RECEIVED
MAY 12 2015
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
CASE No. 2011- CP-10-1084
Circuit Court Judge R. Markley Dennis, Jr.

ROOSEVELT SIMMONS..... Appellant

Vs.

MASE and COMPANY, LLC,
J. AL CANNON, JR.,
CHARLESTON COUNTY SHERIFF'S DEPARTMENT,
CHARLESTON COUNTY REVENUE COLLECTIONS DEPARTMENT
and
HARRY LONG..... Respondents

REPLY BRIEF OF APPELLANT

Edward A. Bertele, Esq.
1812 Pierce Street
Charleston, SC 29492
843-471-2082
SC Bar No. 72521
Attorney for Appellant
Roosevelt Simmons

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

State Statutes

Federal Statutes

Ordinances

Court Rules

REPLY TO STATEMENT OF THE CASE

Appellant responds to the Statement of the Case provided by the Respondents in order to correct certain inaccuracies. In its Initial Brief, County Respondents asserted that in Appellant's motion to dismiss the Second Amended Complaint filed in federal court, Appellant argued that the Fourth Count Section 1983 claim was inextricably intertwined with the validity of the Magistrate Court judgments. County Respondents Brief at page 3. However, Appellant's actual argument to the federal court was different.[1] Appellant moved to dismiss all of the counts or in the alternative to dismiss the counts challenging the user fee judgments (First, Second and Third) and to stay the remaining civil rights and tort claim counts. Motion to Dismiss at page 3. Appellant contended that the District Court lacked subject matter jurisdiction over the first three counts based upon established principles of federal court jurisdiction involving review of state court judgments. Id. at page 3-4. Appellant further contended that " [t]o the extent that the Section 1983 claim . . . relies upon the invalidity of the Magistrate Court judgment, it is inextricably intertwined with the counts which the Court cannot entertain jurisdiction." Id at page 5. Appellant contended that there was a potential for inconsistent results if the Court only dismissed the first three counts which would be remanded to state court and continued with the Section 1983 and tort claims. Id at page 6. This argument was restated in Appellant's Rely Brief to the federal court. See page 2. The District Court agreed and remanded the entire case. Order at page 3.

In their Initial Brief, County Respondents assert that at the initial motion hearing on the summary judgment motions, November 7, 2012, Appellant argued that the basis for his allegation that Deputy Long acted with malice was a phone call. County Respondents' Brief

[1] This correction is necessary since County Respondents have raised the federal court decision as a potential basis to support the Circuit Court's dismissal of all of the counts as "inextricably intertwined". See Point I C.

at page 5. However, that does not accurately reflect the proceedings. After the Court denied both summary judgment motions, County respondents counsel asked the Court to address his motion to dismiss as to Deputy Long:

> MR. DORSEL: Basically they've brought a negligence action against the Sheriff's Department. They named the Sheriff's Department and Deputy Long. I have motion to dismiss Harry Long in the tort claims action.
>
> THE COURT: Absolutely. That's granted.

November 7, 2012 Transcript at page 27, line 12 - 19.

When Appellant's Counsel asked to be heard on the issue, the Court asked him about the allegation of malice. Counsel responded:

> MR. BERTELE: In the record, the deposition of Harry Long . . . he testified that Mr. Simmons called him on the phone and threatened him. We deny that. What happened subsequently is that Deputy Long took it upon himself to disregard . . . the property of Mr. Simmons.

Id. at page 28, line 16-23. Appellant's Counsel also stated that the claims against Deputy Long included an equal protection (civil rights) violation. Id page 30, line 18-23.

In their Initial Brief, County Respondents further assert that Appellant did not seek reconsideration of the denial of his Motion for Partial Summary judgment as to the Magistrate Court's lack of subject matter jurisdiction. County Respondents Brief at page 6. The Circuit Court denied that both motions for summary judgment in the November 20, 2012 Form 4 Order. Id. This was not a final order and Appellant preserved this issue by including it in his Motion to Alter and Amend the judgment dismissing the Second Amended Complaint. Plaintiff's Motion at page 3.

In their Initial Brief, County Respondents also allege that Appellant did not raise the issue of the Respondent County Sheriff Department's failure to follow its own disciplinary regulations in connection with his claim of negligent retention. County Respondents' Brief at page 39. However, Appellant addressed this issue in his Supplemental Opposition to Summary Judgment at pages 2-3 and 6-8.

Finally, in their Initial Brief, County Respondents contend that during the second motion hearing on their motion for reconsideration, the Appellant's counsel asserted that his claim for equitable relief was limited to a lack of notice of the sale. County Respondents' Brief at page 6. The transcript indicates that counsel explained that it "would be inequitable under all the circumstances to enforce those judgments in the way in which it was enforced here." March 7, 2013 Transcript at page 11, line 25 to page 12, line 3. Counsel also referred to the earlier argument about the manner in which Deputy Long conducted the levy and sale as supporting an inference of malice. Id at page 15, line 23 –page 16, line 5.

In its Initial Brief , Respondent Mase and Company, LLC asserts that there was a delay in resolving the reconsideration motion due to the inaction of Appellant. Respondent Brief at page 2. Appellant asserts that this is an improper statement to be included in the Statement of the Case and is unsupported in the Record and has no bearing to the issues on appeal.

Respondent Mase never filed any opposition to Appellant's motion to add the Sixth Count to vacate the sale based upon a grossly inadequate price. Respondent Mase's sole response to the Amendment was to file an Answer, Crossclaims and a Counterclaim. See Answer of Respondent Mase and Company, LLC. Respondent Mase never filed any separate

motion or any pleading in support of the County Respondents' motion for summary judgment to dismiss the Sixth Count on any basis.

REPLY TO STATEMENT OF FACTS

Appellant responds to County Respondents Statement of facts in order to address factual inaccuracies . The Charleston County Ordinance imposes a user fee upon owners of real property who receives services. Charleston County ordinance Section 10-56. It is not, as contended by County Respondents, imposed on all citizens. The inspection to which County Respondents refer, County Respondents' Brief at page 9, was done solely to determine the habitability of the dwelling. Boniface Deposition at page 59, lines 2-18. Contrary to County Respondents' assertion that the Application for Review Form did not contain any language that it was a waiver, County Respondents' Brief at 10, the forms Appellant received were all signed by Peggy Ellington, an employee of the Auditor with the hand written inscription "User fee removed". Exhibit G to County Respondents Supplemental Memorandum.

Contrary to County Respondents' assertion that Respondent Long made a "discretionary decision" to levy on real estate, County Respondents' Brief at page 12, Deputy Long testified that he may have been obtain sufficient proceeds from the sale of the motor vehicles but chose not to pursue it. Appellant's Brief at page 19.

REPLY ARGUMENT

I. THE CIRCUIT COURT HAS JURISDICTION UNDER SCRCP 60(b) TO CONSIDER A CHALLENGE TO THE MAGISTRATE COURT'S JURISDICTION BASED UPON EQUITABLE CIRCUMSTANCES

Appellant has demonstrated that Role 60(b), SCRCP by its own terms allows a Circuit Court to hear a challenge to the validity of an earlier judgment based upon equitable

circumstances. Appellant's Brief at page 26-27. County Respondents have mischaracterized the case law applicable to this provision of the Rule and rely upon other cases which do not deal specifically with the issue of a collateral attack upon a judgment based upon a lack of subject matter jurisdiction as part of an equitable analysis. Finally, County respondents argue that the Appellant is not entitled to any equity. These are addressed below.

A. Rule 60(b) has been interpreted to permit an independent action based upon equitable circumstances.

County Respondents assert that T v. T, 378 S.C. 127, 662 S.E.2d 413,414 (Ct. App. 2008) does not deal with whether R 60(b), SCRCP permitted an independent action to vacate a prior judgment based upon equitable circumstances, only with holding a hearing. County Respondents' Brief at page 14. However, County Respondents then go on to assert that this Court indicated that the case was not a "bright line test to consider the issues". Id. However, the cited passage refers to the Court of Appeals discussion of the developments in paternity testing, not how R 60(b) should be interpreted. 662 S.E.2d at 419. A reasonable reading of the case supports Appellant's position that T v. T allows the Circuit Court under R 60(b) to consider equitable circumstances as the basis for vacating an earlier judgment. The decision of the Court was to reverse the lower court's dismissal of the independent action and remand for reconsideration of the paternity issue which the father had previously conceded in an earlier divorce action. Id at page 414. Therefore, R 60(b) does as Appellant asserted, provide a basis for an independent action to vacate an earlier judgment based upon equitable circumstances.[2]

[2] No issue of res judicata was raised below. Moreover, "a judgment must be "valid" in order to preclude a second action concerning the same transaction, and this validity requirement is already built into the doctrine of res judicata." S.C. Pub. Interest Found. v. Greenville Cnty., 401 S.C. 377,392, 737 S.E.2d 502, 510 (Ct. App. 2013)

2. There is no time limit provided in the applicable provision of R 60(b).

County Respondents mistakenly reference the provisions of an earlier section of R. 60(b), SCRCP which pertain solely to motions to vacate a judgment based upon the enumerated grounds. County Respondents Brief at pages 15-17. Those provisions contain time restrictions for the filing of the motion based upon the nature of the defect which is being asserted. County Respondents contend that the case law applicable to those time limits should be applied to bar this action, Id. at page 16-17, citing McDaniel v. U.S. Fidelity and Guar. Co., 324 S.C. 639, 478 S.E.2d 868 (Ct. App. 1996). However, the facts are different.

In Mc Daniel, the Court of Appeals held that " The special referee's decision that McDaniel's motion was untimely after nearly four years is not an abuse of discretion, especially since McDaniel participated in the settlement, received substantial benefits from it, and utilized [a statute he now seeks to rely upon] as the basis for a cause of action in his [original] 1989 complaint." 478 S.E.2d at 871. The Court of Appeals did not disturb the finding that the motion made after 4 years was untimely based upon the "abuse of discretion" rule. Id. Here the Circuit Court did not rule on the timeliness of Appellant's Complaint to vacate the user fee judgments but refused to consider the claims based upon its lack of jurisdiction.

Appellant contends that the timeliness of the Complaint is one aspect of the equitable analysis to be considered in granting equitable relief. In T v. T, supra, the action to vacate the final divorce judgment concerning paternity was made seven (7) years after the divorce was granted. 662 S.E.2d at 415. Appellant recognizes that in any such analysis a standard of "reasonableness" should be applied, but that is entirely fact dependent. See Below.

3. An equitable analysis is required based upon all the facts.

County Respondents urge this Court to conduct its own analysis of the few facts that the County presents and conclude that Appellant is not entitled to equitable relief. County Respondents' Brief at page 17-19. County Respondents did not raise this issue before the Circuit Court and it did not make any ruling on that issue. Since County respondents have asserted this another basis for affirming the Circuit Court , Appellant will address the issue fully herein.

Appellant contends that there were sufficient facts in the Record to provide a scintilla of evidence on this issue. Appellant's Brief at pages 17,18,21,22. The relevant facts include the following : Appellant lived on Johns Island for many years. He doesn't receive any county services for trash removal because trash removal companies don't come back to his house because it is too far off Kitford Road. He doesn't have any trash pickup or take any solid waste to the landfill. Each year when he received a tax bill from the country which included a user fee, he went to the County Auditor and spoke to Ms. Peggy Ellington, one of the employees to object to the user fees being part of his taxes because he didn't receive any services. She gave him a form which he signed and she initialed indicating the user fee was being removed. He also spoke to the Auditor, Ms. Peggy Moseley about his problem with the user fee. Neither Ms. Ellington nor Ms. Moseley ever told him that he had to pay the user fee or else he could lose his property. Each year after the county removed the user fees from his tax bill he paid the taxes in full for TMS 138. He never received a separate user fee bill. As a result, he thought that the county had no claim for user fees. Simmons Affidavit, Para. 3-5.

Appellant contended that he did not receive any written notice of a complaint filed against him by the Business License/User Fee Department in 2000 for nonpayment of the user

fees in the amount of $89.00. He has had problems with not receiving mail for many years. Since he never received notice of the complaint in 2000, he never went to the Magistrate's Court to object to the user fee. He did not receive written notice that a judgment had been entered against him on that complaint. When a deputy Sheriff came to his home to execute on that judgment in August 2009, he believed that this was an error since the Auditor's Office previously removed the user fee from the tax bill. Also the sale was for TMS 498 for which no user fee was due since it was vacant land. Appellant filed this action after he discovered that TMS 498 had been sold in 2010 for the user fee on TMS 138. Id.

Appellant contended that he owned several motor vehicles including a Ford truck, a Toyota sedan and a "classic" 1955 Desoto sedan which were in very good condition; that these vehicles are all owned free and clear and are registered to him. He also owned a boat and trailer, a Kubota tractor and an Allis Chalmers tractor and dump truck. The motor vehicles, the boat and trailer and all the heavy equipment were parked in plain sight when Deputy Long arrived at his house in August 2009 but he didn't seem to have any interest in them. When he told Appellant that he had to pay the judgment, Appellant told him the user fee had been removed. When Deputy Long gave him a notice of sale for TMS 282-00-00-498, another parcel he owns, he did not understand why the County would try sell property on which the taxes were paid that was not subject to the user fee since it was vacant. If he had understood, he would have placed the taxes and user fee into an escrow account until the dispute could be resolved. Id. Para. 7

Appellant had TMS 498 appraised in 2006 because of a dispute involving Berkeley Electric and the fair market was then $70,000. Id Para. 7; Ebel Appraisal. Yet, Deputy Long sold TMS 498 for $600.00. Id. Para. 8.

County respondents cited Nat'l Sur. Co. v. State Bank of Humboldt, 120 F. 593 (8th Cir.1903) and the elements to be considered as indispensable to an equitable analysis: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law.

Appellant contends that he has made a prima facie showing to satisfy the Humboldt criteria which can be summarized as follows: The jurisdiction of the Magistrate's Court is in question; See Point I B; Appellant has a good defense to the action, he never received any service; See point IIA; he had a good faith belief that the County Auditor had waived the user fee and was never told to the contrary and that the county would not sell TMS 498 for nonpayment of a user fee since there was none due and his taxes had been paid on TMS 498; Appellant responded once he found that TMS 498 had been sold; the sale produced $600. from the sale of a $70,000. parcel which was grossly inadequate s to shock the conscience, See Point IV; finally, Appellant has no other adequate remedy at law to regain title to TMS 498 other than to have the judgment and sale vacated.

B. The Magistrate Court Rules do not bar an action under R 60(b) to challenge the lack of jurisdiction and associated claims

County Respondents raise the defense that the Magistrate Court Rules bar this action. County Respondents' Brief at pages 20-23. The provisions cited by County Respondents pertain to the filing of post trial motions for relief from a judgment. These Rules do not specifically preclude a remedy under R 60(b) and County Respondents have not cited any case which so holds. Moreover, where the basis of the challenge is the lack of subject matter

jurisdiction not the lack of notice of the hearing and entry of judgment, the time limit applicable to attacks upon a lack of jurisdiction is a reasonable time not 30 days as provided in R. 19, SCRMC. Further, the Magistrate Court has no jurisdiction over the Fourth and Fifth Counts alleging civil rights and tort claims against the County Respondents and the Sixth Count that the sale was void due to inadequacy of the sale price since those claims exceeded its jurisdictional limit. S.C. Code Ann. Section 22-3-10(2) & (12). The Magistrate Court could not provide Appellant with a complete remedy and accordingly, this action was appropriately brought in Circuit Court.

County respondents also contend that the Magistrate Court has concurrent jurisdiction with the Circuit Court over actions to injury to the person and thus it could hear an action for unpaid user fees. County Respondents' Brief at page 26. Appellant has addressed this issue below. See Point VII.

Finally, County Respondents cite Love v. Dorman, 91 S.C. 384, 74 S.E. 829 (1912) for the proposition that Magistrate Court judgment becomes a Circuit Court judgment once the transcript is filed and not subject to collateral attack only an appeal. County Respondents' Brief at page 27. The County Respondents argument however, supports Appellant's position because by the filing of the Magistrate Court judgment, it became a Circuit Court judgment. Love v Dorman predated the adoption of the South Carolina rules of Civil Procedure in 1985 and would not apply to preclude an independent action to vacate a Circuit Court judgment because R 60(b) specifically permits it. See McLain v. Ingram, 314 S.C. 359 , 444 S.E.2d 512 (1994)("The adoption of the SCRCP in 1985 heralded a new era in South Carolina's civil practice, modernizing and streamlining our system."). Therefore, County Respondents'

position that the Magistrate Court judgment is Circuit Court judgment supports Appellant's position.

In summary, there are no reported cases which preclude the Circuit Court from hearing an action brought under R 60(b) to collaterally attack a Magistrate Court judgment based upon a lack of jurisdiction. Appellant contends that for all of the foregoing reason, the Circuit Court should not granted summary judgment for lack of subject matter jurisdiction.

C. The Decision of the District Court does not support dismissal of the Fourth Count

Appellant has contended that the Circuit Court's jurisdiction over the Fourth (civil rights violation), Fifth (tort claim) and Sixth (inadequate price) Counts is unaffected by the alleged lack of jurisdiction over the First, Second and Third (validity of user fee judgment) Counts. In response, County Respondents have asserted a new theory for dismissal of the Fourth Count, not raised in their motion for summary judgment or their motion for reconsideration.

Because it has been first asserted in response to this appeal, Appellant will address it fully here. The new theory is that the Fourth Count should be dismissed based upon the decision of the District Court that the validity of the state court judgments and the civil rights claim (Fourth Count) are inextricably intertwined. County Respondents' Brief at pages 28-29. County Respondent's do not make any legal argument with citations that support its position. County Respondents mistakenly assert that " the District Court essentially held that if the Appellant could not prove his first three counts, his fourth count must fail. " Id. at page 29. County Respondents' contention is not supported by a fair reading of the District Court's Decision or of Appellant's motion to dismiss.

In his Motion to Dismiss in federal court, Appellant relied upon the limits of federal court subject matter jurisdiction wherein only the United States Supreme Court can review the judgment of a state court. See Rooker v Fidelity Trust Company, 263 U.S. 413 44 S. Ct. 1249, 68 L. Ed. 362 (1923). Under the Rooker case, the District Court had no jurisdiction over the first three counts. Appellant further argued that to the extent that the Fourth Count Section 1983 claim relied upon the invalidity of the Magistrate Court judgment , it is inextricably intertwined with the counts over which the Court cannot entertain jurisdiction. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462,103 S. Ct. 1303, 75 L.Ed.2d 206 (1983). Appellant's Motion to Dismiss at page 5. In opposition, County Respondents asserted that Fourth Count should proceed but only upon the basis that the state court judgments were valid. County Respondents Opposition at page 2. The County Respondents argued for having two separate trials but opposed this before the Circuit Court and here. Appellant's alternatives before the District Court were to have the Fourth Count dismissed or stayed until the validity of the user fees judgments could be determined in Circuit Court. Appellant's motion to Dismiss at page 5-6. However, the District Court opted to have the entire matter remanded to the Circuit Court instead.

The District Court Decision that it did not have subject matter jurisdiction over the first three counts and that the Fourth Count is inextricably intertwined with them does not bind the Circuit Court to the same conclusion regarding its own jurisdiction. The District Court was prohibited from deciding the validity of the judgments and chose to dismiss the Fourth Count over which it did have jurisdiction and remanded the matter to the Circuit Court to determine all of the issues before it. By so doing, the District Court preserved Appellant's right to argue the invalidity of the user fee judgments as part of its civil rights

claim instead of having to wait for a separate determination and then proceed to trial in federal court.

County Respondents' reliance on the " inextricably intertwined" language is misplaced since it was used by Appellant and the District Court only in the context of the situation where the user fee judgments were determined to be invalid. Appellant's argument is that the Fourth Count can be heard by the Circuit Court which is not governed by any " inextricably intertwined" limitation on its jurisdiction. County Respondents have failed to cite any case which recognizes this as a rule of subject matter jurisdiction governing the Circuit Court. Therefore, this argument should be rejected.

D. The Circuit Court has jurisdiction over claims arising from user fee judgments

Appellant has previously argued that if the Circuit Court had no jurisdiction over the user fee judgments, it could still hear the Fourth, Fifth and Sixth Counts under its general jurisdiction. Appellant's Brief at pages 30-31. County Respondents assert that there is an "arising from" exception to the Circuit Court jurisdiction. County Respondents' Brief at page 29-30. County Respondents do not cite any authority. Therefore, this argument should also be rejected.

II. APPELLANT MADE OUT A PRIMA FACIE CASE OF AN EQUAL PROTECTION VIOLATION

Appellant established that the imposition of a user fee against him and the manner in which the County Sheriff's Department attempted to collect the fee via levy and execution and sale violated the equal protection provisions of the Fourteenth Amendment. Appellant's Brief at page 31-37. These allegations are independent bases for the Fourth Count regardless of whether the Magistrate Court had jurisdiction to render the judgment. The County

Respondents do not overcome these arguments in their response as more fully discussed below.

A. The user fee was arbitrarily imposed upon Appellant

Appellant has demonstrated that the pertinent Supreme Court rulings in Skyscraper Corp. v Newberry County, 323 SC 412, 475 S.E.2d 764 (1996) and Brown v. County of Horry, 308 S.C. 180, 417 S.E.2d 565 (1992), the language of the Charleston County Ordinance at issue and the County 's own designated representative all agree that a user fee is to be imposed against persons receiving some special benefit or service. Appellant's Brief at pages 31-35. County Respondents have not presented any controlling authority to the contrary. See County Respondents Brief at pages 30-33.

S.C. Code Ann. Section 44-55-1210 states: "The governing body of any county may by ordinance or resolution provide that the county shall engage in the collection and disposal of solid waste. Such collection and disposal may be accomplished either by use of county employees and equipment or by contract with private agencies or municipalities of the county. Service charges may be levied against persons for whom collection services are provided whether such services are performed by the county, a municipality or a private agency." It is not disputed that the Charleston County user fee ordinance at issue was adopted pursuant to that legislation.

County Respondents have not denied that Charleston County Ordinance 10-51 et seq. does not mandate that Appellant send his trash to a county facility for disposal or that he can dispose of it on his own property as long as he does not create a nuisance. See Ordinance Section 10-69 (2). County Respondent admits that Charleston County Ordinance Section 10-66 states that the user fees are for the receipt and disposal of waste. County Respondents'

Brief at page 31.Therefore the County Respondents cannot escape the necessary conclusion that the obligation to pay the user fee is based upon the receipt of a benefit or service.

Appellant refers this Court to the language in a Florida state Supreme Court case City of Gainesville v. State, 863 So.2d 138 (Fla. 2003): "We have defined user fees as charges based upon the proprietary right of the governing body permitting the use of the instrumentality involved. Such fees share common traits that distinguish them from taxes: they are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner not shared by other members of society, **and they are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge."** (emphasis added).

County Respondents continue to justify the user fee being imposed on Appellant because he receives the benefit of clean air and water from the disposal of solid waste. Respondents Brief at page32. County respondents have not provided any legal authority for their argument that a user fee can be charged for clean air and water based upon garbage disposal. Moreover, a water bill for clean water is user fee. A user fee for no garbage disposal is tax.

County Respondents' clean air argument conflicts with the very definition and purpose of a user fee, i.e. that the fee relates to the purpose for which the government provides the service. Further County Respondents refuse to acknowledge that a fundamental aspect of a user fee is that its use is voluntary.

County Respondents' claim that Appellant admits that the user fee has been applied uniformly, County Respondents' Brief at page 33, but that misstates Appellant position.

Appellant acknowledged that the residential user fee was uniform, i.e. all residential property were charged the same flat fee but asserted that it was arbitrarily imposed because he did not receive any services. Appellant's Brief at page 33.

County respondents further failed to establish a rational basis for treating Appellant the same as other persons who use the disposal services for which the fee was imposed. See Harbit v. City of Charleston, 382 S.C. 383, 675 S.E.2d 776 (Ct. App. 2009)(any differences of application must be justified by the law's purpose). If the purpose of the fee is to pay for garbage disposal, why should Appellant pay it if he disposes of his own garbage without creating a nuisance on his own property?

Lastly, County Respondents assert that Appellant made contradictory statements about using a private hauler. However, the statement that Appellant used a hauler was contained in the Complaint which was amended twice and it was deleted. Also Appellant provided an Affidavit and was deposed and in both cases he stated he did not use such a service. Appellant has continued to assert that he should not have to pay for a service he does not use. Appellant's alleged inconsistent statements at best involve an issue of credibility which is a matter for the finder of fact to evaluate. County Respondents disparage Appellant's position by asserting that his refusal to pay a user fee is a matter of irrational belief . County Respondents' Brief at page 32. Such an allegation is inappropriate.

In summary, Appellant has made a prima facie showing that the imposition of user fee against him violates equal protection and that the County Respondents have failed to show any rational basis to apply it to him. The Circuit Court should not has dismissed the Fourth Count.

B. The collection of the fee was arbitrarily conducted

Appellant demonstrated that he made out a prima facie case of discriminatory enforcement of the user fee judgment. Appellant's Brief at page 34-37. The Circuit Court did not address this issue in its decision. In response County Respondents argue that there is no genuine issue of material fact as to arbitrary action by the Respondent County Sheriff. County Respondent's Brief at page 33.

This Court is required to review the evidence most favorable to the non moving party including all reasonable inferences. Willis v. Wu, 362 S.C. 146, 607 S.E.2d 63 (2004). It is undisputed that respondent Long claimed that Appellant threatened him on the telephone and as a result he filed an incident report and blue flagged Appellant's house to protect other officers. It is undisputed that Respondent Long found personalty which he could have sold to satisfy the $144. judgment but chose not to do so. It is undisputed that Respondent Long only levied on real estate in three (3) cases (of thousands) of user fee judgments. It is undisputed that Respondent Long saw that TMS 498 was assessed for almost $24,000 while searching for assets. It is undisputed that Respondent Long sold TMS 498 for $600. which could not satisfy the cost of the sale and judgment. Appellant contends that these facts support a reasonable inference that respondent Long was arbitrary in applying the law to Appellant based upon malice, ill will or ulterior motive.

In summary, Appellant made a prima facie case of a civil rights violation against Appellant in the arbitrary and unjustified application of user fee to him, and the arbitrary manner in which the judgment obtained for the fee was collected. The Circuit Court should not have summarily dismissed the Fourth Count.

III. THERE WAS A SUFFICIENT NEXUS SHOWN TO DENY DISMISSAL OF THE FIFTH COUNT TORT CLAIM

In his Brief, Appellant asserted that the Fifth Count tort claims of negligent retention by the Respondent Sheriff's Department and malicious action by Deputy Long were improperly dismissed. Appellant demonstrated that County Respondents never asserted any Tort Act immunity to his claim of negligent retention of Deputy Long. Appellant's Brief at 38-39. Appellant further demonstrated that there was substantial evidence in the Respondent County Sheriff employment files of violation of procedure by Deputy Long to put them on notice that he was a risk to third persons and that the department had violated its own disciplinary procedures in retaining him. Id at page 39-42. Appellant also established that the issue of proximate causation was normally to be determined by the jury. Id at 41-42. It is not disputed that Respondent Long's actions in levying on real property are the "cause in fact" of Appellant's damages. In their response County Respondents contend that Appellant cannot prove any "nexus" between the prior disciplinary infractions and the harm caused. County Respondents Brief at page 36-37.

Appellant contends that based upon nature of the prior acts and the similarity between them and the alleged harm, there was a sufficient "nexus" such that the issue should have been determined by the jury.

The record before the Circuit Court amply demonstrates a pattern of disregard for procedure. Respondent County Sheriff Department records indicate that over a 5 year period (1999-2004) Deputy Long repeatedly violated department procedures as well as the rights of the accused. These included allowing a suspect to escape, failing to obtain a search warrant (twice), failing to bring the accused to a hearing, leaving his post to walk his dog among

others. These were substantial violations of Sheriff Departmental regulations which resulted in 2 Suspensions and 3 Letters of Reprimand. Therefore, the facts before the Circuit Court clearly supported Appellant's assertion that Respondent County Sheriff's Department had notice that they had an undisciplined and erratic employee who frequently violated procedure.

Sheriff's officers are sworn to uphold the law. S.C. Code Ann. Section 15-39-80 states that any execution of judgment "shall require the Officer. . . (1) to satisfy the judgment out of the personal property of such debtor and, if sufficient personal property cannot be found, out of the real property belonging to him." Appellant as the debtor was entitled to the protection of this law while Respondent Long was carrying out his official duties.

The facts are not in dispute that several motor vehicles were registered with the Department of Motor Vehicles that Respondent Long ignored them even though he admitted that one or more of them might be worth pursuing. Deputy Long ignored the law in failing to conduct a levy on personal property in the case of a $144. judgment, instead levying on a $70,000. parcel of real estate, motivated by malice because he believed that Appellant threatened him. See below. He was not, as County Respondents assert, exercising judgment by disregarding personal property but violating the South Carolina Code.

"It is not necessary for a plaintiff to demonstrate the defendant should have foreseen the particular event which occurred but merely that the defendant should have foreseen [its]negligence would probably cause injury to someone." Parks v. Characters Night Club, 345 S.C. 484, 491 548 S.E.2d 605 (Ct. App. 2001) (citing Greenville Memorial Auditorium v. Martin, 301 S.C. 242, 245, 391 S.E.2d 546,548 (1989)). Several of Deputy Long's infractions involved third persons including a suspect in jail who was held in contempt because Deputy Long did not pick him up and take him to a hearing; and fellow officers when they barred

him from an interrogation. Appellant contends that this evidence was a sufficient nexus for the Circuit Court to deny summary judgment.

County respondents contended that while Deputy Long worked in the judgment section there were no disciplinary infractions so that the County Sheriff's Department did not have sufficient notice. County Respondents Brief at page 37-38. However, the fact that Deputy Long was in a different section and had conducted himself appropriately during this time does not negate his earlier history of which the Sheriff's Department had actual notice. If is instead one fact in the overall analysis to determine foreseeability. See Doe v. ATC, Inc., 367 S.C. 199, 624 S.E.2d 447 (2005).

County Respondents rely upon this Court's holding in Kase v. Ebert, 392 S.C. 57, 707 S.E.2d 456 (Ct. App. 2011) to support the alleged lack of foreseeability. In Kase, the plaintiff claimed that the employer had negligently retained the employee that had assaulted him and that the employer had notice of the employee's prior assault conviction in its employment records. This Court acknowledged that the issue of "foreseeability is usually an issue of fact. 392 S.C. at 63, 707 S.E.2d at 459.However, the Court departed from that principle because it determined that reasonable minds could not differ as to the issue. Id. The basis for its conclusion was that the assault conviction upon which plaintiff based his claim that the employer had knowledge of the employee's dangerous propensities was 20 years old, there was no other evidence of violent acts and plaintiff's own expert agreed that a single act was not sufficient notice. 392 S.C. at 63, 707 S.E.2d 459.

Appellant contends that Kase is factually distinguishable and does not support dismissal of the Fifth Count. Kase involved only a single incident of the type complained of and was too remote in time. Here there are multiple incidents of misconduct in failing to

follow procedure which affected third parties which are within a few years of the incident in question. Moreover, Respondent County Sheriff's Department violated its own procedure is failing to impose progressive discipline for his multiple infractions. Respondent Sheriff Department could not document why Respondent Long he was retained in light of his history of infractions. Therefore not only did Respondent County Sheriff's Department have notice of his behavior, but it failed to take action in accordance with its own procedures that should ultimately have lead to termination.

Restatement (Second) of Torts, Section 317 deals specifically with the retention of employees, and provides, in relevant part "*c.* Retention in employment of servants known to misconduct themselves. There may be circumstances in which the only effective control which the master can exercise over the conduct of his servant is to discharge the servant. Therefore the master may subject himself to liability under the rule stated in this Section by retaining in his employment servants who, to his knowledge, are in the habit of misconducting themselves in a manner dangerous to others."Appellant asserts that the pattern of misconduct was sufficient under the Sheriff's Department own guidelines to warrant dismissal. This raises a dispute of fact as to whether the Sheriff's Department breached a duty of care which caused a foreseeable injury.

County Respondents claim that Appellant did not raise any issue about the County Sheriff' failure to adhere to its own disciplinary procedures in opposition to summary judgment. County Respondents' Brief at page 39. However, the issue was clearly presented below. See Plaintiff's Supplemental Opposition to summary judgment at page 2-3, 6-8.

Therefore Appellant asserts based upon the number and nature of prior acts of wrongdoing by the employee, and similarity between the prior acts and the ultimate harm

caused, the issue of foreseeability should have been determined by the fact finder, and not as a matter of law. Doe v. ATC, Inc., 367 S.C. 199 624 S.E.2d 447,450-451 (2005)

The Circuit Court below never considered the negligent retention claim in dismissing the Fifth Count but relied entirely upon County Respondents' claims of immunity as to the conduct of Deputy Long in enforcing the judgment. See Decision at page 3-4. On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. Willis v. Wu, 362 S.C. 146, 607 S.E.2d 63 (2004).

County respondents also allege that there was not sufficient evidence of malice to sustain the Fifth Count. County respondents brief at page 39-41. This is discussed below. See Point V.

IV. THE SIXTH COUNT WAS IMPROPERLY DISMISSED BASED UPON THE RECORD BEFORE THE CIRCUIT COURT

Because County Respondents and Respondent Mase have responded individually to this issue, Appellant will treat them separately below. As to the County Respondents, they assert that they are immune from suit under various provisions of the Tort Claim act; and that the sale arises from the same set of circumstances as is barred due to the lack of subject matter jurisdiction. First, the Tort Claims Act provides immunity against claims for money damages only. S.C. Code Ann. Section 15-78-30(b) & (f). The Sixth Count seeks to invalidate the Sheriff's sale because of the grossly inadequate price not to recover damages. Moreover, Appellant asserts that the Fifth Count contains a tort claim against Respondent Long in the conduct of the levy and sale for which the immunity is not applicable due to malice. See Point III. As to the jurisdiction issue, Appellant has addressed this in Point I.

In its initial brief, Respondent Mase and Company, LLC, it asserts for the first time on appeal that summary judgment was properly granted as to the Sixth Count. Since this argument is being raised as another ground to sustain the dismissal not considered below, Appellant will address it fully here. See Section A. Respondent Mase further contends that it should retain title to TMS 498 notwithstanding the survival of any other claims. This is similarly addressed in full below. See Section B.

A. A Judicial sale may be set aside due to a grossly inadequate price that shocks the conscience

The Sixth Count (contained in the Amendment to Second Amended Complaint) requests that the Sheriff sale of TMS 498 to Respondent Mase be set aside because the sale price was $600.00, the fair market value was $70,000 and the sale price was so grossly inadequate as to shock the conscience. Amendment at Para. 41, 43 & 44. It is undisputed that Respondent Mase acquired title to TMS 498 for $600.00. Sheriff's Deed. Appellant asserted and Respondent Mase has not refuted that there was evidence in the Record that an the earlier appraisal valued TMS 498 at $70,000.00. Ebel Appraisal March 2006. Respondent Mase contends that " absent some showing of inequitable conduct by the one conducting the sale or the purchaser, a sale . . . should not be set aside regardless of price." Respondent Mase and Company, LLC Brief at page 12. This is not a correct statement of the law.

Respondent Mase's legal argument is not supported by any South Carolina case. Respondent cites Appeal of Pasley, 230 S.C. 55, 94 S.E. 2d 57 (1956) but the case does not support Respondent's contention as to the law. As stated by the Supreme Court in Pasley:

> " There is therefore left in the case only the attack upon the validity of the sale upon the ground of inadequacy of consideration--that the property is worth $1,000 or more, and the successful bid was $450; and it is well settled that mere inadequacy of price (unless it shock the conscience of the court) will not vitiate a judicial sale, in the absence of other factors for which the selling

> officer of the successful bidder was at least in part responsible, or participated. It is not contended that any such factor is present in this case; and the disparity between the sales price and the value of the property, as alleged in the petition, does not shock the conscience of the court. "

230 S.C. at 58, 94 S.E. 2d at 58.Therefore, the correct statement of the law is that an inadequate price which shocks the conscience will allow the Court to set aside a judicial sale. See Spillers v. Clay, 233 S.C. 99,104 103 S.E.2d 759, 761 (1958)(" the rule is well settled that inadequacy of price, unless so gross as to shock the conscience of the court, or accompanied by other circumstances warranting the interference of the court, will not justify the setting aside of a judicial sale.").

Respondent Mase has misread the quoted language from Pasley to support its argument that both inadequacy of price and inequitable conduct must be present to vacate a judicial sale. This argument that both elements must be present was specifically rejected in Investors Savings Bank v. Phelps, 303 S.C. 15, 397 S.E.2d 780 (Ct. App. 1990) where the Court of Appeals noted that " The rule in South Carolina was no less clearly stated by our Supreme Court in Poole [v. Jefferson Standard Life Ins. Co., 174 S.C. 150, 177 S.E. 24 (1934)] and has since been restated by the Court on multiple occasions. 'It is well settled in this State that inadequacy of price, unless so gross as to shock the conscience of the court or accompanied by circumstances from which fraud may be clearly inferred, will not justify the overthrow of a judicial sale.' We must assume that when our Supreme Court says 'or,' it means 'or,' not 'and.'" 303 S.C. at 17, 397 S.E.2d at 782.(Citations omitted). The Court of Appeals in Investor Savings Bank affirmed the decision by the Master in Equity setting aside a foreclosure sale of a mortgage that had a balance due of $52,369.80, plus interest " on the ground that [the winning bid] of $510 was "so grossly inadequate as to shock the conscience."

303 S.C. at 19, 397 S.E.2d at 782. Investors Savings is dispositive of the issue and this Court should reject Respondent Mase's argument that both elements (inadequate price and inequitable conduct) must be present .

The Sixth Count also presents a genuine issue of fact, i.e. whether the sale price was grossly inadequate. Appellant provided an appraisal to establish a fair market value of $70,000. This was never addressed by the County Respondents or Respondent Mase. As asserted in Appellant's Brief, the Circuit Court determined that it did not have jurisdiction to consider any of the claims relating to the user fee judgments and never considered the Sixth Count separately in its Decision granting summary judgment. Accordingly, the Circuit Court's decision dismissing the Sixth Count cannot be supported on any other ground.

B. There is no basis to dismiss the Sixth Count on equitable grounds

Appellant asserts that this Court should also reject Respondent Mase's argument that the dismissal of the Sixth Count should be affirmed on equitable grounds. Brief of Respondent Mase at page 14-15. Respondent Mase filed an Answer, Cross claims and a Counterclaim ; it did not move to dismiss the Sixth Count or seek summary judgment as to its defenses. The Order being appealed dismissed all of its claims and defenses, counterclaims and crossclaims. It never filed a Notice of Appeal. There are not facts in the Record which can support a finding that there are equitable grounds to allow Respondent Mase to retain title to TMS 498. Respondent Mase has not provided any legal citation to support its claim for equitable relief. Accordingly, Appellant respectfully requests that the Court reject Respondent Mase's arguments as contrary to law and unsupported in the Record.

V. THERE ARE DISPUTED ISSUES OF FACT REGARDING CLAIMS AGAINST DEPUTY LONG

Appellant demonstrated that there were disputed issues of fact regarding the claims against Respondent Long for arbitrary conduct and malice. Appellant's Brief at page 36-37, 44. These included his conduct in levying on real estate when personalty was available and his sale of that real estate for a price insufficient to satisfy the lien. Appellant argued that the statutes were clear and that Respondent Long was motivated by Appellant's alleged threatening phone call to ignore these procedures. County Respondents assert that he was merely exercising his judgment or the pertinent statute was vague. County Respondents Brief at pages 34-35.

Appellant contends that the facts support a reasonable inference of malice. These include not only the alleged threatening phone call but Respondent Long's filing an incident report against Appellant and blue flagging his property indicating that he took the threat seriously. Exhibit L, Supplemental Appendix to Appellant's Opposition to Summary judgment. Respondent Long acknowledged that he rarely (three times out of thousands) levied against real property for a user fee. It is reasonable to conclude that Respondent Long considered Appellant uncooperative given the number of letters and phone calls that allegedly went unanswered. This is the context within which to consider whether Respondent's Long's actions in levying upon real property worth far in excess of the user fee judgment were improperly motivated. The final act of selling it for $600. creates more than a reasonable inference of malice and ill will. See Pridgen v. Ward, 391 S.C. 238, 705 S.E.2d 58 (Ct. App.2011)(inference of malice sufficient to deny motion for directed verdict).

Accordingly, Appellant contends that the Record provides sufficient evidence to support a reasonable inference of malice such that the Circuit Court should have denied summary judgment based upon a dispute of fact.

VI. THERE WERE DISPUTED ISSUES OF FACT REGARDING DEPUTY LONG'S RETENTION

County Respondents contend that there were no disputed issues of fact regarding Deputy Long's retention. County Respondent's brief at page 42. As set forth in Appellant's Initial Brief, County Sheriff Department had a policy of progressive discipline including termination for repeated offenses. Respondent Sheriff Department could not produce any evidence that it considered retaining Respondent Long in order to claim that it exercised discretion and thus qualify for the discretionary function immunity. Appellant's Brief at page 39. Accordingly, Respondent County Sheriff cannot establish any factual basis for a claim of immunity on which it has the burden of proof. Id.

Appellant contends that Respondent Long's employment history of disciplinary violations and the lack of any evidence of the imposition of progressive punishment create the inference that County Sheriff's Department was negligent in retaining Respondent Long. Accordingly, the Circuit Court erred in dismissing the Fifth Count due to the lack of genuine issue of fact. Appellant's Brief at page 51.

VII. THE CIRCUIT COURT SHOULD HAVE GRANTED SUMMARY JUDGMENT AS TO THE LACK OF JURISDICTION BY THE MAGISTRATE COURT

Appellant has demonstrated that the relevant provisions of the South Carolina Code limit the jurisdiction of the Magistrate's Court to actions on contracts, S.C. Code Ann.

Section 22-3-10(1), or for fines , penalties or forfeitures, Id. Section 22-3-10 (3), with a jurisdictional limit of $7500.00 as to the amount of these claims. Appellant's Brief at page 53.[3] As referenced above, see Point I, S.C. Code Ann. Section 44-55-1210 grants the county the power to provide and regulate solid waste collection and disposal and to levy user fees against persons for whom services are provided. The county's user fee ordinance was adopted to conform to said provisions. County Respondents cannot point to any provision in the enabling legislation or the user fee ordinance that grants authority to the Magistrate Court over user fee collection. Therefore, there is no specific authority for the Magistrate Court's jurisdiction over the collection of user fees either in the user fee ordinance or any provision of the Magistrate Court Act.

Appellant further demonstrated that the user fee ordinance does specify how the user fee is to be collected . Charleston County Ordinance Section 10-56 provides for the collection of " annual disposal user fee established by the county council in the same manner as taxes are collected". Appellant's Brief at pages 53-54. Further Appellant pointed to the provision of the user fee ordinance that fines and penalties may be imposed for violations. Ordinance Section 10-60 & 70.

Because it cannot overcome the weight of these arguments, County Respondents argue that the General Welfare Law, S.C. Code Ann. Section 4-9-25 allow the Magistrate Court to hear the user fee suits. County Respondents' Brief at page 44-45. " The broad delegation of power under this section [4–9–25] ' is limited only by the requirement that the regulation, resolution, or ordinance be consistent with the Constitution and general law of this State.'" Sandlands C & D LLC v. County of Horry, 394 S.C. 451,461, fn. 9, 716 S.E.2d 280,

[3] By including the issue of the Magistrate's Court jurisdiction to hear suits to collect user fees in his Motion to Alter and Amend, Appellant preserved the issue for appeal. See Plaintiff's motion at page 3.

285 (2011)(citation omitted). The enabling legislation S.C. Code Ann. Section 44-55-1210 (and the user fee ordinance upon which it is based) is a general law of this state. Therefore, the General Welfare Act cannot create jurisdiction in the Magistrate Court which conflicts with the specific provisions relating to the collection of user fees.

In addition, our courts have also recognized the principle of statutory interpretation that the particular statute takes precedence over the more general. Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp., 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995); James v. South Carolina Dept. of Transp., 393 S.C. 440, 711 S.E.2d 919 (Ct. App. 2011). Since S.C. Ann. Code Section 22-3-10 deals with Magistrates Court jurisdiction, it should be interpreted as controlling on any questions of the scope of Magistrate's Court jurisdiction that may arise by referencing other statutes such as S.C. Ann. Code Section 4-9-30. Therefore as a matter of statutory interpretation, this Court should find that Magistrate's Court Act provides jurisdiction to suits for a fine, penalty or forfeiture and does not include jurisdiction over collection of unpaid user fees.

County Respondents misstate the significance of the Court of Appeals' ruling in Rock Hill Body Co. v. Rainey, 294 S.C. 426 , 365 S.E.2d 228, (Ct. App., 1987) involving SC Code Ann. Section. 29-15-10. County Respondents' Brief at page 46.County Respondents contend that Rainey recognized a general jurisdiction in the Magistrate Court to hear cases of the type over which it has specific jurisdiction. Id at page 46-47. However, Rainey is limited to its facts and does not provide any support for the County Respondents position for several reasons.

In Rainey, the Court of Appeals addressed a situation involving the application of another general statute, S.C. Code Ann. Section 29-15-10 which authorizes the Magistrate to

sell property subject to a mechanics lien. After the Magistrate ordered the sale of property, the owner disputed the amount and validity of the lien. Since S.C. Code Ann. Section 29-15-10 authorizes the sale but does not address the jurisdiction of the Magistrate to determine the amount of the lien if it is contested by the parties, the Court of Appeals interpreted the provision of that statute to create jurisdiction in the Magistrate Court as a means to harmonize them. Rock Hill Body Co. v. Rainey, 294 S.C. at 429 , 365 S.E.2 at 230. Rainey is limited to its facts and does not appear ever to have been cited as authority for the broader proposition which the County Respondents urge upon this Court.

Moreover, the provisions of S.C. Code Ann. Section 44-55-1210 & 1230 do not require any interpretation to harmonize them with the Magistrate Court Act. They are clear as to how user fees are to be collected and the ordinance enforced. The County Respondents simply refuse to abide by their own ordinance and argue for an unreasonable interpretation to justify their actions in obtaining several judgments that are now being attacked.

All of the complaints upon which the user fee judgments were based recite the provisions of the Charleston County Ordinance Section 10-56 that provide for the collection of user fees "in the same manner as taxes are collected". "It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings. . . ." Skull Creek Club Ltd. Partnership v. Cook and Book, Inc., 313 S.C. 283, 437 S.E.2d 163 (Ct. App. 1993) (citing Elrod v. All, 243 S.C. 425, 134 S.E.2d 410 (1964)). The County Respondents in their summary judgment motion concede this

point: "In our current case, a Summons and Complaint were filed seeking **collection of unpaid user fees** from Plaintiff." County Defendants' Motion at page 10. (emphasis added).

County Respondents initially argued that the suits to collect user fees were actions on a contract, but after Appellant demonstrated that there was no contract alleged or proven, they abandoned that theory. County Respondents' latest theory of jurisdiction is that the user fee suits are for damages to the "person" of the County. County Respondents' Brief at page 47. This is another attempt to tailor their claim to fit the specific category of actions over which the Magistrates Court has jurisdiction. S.C. Code Ann. Section 22-3-10(2) provides jurisdiction "in actions for damages for injury to rights pertaining to the person or personal or real property". There are no reported case interpreting what damage to the rights of the person" under S.C. Code Ann. Section 22-3-10 (2) consists of.

"A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose." Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). "[W]ords in a statute must be construed in context." Southern Mut. Church Ins. Co. v. South Carolina Windstorm and Hail Underwriting Ass'n, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991). Thus, " the Court may not, in order to give effect to particular words, virtually destroy the meaning of the entire context; that is, give the particular words a significance which would be clearly repugnant to the statute, looked at as a whole, and destructive of its obvious intent." Id.

County Respondents do not provide any citation to support their conclusion that user fee suits are included as an injury to the person but assert that the County is a "person" within

the meaning of the statute. County Respondents Brief at page 47. However that does not justify their interpretation of this provision to include a user fee. The reason is that the enabling legislation, S.C. Code Ann. Section 44-55-1210 authorizes the imposition of user fees and requires the user fee to be collected like property taxes and authorizes enforcement proceedings for fines and penalties. That is how the rights of the County are vindicated, not by the actions which they filed in Magistrate's Court.

In summary, the specific provision of the Magistrate's Court Act do not create jurisdiction over suits to collect user fees. The County Respondents cannot justify their Argument that the Magistrate's Court has general jurisdiction over "similar cases" under the circumstances present here. Finally, the injury to the person of the type envisioned by S.C. Code Ann. Section 22-3-10(2) does not apply to a user fee which is to be collected as provided by the enabling legislation. Therefore, the Circuit Court improperly denied the Appellant's motion for partial summary judgment as to the invalidity of the Magistrate Court's jurisdiction.

CONCLUSION

Appellant respectfully requests that this Court reverse the Circuit Court Order dismissing all claims for the reasons set forth herein and reinstate the Second Amended Complaint and Amendment to the Second Amended Complaint. Appellant also requests that the Court reverse the Order denying Appellant's Motion for Partial Summary Judgment and grant partial summary judgment thereon for the reasons set forth herein.

Edward A. Bertele, Esq.
Attorney for Appellant
Roosevelt Simmons

May 8, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
CASE No. 2011- CP-10-1084
Circuit Court Judge R. Markley Dennis, Jr.

ROOSEVELT SIMMONS..... Appellant

Vs.

MASE and COMPANY, LLC,
J. AL CANNON, JR.,
CHARLESTON COUNTY SHERIFF'S DEPARTMENT,
CHARLESTON COUNTY REVENUE COLLECTIONS DEPARTMENT
and
HARRY LONG..... Respondents

CERTIFICATION OF SERVICE

I hereby certify that a true copy of the Appellant's Reply Brief and Appellant's Motion for leave to file over length Reply Brief was served upon the Respondents attorneys, Christopher Dorsel, Esq. and Wendy Keefer, Esq. by regular mail postage prepaid at their last known mailing address.

Edward A. Bertele, Esq.

May 8, 2015

EDWARD A. BERTELE
ATTORNEY AT LAW
1812 PIERCE STREET
CHARLESTON, SC 29492
Email: ebertele@msn.com

Member: SC, NJ & NY bars

Ph: (843) 471-2082
Fax: (843) 471-2082

May 8, 2015

Ms. Jenny Abbott Kitchings, Clerk
Court of Appeals
1015 Sumter St.
PO Box 11629
Columbia, SC 29211

Re: Simmons v. Mase and Co., LLC et al.
Case No. 2014-002575

Dear Ms. Kitchings:

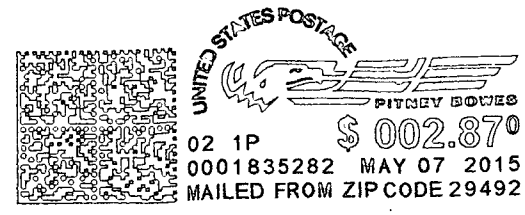
I am enclosing for filing the following: Appellant's Reply Brief and the original and 6 copies of Appellant's Motion for leave to file over length Reply Brief; and original Certification of Service. Also enclosed is my check for the filing fee, $25.00. If you have any questions, please do not hesitate to call. Thank you for your kind assistance.

Very truly yours

Edward A. Bertele

Encl:
CC: Chris Dorsel, Esq. w/encl
Wendy Keefer, Esq. "

Bertele
1812 Pierce St.
Charleston SC 29492



Ms. Jenny Abbott Kitchings
Clerk of Court of Appeals
Court of Appeals Building
1015 Sumter Street
PO Box 11629
Columbia, SC 29211