THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Op. No. 5201
(S.C. Ct. App. Filed February 26, 2014)

Phillip D. Grimsley, Sr., and
Roger M. Jowers, on behalf of
themselves and others similarly situated,

Respondents,

vs.

South Carolina Law Enforcement Division
and the State of South Carolina,

Defendants,

of whom,
South Carolina Law Enforcement Division is.

Petitioner.

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This case involves a scheme by SLED in which it kept money that should have been paid to Respondents --SLED employees who retired and returned to work for SLED. SLED, *by its own admission*, asked for and was appropriated, as salaries for the Respondents, the amount Respondents had been paid prior to retirement. These salaries were included in the personal service line item of the appropriations bill. (R.p. 209). SLED was also provided with an appropriation for the 13.6.% employer contributions for these salaries under the employee benefits line item provision of the appropriations bill. (R.p. 209, 205). However, SLED came up with a scheme that took "13.6%" of [Respondents'] appropriated salary to cover the amount it cost SLED to pay the employer portion of retirement. (R.p. 158). By doing this, SLED also profited by keeping the 13.6% appropriated elsewhere for the employer retirement contribution since it took that money from these employees' salaries. This Court previously recognized the impropriety of SLED's actions:

> Specifically, [Respondents]' takings claim is predicated on their entitled to retain the percentage of their salary --13.6%--that was used to pay the employer portion of the retirement contributions.

Grimsley v. S. Carolina Law Enforcement Div., 396 S.C. 276, 283-84, 721 S.E.2d 423, 427 (2012)("*Grimsley I*").

After the case was remanded, the parties filed cross motions for summary judgment. The Circuit ruled in favor of the SLED. On appeal, the Court of Appeals reversed and directed the circuit court to set the matter for trial. SLED then petitioned this Court for certiorari.

STATEMENT OF THE FACTS

The Respondents ("Respondent Retirees") are former employees of the South Carolina

Law Enforcement Division and were members of the Police Officers Retirement System. (R. pp. 107, 139). While employed, Respondent Retirees were given the opportunity to participate in a retirement program that was created internally created by SLED. (R. pp. 107, 139). This program required Respondent Retirees to retire from SLED and then be rehired by SLED as a full time employee. (R. pp. 107, ¶ 1, 139, ¶ 1).

In order to participate in the program, Respondent Retirees had to complete certain forms. (R.p. 172, ¶ 11). One of the conditions of the program was that Respondent Retirees would "have a reduction of 13.6% in [their] salary to cover the amount it will cost SLED to pay the employer portion of retirement." (R. pp. 107-108, ¶ 3, 158). In other words, Respondent Retirees were responsible for the employer contribution to the retirement system through the reduction of their own salary.

SLED's obligation to pay the employer's contribution to the retirement system when a member of the Police Officers Retirement System retires and returns to employment is established by S.C. Code Ann. § 9-11-90:

> An employer shall pay to the system the employer contribution for active members prescribed by law with respect to any retired member engaged to perform services for the employer, regardless of whether the retired member is a full-time or part-time employee or permanent employee.

Id.[1] However, under SLED's program, Respondent Retirees -- the "retired members" described in the statute-- are paying the employer's portion of the retirement contribution.

Furthermore, as it has admitted, SLED receives appropriations from the General

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[1]See also, S.C. Code § 9-11-220(1) which requires "each employer shall contribute to the System" a certain percentage for its employees.

Assembly, including the monies to pay the employer portion of the retirement contribution. (R. pp. 205-206). In fact, "Employer Contributions" is a line item in the Appropriations Act that represents the monies appropriated by the General Assembly for that specific purpose. (R. pp. 205-206, ¶¶ 5-9, 209-213). However, SLED, in effect, misappropriates monies due the retirement system and hides the misappropriation by taking money from the retirees' wages. (R. pp. 191, 205-207).

Respondent Retirees, who are only two of approximately 70 other SLED employees affected, lost thousands of dollars to which they were entitled. (R. pp. 108-109 ¶ 6-9, 140-141 ¶ 6-9). For example, in 2005, which was the first full year of reemployment for both Respondent Retirees, Appellant Grimsley lost salary in the amount of $7,330.74 and Appellant Jowers lost $6,382.53.

On cross-motions for summary judgment, the Circuit Court ruled in SLED's favor. (R.p. 1-22). On appeal, the Court of Appeals reversed the Circuit Court, holding that "a reasonable jury could find SLED agreed to pay each rehired employee the same salary it paid before retirement, and the percentage reduction represents and an illegal requirement that the employee pay the retirement contribution the employer is required to pay" by law. (Appendix, p. 2). The Court of Appeals remanded the case to the Circuit Court for trial.

On February 20, 2015 this Court granted SLED's petition for writ of certiorari.

Standard of Review

Summary judgment is only proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. An appellate court reviews the granting of summary judgment under the same standard applied by

the trial court. *South. Carolina Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). The non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid-S. Mgmt. Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

ARGUMENT

I. The Court of Appeals properly found that "a reasonable jury could find SLED agreed to pay each rehired employee the same salary it paid before retirement, and the percentage reduction represents and an illegal requirement that the employee pay the retirement contribution the employer is required to pay" by law.

Respondent first argues that because Lynn Hutto, the 30(b)(6) designee for SLED, referred to Respondent-Retirees' rehire salaries as "new salaries," the Court of Appeals was required to accept that Respondent-Retirees were not entitled to the salaries they had before. This is merely a play on words. The forms themselves do not state that Respondent-Retirees will be hired at "new" salaries. The forms provided a figure that was identified as "a reduction of 13.6% in *your* salary," thus recognizing that SLED took 13.6% away from Respondent Retirees to pay the employer contributions. ROA 158 (emphasis added). SLED's argument that the forms referred to the pre-retirement salary simply for purpose of calculating the amount of the post-retirement salary was properly rejected by the Court of Appeals, citing the evidence in the record (such as the forms) and finding:

> a reasonable jury could find SLED agreed to pay each rehired employee the same salary it paid before retirement, and the percentage reduction represents an illegal requirement that the employee pay the retirement contribution that the employer is required to pay under subsection 9-11-90(4)...."

Grimsley Slip. Op. at p. 2 (Appendix p. 2).

In other words, the Court of Appeals correctly recognized that the salary amounts (and

any reductions) were disputed issues of material fact that should be determined by a jury.[2]

Furthermore, contrary to Petitioner's assertion, the cases of *Ahrens* and *Alston* do not apply to this matter. SLED claims that even if Respondent-Retirees were rehired at their old salary which was then reduced, there has no violation of their property rights because *Ahrens v. State*, 392 S.C. 340, 709 S.E.2d 54 (2011), allows an employer to impose new conditions, such as a reduction of salary, when an employee retires and returns to work. SLED also claims that under *Alston v. City of Camden*, 471 S.E.2d 174 (S.C. 1996), it can "impose prospective changes in the conditions of employment."

This argument is merely a rehash of the arguments made in the Respondent's Brief to the Court of Appeals (see Resp. Brief, p. 29) that the court properly refused to adopt. This Court has already recognized that Respondent-Retirees have a "cognizable property interest in the percentage of their salary that was deducted in violation of section 9-11-90[.]" *Grimsley I*, 396 S.C. at 285, 21 S.E.2d at 428.

In this case, S.C. Code 9-11-90 states:

> An employer **shall pay to the system the employer contribution for active members** prescribed by law with respect **to any retired member** engaged to perform services for the employer, regardless of whether the retired member is a full-time or part-time employee or permanent employee.

In other words, SLED must treat Respondent-Retirees the same as any other member. SLED cannot gain by requesting and receiving from the General Assembly salaries appropriated to SLED employees and then reducing those salaries by 13.6% , claiming they really were not salaries. Such a scheme allowed SLED to profit by not giving the retirement system the

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[2]As a matter of law, it is illegal for SLED to profit from their scheme.

contributions for which SLED had been specifically appropriated. The type of mandatory language or "express guarantee"[3] of § 9-11-90 requiring SLED to make the employer contribution was not present in the statute in the *Ahrens* case and the court found no right had been violated. Because there is an "express guarantee" in this case (that SLED has violated), *Ahrens* has no application.

The *Alston* case involved a change in the amount of employee vacation and sick days given to city employees. Here, this dispute is over whether SLED can illegally and unconstitutionally reduce Respondent-Retirees' salaries and require Respondent-Retirees to pay the employer contributions, contrary to the express requirement of the retirement statute -- a very different issue than those present in *Alston*. See, *Layman v. State*, 368 S.C. at 640, 630 S.E.2d at 270 (Recognizing that retirement benefits are different from the "terms of employment" and the fringe benefits that were the subject of *Alston v. City of Camden).* Neither *Ahrens* nor *Alston* provide any justification for SLED's violation of the mandate in S.C. Code § 9-11-90.

Respondent next claims that the 1999 change to Section 9-11-90 was no effect as to who should pay the employer contribution for working retirees but was simply a clarification that an employer contribution must be made. However, every part of a statute must be given effect. *Crescent Mfg. Co. v. Tax Comm'n*, 129 S.C. 480, 124 S.E. 761 (1924). Prior to the 1999 change, the statute was silent as to employer contributions. After the 1999 amendments, the statute provided that the employer must fund the employer contribution just as they did for active members: "[a]n employer shall pay to the system the employer contribution for active members prescribed by law with respect to any retired member engaged to perform services for the

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[3] *Ahrens*, 392 S.C. at 352.

employer, regardless of whether the retired member is a full-time or part-time employee or a temporary or permanent employee." S.C. § 9-11-90 (1999). By forcing to Respondent Retirees to fund or offset the employer contribution, SLED is not treating the Respondent Retirees in the same manner as active members.

A. SLED's justification that salaries and employer contributions were never commingled has no effect on this case.

SLED argues that the employer contributions were never paid from the "personal service" accounts from which the Respondent-Retirees' salaries were paid, and were only transmitted from the "benefit account." (Pet. Brief, p. 30). Whether that statement is true or not has no bearing. From which pocket SLED withheld money from Respondent-Retirees does not change the fact that they withheld money. Respondent Retirees were entitled to the 13.6% appropriated to them as salaries, which SLED kept.

SLED admitted that the General Assembly appropriates funds for both the salaries for the agency's employees and for the other employee benefits such as the employer portion of the retirement contribution. In other words, SLED submitted to the General Assembly the amount of the salaries for these employees and was appropriated the requested salaries. However, SLED reduced Respondent-Retirees' salaries by 13.6 percent, keeping that amount for itself. SLED also calculated and was appropriated the 13.6% employer retirement contribution for the appropriated salaries (R. pp. 65-86). Whether or not the personal service account and the benefit account were separate and never commingled has no bearing here. The impropriety of SLED's actions turns on whether SLED, having been appropriated Respondent-Retirees' salaries and the employer retirement contributions, improperly reduced those salaries by 13.6 percent. This is no

ministerial act of transferring contributions to the retirement but a scheme to keep money that should have been paid to Respondent Retirees.

B. Respondent Retirees have standing to bring this suit and challenge SLED's actions and a property interest affected by SLED's actions.

With regard to standing, SLED claims that once Respondent-Retirees became fully retired and were no longer working retirees, they had no more standing to challenge the use of funds by SLED than any other citizen However, standing is conveyed when a plaintiff has an "injury in fact"-an invasion of a legally protected interest -- and where there is be a causal connection between the injury and the conduct complained of. *Smiley v. S. Carolina Dep't of Health & Envtl. Control*, 374 S.C. 326, 329, 649 S.E.2d 31, 32-33 (2007). As employees of SLED who contributed to PORS (even after being rehired) and whose constitutional rights were violated when SLED cut their salaries in order to fund the employer contribution, the standing requirement is clearly met. Furthermore, Respondent Retirees were still employees of SLED until 2008 and were contributing members of PORS. Respondent Retirees actually shouldered the burden of funding other members retirement because in addition to their employee contributions,[4] their salaries were decreased. Contrary to SLED's claim, Respondent Retirees have suffered an particularized injury rather than any general injury to all South Carolina citizens. Otherwise, such conduct could escape review.[5]

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[4]Furthermore, the contributions of Respondent Retirees did not result in any additional service credit for Respondent Retirees. S.C. Code 9-11-90(4)(c).

[5]In a matter of such public importance, standing can be conferred "without requiring the plaintiff to show he has an interest greater than the other plaintiffs." *Davis v. Richland County Council*, 372 S.C. 497, 642 S.E.2d 740 (2007). An agency should not be able to evade review for conduct that is capable of repetition and is imperative to establish a rule for future conduct in matters of public interest. *Sloan v. Dep't of Transp.*, 379 S.C. 160, 168, 666 S.E.2d 236, 240

Moreover, there are clearly facts and admissions by SLED to indicate money has been misappropriated or misused. SLED has acknowledged reducing Grimsley's salary from $52,896 to $42,318, despite the fact that it was appropriated the full salary and the employer contribution based on that amount. (R. p. 76). In other words, SLED requests appropriation of Grimsley's full salary, then lowers that salary by the amount of required employer contribution -- despite the fact that SLED was also appropriated that contribution based on Grimsley's full salary-- and then uses those "savings" for other purposes, such as salaries or benefits for other employees. SLED is being disingenuous in its appropriations requests to the General Assembly and its claims to the court.

Respondent-Retirees contributed to the retirement system, as both regular employees and as working retirees and thus, have standing as to what SLED did with the money the General Assembly appropriated to that agency for the retirement system. See, *Myers v. Patterson*, 315 S.C. 248, 433 S.E. 2d 841 (1993)(a taxpayer who has contributed to the sum jeopardized, is considered to have sufficient interest for standing).

In addition, contrary to SLED's assertion that Respondent Retirees have no property rights to sustain their claims, this Court previously addressed Respondent-Retirees' property rights and held:

> Properly construing [Respondent Retirees'] claim, we hold section 9-11-90 provides a basis to assert a property interest. Specifically, [Respondent Retirees'] takings claim is predicated on their entitlement to retain the percentage of their salary—13.6%—that was used to pay the employer portion of the retirement

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(2008). The issue in this case can reoccur each time an agency attempts to shift its employer burden to the employees and seeks appropriations (thus, every year) and should be resolved to provide future guidance. Id.

> contributions. It follows that [Respondent Retirees'] are able to point to a property interest rooted in state law.

Grimsley I, 396 S.C. at 285, 721 S.E.2d at 428.[6] In finding that the there was a jury question as to whether SLED agreed to pay Respondent-Retirees' salaries and then illegally reduced those salaries by the percentage of the employer retirement contribution, the Court of Appeals obviously concurred with this Court's earlier decision that Section 9-11-90 provided the basis for a property interest.

In this case, state laws set forth the amounts that can be deducted from wages for retirement contributions, as well as the contributions that must be paid by the employer. In other words, the State has created a statutory right to be paid without a reduction for the 13.6 % employer contribution. It is undisputed that Respondent Retirees' salaries were reduced by this amount, which caused them to lose thousands of dollars.[7] The reduction of wages is contrary to the specific statutory requirements and constitutes a taking of the property interest created by statute. *See, e.g., Wicker v. South Carolina Dept. of Corrections,* 360 S.C. 421, 424, 602 S.E.2d 56, 57 (2004) ("We find that where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law."). Respondent Retirees who were rehired to perform the same jobs as before retirement, should not have their salaries reduced to pay the employer contribution under SLED's "internal policy."

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[6]In fact, this Court reiterated this tenet in *Bell v. S. Carolina Dep't of Corr.*, 397 S.C. 320, 337, 724 S.E.2d 675, 684 (2012), in which the Court acknowledged and affirmed that the statutory right in *Bell* and the statutory right in right in *Grimsley*, were the same and that the state could not "through an internal policy, deprive Respondent-Retirees of these interests rooted in state law."

[7]Affidavits of Grimsley and Jowers (R.pp. 108-109 ¶ 6-9, 140-141 ¶ 6-9).

Plaintiffs clearly have a property interest, which SLED has illegally taken.[8]

Petitioner again falls back on the arguments already rejected by the Court of Appeals: that the salaries were not subject to a DE-duction, but a RE-duction. (Pet. Brief, p. 26). However, the terms are interchangeable and have no affect of the illegality of SLED's actions. Petitioner also feigns ignorance as to how its actions eviscerate the spirit of the statute. However, S.C. Code § 9-11-90 clearly mandates that the employer bear the financial burden of the employer portion of retirement; by shifting that to shift that burden to the employee, through the use wordplay and deceit, SLED has violated the intent and spirit of the statute.

II. The Court of Appeals properly recognized that SLED had improperly reduced Respondent Retirees' salaries.

Throughout this case, Respondent-Retirees have consistently argued that SLED could not reduce[9] their salaries by the percentage of the employer retirement contribution. In fact, this was

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[8]While the lower court's order only concludes there is no property interest and thus does not address whether a taking occurred, the taking of one's wages is an obvious violation:

> Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing this prejudgment garnishment procedure violates the fundamental principles of due process.

Sniadach v. Family Finance Corp. of Bay View, 395 U.S. 337, 342 (1969)(court found the prejudgment garnishment of wages violated Constitution). The amount of money that Respondent Retirees and the class have been deprived is significant. According to SLED's own spreadsheet showing the salary at retirement and the rehire salary for at least 71 working retirees, thousands of dollars were withheld under SLED's program.

[9]SLED, as it did in the lower courts, tries to recast Respondent-Retirees' theory of the case and argues that Respondent-Retirees asserted monies were wrongly "deducted" from their salaries instead of "reduced." Pet. Brief, p. 26. This is merely wordplay by SLED in attempt to distract the court from the inescapable truth that SLED has violated the retirement statutes and kept Respondent-Retirees' money for itself. Deduction and reduction have the same meaning, as both mean a lowering or decreasing. In fact, synonyms for "decrease" include **reduction**, lessening, lowering, **deduction** (Roget's Int'l Thesaurus, 3rd Ed. § 39.1). See also, Merriam-

the argument Respondent-Retirees made in the first appeal, and this Court said:

> ...[Respondent Retirees] do not claim they are entitled to a particular salary level. Rather, [Respondent Retirees] contend that they have a cognizable property interest in the percentage of their salary that was deducted in violation of section 9-11-90, regardless of any particular salary level.... Properly construing [Respondent Retirees'] claim, we hold section 9-11-90 provides a basis to assert a property interest.

Grimsley v. S. Carolina Law Enforcement Div., 396 S.C. 276, 283-84, 721 S.E.2d 423, 427 (2012)("*Grimsley I*")(emphasis added). The *Grimsley I* opinion recognized that Respondent-Retirees' claim was predicated on their "entitlement to retain the percentage of their salary -- 13.6-- that was used to pay the employer portions of the retirement contributions." *Id.* After *Grimsley I* was remanded to the circuit court, Respondent-Retirees again argued that they had "a statutory right to be paid without a reduction for the 13.6% employer contribution." (R.p. 93). The Court of Appeals, recognized, as this Court did:

> [SLED's] form ...identifies the reduced figure as "a reduction...in *your* salary." (emphasis added). If the reduced figure was calculated a percentage reduction from "your salary", then the salary of each rehired employee was the figure before reduction, not the reduced figures.

Grimsley Slip Op., p. 2. Before both the circuit court and the Court of Appeals, Respondent Retirees argued that the General Assembly appropriated Respondent Retirees' salaries as well as the 13.6% employer retirement contribution, but that SLED then reduced the appropriated salaries and kept that portion for itself in violation of the law on appropriations, which states:

> It shall be unlawful for any moneys to be expended for any purpose or activity except that for which it is specifically appropriated....

Webster Dictionary ("Deduction" is defined as: the act of taking away something from a total. Synonyms: abatement, discount, **reduction.)**

S.C.Code Ann. § 11-9-10. Respondent Retirees argued that SLED's retention of the 13.6% of the salary appropriated for Respondent Retirees was unlawful. (R.p. 90-91; 93). This was not a new argument, contrary to SLED's claim.

III. The Court of Appeals was not required to set forth specific findings on Respondent's affirmative defenses.

Petitioner claims the Court of Appeals' opinion is deficient because it reversed the circuit court's order but did not address the defenses of consent, waiver or estoppel. However, the Court need not address with all other issues present in the appeal. Cf. *Bramlette v. Charter-Medical-Columbia*, 302 S. C. 68, 393 S. E. 2d 914 (1990) (court reversed the verdict against the hospital for errors related to one employee but did not discuss a second employee's alleged wrongdoing as an independent basis for imposing liability on the hospital; as to the first employee, liability was vicarious; as to the second employee, liability was primary, based upon alleged inadequate training by the hospital).

A. Respondent Retirees did not waive any interests.

SLED claims that the forms signed by Respondent Retirees constituted a waiver of to a property interest. However, Respondent Retirees' waiver of rights as evidenced by "agreements" were forms created by SLED, and which do not contain language upon which the parties negotiated. If Respondent Retirees did not sign the form, they could not be rehired. Furthermore, agreements in violation of statutory or constitutional law will not be enforced. *Beach Co. v. Twillman, Ltd.,* 351 S.C. 56, 566 S.E.2d 863 (Ct. App. 2002) (An illegal contract is unenforceable); *Carolina Care Plan, Inc. v. United Healthcare Services, Inc.,* 361 S.C. 544, 555, 606 S.E.2d 752, 758 (2004) (This Court will not enforce a contract which is violative of public

policy, statutory law, or provisions of the Constitution); 717A *Am. Jur. 2d Contracts* § 309 (an illegal agreement cannot be valid by invoking waiver or estoppel). Since SLED's conduct is illegal, Respondent-Retirees could not consent or waive the illegality, and it cannot form the basis for estoppel.[10]

If the jury finds, as the Court of Appeals stated, that "the percentage reduction represents an illegal requirement that the employee pay the retirement contribution that the employer is required to pay under 9-11-90(4)(b)," there can be no consent or waiver.

B. Respondent Retirees are not estopped from pursuing their claims.

SLED claims that the conduct of Respondent Retirees estops them from now pursuing this action. SLED argues that Chief Stewart would not have offered the program to Respondent Retirees if he knew that they would challenge SLED's wrongful acts. However, Chief Stewart does not assert, and the record does not support that SLED suffered the required definite, substantial, detrimental change of position in reliance of Respondent Retirees' actions. Had Respondent Retirees remained as regular employees, SLED would have had to pay Respondent Retirees' salaries, without the reduction of 13.6% for employer contributions, as well as the employer portion of the retirement contribution.

Moreover, SLED has certainly not submitted evidence to warrant summary judgment on an estoppel claim. The elements of estoppel as to the party estopped are: (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or

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[10]In addition, as set forth above, SLED's actions result in an unconstitutional taking and is likewise unenforceable. See, *Carolina Care Plan, Inc. v. United Healthcare Services, Inc.*, supra.

constructive, of the true facts. *Ingram v. Kasey's Associates*, 340 S.C. 98, 531 S.E.2d 287 (2000). The lower court's order cites no conduct by Respondent Retirees that amounts to false representation or concealment.[11]

C. The statute of limitations does or doctrine of laches do not bar Respondent Retirees' claims.

SLED argues that the Respondent Retirees entered the program in 2004, but did not bring this lawsuit in 2008, and thus, their action is barred by the statute of limitations or laches. SLED initially made this argument to the Circuit Court, which it clearly rejected, stating that "it could be held that the statute commences to run anew with each [pay]check presented." R.p. 19. *See also, Tilley v. Pacesetter Corp.*, 333 S.C. 33, 42, 508 S.E.2d 16, 20 (1998)("Accordingly, although we find the three year statute of limitations applicable, it begins to run from each payment [in violation of the statute], such that plaintiffs' claims are not barred.").

The statute of limitations began to run anew every time SLED issued a paycheck to Respondent Retirees that was 13.6% less than it should have been, due to SLED's improper withholding of that amount to pay the employer retirement contribution for Respondent Retirees. *See, e.g. Tilley v. Pacesetter Corp.*, 333 S.C. 33, 42, 508 S.E.2d 16, 20 (1998)("Accordingly, although we find the three year statute of limitations applicable, it begins to run from each payment [in violation of the statute], such that plaintiffs' claims are not barred.").[12] Thus,

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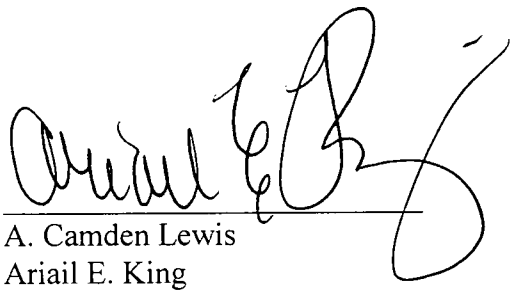
[11]In addition, there is no evidence that Respondent Retirees had knowledge of some "true facts" that it withheld from SLED.

[12]*See also, Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 358, 559 S.E.2d 327, 337 (Ct. App. 2001) (A new statute of limitations begins to run after each separate invasion of property.)

Respondent Retirees can recover for the three years prior to the filing of the Complaint through the current date.

CONCLUSION

As described herein, SLED has wrongfully shifted the burden of the employer contribution to the employee, in violation of state law. For the reasons set forth above, the Court of Appeals' opinion should be affirmed.



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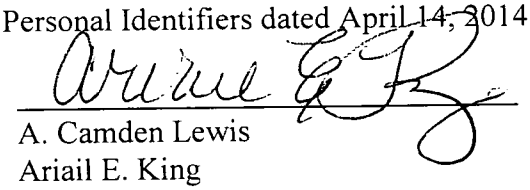
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Brief of Respondent complies with Rule 208(b), SCACR and the Supreme Court's Order on Personal Identifiers dated April 14, 2014.



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In the Supreme Court

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S.C. Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge
(Case No. 08-CP-40-8854)

Op. No. 5201
(S.C. S.Ct. Filed February 26, 2014)

Phillip D. Grimsley, Sr., and
Roger M. Jowers, on behalf of
themselves and others similarly situated,

Respondents,

vs.

South Carolina Law Enforcement Division
and the State of South Carolina,

Defendants,

of whom,
South Carolina Law Enforcement Division is. Petitioner.

PROOF OF SERVICE

I, Connie W. Grugan, secretary to the law firm of Lewis, Babcock & Griffin, L.L.P., hereby certify that I have served the Brief of Respondent upon opposing counsel by mailing a copy of same, postage prepaid and return address clearly indicated, to said opposing counsel addressed as follows:

Kenneth P. Woodington, Esquire
William H. Davidson, II, Esquire
Davidson & Lindemann, P.A.
Post Office Box 8568
Columbia, South Carolina 29202-8568

Connie W. Grugan

This 12th day of May, 2015.

LAW OFFICES OF
LEWIS
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May 12, 2015

HAND DELIVERED
Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolnia
1231 Gervais Street
Columbia, South Carolina 29201

Re: Phillip D. Grimsley, Sr., et al. vs. South Carolina Law Enforcement Division and the State of South Carolina. et al., Appellate Case No. 2014-001059

Dear Mr. Shearouse:

Enclosed please find the original and sixteen copies of the Brief of Respondent in regard to the above-referenced matter for filing with your office. Please return a clocked copy via our courier.

By copy of this letter, we are hereby serving a copy of same upon opposing counsel.

Sincerely,

LEWIS, BABCOCK & GRIFFIN, L.L.P

Ariail E. King

AEK:cg
Enclosure
cc: Kenneth P. Woodington, Esquire
William H. Davidson, II, Esquire
Richard A. Harpootlian, Esquire
John A. O'Leary, Esquire