

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

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SC. Court of Appeals

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

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REPLY TO STATEMENT OF THE CASE

Appellant responds to the Statement of the Case provided by the Respondents in order to correct certain inaccuracies. County Respondents assert 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.

Further, 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 Respondent Long acted with malice was a phone call. County Respondents' Brief at page 5. However, that does not accurately reflect the proceedings; when the Court asked Appellant's Counsel about the allegation of malice, he 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.

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.

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. Counsel also stated that the claims against Respondent Long included an equal protection violation. Id page 30, line 18-23. Therefore, the Record reflects that Appellant asserted the existence of other facts in addition to the phone call.

County Respondents also 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 5. However, that 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 3.

Finally, 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 Appellant's 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.

Respondent Mase and Company, LLC asserts that there was a delay in resolving the reconsideration motion due to the inaction of Appellant. Respondent Mase and Company, LLC Brief at page 2. Appellant contends that this is an improper statement to be included in the Statement of the Case and has no bearing to the issues on appeal. Furthermore, Respondent Mase does not cite to any part of the Record.

REPLY TO STATEMENT OF FACTS

Appellant responds to County Respondents' Statement of Facts in order to address factual inaccuracies. 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.

REPLY ARGUMENT

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

County Respondents have mischaracterized the case law applicable to R. 60(b), SCRPC 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. These are discussed below, See Section A. County Respondents also argue that Appellant is not entitled to any equity, an issue which they did not raise below. See Section B. Finally, County Respondents' argument that the Magistrate Court Rules bar this action is without merit. See Section C.

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 (Ct. App. 2008) does not deal with whether R 60(b), SCRPC 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, 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. This Court reversed the lower court's dismissal of the independent action and remanded 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), SCRCF does as Appellant asserted, provide a basis for an independent action to vacate an earlier judgment based upon equitable circumstances.²

County Respondents mistakenly reference the provisions of an earlier section of R. 60(b), SCRCF which pertains 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, 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 McDaniel, 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 case simply holds that it was not an abuse of discretion to bar the motion after 4 years as untimely based upon all of the circumstances. 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.

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)

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.

B. 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 presented and conclude that Appellant is not entitled to equitable relief. County Respondents’ Brief at page 16. County Respondents did not raise this issue before the Circuit Court and it did not make any ruling on that issue and they should be barred from raising it here. Brashier v. South Carolina Dept. of Transp., 327 S.C. 179, 186 fn. 7, 490 S.E.2d 8(1997)(additional ground for sustaining dismissal not raised below will not be considered) . Notwithstanding his objection, Appellant will address the issue.

The relevant facts in the Record include the following : Appellant 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 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 Respondent 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. In 2006 Appellant had TMS 498 appraised 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; Appellant has a good defense to the action, he never received any service; he had a good faith belief that the County Auditor had waived the user fee based upon his personal discussions with the Auditor and was never told to the contrary; all of his taxes were paid on TMS 135 and TMS 498; Appellant responded once he found that TMS 498 had been sold; the sale produced \$600. of a \$70,000. parcel which was grossly inadequate s to shock the conscience; finally, Appellant has no other adequate remedy at law to regain title to TMS 498 other than to have the judgment and sale vacated.

Therefore, Appellant contends that the Circuit Court should have exercised its equitable jurisdiction to hear the case due to the presence of facts justifying relief from the user fee judgments.

C. 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 19. 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), SCRCP 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 23. 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 23. 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), SCRCF specifically permits it. See McLain v. Ingram, 314 S.C. 359 , 444 S.E.2d 512 (1994)(“The adoption of the SCRCF 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 a 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), SCRCF to collaterally attack a Magistrate Court judgment based upon a lack of jurisdiction under equitable circumstances . Appellant contends that for all of the foregoing reason, the Circuit Court should not granted summary judgment for lack of subject matter jurisdiction.

II. THE CIRCUIT COURT’S JURISDICTION IS NOT AFFECTED BY DISMISSAL OF CLAIMS RELATING TO VALIDITY OF JUDGMENTS

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. 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 24-25. Because it has been first asserted in response to this appeal, this Court should not consider it. Brashier v. South Carolina Dept. of Transp., 327 S.C. 179, 186 fn. 7, 490 S.E.2d 8 (1997) (additional

ground for sustaining dismissal not raised below will not be considered). However, Appellant will address it here notwithstanding his objection.

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 24. 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. 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.

The District Court was prohibited from deciding the validity of the judgments and choose not to stay the Fourth Count over which it did have jurisdiction (assuming the Magistrate's Court judgment was valid) 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. Therefore, the District Court's Decision to decline to exercise jurisdiction over the Fourth Count as inextricably intertwined does not bind the Circuit Court to the same conclusion regarding its own jurisdiction.

Furthermore, in opposition to dismissal of the Complaint in Federal Court County Respondents asserted that the District Court should proceed on the Fourth Count on the basis that the state court judgments were valid. County Respondents Opposition at page 2. The County Respondents argued in effect for having two separate trials , a state court trial over the validity of the user fees and a federal court trial on the civil rights and tort claims. That is the exact opposite of the position that they took before the Circuit Court.

The Fourth Count can be heard by the Circuit Court also assuming that the Magistrate Court judgments were valid. Furthermore, the Circuit Court 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.

County Respondents also assert that there is an "arising from" exception to the Circuit Court jurisdiction similar to that which they contend the District Court invoked. County Respondents' Brief at page 29-30. County Respondents do not cite any authority. Therefore, this argument should also be rejected.

In summary, the County Respondent's reliance on the reasoning of the District Court that the Fourth Count was "inextricably intertwined" with the Counts over which it had no jurisdiction is not a valid basis for dismissal since the Circuit Court may decide the civil rights, tort claims and grossly inadequate price claims regardless of whether it has jurisdiction

over the user fee claims. See Points III, IV & V. There is no “ arising from” exception to the Circuit Court’s jurisdiction and the Decision of the Circuit Court to dismiss the Fourth, Fifth and Sixth Counts was not supported by any recognized limit to its own jurisdiction.

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

As to the merits of Appellant’s Equal protection claim, County Respondents again assert that the Fourth Count is inextricably intertwined with the First three counts, County Respondents’ Brief at page 26, but again they do not provide any legal argument or factual basis for this contention and it should be rejected since it was not raised below. See Point II. Moreover, Appellant’s Equal Protection claim has two independent elements: 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 of real estate were each arbitrary and unreasonable and violated the equal protection provisions of the Fourteenth Amendment. Appellant’s Brief at page 25-30. Even if the Circuit Court could not determine whether the Magistrate Court judgment was invalid, it could still determine whether the Appellant’s civil rights were violated by the means used to collect the judgment. County Respondent’s’ arguments on the merits of the Fourth Count, see Section A & B below, likewise have no legal or factual support.

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 26-27. County Respondents have not presented any controlling authority to the contrary. See County Respondents Brief at pages 27-29.

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 27. 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 try 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. County Respondents Brief at page 28. 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 a 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 27, but that misstates Appellant's position. Appellant acknowledged that all residential property was 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 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. County Respondents' Brief at page 28. 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. See Point IB above. 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.

In summary, County Respondents have failed to establish a rational basis for the imposition of a user fee to Appellant. The law is clear that a user fee is imposed on someone who uses a service. Appellant neither used nor received any services. The Circuit Court should not have dismissed the Fourth Count based upon the established definition and application of a user fee.

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 28-29. 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 29-31. However, the facts do not support their contention as to lack of evidence of arbitrary action.

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. County Respondents assert that Appellant denied making the phone call and therefore can't rely upon the call to support a claim of malice. County Respondents' Brief at page 30. However, Respondent Long's state of mind is at issue and he testified that he believed that Appellant called him so there is question of fact as to whether this caused him to carry a grudge and act on it. It is undisputed that Respondent Long found personalty which he could have sold to satisfy the \$144. judgment but chose not to do so. County Respondents assert that Appellant did not document any other assets that he claimed to have owned,

County Respondents' Brief at 30, an evidential issue which was not raised below and thus cannot be considered. Brashier v. South Carolina Dept. of Transp., 327 S.C. 179,186 fn. 7, 490 S.E.2d 8,12 (1997). However, the Record is clear that Respondent Long had already identified motor vehicles that he could have levied upon. Appellant's statements about farm machinery and other equipment being in plain sight were not contradicted by Respondent Long. The reasonable inference is that Respondent Long was aware of these assets but chose to ignore them also. It is undisputed that state law required Respondent Long to levy on personalty first. County Respondents' assert that state law allowed him to sell real estate or personalty. County Respondents' Brief at page 31. Because Respondent Long was required to follow the law and levy upon personalty first and not use his "judgment" and because he didn't even try to levy upon it and ignored other assets in plain sight, this is further evidence of malice toward Appellant. It is undisputed that Respondent Long only levied on real estate in three (3) cases out of thousands of user fee judgments. This raises an inference that it was unusual for him to have to do so. It is undisputed that Respondent Long knew that TMS 498 was assessed for almost \$24,000 while searching for assets. This raises the inference that he knew this was far in excess of what the judgment required him to execute on and that he was motivated by malice.

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). "[W]hen only one reasonable inference, not just one inference, but one reasonable inference, can be deduced from the evidence, it becomes a question of law for the court." Hart v. Doe, 261 S.C. 116,120, 198 S.E.2d 526,528 (1973) . 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 was collected. The Circuit Court should not have summarily dismissed the Fourth Count.

**IV. THERE WERE SUFFICIENT FACTS
UPON WHICH TO DENY DISMISSAL OF
THE FIFTH COUNT TORT CLAIM**

The Circuit Court below never considered the negligent retention claim in dismissing the Fifth Count as to the County Sheriff 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. Appellant asserted that County Respondents never raised any Tort Act immunity to Appellant's claim of negligent retention of Respondent Long. Appellant's Brief at 32. County Respondents do not rebut this assertion by reference to the Record on Appeal so it is conclusive against them. Nonetheless they raise it for the first time on appeal. County Respondents' Brief at page 34. Because it was not raised and argued below, this Court should reject this argument. Brashier v. South Carolina Dept. of Transp., 327 S.C. 179, 186 fn. 7, 490 S.E.2d 8, 12 (1997).

Moreover, the Tort Claim Act provision upon which County Respondents rely, S.C. Code Ann. Section 15-78-60(4) relates to the enforcement of law. Id. The burden of establishing a limitation upon liability or an exception to the waiver of immunity is upon the governmental entity asserting it as an affirmative defense. Strange v. South Carolina Dept. of Highways and Public Transp., 314 S.C. 427, 445 S.E.2d 439 (1994). County Respondents do

not cite to any case that supports their contention that employee discipline is akin to enforcing any law. Obviously it is not and is a discretionary function for which County Respondents have to the burden of proof to show that they exercised their discretion. Appellant's Brief at 31. Respondent Sheriff 's Department could not document why Respondent Long was retained in light of his history of infractions. Obviously they did not exercise any discretion since they cannot cite to any in the Record. County Respondents claim that Appellant did not raise any issue about the County Sheriff's failure to adhere to its own disciplinary procedures in opposition to summary judgment. County Respondents' Brief at page 34. However, the issue was clearly presented below. See Plaintiff's Supplemental Opposition to summary judgment at page 2-3, 6-8.

County Respondents assert that there were insufficient facts to support negligent retention or malice by Respondent Long. County Respondents' Brief at 31-35.

County Respondents do not deny that there was substantial evidence in the Respondent County Sheriff employment files of violation of procedure by Deputy Long. Id at 32-33. County Respondents contend that Appellant cannot prove any "nexus" between the prior disciplinary infractions and the harm caused such that the Fifth Count should have been dismissed. Id. As previously established, the issue of proximate causation was normally to be determined by the jury. Appellant's Brief at 33. 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. Doe v. ATC, Inc., 367 S.C. 199, 624 S.E.2d 447 (2005).

Respondent County Sheriff Department records indicate that over a 5 year period

(1999-2004) Respondent Long repeatedly violated department procedures. Several of Respondent Long's infractions directly 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. 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 that he was a risk to third persons. County Respondents Brief at page 32-33. "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)). Moreover 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. It is one fact in the overall analysis to determine foreseeability. See Doe v. ATC, Inc., 367 S.C. 199, 624 S.E.2d 447 (2005).

Appellant asserts based upon the number and nature of prior acts of wrongdoing by Respondent Long 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., 624 S.E.2d at 450-451. Moreover, Respondent County Sheriff's Department violated its own procedure is failing to impose progressive discipline for Respondent Long's multiple 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.

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 summary dismissal of the Fifth Count. Moreover, Kase is factually distinguishable because it involved only a single incident of the type complained of and was too remote in time. In Kase, this Court acknowledged that the issue of "foreseeability is usually an issue of fact "but departed from that principle because it determined that reasonable minds could not differ as to the issue. 392 S.C. at 63, 707 S.E.2d at 459. 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. Id. Here there are multiple incidents of misconduct by Respondent Long in failing to follow procedure which affected third parties which are within a few years of the incident in question.

In summary whether County Respondents had sufficient notice of Respondent Long's propensity to violate procedure causing injury to third persons and did not take appropriate action to terminate Respondent Long prior to the incident involving Appellant is question of fact for the jury.

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

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

County Respondents and Respondent Mase have asserted different arguments to support the Circuit Court's dismissal of the Sixth Count which are being raised for the first

time here. County Respondents assert that they are immune from suit under provisions of the Tort Claim Act. County Respondents' Brief at page 36. County Respondents never asserted any Tort Claim Act defenses as to the Sixth Count since it was not part of their Summary Judgment motion. It was added after the Court initially denied both summary judgment motions and was not filed until after County Respondents filed their Motion for Reconsideration. County Respondents did not mention any Tort Claim Act defenses in this Motion which was limited to an assertion that the Circuit Court did not have jurisdiction over the non user fee claims since they arose from the user fee judgments. County Respondents' only substantive objection to the Sixth Count was asserted in its opposition to Appellant's Motion for Leave to amend his pleadings in which they asserted that Appellant did not have standing. See Respondents Motion. Accordingly, Appellant objects to this argument regarding Tort Claim Act immunity regarding the Sixth Count and asks that it be disregarded. Brashier v. South Carolina Dept. of Transp., 327 S.C. 179, 490 S.E.2d 8 (1997).

Notwithstanding this objection, should this Court consider this argument as an alternate ground for sustaining the Circuit Court dismissal, Appellant responds as follows. 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 on equitable grounds because of the grossly inadequate price, not to recover damages. It is the Fifth Count which contains a claim for damages against Respondent Long in the conduct of the levy and sale. See Point IV.

County Respondents also assert that the Circuit Court's jurisdiction over the Sixth Count is subject to the "arising from" exception as the other Counts. County Respondents' Brief at page 36. Appellant has addressed this previously, See Point II. This assertion is

subject to the same defect as the others, that the Magistrate's Court has no jurisdiction involving matters in excess of its monetary jurisdiction.

Respondent Mase and Company, LLC, asserts for the first time on appeal that summary judgment was properly granted as to the Sixth Count based on lack of disputed issues of fact and that judgment should be entered as a matter of law. Respondent Mase & Company Brief at 11-14. Because this argument is being raised as another ground to sustain the dismissal which was not raised or considered below, this Court should not consider it. Brashier v. South Carolina Dept. of Transp., 327 S.C. 179, 490 S.E.2d 8 (1997).

Notwithstanding his objection, Appellant will address it. See Section A. Respondent Mase further contends that it should retain title to TMS 498 notwithstanding the survival of any other claims, another issue not raised below. Notwithstanding Appellant's objection, this issue is also addressed. See Section B.

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

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 and 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 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’s 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 obtained an appraisal which determined that the fair market value of TMS was \$70,000. Neither County Respondents nor Respondent Mase ever addressed this issue. 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.

In summary, the Sixth Count asserts a correct theory of law and the Record contains evidence that TMS 498 was valued at substantially more than the judgment. Therefore, there was a question of fact as to whether the sale price was so grossly inadequate to shock the conscience.

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

Appellant asserts that this Court should also reject Respondent Mase's second argument to affirm dismissal of the Sixth Count on equitable grounds. Brief of Respondent Mase at page 14-15. Respondent Mase never filed any motion to dismiss the Sixth Count or to 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.

**VI. 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 35,38,41-44. 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 statute was 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). See McBride v. School Dist. of Greenville County, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010)(Common law malice means defendant acted with conscious indifference to plaintiff's rights).

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). “[W]hen only one reasonable inference, not just one inference, but one reasonable inference, can be deduced from the evidence, it becomes a question of law for the court.” Hart v. Doe, 261 S.C. 116, 120 198 S.E.2d 526, 528 (1973) . 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.

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

Appellant has argued that the provisions of the Charleston County Ordinance do not authorize collection of user fee payments in Magistrate’s Court. Appellant’s Brief at pages 44-45. County Respondents mischaracterize Appellant’s arguments as asserting that the user fee is a tax. County Respondents’ Brief at page 38. Appellant has asserted that it is a type of tax. ³ County Respondents then argue that the user fee is not a tax and therefore cannot be collected like a tax. County Respondents’ Brief at page 38. They argue that Charleston County Ordinance Section 10-56 which provides for the collection of “ annual disposal user fee established by the county council in the same manner as taxes are collected” is limited to the mailing out of bills. Id. Their argument is not supported by any case or other guide to statutory interpretation. They cite Skyscraper Corp. v Newberry County, 323 SC 412, 475 S.E.2d 764 (1996) but that case merely holds that the solid waste ordinance as applied to

³ Appellant has contended that if the user fee would be applied to someone who does not receive services , it amounts to a tax.

commercial property was a user fee; it does not discuss how the fee can be collected; therefore Skyscraper Corp. is not dispositive of the issue.

Appellant urges this Court to take the Legislature and Charleston County Council at their words and apply the statute and ordinance as written. There is no legal basis to do otherwise. The Legislature delegated the function of solid waste collection to the Counties under S.C. Code Ann. Section 44-55-1210. See Savage v. Waste Management, Inc., 623 F. Supp. 1505 (D. S.C. 1985)(solid waste collection is a delegated function by the state to the counties). Charleston County's user fee ordinance was adopted to conform to said provisions. The Ordinance states how the user fees are to be collected. County Ordinance Section 10-65. Ordinance Section 10-60 & 70 provides for fines and penalties to be imposed for violations but the County did not sue Appellant for a fine or penalty. County Respondents cannot point to any provision in the user fee ordinance that grants authority to the Magistrate Court over user fee collection.

Moreover, there is no inconsistency in having the County collect user fees in the same manner as taxes. This creates a uniformity such that the public who are required to pay such fees can know what to expect. In this case Appellant was led to believe that once the user fee was removed from the tax bill, he did not have to pay it and then could pay his taxes in full. The enabling statute left it up to the counties to establish the procedures for collection user fees and County Respondents ask this Court to ignore them.

County respondents also mischaracterize Appellant's arguments as to the applicability of S.C. Code Section Ann 4-9-30(14) . County Respondents' Brief at pages 38-39.

Appellant's argument was in response to County Respondents' assertion that the General Welfare Statute was a source of authority of the collection of a user fee in magistrate's Court.

Appellant's Brief at page 46. Again County respondents create a false argument and then try to rebut it and assert that Ordinance Section 10-56 does not conflict with the general law, County Respondent's' Brief at page 40, a position with which Appellant agrees but which is not relevant to the issue here.

County respondent mischaracterize Appellant's as asserting that no collection efforts can be brought for user fees. County Respondents' Brief at page 39. This is another false argument. Appellant contends once the user fees ordinance determines how the unpaid fees can be collected, i.e. like taxes through foreclosure or by a suit for a fine or penalty, these procedures must be followed, in the absence of some specific jurisdictional authority given to the Magistrate's Court t

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). County Respondents' Brief at page 40. 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.

County Respondents assert that suits to collect user fees are of the general type determined by the Magistrate's Court Act to have been given jurisdiction . County Respondents' Brief at page 40-41. However, the only type of cases for which the Magistrate's Court has jurisdiction as it applies here is for actions for fines or penalties. S.C. Code Section Ann. 22-3-10(3). Again, the County sued to collect a user fee not a fine or penalty. 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). 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.

County Respondents' last theory of jurisdiction is that the user fee suits are for damages to the "person" of the County. County Respondents' Brief at page 41. 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 cases interpreting the meaning of "damage to the rights of the person" under S.C. Code Ann. Section 22-3-10 (2).

"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

July 20, 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.

July 20, 2015

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July 20, 2015

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

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JUL 23 2015

SC Court of Appeals

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

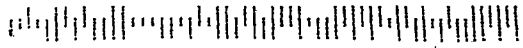
Dear Ms. Kitchings:

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.

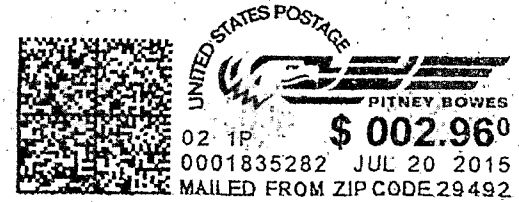
Very truly yours

Edward A. Bertele

Encl:

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



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