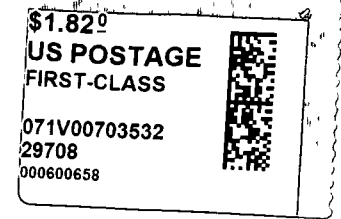
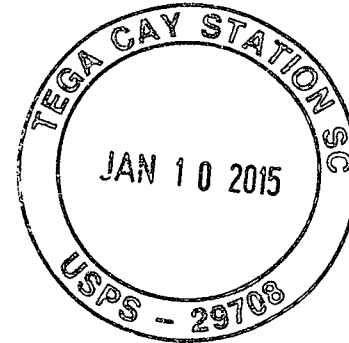
For the reasons stated herein, this Court must reverse both orders of the circuit court appealed and issue instructions to the lower court that upon remand Ryan is to be permitted to utilize his mother as his "assistance of counsel" if he so chooses

Respectfully submitted,

January 10, 2015


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