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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

MAR 30 2016

SC 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

RECORD ON APPEAL - VOLUME I

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CERTIFICATION

Counsel for Appellant hereby certifies that the Record on Appeal contains all material designated by any party and no other material.

June 8, 2015

Edward A. Bertele

2011-CP-10-1084

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

RECEIVED
U.S. DISTRICT COURT, SC

2012 FEB -6 A 10:46

Roosevelt Simmons,

Plaintiff,

v.

Mase and Company, LLC, J. Al Cannon,
Jr., Charleston County Sheriff's
Department, Charleston County, Charleston
County Revenue Collections Department,
and Harry Long,

Defendants.

Civil Action No.: 2:11-cv-709-RMG

ORDER

FILED
2012 FEB -7 PM 1:10
JULIE J. HARRIS
CLERK OF COURT

This matter comes before the Court on Plaintiff's motion to dismiss for lack of jurisdiction. (Dkt. No. 38).

In this case, Plaintiff seeks to invalidate various judgments entered against him in state court as the result of various fees which certain Defendants allegedly improperly assessed against Plaintiff. In his Amended Complaint, Plaintiff alleges five causes of action. (See Dkt. No. 35). Plaintiff identifies these causes of action as (1) Invalidating Sheriff's Deed of TMS 498; (2) Invalidation of user Fees and Judgments; (3) Invalidation of Judgments for Non Owned Real Property; (4) Civil Rights Violation; and (5) Tort Claim. (*Id.*). All of these causes of action arise from one or more of the Defendants allegedly assessing Plaintiff for various user fees and then obtaining judgments against Plaintiff based on these assessments. Plaintiff argues that the judgments were improperly entered against him and should be invalidated.

Plaintiff originally filed his Complaint in the Charleston County Court of Common Pleas, but Defendants removed the case to federal court based on Plaintiff's civil rights cause of action

R 6

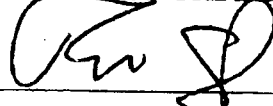
in which Plaintiff alleges that Defendants' assessments and pursuit of state court judgments against Plaintiff "denied [Plaintiff] equal protection of the law under the United States Constitution and [Plaintiff's] rights under 42 U.S.C. section 1983." (Dkt. No. 35 at 6). Plaintiff did not file a motion to remand. Instead, on November 11, 2011, Plaintiff filed a motion to dismiss, arguing that the Court should dismiss Plaintiff's entire case or, in the alternative, should dismiss the First, Second, and Third Counts and stay the Fourth and Fifth Counts pending resolution of the First, Second, and Third Counts in state court. (Dkt. No. 38). In his motion to dismiss, Plaintiff argued that, pursuant to the *Rooker-Feldman* doctrine, the Court does not have subject matter jurisdiction over Plaintiff's claims. (*Id.*). Specifically, Plaintiff argued that Counts One, Two, and Three of the Amended Complaint would require the Court to review several South Carolina Magistrate Court judgments and a Sheriff's sale resulting from execution on one of the judgments in direct violation of the *Rooker-Feldman* doctrine. (*Id.* at 4). Further, Plaintiff argued that the constitutional claim alleged in Count Four is "inextricably intertwined" with the state court decisions, and that the Court therefore does not have subject matter jurisdiction over Count Four either. (*Id.* at 4-5). Finally, Plaintiff argued that the Court should refuse to exercise supplemental jurisdiction over the tort claim alleged in Count Five. (*Id.* at 5). In a very brief Response to Plaintiff's motion, Defendants noted that Plaintiff's civil rights cause of action "does not make reference to a specific judgment in State Court." (Dkt. No. 40 at 1). Thus, Defendants argued that the Court need not stay Count Four while Plaintiff pursues the remaining causes of action in state court.

The Court agrees with Plaintiff that the *Rooker-Feldman* doctrine bars this Court from exercising jurisdiction over Counts One, Two, Three, and Four of Plaintiff's Amended Complaint. Under the *Rooker-Feldman* doctrine, "lower courts are precluded from exercising

appellate jurisdiction over final state-court judgments.” *Lance v. Dennis*, 546 U.S. 459, 463 (2006). “The Rooker-Feldman doctrine precludes not only review of adjudications of the state’s highest court, but also the decisions of its lower courts.” *Jordahl v. Democratic Party of Virginia*, 122 F.3d 192, 199 (4th Cir. 1997). In this suit, Plaintiff seeks to invalidate certain state court judgments which certain Defendants allegedly obtained against Plaintiff. These are precisely the types of claims which the *Rooker-Feldman* doctrine prohibits federal courts from entertaining. Further, the Court agrees with Plaintiff that the § 1983 claim in Count Four is “inextricably intertwined” with the challenged state court judgments, and the Court is therefore barred from exercising jurisdiction over this claim as well. *See id.* at 202-03 (holding that the *Rooker-Feldman* doctrine barred the federal court from exercising jurisdiction over plaintiff’s § 1983 claim, which was “inextricably intertwined” with plaintiff’s challenges to state court decisions). Finally, the Court declines to exercise supplemental jurisdiction over Plaintiff’s tort claim in Count Five of the Amended Complaint. *See* 28 U.S.C. § 1367(c)(3) (giving district courts the discretion to decline to exercise supplemental jurisdiction over a claim where the district court has dismissed all claims over which it has original jurisdiction).

Although Plaintiff filed a motion to dismiss rather than a motion to remand, a district court may *sua sponte* remand a case to state court based on lack of subject matter jurisdiction. *Ellenburg v. Spartan Motors Chassis, Inc.*, 519 F.3d 192, 196 (4th Cir. 2008). For the foregoing reasons, the Court hereby remands this case to the Charleston County Court of Common Pleas.

AND IT IS SO ORDERED.



Richard Mark Gerge
United States District Court Judge

February 6, 2012
Charleston, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-10-1084

Roosevelt Simmons
PLAINTIFF(S)

Mase and Company LLC, et al
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: All Motions for Summary Judgment were denied, except for granting of dismissal of Defendant Deputy Long. Motion to Amend 2nd Amended Complaint was granted. Motion to Compel discovery was resolved. Defendant's Mase Motion for Protection from Court was moot, as order granting protection has already been signed. Formal order to follow.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

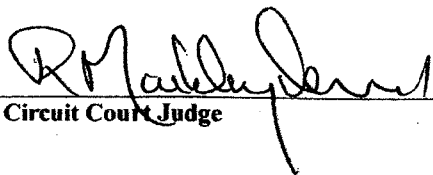
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a	n/a	\$n/a
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

R9


Circuit Court Judge

2060
Judge Code

11/08/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ROOSEVELT SIMMONS,

Plaintiff,

v.

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

Defendants,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL
CIRCUIT CASE NO.: 2011-CP-10-1084

ORDER

FILED
2013 JUN 21 PM 3:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter came before this Court on a Motion for Reconsideration in connection with a Motion for Summary Judgment filed by Defendants Al Cannon, Jr., Charleston County Sheriff's Office, Charleston County, Charleston County Revenue Collections Department, and Harry Long (hereinafter referred to as "Defendants").¹ The Court heard arguments on the Motion for Summary Judgment on November 7, 2012, and initially denied Defendants' Motion. Thereafter, Defendants filed a Motion for Reconsideration and arguments were heard before the Court on March 20, 2013. Present at the Motion for Reconsideration hearing were Ed Bertele (counsel for Plaintiff), Wendy Keefer (counsel for Mase and Company, LLC), and Chris Dorsel (counsel for Defendants). After hearing arguments and reviewing the filed Motions and memoranda regarding Defendants' Motion for Summary Judgment and Motion for Reconsideration, this Court

¹ The Court would note that Defendant Harry Long was dismissed from this action by Order of this Court dated November 8, 2012.

Rm 1111

R 11

hereby grants Defendants' Motion for Reconsideration and grants Defendants' Motion for Summary Judgment as to all claims filed by Plaintiff. The grant of Summary Judgment also ends any claims by or against Defendant Mase and Company, LLC.

BRIEF STATEMENT OF FACTS

Plaintiff owned land on Johns Island that was subject to the Charleston County Solid Waste Recycling and Disposal User Fee ("User Fee"). Due to non-payment of the user fee, the County instituted legal action in the Charleston County Magistrates Court, which resulted in an initial judgment against Plaintiff dated September 19, 2000. The County instituted several more actions against Plaintiff for unpaid user fees and received several more judgments against Plaintiff from 2001-2009.

In 2009, the Sheriff's Office was directed to collect on the outstanding judgments and eventually sold a piece of real property belonging to Plaintiff at a Sheriff's Sale in December 2009. Plaintiff was not present at the Sheriff's sale despite being served with notice of the sale. The first action Plaintiff took to challenge the sale and the 2000 judgment that gave rise to the sale was this lawsuit originally filed on February 11, 2011. Plaintiff amended his Complaint twice and his Second Amended Complaint alleged the following causes of action: (1) Invalidation of Sheriff's Deed for Plaintiff's property; (2) Invalidation of User Fees and judgments; (3) Invalidation of judgments for non-owned real property; (4) Civil Rights violation, and (5) Tort Claim. Defendants filed a Motion for Summary Judgment as to these causes of action. Plaintiff also filed a sixth cause of action by amendment for Insufficiency of Sale Price.

FINDINGS

I. The Court of Common Pleas does not have jurisdiction in this case.

In this lawsuit, Plaintiff is challenging Magistrates Court judgments from the years

Rm 12/12

2000-2009 and asking this Court to overturn those judgments. Yet, Plaintiff has never filed any motions regarding the Magistrates Court judgments nor appeals of the Magistrates Court judgments once he had notice of the same. Therefore, he is procedurally barred from challenging those judgments in a collateral action in Circuit Court now. Additionally, this Court finds that every cause of action brought by Plaintiff in this case necessarily flows from the underlying Magistrates Court judgments. Because this Court does not have jurisdiction to overturn the underlying Magistrate Court judgments, this court does not have jurisdiction regarding any of Plaintiff=s claims in this matter and all claims are dismissed with prejudice.

II. Defendants are entitled to immunity pursuant to the South Carolina Tort Claims Act.

Plaintiff brings claims against Charleston County and the Charleston County Revenue Collections Department (hereafter referred to as "County Defendants") for imposing user fees on him and for taking legal action against him to collect unpaid user fees. Plaintiff further alleges that Al Cannon, Jr., Charleston County Sheriff=s Office (hereinafter referred to as "Sheriff's Office") was negligent in seeking to enforce judgments against Plaintiff and sold Plaintiff's property for less than the property was worth. This Court finds that these Defendants are governmental entities and all claims against them are subject to the immunities provided by the South Carolina Tort Claims Act.

With regard to any state law claims against the County Defendants, this Court finds that their actions were taken to enforce User Fee payments provided by Charleston County Ordinance. Therefore, the County Defendants are subject to immunity under S.C. Code §15-78-60 (4), which provides immunity for the "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision,

Rm 10/13

ordinance, resolution, rule, regulation, or written policies.” Further, the County Defendants are charged with the duty of collecting User Fees and must use discretion in doing so. Therefore, the County Defendants are subject to immunity under S.C. Code §15-78-60 (5), which provides immunity for “the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion judgment of the governmental entity or employee.” This Court further finds the County Defendants’ actions in this matter were for the purpose of collecting User Fees and therefore any actions taken by these entities are also subject to the immunities provided by S.C. Code §§15-78-60 (11) & (23).

With regard to any state law claims against the Sheriff’s Office, this Court finds that the actions taken by the Sheriff’s Office in this case were done to enforce an order from the Magistrate Court. Therefore, the Sheriff’s Office is subject to immunity under S.C. Code §15-78-60 (3), which provides immunity for “execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process.” Further, the Sheriff’s Office is charged with the duty of enforcing judgments and must use discretion in enforcing those judgments. Therefore, the Sheriff’s Office is also subject to immunity under S.C. Code §15-78-60 (5), which provides immunity for “the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion judgment of the governmental entity or employee.” This Court further finds that the Sheriff’s Office instituted a Sheriff’s Sale to collect unpaid User Fees and is therefore also subject to the immunities provided by S.C. Code §§15-78-60 (11) & (23).

III. Plaintiff has not stated a valid constitutional claim in this case.

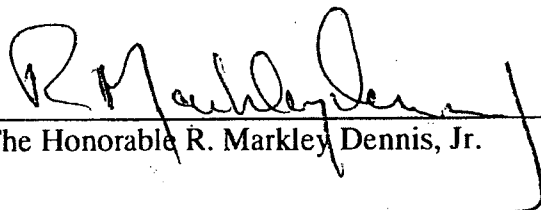
Plaintiff claims that his equal protections rights were violated by both the imposition of the user fee and the collection efforts taken by the Sheriff’s Office. The South Carolina Supreme

Rm 07/14

Court has addressed equal protection concerns as they relate to user fees in the case of Skyscraper Corp. v. County of Newberry, 323 S.C. 412, 417 (1996). Based on the holdings in Skyscraper, Plaintiff in our current case has not set forth a genuine issue of fact as to how imposition of the user fee by the County Defendants violated his constitutional rights. Further, Plaintiff has likewise not set forth a genuine issue of fact as to how the Sheriff's Office collection efforts violated his constitutional rights. Therefore, Plaintiff's constitutional claims in his Second Amended Complaint are dismissed.

THEREFORE, ALL OF PLAINTIFF'S CLAIMS IN THIS MATTER ARE DISMISSED WITH PREJUDICE.

AND IT IS SO ORDERED.


The Honorable R. Markley Dennis, Jr.

June 17, 2013
Charleston, South Carolina

RM07/15

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
Case No. 2011-CP-10-1084

Roosevelt Simmons,

PLAINTIFF,

Mase and Company LLC, et al,

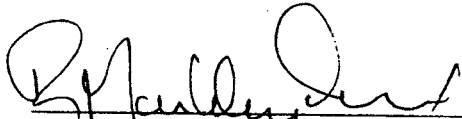
DEFENDANT.

ORDER

FILED
2014 OCT 13 AM 9:29
JULIE L. ARMSTRONG
CLERK OF COURT

This matter comes before me upon Motion for Reconsideration filed by Plaintiff, **Roosevelt Simmons**. After fully considering said Motion, this Court finds no need for oral argument in this matter and, therefore, the Motion for Reconsideration is DENIED;

AND IT IS SO ORDERED!


R. MARKLEY DENNIS, JR.
Presiding Judge

Charleston, South Carolina

October 6, 2014

R 16

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO. 2011- CP -10 - 1084

COMPLAINT

FIRST COUNT
(Invalidating Sheriff's Deed)

1. At all relevant times, Simmons was the owner of real property known as TMS 282-00-00-138 (TMS 138) located on Johns Island, South Carolina.
2. On or about 1987, defendant Charleston County (the county) adopted an Ordinance to impose user fees upon the owners of real property located in the county for the express purpose of paying the costs of garbage and trash disposal at the county's facilities. According to Charleston County Code of Ordinances Section 10-56, " [t]he annual disposal user fee shall be due and payable within the time and in the manner prescribed by law for county ad valorem taxes pursuant to section 12-45-70 of the code [S.C. Code 1976, § 12-45-70], or other law of similar import. The treasurer shall bill and collect the annual disposal user fee established by the county council in the same manner as taxes are collected "

3. TMS 138 is located on a private road for which no county services including trash removal are provided. Simmons contracted with a private trash hauling company to remove his trash in accordance with Charleston County Code of Ordinances Section 10-24 which provides that "[e]very owner of residential or commercial property shall use an approved licensed . . . solid waste collection service."
4. After receiving notice of the imposition of a user fee against TMS 138, Simmons made a written application for waiver of the user fee. The county's User Fee Department granted Simmons' request for a waiver of the user fee for the initial year and for all years following up to the present.
5. On or about February 2010, Defendant, J. Al Cannon, Jr., Sheriff of Charleston County executed a deed purporting to transfer title to real property designated as TMS 283-00-00-498 located along Kitford Road, Johns Island, SC to defendant Mase and Company, LLC. Said deed was recorded in the office of the Register of Mesne Conveyances of Charleston County in Deed Book 0109 page 498. Said deed purports to be pursuant to a levy and execution on a judgment in Case No. 2000-JG -10-1817 issued by the Magistrates Court against plaintiff Roosevelt Simmons for nonpayment of a user fee relating to TMS 282-00-00-138. The deed recites that the consideration was the sum of \$600.
6. Said deed is void because the Magistrates Court has no jurisdiction or authority in Case No. 2000-JG -10-1817 to enforce the collection of user fees and the subsequent judgment and levy and execution thereon was void and of no effect. The method to enforce a user fee is governed by SC Code Section 12-49-10 and laws applicable to real property taxes.

7. SC Code 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.

8. TMS 283-00-00-498 is vacant land from which no solid waste is generated. Any levy and execution against TMS 138 is contrary to the express purpose and intent of the enabling laws and ordinances relating to user fees.

9. The Sheriff of Charleston County has no authority to levy and execute on real property which is not subject to the user fee being enforced.

SECOND COUNT
(Invalidation of User Fees and judgments)

10. Plaintiff repeats and realleges each and every allegation of Paragraphs 1-9 as if more fully set forth herein.

11. The imposition of a user fee against TMS 138 was and is invalid because Simmons was and is in compliance with Charleston County Code of Ordinances Section 10-24 by having contracted with a private trash hauling company licensed by the county to remove his trash and paying them a fee.

12. The imposition of a user fee against TMS 138 was and is invalid because Simmons as owner derived no benefit from this charge as required by SC Code Section 44-55-1210

13. The imposition of a user fee against TMS 138 had been waived by the User Fee Department, an agency of the county as a matter of custom and practice over a long period of time.

14. The County had actual or implied knowledge that employees of the User Fee Department had waived the user fee imposed against TMS 138 and was barred and estopped from prosecuting an action against Simmons for nonpayment by these acts and conduct.

15. The country has commenced other actions against Simmons for nonpayment of user fees imposed against property known as TMS 311-00-00-024. Prior to 2009, this property has been titled as "the estate of Sam Balaam" being heirs property and subject to distribution among the heirs of the deceased owner, Sam Balaam. As an heir of Sam Balaam and in order to preserve the family interest intact, Simmons paid the real estate taxes imposed on TMS 311-00-00-024. Notwithstanding his voluntary payment, Simmons had no legal obligation to pay user fees imposed against TMS 311-00-00-024.

16 Any judgments entered against Simmons for nonpayment of user fees imposed against TMS 311-00-00-024 are unjust, unlawful, inequitable, are the result of mistake, inadvertence and neglect and should be vacated.

17. Any judgments entered against Simmons for nonpayment of user fees against TMS 282-00-00-138 are unjust, unlawful, inequitable, are the result of mistake, inadvertence and neglect and should be vacated.

THIRD COUNT
(Civil Rights violations)

16. Plaintiff repeats and realleges each and every allegation of Paragraphs 1-15 as if more fully set forth herein.

17. At all relevant times, Simmons has timely paid his real property taxes and repeatedly complained about the imposition of user water fees. Each year he had had to make a personal

application to have the fee waived notwithstanding the fact that the fee is not applicable to his property. Each year, the county has also imposed storm water collection fees against Simmons property although TMS 138 is not served by public storm water collection or sewer or water service. Simmons has repeatedly objected to the imposition of a storm water fee but the county continues to bill and seek to collect same.

18. The county acted arbitrarily and discriminatorily in commencing suit against Simmons for user fees and storm water fees with the intent to deprive him of his property. The county has violated Simmons rights under 42 USC section 1982.

19. The county has not heretofore sought to enforce its right to collect user fees against real property not subject to imposition of user fees. The sale of TMS 283-00-00-498 by the Sheriff has violated Simmons right to equal protection of the law.

20. The actions of the county in attempting to collect user fees and to execute on other real property owned by Simmons is not in compliance with SC Code Section 44-55-1210 and SC Code Section 12-49-10 and laws applicable to real property taxes. As a result Simmons has been denied equal protection of the law.

WHEREFORE, plaintiff requests that judgment be entered against the defendants as follows:

1. A declaration that the Sheriff's deed to real property designated as TMS 283-00-00-498 to defendant Mase and Company, LLC, recorded in the office of the RMC of Charleston County in Deed Book 0109 page 498 is void and of no effect and that an Order be entered on the record of the Recorder of Mesne Conveyances;
2. A declaration invalidating all judgments entered against Simmons relating to payment of user fees imposed against TMS 282-00-00-138 and TMS 311-00-00-024

3. Declaratory and injunctive relief against defendants future imposition of user and stormwater fees and levy and execution against TMS 282-00-00-138.
4. Compensatory damages
5. An award of counsel fees and costs to the plaintiff;
6. Such other relief as the Court deems just and equitable.

Edward A. Bertele, Esq.
1812 Pierce Street
Charleston, SC 29492
(843) 471-2082
Attorney for Roosevelt Simmons

By: 

Dated: February 10, 2011

2-11-2011
4:54pm

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO. 2011- CP -10 - 1084

ROOSEVELT SIMMONS)
Plaintiff)
Vs.)
MASE and COMPANY, LLC,)
J. AL CANNON, JR., SHERIFF OF)
CHARLESTON COUNTY)
and)
CHARLESTON COUNTY)
Defendants)

LIS PENDENS

FILED
2011 FEB 11 PM 4:52
JULIE J. ARMSTRONG
CLERK OF COURT

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in the Court of Common Pleas for the County of Charleston, South Carolina upon a complaint of the above named plaintiff against the above named defendants for the purpose of determining the interest of the plaintiff and the interest of the defendants in the parcel of land hereinafter described and is brought under the provisions of the South Carolina Code of Laws Section 15-67-10 et seq. for the purpose of establishing that the above named plaintiff be declared the owner in fee simple and having good and marketable title to the property hereinafter described; that the premises to be affected by said complaint was at the time of the filing of this Lis Pendens situated, lying and being in the County of Charleston, South Carolina and is more particularly described as follows:

TMS 283-00-00-498

Edward A. Bertele, Esq.
1812 Pierce Street
Charleston, SC 29492
843-471-2082

By: 

February 11, 2011
Charleston, SC

R 23

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
ROOSEVELT SIMMONS,)
Plaintiff,)
vs.)
MASE and COMPANY, LLC,)
J. AL CANNON, SHERIFF of)
CHARLESTON COUNTY,)
CHARLESTON COUNTY)
Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2011-CP-10-1084

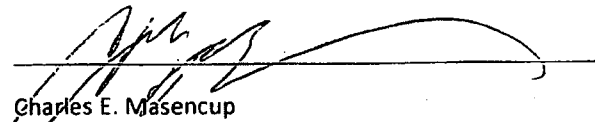
ANSWER OF DEFENDANT
MASE and COMPANY, LLC

FILED
2011 MAR 17 PM 12:51
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

COMES NOW, MASE and COMPANY, LLC, Defendant in the within action, who hereby allege and respond to the Complaint, as follows:

1. They deny each and every allegation of the Complaint not hereafter specifically admitted.
2. Defendant lacks sufficient knowledge and information upon which to form an opinion or belief as to Paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, (THIRD COUNT Paragraph numbers repeat, further denied) 16(2), 17(2), 18, 19, and 20 and therefore deny same and demand strict proof thereof.
3. They admit Paragraph 5 as being true and correct to the best of their knowledge.
4. Further answering the Complaint, and as and for a further defense thereto, Defendant alleges that the Complaint fails to state facts sufficient to constitute causes of action against it and should be dismissed.

WHEREFORE, having fully answered the Complaint, Defendant Mase and Company, LLC pray that the same be dismissed as to them with attorney's fees and costs, provide a QUITCLAIM deed by Roosevelt Simmons, Plaintiff, to Mase and Company, LLC, defendant, and for such other and further relief as the Court may deem appropriate.



Charles E. Masencup
138 Broad Street, Unit D
Charleston, SC 29401
843-408-1400
Sole owner, Mase and Company, LLC

CHARLESTON, SC
March 16, 2011

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO. 2011- CP -10 - 1084

AMENDED COMPLAINT

FIRST COUNT
(Invalidating Sheriff's Deed of TMS 498)

2 S.C. Code Section 44-55-1210 authorizes a county to provide and regulate solid waste collection and disposal and to levy user fees only against persons for whom services are provided. On or about 1987, defendant County adopted Ordinance Section 10-56 to impose user fees upon the owners of real property located in the county for the express purpose of

paying the costs of garbage and trash disposal at the county's facilities. Section 10-56 was intended to conform to S.C. Code Section 44-55-1210.

3. On or after 1987, Simmons received tax bills from the County for TMS 138 which included a user fee. Simmons regularly and timely paid the taxes assessed for each of these years and made a written application to the County's User Fee Department for waiver of the user fee.

4. Simmons was not required to pay a user fee under Ordinance Section 10-56 for TMS 138 because the County did not remove any trash from TMS 138. Simmons contracted with a private, approved and licensed solid waste collection company to remove his trash as permitted by Ordinance Section 10-24.

5. The County's User Fee Department granted Simmons' request for a waiver of the user fee against TMS 138 for the initial year and for all years following up to the present.

6. Notwithstanding the waiver of the user fees by the User Fee Department, the County commenced various law suits against Simmons in the Magistrate's Court of Charleston County for collection of the user fee imposed on TMS 138.

7. The Magistrates Court had no jurisdiction or authority to proceed against plaintiff Roosevelt Simmons for nonpayment of a user fee imposed upon TMS 138 since jurisdiction over all actions to collect real property taxes is vested in the Circuit Court.

8. Charleston County Code of Ordinances Section 10-56 states: "[t]he annual disposal user fee shall be due and payable within the time and in the manner prescribed by law for county ad valorem taxes pursuant to section 12-45-70 of the code . . . or other law of similar import. The treasurer shall bill and collect the annual disposal user fee established by the county council in the same manner as taxes are collected"

9. On or about February 2010, Defendant, J. Al Cannon, Jr., Sheriff of Charleston County (the Sheriff) executed a deed purporting to transfer title to TMS 498 to defendant Mase and Company, LLC. The deed was recorded in the office of the Register of Mesne Conveyances of Charleston County in Deed Book 0109 page 498. The deed was issued pursuant to a levy and execution on a judgment in Case No. 2000-JG -10-1817 issued by the Magistrates Court against plaintiff Roosevelt Simmons for nonpayment of a user fee of \$89.00 imposed against TMS 138 .

10. The judgment in Case No. 2000-JG -10-1817 is void since the Magistrates Court had no jurisdiction or authority in Case No. 2000-JG -10-1817 to proceed against plaintiff Roosevelt Simmons for nonpayment of a user fee of \$89.00 imposed upon TMS 138. The Sheriff's deed is also void because the judgment upon it is based is void.

11. Defendant Sheriff had no authority to levy and execute on TMS 498 for payment of user fees on TMS 138. The method to enforce a user fee is governed by SC Code Section 12-49-10 and laws applicable to real property taxes. Such sale is also subject to a statutory right of redemption pursuant to South Carolina Statutes Section 12-51-90.

12. TMS 283-00-00-498 is vacant land from which no solid waste is generated. Any levy and execution against TMS 138 is contrary to the express purpose and intent of the enabling laws and ordinances relating to user fees.

SECOND COUNT
(Invalidation of User Fees and judgments)

13. Plaintiff repeats and realleges each and every allegation of Paragraphs 1-12 as if more fully set forth herein.

14. At all relevant times, Simmons was and is in compliance with Charleston County Ordinance Section 10-24 by having contracted with a private trash hauling company licensed by the county to remove trash from TMS 138.

15. All user fees imposed by the county against TMS 138 are invalid because Simmons as owner derived no benefit from this charge as required by SC Code Section 44-55-1210

16. Pursuant to Simmons request, all user fees imposed against TMS 138 have been waived by the User Fee Department, an agency of Charleston County, as a matter of custom and practice over a long period of time.

17. Defendant Country wrongfully commenced actions against Simmons for nonpayment of user fees imposed against TMS 138 after its User Fee Department waived all such user fees imposed against TMS 138.

18 All judgments entered against Simmons for nonpayment of user fees imposed against TMS 282-00-00-138 are the result of mistake, inadvertence and neglect and should be vacated. It would be unjust and inequitable for said judgments to have prospective effect against any real or personal property of plaintiff.

THIRD COUNT

(Invalidation of judgments for non owned real property)

19. Plaintiff repeats and realleges each and every allegation of Paragraphs 1-18 as if more fully set forth herein.

20. At all relevant times, the County issued tax bills against certain real property known and designated as TMS 311-00-00-024 (TMS 024) and 311-00-00-032 (TMS 032) which included user fees. TMS 024 contains a residential dwelling. Defendant County does not provide any services including trash removal, water, sewer or storm water control to TMS 024. TMS 032 is

unimproved. Defendant County does not provide any services including trash removal, water, sewer or storm water control to TMS 032.

21. According to the records of the Charleston County Tax Assessor, TMS 024 and 032 were owned by the estate of Sam Balaam. At all relevant times, plaintiff was one of the heirs of Samuel Balaam. In order to preserve his family's interest, Simmons regularly and timely paid the taxes assessed on TMS 024 and 032 and made a written application to the County's User Fee Department for waiver of the user fee.

22. The County's User Fee Department granted Simmons' request for a waiver of the user fee against TMS 024 and 032 for all years up to the present.

23. Notwithstanding his voluntary payment of real estate taxes, Simmons had no legal obligation to pay user fees imposed against TMS 024 and 032 and derived no benefit.

24. TMS 032 was not subject to user fees since the County did not remove any trash. Trash collection from TMS 024 was provided by a private, approved and licensed solid waste collection company as permitted by Ordinance Section 10-24.

25. Notwithstanding the waiver of the user fees by the User Fee Department, the County commenced various law suits against Simmons in the Magistrate's Court of Charleston County for collection of the user fee imposed on TMS 024 and 032.

26. The Magistrates Court had no jurisdiction or authority to proceed against plaintiff Roosevelt Simmons for nonpayment of a user fee imposed upon TMS 024 and 032 since jurisdiction over all actions to collect real property taxes is vested in the Circuit Court.

27. All judgments entered against Roosevelt Simmons for nonpayment of user fees imposed upon TMS 024 and 032 are void since the Magistrates Court had no jurisdiction or authority in such cases.

28. All judgments entered against Simmons for nonpayment of user fees imposed against TMS 024 and 032 are the result of mistake, inadvertence and neglect. It would be unjust and inequitable for said judgments to have prospective effect against any real or personal property of plaintiff.

FOURTH COUNT
(Civil Rights violations)

29. Plaintiff repeats and realleges each and every allegation of Paragraphs 1-28 as if more fully set forth herein.

30. At all relevant times, Simmons timely paid his real property taxes and repeatedly complained about the imposition of user fees. Each year he had to make a personal application to have the fee waived notwithstanding the fact that the fee is not applicable to his property. Each year, the County has also imposed storm water collection fees against Simmons property although TMS 138 is not served by public storm water collection or sewer or water service. Simmons has repeatedly objected to the imposition of a storm water fee but the county continues to bill and seek to collect same.

31. Defendant County acted arbitrarily and discriminatorily in enforcing the user fee and storm water ordinances by commencing multiple suits against Simmons for user fees and storm water fees with the intent to deprive him of his property.

32. Defendant County's discriminatory enforcement of the user fee and storm water ordinances has violated Simmons right to equal protection of the Fourteenth Amendment of the United States Constitution and South Carolina Constitution art. I, Sec. 3 and Simmons rights under 42 USC section 1983.

33. Defendant County by arbitrarily and discriminatorily executing on other real property owned by Simmons not in compliance with SC Code Section 44-55-1210 and SC Code Section 12-49-10 and laws applicable to real property taxes has denied Simmons equal protection of the law under the United States and South Carolina Constitutions.

34. Defendant Sheriff by arbitrarily and discriminatorily executing on other real property owned by Simmons not in compliance with SC Code Section 44-55-1210 and SC Code Section 12-49-10 and laws applicable to real property taxes has denied Simmons equal protection of the law under the United States and South Carolina Constitutions.

35. Defendant Sheriff by arbitrarily and discriminatorily conducting the sale of TMS 283-00-00-498 to satisfy payment of user fees against TMS 138 has violated Simmons right to equal protection of the law under the United States and South Carolina Constitutions.

FIFTH COUNT
(Civil Conspiracy)

36. Defendants herein together with persons not presently known have engaged in a conspiracy for their own personal benefit to affect the outcome of pending litigation, Simmons v. Berkeley Electric Cooperative, Inc. et al, 2008 CP-10-1983 (the litigation) in which Simmons ownership of TMS 498 was an issue.

37. Defendants carried out their conspiracy to affect the outcome of the litigation by using an existing judgment against Simmons for nonpayment of a user fee relating to TMS 138 to levy and execute on an unrelated property, TMS 498 and causing the defendant Sheriff to sell TMS 498 prior to the completion of the litigation.

38. Due to defendants' efforts to interfere with the pending litigation, Simmons incurred additional legal fees and costs in the litigation to oppose defendants Berkeley Electric Cooperative, Inc. and St. Johns Water Company efforts to dismiss the litigation.

39. By depriving Simmons of his interest in TMS 498, defendants also caused Simmons' claim of damages against the named defendants in the litigation to be substantially reduced.

40. By carrying out their conspiracy to interfere with Simmons claims in the litigation and depriving Simmons of his interest in TMS 498, defendants reduced the value of Simmons' claims in the litigation even if he later recovered ownership of TMS 498.

WHEREFORE, plaintiff requests that judgment be entered against the defendants as follows:

1. A declaration that the Sheriff's deed to real property designated as TMS 283-00-00-498 to defendant Mase and Company, LLC, recorded in the office of the RMC of Charleston County in Deed Book 0109 page 498 is void and of no effect and that an Order thereupon be entered in the record of the Recorder of Mesne Conveyances;
2. A declaration invalidating all judgments entered against Simmons relating to payment of user fees imposed against TMS 282-00-00-138 and TMS 311-00-00-024 and 311-00-00-032
3. Declaratory and injunctive relief against defendants' future imposition of user and stormwater fees and levy and execution against TMS 282-00-00-138 and TMS 311-00-00-024 and 311-00-00-032.
4. Compensatory damages
5. Special damages relating to the litigation
6. An award of counsel fees and costs to the plaintiff;
7. Such other relief as the Court deems just and equitable.

Edward A. Bertele, Esq.
1812 Pierce Street
Charleston, SC 29492
(843) 471-2082
Attorney for Roosevelt Simmons

By: _____

Dated: March 22, 2011

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

ROOSEVELT SIMMONS,

Plaintiff,

v.

MASE and COMPANY, LLC, J. AL
CANNON, JR., SHERIFF OF
CHARLESTON COUNTY and
CHARLESTON COUNTY,

Defendants.

CIVIL ACTION NO.:

2011-CP-10-1084

NOTICE OF REMOVAL

2011 MAR 25 PM 1:15
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

YOU WILL PLEASE TAKE NOTICE that this entitled cause has this date been removed to the United States District Court for the District of South Carolina, Charleston Division, by filing in that Court this Notice and filing in the Court of Common Pleas for Charleston County a copy of this Notice.

This is a civil suit, commenced on February 11, 2011, by the filing of a Summons and Complaint in the Court of Common Pleas for Charleston County. The Summons and Complaint, copies of which are attached, were served on the Defendants on or after February 22, 2011. Undersigned counsel will represent and appear for Defendants J. Al Cannon, Jr., Sheriff of Charleston County and Charleston County. Defendant Mase and Company, LLC, will be proceeding *pro se*; and hereby consents and joins in this removal.

The United States District Court has original jurisdiction over this action pursuant to the provisions of 28 U.S.C. §§ 1331 and 1343, in that the Complaint alleges causes of action under

42 U.S.C. §§ 1981, 1982, 1983, and 1988, and the deprivation of constitutional rights secured by the Constitution and laws of the United States of America.

This suit is one which may be removed to the United States District Court by the Defendants, pursuant to the provisions of 28 U.S.C. Section 1441(b), as one or more of the claims arise under the Constitution and laws of the United States of America.

S/Sandra J. Senn

Sandra J. Senn
Fed. I.D. No: 5761
Senn, McDonald, & Leinbach, LLC
P.O. Box 12279
Charleston, SC 29422
(843) 556-4045

Attorney for Defendants

March 24, 2011
Charleston, South Carolina

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

ROOSEVELT SIMMONS,

Plaintiff,

v.

MASE and COMPANY, LLC, J. AL
CANNON, JR., SHERIFF OF
CHARLESTON COUNTY and
CHARLESTON COUNTY,

Defendants.

CIVIL ACTION NO.: 2:11-cv-00709-RMG

2011-CP-10-1084

ANSWER ON BEHALF OF
DEFENDANTS' J. AL CANNON, JR.,
SHERIFF OF CHARLESTON COUNTY
AND CHARLESTON COUNTY

(Jury Trial Demanded)

FILED
2012 JUL 11 PM 4:17
JULIE J. HARRIS
CLERK OF COURT

Come now the defendants, J. Al Cannon, Jr., Sheriff of Charleston County, and Charleston County, and hereby answer the plaintiff's Amended Complaint to wit:

FOR A FIRST DEFENSE
(Qualified General Denial)

All specifically not admitted herein should be deemed denied.

1. Lack sufficient information to admit or deny and therefore denies.
2. Plead conclusions of law which the answering defendants can neither admit nor deny.
3. Lack sufficient information to admit or deny and therefore denies.
4. Deny that he was not required to pay a user fee; lack sufficient information regarding the remainder of the paragraph.
5. Deny
6. Deny that user fees were waived; admit that the County proceeded with its legal remedies against the plaintiff.

7. Plead conclusions of law which the answering defendants can neither admit nor deny.
8. Is a statement of law that does not require a response.
9. Admit.
10. Deny.
11. Deny.
12. Deny.
13. Requires no response.
14. Deny
15. Deny.
16. Deny.
17. Deny.
18. Deny.
19. Requires no response.
20. Admit that tax bills were issued against TMA 024 and TMS 032.
21. Lack sufficient information to admit or deny and therefore denies.
22. Deny.
23. Deny.
24. Deny that TMS 032 was not subject to user fees; lack sufficient information regarding the trash collection for this address and therefore deny.
25. Deny.
26. Deny.
27. Deny.

- 28. Deny.
- 29. Requires no response.
- 30. Deny.
- 31. Deny.
- 32. Deny.
- 33. Deny.
- 34. Deny.
- 35. Deny.
- 36. Deny.
- 37. Deny.
- 38. Deny.
- 39. Deny.
- 40. Deny.

FOR A SECOND DEFENSE
(Impossibility)

41. The plaintiff has pled a cause of action for Civil Conspiracy which is impossible, as legally, entities cannot participate in a conspiracy, only persons are able to do so. Therefore, this cause of action should be dismissed.

FOR A THIRD DEFENSE
(Rules 8 and 12)

42. Plaintiff has failed to state a cause of action for which relief can be granted. Further, this Complaint should be dismissed for all applicable reasons in accordance with Rule 12 and Rule 8 of the Federal Rules of Civil Procedure.

FOR A FOURTH DEFENSE
(No Constitutional Violation)

43. The alleged actions/inactions claimed by the plaintiff did not rise to the level of a constitutional violation and the plaintiff did not suffer any infringement of constitutional and/or federal rights, privileges or immunities.

FOR A FIFTH DEFENSE
(Comparative Negligence/Sole Negligence)

44. Any injuries or damages sustained by the plaintiff, all of which are expressly denied, are due to and caused by the plaintiff's own negligent, gross negligent, reckless, wanton, and illegal behavior.

FOR A SIXTH DEFENSE
(Waiver, *Estoppel*, Laches, Acquiescence, Stale Demand, Statute of Limitations, Service of Process and Proximate Cause)

45. Plaintiff's claims are barred, in whole or in part, by the doctrines of *estoppel*, laches, waiver, acquiescence, stale demand, statute of limitations, service of process and/or the acts of the answering defendants were not the proximate cause of the damages.

FOR A SEVENTH DEFENSE
(South Carolina Frivolous Civil Proceedings Sanctions Act)

46. Under the South Carolina Frivolous Civil Proceedings Sanctions Act, Sections 15-36-10 et seq of the South Carolina Code of Laws, these defendants are entitled to recover their attorney's fees and court costs incurred in litigating this matter.

FOR AN EIGHTH DEFENSE
(Sovereign Immunity - Tort Claims Act)

47. As to any alleged violation of common law or state law, the answering defendants assert the protections and provisions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, et seq, pertinent portions thereto.

FOR A NINTH DEFENSE
(Failure to Mitigate)

48. Plaintiff's claims are barred or must be reduced by his failure to mitigate damages, should there be any damages.

Wherefore, having fully answered the Amended Complaint, the answering Defendants hereby pray that the Complaint be dismissed with prejudice; that plaintiff be responsible for all costs associated with defending this action; and for all such further relief as this court deems just and proper. In addition, the defendants reserve the right to amend to allege additional affirmative defenses or other defenses as they become known throughout the course of discovery.

s/Sandra J. Senn

SANDRA J. SENN

FED. I.D. NO: 5761

ROBIN L. JACKSON

FED. I.D. NO.: 7465

Senn, McDonald, & Leinbach, LLC

P.O. Box 12279

Charleston, SC 29422

(843) 556-4045

March 31, 2011

Attorneys for Defendants Sheriff Al Cannon,
Charleston County Sheriff's Department,
and the County of Charleston

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

ROOSEVELT SIMMONS,

Plaintiff,

v.

MASE and COMPANY, LLC, J. AL CANNON,
JR., SHERIFF OF CHARLESTON COUNTY,
and CHARLESTON COUNTY,

Defendants.

Civil Action No: 2:11-cv-00709-RMG

2011-1084

**ANSWER, CROSS-CLAIM, AND
COUNTERCLAIM OF DEFENDANT
MASE AND COMPANY, LLC**

JURY TRIAL DEMANDED

FILED
2012 JUL 11 PM 4:18
JULIE J. ARMSTRONG
CLERK OF COURT

Defendant, Mase and Company, LLC (MASE), hereby answers Plaintiff's Amended Complaint by denying each and every allegations not herein expressly admitted, reserving all rights to amend this answer pursuant to Federal Rules of Civil Procedure, and by alleging as follows. Though not having been named as a party to this suit no answer is required, to the extent any answer is required by the sole member of Mase and Company, LLC, Charles E. Masencup, this Answer is intended to serve as that pleading.

FOR A FIRST DEFENSE

1. Answering the allegations of Paragraph 1 of Plaintiff's Amended Complaint, MASE has insufficient information and knowledge either to admit or deny those allegations and, therefore, denies those allegations.
2. The allegations of Paragraph 2 of Plaintiff's Amended Complaint states conclusions of law which conclusions MASE is required neither to admit nor deny.

R43

3. Answering the allegations of Paragraph 3 of Plaintiff's Amended Complaint, MASE has insufficient information and knowledge either to admit or deny those allegations and, therefore, denies those allegations.
4. Answering the allegations of Paragraph 4 of Plaintiff's Amended Complaint, MASE has insufficient information and knowledge either to admit or deny those allegations and, therefore, denies those allegations.
5. Answering the allegations of Paragraph 5 of Plaintiff's Amended Complaint, MASE has insufficient information and knowledge either to admit or deny those allegations and, therefore, denies those allegations.
6. Answering the allegations of Paragraph 6 of Plaintiff's Amended Complaint, MASE has insufficient information and knowledge either to admit or deny those allegations and, therefore, denies those allegations.
7. The allegations of Paragraph 7 of Plaintiff's Amended Complaint state conclusions of law which conclusions MASE is required neither to admit nor deny.
8. The allegations of Paragraph 8 of Plaintiff's Amended Complaint state conclusions of law which conclusions MASE is required neither to admit nor deny.
9. Upon information and belief, MASE admits the allegations of Paragraph 9 of Plaintiff's Amended Complaint but craves reference to the actual sales, title and deed documents referenced for their exact terms.

10. The allegations of Paragraph 10 of Plaintiff's Amended Complaint state conclusions of law which conclusions MASE is required neither to admit nor deny.
11. The allegations of Paragraph 11 of Plaintiff's Amended Complaint state conclusions of law which conclusions MASE is required neither to admit nor deny.
12. Answering the allegations of Paragraph 12 of Plaintiff's Amended Complaint, MASE admits only that, upon information and belief, TMS 283-00-00-498 is undeveloped land. The remaining allegations of Paragraph 12 either state conclusions of law not requiring a response from MASE or include facts about which MASE has insufficient information and knowledge either to admit or deny and, therefore, those allegations are denied.
13. Answering the allegations of Paragraph 13 of Plaintiff's Amended Complaint, MASE reasserts and realleges each and every allegations of Paragraphs 1 through 12 above as if set forth herein verbatim.
14. The allegations of Paragraph 14 of Plaintiff's Amended Complaint state conclusions of law which conclusions MASE is required neither to admit nor deny.
15. The allegations of Paragraph 15 of Plaintiff's Amended Complaint state conclusions of law which conclusions MASE is required neither to admit nor deny.

16. The allegations of Paragraph 16 of Plaintiff's Amended Complaint contain only legal conclusions or facts about which MASE has insufficient information either to admit or deny and, therefore, those allegations are denied.
17. The allegations of Paragraph 17 of Plaintiff's Amended Complaint state conclusions of law which conclusions MASE is required neither to admit nor deny.
18. The allegations of Paragraph 18 of Plaintiff's Amended Complaint state conclusions of law which conclusions MASE is required neither to admit nor deny.
19. Answering the allegations of Paragraph 19 of Plaintiff's Amended Complaint, MASE reasserts and realleges each and every allegations of Paragraphs 1 through 18 above as if set forth herein verbatim.
20. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 20 of Plaintiff's Amended Complaint and, therefore, denies those allegations.
21. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 21 of Plaintiff's Amended Complaint and, therefore, denies those allegations.
22. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 22 of Plaintiff's Amended Complaint and, therefore, denies those allegations.

23. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 23 of Plaintiff's Amended Complaint and, therefore, denies those allegations.
24. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 24 of Plaintiff's Amended Complaint and, therefore, denies those allegations.
25. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 25 of Plaintiff's Amended Complaint and, therefore, denies those allegations.
26. The allegations of Paragraph 26 of Plaintiff's Amended Complaint state conclusions of law which conclusions MASE is required neither to admit nor deny.
27. The allegations of Paragraph 27 of Plaintiff's Amended Complaint state conclusions of law which conclusions MASE is required neither to admit nor deny.
28. The allegations of Paragraph 28 of Plaintiff's Amended Complaint state conclusions of law which conclusions MASE is required neither to admit nor deny. To the extent this paragraph asserts any inequities, those inequities were suffered by MASE as a good faith purchaser of TMS 283-00-00-498.
29. Answering the allegations of Paragraph 29 of Plaintiff's Amended Complaint, MASE reasserts and realleges each and every allegations of Paragraphs 1 through 28 above as if set forth herein verbatim.

30. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 30 of Plaintiff's Amended Complaint and, therefore, denies those allegations.
31. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 31 of Plaintiff's Amended Complaint and, therefore, denies those allegations.
32. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 32 of Plaintiff's Amended Complaint and, therefore, denies those allegations. Moreover, these allegations contain legal conclusions requiring no response.
33. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 33 of Plaintiff's Amended Complaint and, therefore, denies those allegations. Moreover, these allegations contain legal conclusions requiring no response.
34. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 34 of Plaintiff's Amended Complaint and, therefore, denies those allegations. Moreover, these allegations contain legal conclusions requiring no response.
35. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 35 of Plaintiff's Amended Complaint and, therefore, denies those allegations. Moreover, these allegations contain legal conclusions requiring no response.

36. To the extent the use of the term "Defendants" in Paragraph 36 of Plaintiff's Amended Complaint refers to or may refer to MASE or its sole member, Charles E. Masencup, those allegations are denied.
37. To the extent the use of the term "Defendants" in Paragraph 37 of Plaintiff's Amended Complaint refers to or may refer to MASE or its sole member, Charles E. Masencup, those allegations are denied.
38. To the extent the use of the term "Defendants" in Paragraph 38 of Plaintiff's Amended Complaint refers to or may refer to MASE or its sole member, Charles E. Masencup, those allegations are denied.
39. To the extent the use of the term "Defendants" in Paragraph 39 of Plaintiff's Amended Complaint refers to or may refer to MASE or its sole member, Charles E. Masencup, those allegations are denied.
40. To the extent the use of the term "Defendants" in Paragraph 40 of Plaintiff's Amended Complaint refers to or may refer to MASE or its sole member, Charles E. Masencup, those allegations are denied.

FOR A SECOND DEFENSE
(Impossibility)

41. Plaintiff's Amended Complaint includes a cause of action for civil conspiracy, which claim is impossible, as legally, entities cannot participate in a conspiracy, only persons are able to do so. Therefore, this cause of action should be dismissed with prejudice.

FOR A THIRD DEFENSE
(Rules 8 and 12)

R 49

42. Plaintiff failed to state any cause of action against MASE or its sole member, Charles E. Masencup, on which relief may be granted. Thus, the Amended Complaint should be dismissed with prejudice pursuant to Federal Rules of Civil Procedure, Rules 8 and 12.

FOR A FOURTH DEFENSE
(No Constitutional Claim Against MASE)

43. As constitutional violations may only be committed, as a matter of law, by government entities, no claim for constitutional violation may proceed against the MASE Defendant or its sole member, each a private entity or person.

FOR A FIFTH DEFENSE
(Comparative Negligence/Sole Negligence)

44. Any injuries or damages sustained by Plaintiff, all of which are denied as related to any action or inaction of MASE or its sole member, are due to and caused by Plaintiff's own negligence, gross negligence, recklessness, wantonness, and/or illegal behavior or that of the other Defendants as more specifically described in the cross-claim contained herein.

FOR A SIXTH DEFENSE
(Waiver, Estoppel, Laches, Acquiescence, Stale Demand, Statute of Limitations,
Service of Process, Proximate Cause, and Failure to Mitigate)

45. Plaintiff's claims are barred, in whole or in part, and particularly as relates to MASE and its sole member, by the doctrines of estoppel, laches, waiver acquiescence, stale demand, statute of limitations, service of process, lack of proximate cause between any act of MASE or its sole

member and the damages claimed, and/or failure to mitigate Plaintiff's damages.

46. Further answering Plaintiff's Amended Complaint, Plaintiff failed to take any steps to maintain ownership of the property or otherwise protect his claimed interest prior to its sale, which property was purchased in good faith by MASE from Charleston County. Plaintiff thereby failed to mitigate his damages and instead MASE continued as the legal owner of the property maintaining it and incurring and assuming any and all liabilities and costs of such ownership.

FOR A SEVENTH DEFENSE
(Good Faith Purchaser)

47. Defendant MASE purchased the relevant property in good faith and with no knowledge or information from which a reasonable person could or should have deduced that title would not be cleanly provided to the relevant property upon the payment of the purchase price provided by this Defendant. As such a good faith purchaser, this Defendant is entitled to dismissal of any and all claims against it, to retain ownership of the property purchased, and for reimbursement by Plaintiff for any and all costs and fees related to defense of this litigation.

FOR AN EIGHTH DEFENSE
& COUNTERCLAIM
(South Carolina Frivolous Civil Proceedings Sanctions Act)

48. Pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code § 15-26-10, et seq., MASE and its sole member are entitled to

recover their attorney's fees and court costs incurred in litigating this matter.

FOR AN NINTH DEFENSE
& AS A CROSS-CLAIM AGAINST
DEFENDANTS J. AL CANNON, JR. and CHARLESTON COUNTY
(Negligence)

49. In reliance upon the property's being offered for sale by the Sheriff of Charleston County, MASE incurred various costs and expenses related to the purchase of the relevant property, maintenance of it and other damages, including but not limited to the costs incurred to defend this litigation, which costs and other damages were proximately caused by these Defendants' negligence either alone or in combination with the negligence of Plaintiff earlier alleged.

FOR A TENTH DEFENSE
& AS A CROSS-CLAIM AGAINST
DEFENDANTS J. AL CANNON, JR. and CHARLESTON COUNTY
(Indemnification)

50. Any and all damages awarded to Plaintiff in this action, which damages are denied, against Defendant MASE (or its sole member), were the result of actions or inactions of the other Defendants such that MASE (and/or its sole member) is entitled to full indemnification from the other Defendants for any such amounts entered against it, along with the fees and costs incurred in defending this action.

Wherefore, having fully answered the Amended Complaint, the answering MASE Defendant hereby prays that the Amended Complaint, including all claims contained

therein, be dismissed with prejudice, that Plaintiff be responsible for all costs associated with defending this action, and for such other relief as the Court deems just and proper.

/s Wendy J. Keefer

Wendy J. Keefer (Fed. Id. 7193)
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April 28, 2011

Attorneys for Defendant MASE and
COMPANY, LLC and its sole member,
Charles E. Masencup

253

FILED
2012 JUL 11 PM 4:19
JULIE J. ARMSTRONG
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

ROOSEVELT SIMMONS,

Plaintiff,

v.

MASE and COMPANY, LLC, J. AL
CANNON, JR., SHERIFF OF
CHARLESTON COUNTY and
CHARLESTON COUNTY,

Defendants.

CIVIL ACTION NO.: 2:11-cv-00709-RMG

2011- 1084

ANSWER ON BEHALF OF
DEFENDANTS' J. AL CANNON, JR.,
SHERIFF OF CHARLESTON COUNTY
AND CHARLESTON COUNTY TO
DEFENDANT MASE AND COMPANY,
LLC AMENDED ANSWER AND CROSS-
CLAIMS

(Jury Trial Demanded)

Come now the defendants, J. Al Cannon, Jr., Sheriff of Charleston County, and Charleston County ("these Defendants") and hereby answer the Cross-Claims of Defendant Mase and Company, LLC, ("Defendant Mase") included in Defendant Mase's Amended Answer, Cross-Claim, and Counterclaim of Defendant Mase and Company, LLC as follows:

FOR A FIRST DEFENSE
(Qualified General Denial)

All specifically not admitted herein should be deemed denied.

1. These Defendants would show that Paragraphs 1-48 of Defendant Mase's Answer, Cross-Claim and Counterclaim are not directed at these Defendants and therefore no response is required. To the extent a response is required to Paragraphs 1-48 of Defendant Mase's Answer, Cross-Claim and Counterclaim, these Defendants deny any allegations against these Defendants.

2. These Defendants deny the allegations of Paragraph 49 of Defendant Mase's Answer, Cross-Claim and Counterclaim as they apply to them, but would admit that any damages, should there be any proven, incurred by Defendant Mase were solely caused by Plaintiff.
3. These Defendants deny any allegations of Paragraph 50 of Defendant Mase' Answer, Cross-Claim and Counterclaim as they apply to these Defendants.

FOR A SECOND DEFENSE
(Rules 8 and 12)

4. Defendant Mase has failed to state a cause of action for which relief can be granted. Further, the Cross-Claims should be dismissed for all applicable reasons in accordance with Rule 12 and Rule 8 of the Federal Rules of Civil Procedure.

FOR AN THIRD DEFENSE
(Sovereign Immunity - Tort Claims Act)

5. As to any alleged violation of common law or state law, these Defendants assert the protections and provisions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, et seq., pertinent portions thereto.

FOR A FOURTH DEFENSE
(Failure to Mitigate)

6. Defendant Mase's claims are barred or must be reduced by his failure to mitigate damages, should there be any damages.

Wherefore, having fully answered Defendant Mase's Cross-Claim, these Defendants hereby pray that the Cross-Claim be dismissed with prejudice; that Defendant Mase be responsible for all costs associated with defending this action; and for all such further relief as this court deems just and proper. In addition, these Defendants reserve the right to amend to allege additional affirmative

defenses or other defenses as they become known throughout the course of discovery.

s/Christopher T. Dorsel

CHRISTOPHER T. DORSEL

FED. I.D. NO:

SANDRA J. SENN

FED. I.D. NO: 5761

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Charleston, SC 29422

(843) 556-4045

May 17, 2011

Attorneys for Defendants Sheriff Al Cannon,
Charleston County Sheriff's Department,
and the County of Charleston

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

ROOSEVELT SIMMONS)
Plaintiff)
)
Vs.)
MASE and COMPANY, LLC,)
J. AL CANNON, JR., SHERIFF OF)
CHARLESTON COUNTY)
and)
CHARLESTON COUNTY)
Defendants)

Civil Action No: 2:11-cv-00709-RMG

ANSWER OF PLAINTIFF TO
COUNTERCLAIM OF DEFENDANT
MASE AND COMPANY, LLC

Plaintiff, Roosevelt Simmons replies to the Counterclaim of defendant, Mase and Company, LLC as follows:

1. Plaintiff denies the allegations of Paragraph 48 of the Answer and Counterclaim of Mase and Company, LLC that its joinder is frivolous or sanctionable.
2. The complaint alleges an invalid sale and transfer of the subject property by the defendant Sheriff of Charleston County to Mase and Company, LLC.
3. As the current record owner of the subject property, Mase and Company, LLC is an indispensable party to the within action.
4. Mase and Company, LLC was properly named as party defendant pursuant to the South Carolina Rules of Civil procedure.
5. Mase and Company, LLC derives its title, if any, to the subject property from the defendant Sheriff of Charleston County, subject to all of the plaintiff's rights, claims and causes of actions against the Sheriff and/or county of Charleston.

Wherefore, Plaintiff demands judgment dismissing the Counterclaim of Mase and Company, LLC and awarding plaintiff costs related thereto.

s/ Edward A. Bertele/

Edward A. Bertele
Fed. ID. No. 10293
1812 Pierce Street
Charleston, SC 29492
(843) 471-2082
Attorney for Plaintiff Roosevelt Simmons

May, 18, 2011

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

ROOSEVELT SIMMONS)
Plaintiff)

Civil Action No: 2:11-cv-00709-RMG

Vs.)

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

Defendants)

SECOND AMENDED COMPLAINT

Plaintiff Roosevelt Simmons, at all relevant times a resident of Johns Island, South Carolina, alleges the following as his complaint against the defendants:

FIRST COUNT
(Invalidating Sheriff's Deed of TMS 498)

1. At all relevant times, Simmons was the owner of real property known as TMS 282-00-00-138 (TMS 138), TMS 282-00-00-135 (TMS 135), 283-00-00-498 (TMS 498) and 283-00-00-499 (TMS 499) located on Johns Island, South Carolina. TMS 138 contains a residential dwelling and is accessible only by private road. At all relevant times TMS135, 498 and 499 have been vacant and unimproved.

2 S.C. Code Section 44-55-1210 authorizes a county to provide and regulate solid waste collection and disposal and to levy user fees only against persons for whom services are provided. On or about 1987, defendant Charleston County (the County) adopted Ordinance Section 10-56 to impose user fees upon the owners of real property located in the county for the

express purpose of paying the costs of garbage and trash disposal at the county's facilities.

Section 10-56 was intended to conform to S.C. Code Section 44-55-1210.

3. On or after 1987, Simmons received tax bills from the County for TMS 138, 135 and 499 which included a user fee.

4. At various times thereafter and in response to inclusion of the user fee on the tax bill, Simmons made written application for waiver of the user fee. Employees of the Charleston County's Auditor's Department accepted Simmons' request for a waiver of the user fees against TMS 135, 138 and 499 for the years he requested and removed the user fee from the tax bill.

5. In response to the removal of the user fee, Simmons timely paid the taxes assessed for each of these years.

6. Notwithstanding the removal of the user fee by the Auditor, defendant Charleston County Revenue Collections Department (f/k/a Charleston County Business License User Fee Department) commenced various law suits against Simmons in the Magistrate's Court of Charleston County for collection of the user fee imposed on TMS 138.

7. The Magistrates Court had no jurisdiction or authority to proceed against plaintiff Roosevelt Simmons for nonpayment of a user fee imposed upon TMS 138 since jurisdiction over all actions to collect real property taxes is vested in the Circuit Court.

8. Charleston County Code of Ordinances Section 10-56 states: "[t]he annual disposal user fee shall be due and payable within the time and in the manner prescribed by law for county ad valorem taxes pursuant to section 12-45-70 of the code . . . or other law of similar import. The treasurer shall bill and collect the annual disposal user fee established by the county council in the same manner as taxes are collected"

9. On or about February 2010, defendant J. Al Cannon, Jr., Sheriff of Charleston County

(the Sheriff) executed a deed purporting to transfer title to TMS 498 to defendant Mase and Company, LLC. The deed was recorded in the office of the Register of Mesne Conveyances of Charleston County in Deed Book 0109 page 498. The deed was issued pursuant to a levy and execution on a judgment in Case No. 2000-JG -10-1817 issued by the Magistrates Court against plaintiff Roosevelt Simmons for nonpayment of a user fee of \$89.00 imposed against TMS 138 .

10. The judgment in Case No. 2000-JG -10-1817 is void since the Magistrates Court had no jurisdiction or authority to proceed against plaintiff Roosevelt Simmons for nonpayment of a user fee of \$89.00 imposed upon TMS 138. The Sheriff's deed is also void because the judgment upon it is based is void.

11. Defendant Sheriff had no authority to levy and execute on TMS 498 for payment of user fees on TMS 138. The method to enforce a user fee is governed by SC Code Section 12-49-10 and laws applicable to real property taxes. Such sale is also subject to a statutory right of redemption pursuant to South Carolina Statutes Section 12-51-90.

12. TMS 283-00-00-498 is vacant land from which no solid waste is generated. Any levy and execution against TMS 138 is contrary to the express purpose and intent of the enabling laws and ordinances relating to user fees.

SECOND COUNT
(Invalidation of User Fees and judgments)

13. Plaintiff repeats and realleges each and every allegation of Paragraphs 1-12 as if more fully set forth herein.

14. Defendant County does not provide any trash removal services to TMS 135, 138, 498 or 499. Simmons was not required to pay a user fee under Ordinance Section 10-56 because the County did not remove any trash from TMS 135,138, 498 or 499.

15. All user fees imposed by the County against TMS 135,138, 498 or 499 are illegal because Simmons as owner derived no benefit from this charge as required by SC Code Section 44-55-1210.

16. Defendant Revenue Collections Department wrongfully commenced actions against Simmons for nonpayment of user fees imposed against TMS 138 and obtained judgments as follows: 2004-JG -10-444; 2006-JG-10-931; 2002-JG-10-0021;2003-JG10-170;2002-JG-10-923.

17 All judgments entered against Simmons for nonpayment of user fees are void since the Magistrates Court had no jurisdiction or authority to proceed against plaintiff Roosevelt Simmons for nonpayment of a user fee.

18. All judgments entered against Simmons for nonpayment of user fees are the result of mistake, inadvertence and neglect and should be vacated. It would be unjust and inequitable for said judgments to have prospective effect against any real or personal property of plaintiff.

THIRD COUNT
(Invalidation of judgments for non owned real property)

19. Plaintiff repeats and realleges each and every allegation of Paragraphs 1-18 as if more fully set forth herein.

20. At all relevant times, the County issued tax bills against certain real property known and designated as TMS 311-00-00-024 (TMS 024) and 311-00-00-032 (TMS 032) which included user fees. TMS 024 contains a residential dwelling. Defendant County does not provide any services including trash removal, water, sewer or storm water control to TMS 024. TMS 032 is unimproved. Defendant County does not provide any services including trash removal, water, sewer or storm water control to TMS 032.

21. According to the records of the Charleston County Tax Assessor, TMS 024 and 032 were owned by the estate of Sam Balaam. At all relevant times, plaintiff was one of the heirs of Samuel Balaam. In order to preserve his family's interest, Simmons regularly and timely paid the taxes assessed on TMS 024 and 032 and made a written application to the Charleston County Auditor for waiver of the user fee.
22. Pursuant to Simmons request, the Auditor removed the user fee from the tax bills for TMS 024 and 032 for the years requested.
23. Notwithstanding his voluntary payment of real estate taxes, Simmons had no legal obligation to pay user fees imposed against TMS 024 and 032 and derived no benefit.
24. TMS 032 was not subject to user fees since the County did not remove any trash. Trash collection from TMS 024 was provided by a private, approved and licensed solid waste collection company as permitted by Ordinance Section 10-24.
25. Notwithstanding the waiver of the user fees by the Auditor, the Revenue Collections Department commenced various law suits against Simmons in the Magistrate's Court of Charleston County for collection of the user fee imposed on TMS 024 and 032.
26. The Magistrates Court had no jurisdiction or authority to proceed against plaintiff Roosevelt Simmons for nonpayment of a user fee and all judgments entered against Roosevelt Simmons for nonpayment of user fees imposed upon TMS 024 and 032 are void.
27. All judgments entered against Simmons for nonpayment of user fees imposed against TMS 024 and 032 are the result of mistake, inadvertence and neglect. It would be unjust and inequitable for said judgments to have prospective effect against any real or personal property of plaintiff.

FOURTH COUNT
(Civil Rights violations)

28. Plaintiff repeats and realleges each and every allegation of Paragraphs 1-27 as if more fully set forth herein.

29 Defendants County and Revenue Collections Department practice and procedures for the collection of user fees by commencing actions in Magistrate's Court of Charleston County have deprived Simmons of equal protection of the law in violation of the Fourteenth Amendment of the United States Constitution and Simmons rights under 42 USC section 1983.

30. Defendant Revenue Collections Department practice and procedures of obtaining judgments for user fees and executing on those judgments against other real property owned by Simmons has denied Simmons equal protection of the law under the United States Constitution and Simmons rights under 42 USC section 1983.

31. Defendant Harry Long, acting under the authority of the Sheriff's Department by arbitrarily and discriminatorily executing on other real property owned by Simmons not in compliance with SC Code Section 15-39-80 has denied Simmons equal protection of the law under the United States Constitution and Simmons rights under 42 USC section 1983.

FIFTH COUNT
(Tort Claim)

32. Plaintiff repeats and realleges each and every allegation of Paragraphs 1-31 as if more fully set forth herein.

33. At all relevant times, defendant Harry Long was employed as Deputy Sheriff in the Charleston County Sheriff Department and was assigned to perform the execution and levy of judgments and sale of properties to satisfy said judgments submitted to the Sheriff's Department.

34. At all relevant times, defendant Long was engaged in efforts to execute and levy upon a judgment in Case No. 2000-JG -10-1817 issued by the Magistrates Court against plaintiff

Roosevelt Simmons for nonpayment of a user fee of \$89.00 imposed against TMS 138.

35. Defendant Sheriff's Department was negligent in retaining defendant Long as an employee prior to the time he undertook work on the Simmons judgment.

36. Defendant Long exhibited hostility toward Simmons and with malice and intent to injure Simmons, caused a levy to be placed against real property owned by Simmons which resulted in a sale and loss of Simmons interest in the property.

37. As a result of the acts and conduct of defendants, Sheriff's Department and Harry Long, plaintiff has sustained damages.

WHEREFORE, plaintiff requests that judgment be entered against the defendants as follows:

1. A declaration that the Sheriff's deed to real property designated as TMS 283-00-00-498 to defendant Mase and Company, LLC, recorded in the office of the RMC of Charleston County in Deed Book 0109 page 498 is void and of no effect and that an Order thereupon be entered in the record of the Recorder of Mesne Conveyances;
2. A declaration invalidating all judgments entered against Simmons relating to payment of user fees imposed against TMS 282-00-00-138 and TMS 311-00-00-024 and 311-00-00-032;
3. Declaratory and injunctive relief against defendants' future imposition of user fees;
4. Compensatory damages;
5. Punitive damages;
6. An award of counsel fees and costs to the plaintiff;

7. Such other relief as the Court deems just and equitable.

/s/ Edward A. Bertele
Edward A. Bertele, Esq.
Fed. ID. No. 10293
1812 Pierce Street
Charleston, SC 29492
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(843) 471-2082 fax
ebertele@msn.com
Attorney for Plaintiff Roosevelt Simmons

Dated: October 15, 2011

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

ROOSEVELT SIMMONS,

Plaintiff,

v.

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

Defendants.

CIVIL ACTION NO.: 2:11-cv-00709-RMG

**ANSWER TO SECOND AMENDED
COMPLAINT ON BEHALF OF
DEFENDANTS' J. AL CANNON, JR.,
SHERIFF OF CHARLESTON COUNTY,
CHARLESTON COUNTY,
CHARLESTON COUNTY REVENUE
COLLECTIONS DEPARTMENT, AND
HARRY LONG**

Come now the defendants, J. Al Cannon, Jr., Sheriff of Charleston County, Charleston County, Charleston County Revenue Collections Department and Harry Long ("Defendants") and hereby answer the plaintiff's Amended Complaint to wit:

FOR A FIRST DEFENSE
(Qualified General Denial)

All specifically not admitted herein should be deemed denied.

1. Counsel for Defendants admits only so much of paragraph 1 of Plaintiff's Second Amended Complaint that would allege that at certain times, Plaintiff possessed some ownership interest in the referenced property. Counsel for Defendants lacks information sufficient to either admit or deny the remaining allegations in paragraph 1 of Plaintiff's Second Amended Complaint and therefore, the same are denied.
2. Plead conclusions of law which the Defendants can neither admit nor deny.

3. Lack sufficient information to either admit or deny and therefore denies.
4. Counsel for Defendants denies the allegations of paragraph 4 of Plaintiff's Second Amended Complaint as written.
5. Counsel for Defendants denies the allegations of paragraph 5 of Plaintiff's Second Amended Complaint as written.
6. Counsel for Defendants admits only so much of paragraph 6 of Plaintiff's Second Amended Complaint that would allege that Magistrate Court lawsuits were instituted against Plaintiff to enforce legal remedies on behalf of Defendants. Counsel for Defendants denies the remaining allegations in paragraph 6 of Plaintiff's Second Amended Complaint.
7. Plead conclusions of law which the answering defendants can neither admit nor deny.
8. Is a statement of law that does not require a response.
9. Admit.
10. Counsel for Defendants denies the allegations of paragraph 10 of Plaintiff's Second Amended Complaint.
11. Counsel for Defendants denies the allegations of paragraph 11 of Plaintiff's Second Amended Complaint
12. Counsel for Defendants denies the allegations of paragraph 12 of Plaintiff's Second Amended Complaint
13. Requires no response.
14. Counsel for Defendants denies the allegations of paragraph 14 of Plaintiff's Second Amended Complaint as written.
15. Counsel for Defendants denies the allegations of paragraph 15 of Plaintiff's Second

Amended Complaint as written.

16. Counsel for Defendants denies the allegations of paragraph 16 of Plaintiff's Second

Amended Complaint as written.

17. Counsel for Defendants denies the allegations of paragraph 17 of Plaintiff's Second

Amended Complaint as written.

18. Counsel for Defendants denies the allegations of paragraph 18 of Plaintiff's Second

Amended Complaint as written.

19. Requires no response.

20. Counsel for Defendants admits only so much of paragraph 20 of Plaintiff's Second

Amended Complaint that would allege that tax bills were issued against TMS 024 and TMS 032.

Counsel for Defendants denies the remaining allegations in paragraph 20 of Plaintiff's Second

Amended Complaint.

21. Lack sufficient information to admit or deny and therefore denies.

22. Counsel for Defendants denies the allegations of paragraph 22 of Plaintiff's Second

Amended Complaint as written.

23. Counsel for Defendants denies the allegations of paragraph 23 of Plaintiff's Second

Amended Complaint.

24. Deny that TMS 032 was not subject to user fees; lack sufficient information regarding the

trash collection for this address and therefore deny.

25. Counsel for Defendants denies the allegations of paragraph 25 of Plaintiff's Second

Amended Complaint as written.

26. Deny.

- 27. Deny.
- 28. Requires no response.
- 29. Deny.
- 30. Deny.
- 31. Deny.
- 32. Requires no response.
- 33. Counsel for Defendants admits the allegations of Paragraph 33 of Plaintiff's Second Amended Complaint.
- 34. Counsel for Defendants admits only so much of the allegations of Paragraph 34 of Plaintiff's Second Amended Complaint that would allege that Defendant Long worked in accordance with his duties and in accordance with law to enforce a valid judgment against Plaintiff. Counsel for Defendants denies any additional or inconsistent allegations in Paragraph 34 of Plaintiff's Second Amended Complaint.
- 35. Deny.
- 36. Deny.
- 37. Deny.

FOR A SECOND DEFENSE
(Rules 8 and 12)

- 38. Plaintiff has failed to state a cause of action for which relief can be granted. Further, this Second Amended Complaint should be dismissed for all applicable reasons in accordance with Rule 12 and Rule 8 of the Federal Rules of Civil Procedure.

FOR A THIRD DEFENSE
(No Constitutional Violation)

39. The alleged actions/inactions claimed by the plaintiff did not rise to the level of a constitutional violation and the plaintiff did not suffer any infringement of constitutional and/or federal rights, privileges or immunities.

FOR A FOURTH DEFENSE
(Comparative Negligence/Sole Negligence)

40. Any injuries or damages sustained by the plaintiff, all of which are expressly denied, are due to and caused by the plaintiff's own negligent, gross negligent, reckless, wanton, and illegal behavior.

FOR A FIFTH DEFENSE
(Waiver, *Estoppel*, Laches, Acquiescence, Stale Demand, Statute of Limitations, Service of Process and Proximate Cause)

41. Plaintiff's claims are barred, in whole or in part, by the doctrines of *estoppel*, laches, waiver, acquiescence, stale demand, statute of limitations, service of process and/or the acts of the answering defendants were not the proximate cause of the damages.

FOR A SIXTH DEFENSE
(South Carolina Frivolous Civil Proceedings Sanctions Act)

42. Under the South Carolina Frivolous Civil Proceedings Sanctions Act, Sections 15-36-10 et seq of the South Carolina Code of Laws, Defendants are entitled to recover their attorney's fees and court costs incurred in litigating this matter.

FOR AN SEVENTH DEFENSE
(Sovereign Immunity - Tort Claims Act)

43. As to any alleged violation of common law or state law, the Defendants assert the protections and provisions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, et seq., pertinent portions thereto.

FOR A EIGHTH DEFENSE
(Failure to Mitigate)

44. Plaintiff's claims are barred or must be reduced by his failure to mitigate damages, should there be any damages.

Wherefore, having fully answered the Amended Complaint, the answering Defendants hereby pray that the Complaint be dismissed with prejudice; that plaintiff be responsible for all costs associated with defending this action; and for all such further relief as this court deems just and proper. In addition, the defendants reserve the right to amend to allege additional affirmative defenses or other defenses as they become known throughout the course of discovery.

s/Christopher T. Dorsel

CHRISTOPHER T. DORSEL

FED. I.D. NO: 9628

SANDRA J. SENN

FED. I.D. NO: 5761

Senn Legal, LLC

P.O. Box 12279

Charleston, SC 29422

(843) 556-4045

October 28, 2011

Attorneys for Defendants Sheriff Al Cannon,
Charleston County Sheriff's Department, and
the County of Charleston

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

ROOSEVELT SIMMONS,	)	
	)	Civil Action No: 2:11-cv-00709-RMG
Plaintiff,	)	
	)	
v.	)	DEFENDANT MASE AND
	)	COMPANY, LLC'S ANSWER
MASE and COMPANY, LLC, J. AL CANNON,	)	TO PLAINTIFF'S SECOND
JR., CHARLESTON COUNTY SHERIFF'S	)	AMENDED COMPLAINT,
DEPARTMENT, CHARLESTON COUNTY,	)	CROSS-CLAIM AND
CHARLESTON COUNTY REVENUE	)	COUNTERCLAIM
COLLECTIONS DEPARTMENT and	)	
HARRY LONG,	)	
	)	
Defendants.	)	
_____	)	

Counsel for Defendant, Mase and Company, LLC (MASE) (and its sole member, Charles E. Masencup), hereby files this Answer to Plaintiff's Second Amended Complaint by denying each and every allegation not herein expressly admitted, reserving all rights to amend this answer and/or to file motions pursuant to Federal Rule of Civil Procedure, including but not limited to Rules 12 and 15, and as plead herein, and by alleging as follows. Though not named an actual party to this action, to the extent any answer is deemed required from Mase and Company, LLC's sole member, Charles E. Masencup, this Answer is intended to serve as that pleading.

FOR A FIRST DEFENSE

1. Answering allegations of Paragraph 1 of the Plaintiff's Second Amended Complaint, MASE has insufficient information and knowledge either to admit or deny those allegations and, therefore, denies those allegations.

2. The allegations of Paragraph 2 of Plaintiff's Second Amended Complaint states conclusions of law, which conclusions MASE is required neither to admit nor deny.
3. Answering the allegations of Paragraph 3 of Plaintiff's Second Amended Complaint, MASE has insufficient information and knowledge either to admit or deny those allegations and, therefore, denies those allegations.
4. Answering the allegations of Paragraph 4 of Plaintiff's Second Amended Complaint, MASE has insufficient information and knowledge either to admit or deny those allegations and, therefore, denies those allegations.
5. Answering the allegations of Paragraph 5 of Plaintiff's Second Amended Complaint, MASE has insufficient information and knowledge either to admit or deny those allegations and, therefore, denies those allegations.
6. Answering the allegations of Paragraph 6 of Plaintiff's Second Amended Complaint, MASE has insufficient information and knowledge either to admit or deny those allegations and, therefore, denies those allegations.
7. The allegations of Paragraph 7 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
8. The allegations of Paragraph 8 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.

9. Upon information and belief, MASE admits the allegations of Paragraph 9 of Plaintiff's Second Amended Complaint but craves reference to the actual sales, title and deed documents referenced for their exact terms.
10. The allegations of Paragraph 10 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
11. The allegations of Paragraph 11 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
12. Answering the allegations of Paragraph 12 of Plaintiff's Second Amended Complaint, MASE admits only that, upon information and belief, TMS 283-00-00-498 is undeveloped land. The remaining allegations of Paragraph 12 either state conclusions of law not requiring a response from MASE or include facts about which MASE has insufficient information and knowledge either to admit or deny and, therefore, those allegations are denied.
13. Answering the allegations of Paragraph 13 of Plaintiff's Second Amended Complaint, MASE reasserts and realleges each and every allegation of Paragraphs 1 through 12 above as if set forth herein verbatim.
14. The allegations of Paragraph 14 of Plaintiff's Complaint state either conclusions of law MASE is required neither to admit nor deny or include allegations about which MASE has insufficient information and

knowledge either to admit or deny and, therefore, those allegations are denied.

15. The allegations of Paragraph 15 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
16. The allegations of Paragraph 16 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
17. The allegations of Paragraph 17 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
18. The allegations of Paragraph 18 of Plaintiff's Complaint state either conclusions of law MASE is required neither to admit nor deny or include allegations about which MASE has insufficient information and knowledge either to admit or deny and, therefore, those allegations are denied.
19. Answering the allegations of Paragraph 19 of Plaintiff's Second Amended Complaint, MASE reasserts and realleges each and every allegation of Paragraphs 1 through 18 above as if set forth herein verbatim.
20. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 20 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.

21. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 21 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.
22. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 22 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.
23. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 23 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.
24. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 24 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.
25. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 25 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.
26. The allegations of Paragraph 26 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
27. The allegations of Paragraph 27 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.

28. Answering the allegations of Paragraph 28 of Plaintiff's Second Amended Complaint, MASE reasserts and realleges each and every allegation of Paragraphs 1 through 27 above as if set forth herein verbatim.
29. The allegations of Paragraph 29 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
30. The allegations of Paragraph 30 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
31. The allegations of Paragraph 31 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
32. Answering the allegations of Paragraph 32 of Plaintiff's Second Amended Complaint, MASE reasserts and realleges each and every allegation of Paragraphs 1 through 31 above as if set forth herein verbatim.
33. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 33 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.
34. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 34 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.

35. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 35 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.
36. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 36 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.
37. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 37 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.

FOR A SECOND DEFENSE
MOTION TO DISMISS
(Rules 8 and 12)

38. Plaintiff failed to state any cause of action against MASE or its sole member, Charles E. Masencup, on which relief may be granted. Indeed, the only allegation directly identifying either of these entities/person alleges merely that MASE purchased property from the County of Charleston. No allegations of bad faith or knowledge of any issues regarding the property on the part of MASE or Masencup are made in the Plaintiff's pleadings. Any dispute about whether the County properly sold such property is between Plaintiff and the other Defendants to this action and can be addressed solely by money damages, which damages this Defendant has no reason to believe should be awarded, and need not involve MASE, the current owner and good faith purchaser for value of the property at issue. Thus, the Amended Complaint should be dismissed,

as to this Defendant, with prejudice, pursuant to Federal Rules of Civil Procedure, Rules 8 and 12 and costs and fees awarded to MASE for having to defend this frivolous suit as to this Defendant. MASE also expressly reserves the right to file a motion to dismiss or for judgment on the pleadings, pursuant to Rule 12 of the Federal Rules of Civil Procedure, specifically but not limited to Rule 12(c), once all pleadings are filed in this matter.

FOR A THIRD DEFENSE
(No Constitutional Claim Against MASE)

39. Though Plaintiff's Second Amended Complaint appears to assert causes of action only against the other Defendants, to the extent any constitutional claim is intended to be made against MASE, such claim may not proceed as constitutional violations of the nature raised in Plaintiff's Second Amended Complaint may only be committed by state actors. Neither MASE nor Masencup are state actors.

FOR A FOURTH DEFENSE
(Comparative Negligence/Sole Negligence)

40. Any injuries or damages sustained by Plaintiff, all of which are denied as related to any action or inaction of MASE or its sole member, are due to and caused by Plaintiff's own negligence, gross negligence, recklessness, wantonness, and/or illegal behavior or that of the other Defendants as more specifically described in the cross-claim contained herein.

FOR A FIFTH DEFENSE
(Waiver, Estoppel, Laches, Acquiescence, Stale Demand, Statute of Limitations,
Service of Process, Proximate Cause, and Failure to Mitigate)

41. Plaintiff's claims are barred, in whole or in part, and particularly as relates to MASE and its sole member, by the doctrines of estoppel, laches, waiver, acquiescence, stale demand, statute of limitations, service of process, lack of proximate cause between any act or omission of MASE or its sole member and the damages claimed, and/or failure to mitigate Plaintiff's damages.
42. Further answering Plaintiff's Second Amended Complaint, Plaintiff failed to take any steps to maintain ownership of the property or otherwise protect his claimed interest prior to its sale, which property was purchased in good faith by MASE from Charleston County. Plaintiff thereby failed to mitigate his damages and instead MASE became the legal owner of the property, maintaining it and incurring and assuming any and all liabilities and costs of such ownership.

FOR A SIXTH DEFENSE
(Good Faith Purchaser)

43. Defendant MASE purchased the relevant property in good faith, for value determined through a bidding process, and with no knowledge or information from which a reasonable person could or should have deduced that title would not be cleanly provided to the relevant property upon the payment of the purchase price provided by this Defendant. As such a good faith purchaser for value, this Defendant is entitled to dismissal of any and all claims against it, to retain ownership of the property purchased, and for reimbursement by Plaintiff and/or the other

Defendants for any and all costs and fees related to defense of this litigation.

FOR A SEVENTH DEFENSE
& COUNTERCLAIM
(South Carolina Frivolous Civil Proceedings Sanctions Act)

44. Pursuant to the South Carolina Frivolous Proceedings Sanctions Act, S.C. Code § 15.26.10, et seq., MASE and/or its sole member are entitled to recover from Plaintiff their attorney's fees and court costs incurred in litigation this matter, along with lost business opportunities resulting from the *lis pendens* placed on the property by Plaintiff. As a good faith purchaser for value of the relevant property, and with no allegations contained in Plaintiff's Second Amended Complaint or any other pleading asserting any facts on which it could be determined that this Defendant did not purchase the relevant property in good faith and without knowledge of any reasons why such property was not available for purchase and rightfully purchased by MASE, naming this Defendant in this action is inappropriate and amounts to a frivolous civil proceeding against this Defendant.

FOR AN EIGHTH DEFENSE
& AS A CROSS-CLAIM AGAINST
DEFENDANTS J. AL CANNON, JR., CHARLESTON COUNTY SHERIFF'S
DEPARTMENT, CHARLESTON COUNTY, CHARLESTON COUNTY REVENUE
COLLECTIONS DEPARTMENT AND HARRY LONG
(Negligence)

45. In reliance upon the property's being offered for sale by one or more the Defendants named above, MASE incurred various costs and expenses related to the purchase and maintenance of the relevant property and

other damages, including but not limited to costs incurred to defend this litigation and lost business opportunities, which costs and other damages were proximately caused by one or more of these Defendants' negligence, either alone or in combination with the negligence of Plaintiff as earlier alleged.

FOR A NINTH DEFENSE
& AS A CROSS-CLAIM AGAINST
DEFENDANTS J. AL CANNON, JR., CHARLESTON COUNTY SHERIFF'S
DEPARTMENT, CHARLESTON COUNTY, CHARLESTON COUNTY REVENUE
COLLECTIONS DEPARTMENT AND HARRY LONG
(Indemnification)

46. Any and all damages awarded to Plaintiff in this action, which damages are denied, against Defendant MASE (or its sole member), were the result of actions or inactions of the other Defendants such that MASE (and/or its sole member) is entitled to full indemnification from the other Defendants for any such amounts entered against it, indemnification for the full fair market value of the property at issue if such property is awarded to Plaintiff, and indemnification for all fees and costs incurred by MASE in defending this action.

Wherefore, having fully answered the Second Amended Complaint, Defendant MASE (and its sole member) hereby prays that the Second Amended Complaint, including all claims contained therein, be dismissed with prejudice, that Plaintiff be responsible for all costs associated with defendant this action and for such other relief as is requested in this pleading or is otherwise deemed just and proper by this Court.

/s Wendy J. Keefer

Wendy J. Keefer (Fed. Id. 7193)
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October 28, 2011

Attorneys for Defendant MASE and
COMPANY, LLC and its sole member,
Charles E. Masencup

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

ROOSEVELT SIMMONS	)	Civil Action No: 2:11-cv-00709-RMG -BM
Plaintiff	)	
Vs.	)	
	)	
MASE and COMPANY, LLC,	)	
J. AL CANNON, JR.,	)	
CHARLESTON COUNTY	)	
SHERIFF'S DEPARTMENT,	)	
CHARLESTON COUNTY,	)	
CHARLESTON COUNTY	)	
REVENUE COLLECTIONS	)	
DEPARTMENT and	)	
HARRY LONG	)	
Defendants	)	PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL AND STAY

Plaintiff, Roosevelt Simmons, hereby moves pursuant to FRCP 12(b) (1) and 41(a) (2) for voluntary dismissal of the Second Amended Complaint Count or in the alternative, dismissal of the First, Second and Third Counts and a stay of the Fourth and Fifth Counts pending further order of the Court. As set forth below, the Court lacks subject matter jurisdiction over the First, Second and Third Counts of the Second Amended Complaint and arguably also the Fourth Count and the Fifth Count; if the Court determines to retain jurisdiction of the Fourth Count and Fifth Count, a stay of these counts would avoid possible inconsistent results if the case would go to trial before the other Counts are resolved by the Charleston County Circuit Court. The plaintiff relies upon the following memorandum in support of this motion:

FACTS RELEVANT TO THIS MOTION

Plaintiff filed a Complaint on February 11, 2011 in Charleston County Court of Common Pleas. Doc. # 1-1. The First Count sought to invalidate a certain judgment for a user fee entered against plaintiff on the basis that the Magistrate Court where it was entered had no

jurisdiction and to vacate a Sheriff's sale and deed which resulted from execution upon this judgment. The Second Count sought to invalidate other judgments entered against plaintiff also on the basis that the Magistrate Court had no jurisdiction. The Third Count asserted a civil rights violation by Charleston County due to discriminatory enforcement of county ordinances relating to the collection of fees for solid waste removal. Plaintiff filed an Amended Complaint on March 23, 2011 which included an additional count to invalidate other judgments due to the lack of jurisdiction and a count for civil conspiracy relating to another lawsuit brought by Simmons involving the same real estate that was sold under an allegedly invalid judgment. Doc. # 6.

On March 24th, defendants Charleston County and Sheriff's Department filed a Petition of Removal to this Court, Doc. # 1, and answered denying liability. Doc. # 7. Defendant Mase and Company, LLC, the purchaser of the real estate sold by the Sheriff under the alleged invalid judgment, answered and filed a cross claim against the County defendants for indemnification and a counterclaim against plaintiff for a frivolous pleading. Doc. # 13. The County defendants filed an Answer to the Cross Claim, Doc. # 19 and plaintiff answered the Counterclaim. Doc. # 21. The parties conducted a Rule 26(f) conference and filed a consent motion, Doc. # 29, to amend the Scheduling Order which this Court subsequently granted. Doc. # 30.

Defendant Charleston County filed a consent motion for a confidentiality order regarding the contents of county employee personnel files requested by plaintiff. Doc. # 33. The Confidentiality Order was entered by this Court on September 21, 2011. Doc. # 34. Following the production of the files, plaintiff filed a Second Amended Complaint on October 15, 2011 asserting a tort claim against the Sheriff's Department relating to the conduct of its supervisors and joined one of its employees, Harry Long who was involved in the execution of

the judgment which resulted in the sale of the plaintiff's real property. Doc. # 35. All named defendants have answered. Doc. # 36 & 37.

The parties have exchanged and answered interrogatories and responded to initial document demands. The parties except for representatives of Mase and Company, LLC have been deposed including plaintiff and representatives of the Charleston County Revenue Collection department involved in the collection of the user fees and the Sheriff's Department. The County has produced the files of various employees under the Confidentiality Order. Other document demands are outstanding and further depositions of county employees and Mase and Company, LLC are yet to be scheduled. The Second Amended Scheduling Order requires discovery to be complete by November 29, 2011 and trial is scheduled for March 2012. Plaintiff now moves to dismiss the Second Amended Complaint or alternatively, the First, Second and Third Counts and to stay the remaining claims.

ARGUMENT

I. The Court lacks subject matter jurisdiction

Simmons contends that the court lacks subject jurisdiction over at least three and possibly the Fourth Count of the Second Amended Complaint under the Rooker- Feldman doctrine. See below. Because the Rooker-Feldman doctrine goes to subject matter jurisdiction, it may be raised at any time. Plyler v. Moore, 129 F.3d 728, 731 n.6 (4th Cir. 1997).

In Rooker v. Fidelity Trust Company, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923) the Supreme Court held : "Under the legislation of Congress, no court of the United States other than this Court could entertain a proceeding to reverse or modify the judgment [of a state court] for errors of that character. To do so would be an exercise of appellate jurisdiction." The doctrine extends not only to constitutional claims presented or adjudicated by the state

courts but also to claims that are 'inextricably intertwined' with a state court judgment. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482, 486-87, 103 S. Ct. 1303, 1315-17, 75 L.Ed.2d 206 (1983). "The Rooker-Feldman doctrine provides that federal district courts lack jurisdiction to exercise appellate review over final state court judgments." Henrichs v. Valley View Dev., 474 F.3d 609, 613 (9th Cir.2007). "The Rooker-Feldman doctrine precludes not only review of adjudications of the state's highest court, but also the decisions of its lower courts." Jordahl v. Democratic Party of Virginia, 122 F.3d 192,199 (4th Cir. 1997).

The First, Second and Third Counts of the Second Amended Complaint request the court to invalidate several South Carolina Magistrate Court judgments and a Sheriff's sale resulting from execution on one of them. Under Rooker-Feldman, this Court cannot determine whether the Magistrate Court had jurisdiction because that would require appellate review of those decisions. Therefore, this Court should dismiss those counts due to the lack of subject matter jurisdiction.

The Fourth Count alleges that County Revenue Collections Department practices and procedures deprived Simmons of equal protection of the law in violation of the Fourteenth Amendment of the United States Constitution and Simmons rights under 42 USC section 1983, Doc. # 35, Para. 29, 30; and that a Sheriff's Department employee arbitrarily and discriminatorily executed on real property owned by Simmons in violation of SC Code Section 15-39-80 and denied Simmons equal protection of the law under the United States Constitution and Simmons rights under 42 USC section 1983. Id. at Para. 31. When the constitutional claims for which the petitioner seeks judicial review are "inextricably intertwined with the [state court's] decisions, in judicial proceedings," they cannot be reviewed. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482, 486-87, 103 S. Ct. 1303, 1315-17, 75 L.Ed.2d 206

(1983); Berry v. South Carolina Dept. of Social Services, 121 F.3d 697 (4th Cir. 1997) See also Guess v. Board of Medical Examiners, 967 F.2d 998, 1002 (4th Cir.1992). Although the Fourth Count relies upon same operative facts as the earlier counts, it alleges further violations of law. To the extent that the Section 1983 claim in the Fourth Count relies upon the invalidity of the Magistrate Court judgment, it is inextricably intertwined with the counts which the Court cannot entertain jurisdiction under Rooker –Feldman and thus also beyond this Court’s jurisdiction.

The Fifth Count of the Second Amended Complaint alleges that the defendant Sheriff’s Department was negligent in retaining defendant Harry Long as an employee and that Long exhibited hostility toward Simmons and with malice and intent to injure Simmons, caused a levy to be placed against real property owned by Simmons which resulted in a sale and loss of Simmons interest in the property. *Id.* at Para. 35 & 36. This count is a tort claim over which the court has pendent but not original jurisdiction.

28 U.S.C. Section 1367 provides that the court has supplemental jurisdiction over state law claims but may decline to exercise jurisdiction if the district court has dismissed all claims over which it has original jurisdiction. *Id.* at (c) (3). If the Court determines that it does not have subject matter jurisdiction of the Section 1983 claim, then it may also dismiss the Fifth Count for lack of subject matter jurisdiction.

2. The Court should stay the remaining counts if not dismissed.

Plaintiff requests that if the Court does not dismiss the remaining Fourth and Fifth Counts, then it should stay further proceedings for these reasons. Discovery is not complete but is scheduled to end on November 28, 2011. Doc. # 30. The case is scheduled for trial in March 2012. *Id.* A stay would enable the plaintiff to bring the claims relating to the validity of the

Magistrate Court judgments in Charleston County where the case was venued before removal. If as plaintiff alleges, the Magistrate Court judgment and the Sheriff sale resulting that judgment is void for lack of jurisdiction, plaintiff will have the primary relief to which he would be entitled, i.e. return of his real property. As a result, the monetary damages for civil rights and tort claim violations would be lessened since plaintiff will recover his property. Also the plaintiff will have the benefit of a ruling that the judgment and sale upon which the other alleged civil rights and tort claim violations are based is illegal. If these counts are not stayed, then there is a potential for inconsistent results if plaintiff recovers damages for the loss of his property due to civil rights and tort claim violations in this Court and later recovers the real property in state court. Therefore, plaintiff contends that it is in the interest of justice that a stay be imposed to allow the validity of the Magistrate Court judgments to be determined, if the Court retains jurisdiction over Fourth and Fifth Counts.

CONCLUSION

Plaintiff respectfully requests than the court dismiss the First, Second and Third Counts of the Second Amended Complaint for lack of subject matter jurisdiction. Further, if the court determines that the Fourth Count is inextricably intertwined with those counts that it also be dismissed together with the Fifth Count. Alternatively, plaintiff requests that the Court stay any further proceedings on the Fourth and Fifth Counts.

/s/ Edward A. Bertele
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Attorney for Plaintiff Roosevelt Simmons

November 7, 2011

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

ROOSEVELT SIMMONS,

Plaintiff,

v.

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

Defendants.

CIVIL ACTION NO.: 2:11-cv-00709-RMG

~~2010~~ -
2011 - 1084

ANSWER ON BEHALF OF
DEFENDANTS' J. AL CANNON, JR.,
CHARLESTON COUNTY SHERIFF'S
DEPARTMENT, CHARLESTON
COUNTY, CHARLESTON COUNTY
REVENUE COLLECTIONS
DEPARTMENT AND HARRY LONG TO
DEFENDANT MASE AND COMPANY,
LLC ANSWER TO PLAINTIFF'S
SECOND AMENDED COMPLAINT AND
CROSS-CLAIM

(Jury Trial Demanded)

Come now the defendants, J. Al Cannon, Jr., Sheriff of Charleston County, Charleston County Sheriff's Department, Charleston County, Charleston County Revenue Collections Department and Harry Long, ("these Defendants") and hereby answer the Cross-Claims of Defendant Mase and Company, LLC, ("Defendant Mase") included in Defendant Mase's Answer to Plaintiff's Second Amended Complaint, Cross-Claim, and Counterclaim of Defendant Mase and Company, LLC as follows:

FOR A FIRST DEFENSE
(Qualified General Denial)

All specifically not admitted herein should be deemed denied.

1. These Defendants would show that Paragraphs 1-44 of Defendant Mase's Answer to Plaintiff's Second Amended Complaint, Cross-Claim and Counterclaim are not directed at these

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JUDGE J. A. BRISTOL
CLERK OF COURT

Defendants and therefore no response is required. To the extent a response is required to said Paragraphs, these Defendants deny any allegations against these Defendants.

2. These Defendants deny the allegations of Paragraph 45 of Defendant Mase's Answer to Plaintiff's Second Amended Complaint, Cross-Claim and Counterclaim as they apply to them, but would admit that any damages, should there be any proven, incurred by Defendant Mase were solely caused by Plaintiff.

3. These Defendants deny any allegations of Paragraph 46 of Defendant Mase's Answer, Cross-Claim and Counterclaim as they apply to these Defendants.

FOR A SECOND DEFENSE
(Rules 8 and 12)

4. Defendant Mase has failed to state a cause of action for which relief can be granted. Further, the Cross-Claims should be dismissed for all applicable reasons in accordance with Rule 12 and Rule 8 of the Federal Rules of Civil Procedure.

FOR AN THIRD DEFENSE
(Sovereign Immunity - Tort Claims Act)

5. As to any alleged violation of common law or state law, these Defendants assert the protections and provisions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, et seq., pertinent portions thereto.

FOR A FOURTH DEFENSE
(Failure to Mitigate)

6. Defendant Mase's claims are barred or must be reduced by his failure to mitigate damages, should there be any damages.

Wherefore, having fully answered Defendant Mase's Cross-Claim, these Defendants hereby

pray that the Cross-Claim be dismissed with prejudice; that Defendant Mase be responsible for all costs associated with defending this action; and for all such further relief as this court deems just and proper. In addition, these Defendants reserve the right to amend to allege additional affirmative defenses or other defenses as they become known throughout the course of discovery.

s/Christopher T. Dorsel

CHRISTOPHER T. DORSEL

FED. I.D. NO:

SANDRA J. SENN

FED. I.D. NO: 5761

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November 10, 2011

Attorneys for Defendants J. Al Cannon, Jr.,
Sheriff of Charleston County, Charleston
County Sheriff's Department, Charleston
County, Charleston County Revenue
Collections Department and Harry Long

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

ROOSEVELT SIMMONS)
Plaintiff)

Civil Action No: 2:11-cv-00709-RMG-BM

Vs.)

MASE and COMPANY, LLC,)
J. AL CANNON, JR., SHERIFF OF)
CHARLESTON COUNTY)
and)
CHARLESTON COUNTY)
Defendants)

ANSWER OF PLAINTIFF TO
COUNTERCLAIM OF DEFENDANT
MASE AND COMPANY, LLC

Plaintiff, Roosevelt Simmons replies to the Counterclaim of defendant, Mase and Company, LLC as follows:

1. Plaintiff denies the allegations of Paragraph 44 of the Answer to the Second Amended Complaint and Counterclaim of Mase and Company, LLC.

AFFIRMATIVE DEFENSES

1. Defendant Mase and Company, LLC has not sustained any damages.
2. It would be inequitable for defendant to retain ownership of the subject property.
3. Mase and Company, LLC derives its title, if any, to the subject property from the defendant Sheriff of Charleston County, subject to all of the plaintiff's rights, claims and causes of actions against the Sheriff and/or county of Charleston.

Wherefore, Plaintiff demands judgment dismissing the Counterclaim of Mase and Company, LLC and awarding plaintiff costs related thereto.

s/ Edward A. Bertele/

Edward A. Bertele

Fed. ID. No. 10293

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Attorney for Plaintiff Roosevelt Simmons

November 11, 2011

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

ROOSEVELT SIMMONS,

Plaintiff,

v.

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

Defendants.

CIVIL ACTION NO.: 2:11-cv-00709-RMG

RESPONSE ON BEHALF OF
DEFENDANTS' J. AL CANNON, JR.,
CHARLESTON COUNTY SHERIFF'S
DEPARTMENT, CHARLESTON
COUNTY, CHARLESTON COUNTY
REVENUE COLLECTIONS
DEPARTMENT AND HARRY LONG TO
PLAINTIFF'S MOTION FOR
VOLUNTARY DISMISSAL AND STAY

Counsel for Defendants, J. Al Cannon, Jr., Sheriff of Charleston County, Charleston County Sheriff's Department, Charleston County, Charleston County Revenue Collections Department and Harry Long, ("Defendants") responds to Plaintiff's Motion for Voluntary Dismissal and Stay as follows. Counsel for Defendants has indicated to Plaintiff's counsel that Defendants will consent to a voluntary dismissal of the entire case, with the stipulation that Plaintiff will proceed under the South Carolina Constitution for any constitutional claims. In the alternative, Defendants will consent to a dismissal of the state court causes of action (Plaintiff's Second Amended Complaint, Counts 1, 2, 3, & 5), but will not consent to a stay of the federal cause of action (Id, Count 4).

Defendants would show that Count 4 of Plaintiff's Second Amended Complaint does not make reference to a specific judgment in State Court. Rather, it alleges that Defendants' "practice and procedures" for commencing actions in the Charleston County Magistrate Court, for obtaining judgments regarding user fees, and for executing on those judgments violated Plaintiff's equal

protection rights under the Fourteenth Amendment to the United States Constitution. (Second Amended Complaint, ¶ 29-31). These generalized constitutional claims are separate and distinct from Plaintiff's specific claims that certain judgments should be invalidated. Therefore, moving forward with Plaintiff's state causes of action and federal causes of action would not create inconsistent results.

s/Christopher T. Dorsel

CHRISTOPHER T. DORSEL

FED. I.D. NO:

SANDRA J. SENN

FED. I.D. NO: 5761

Senn Legal, LLC

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November 22, 2011

Attorneys for Defendants J. Al Cannon, Jr.,
Sheriff of Charleston County, Charleston
County Sheriff's Department, Charleston
County, Charleston County Revenue
Collections Department and Harry Long

ROOSEVELT SIMMONS)
Plaintiff)

Civil Action No: 2:11-cv-00709-RMG -BM

Vs.)

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

PLAINTIFF'S REPLY IN
SUPPORT OF MOTION FOR
VOLUNTARY DISMISSAL
AND STAY

Plaintiff, Roosevelt Simmons, previously moved pursuant to FRCP 12(b) (1) and 41(a) (2) for voluntary dismissal of the Second Amended Complaint or in the alternative, dismissal of the First, Second and Third Counts and a stay of the Fourth and Fifth Counts pending further order of the Court. Doc. # 38. Defendants Al Cannon, Jr., Sheriff's Department, Charleston County, Charleston County Revenue Collections Department and Harry Long (the County defendants) replied and requested only that there not be a stay of the Fourth Count, alleging civil rights violations by the county defendants. Doc. # 40. Defendant Mase and Company, LLC did not file opposition. The plaintiff submits the following reply to the County defendants' opposition and in support of his motion.

REPLY ARGUMENT

The county defendants do not oppose the plaintiff's motion to dismiss the First, Second and Third Counts of the Second Amended Complaint based upon a lack of subject matter jurisdiction. They also consent to dismissal of the Fifth Count which alleges a tort claim against

them. Doc. # 40 at page 1. They assert that they advised plaintiff's counsel that they would only consent to the dismissal of all claims if plaintiff which would proceed in state court based upon state constitutional law violations. Id.

The county defendants have not effectively rebutted plaintiff's contention that the alleged constitutional and Section 1983 violations under the Fourth Count are inextricably intertwined with the First, Second and Third Counts. When the constitutional claims for which the petitioner seeks judicial review are "inextricably intertwined with the [state court's] decisions, in judicial proceedings," they cannot be reviewed. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482, 486-87, 103 S. Ct. 1303, 1315-17, 75 L.Ed.2d 206; Guess v. Board of Medical Examiners, 967 F.2d 998, 1002 (4th Cir.1992). See Doc. # 38 at page 4-5.

The county defendants assert that the Fourth Count does not refer to the invalid judgments, Doc. # 40 at page 2, but the initial paragraph of the Fourth Count incorporates by reference all of the preceding counts. Thus the Fourth Count relies upon same operative facts as the earlier counts and alleges federal constitutional violations of law. The county defendants want this Court to adopt a narrow reading of the Fourth Count whereby the plaintiff could not introduce the invalidity of the Magistrate's Court judgments as part of the county's practices to collect user fees unconstitutionally. If the Court were to adopt the view of the county defendants, plaintiff's theory of the case would be limited at trial to only acts and conduct which were by themselves discriminatory and deprived plaintiff of his property. Therefore to the extent that the Section 1983 claim in the Fourth Count relies upon the invalidity of the Magistrate Court judgment, it is inextricably intertwined with the counts which the Court cannot entertain jurisdiction under *Rooker-Feldman* and thus also beyond this Court's jurisdiction.

The County defendants oppose a stay on the grounds that there would not be inconsistent results for the same reason i.e. that the Fourth Count relies upon separate facts. Doc. # 40 at page 2. However, as demonstrated above, their view would unduly restrict the plaintiff's case, since the invalidity of the user fee judgments is part of the constitutional violations. Moreover, the county defendants do not present any reason why a stay of the Fourth Count, assuming the Court were to retain jurisdiction, would cause them prejudice. Instead the county defendants are trying to avoid the res judicata effect in this Court of a state court ruling that the judgments are invalid, by arguing against a stay.

Therefore, plaintiff contends that the interest of justice requires that a stay be imposed to allow the validity of the Magistrate Court judgments to be determined due to the lack of any prejudice to the county defendants, if the Court retains jurisdiction over Fourth and Fifth Counts.

CONCLUSION

Plaintiff contends that for the reasons expressed heretofore, the Second Amended Complaint should be dismissed for lack of subject matter jurisdiction. Alternatively, if the Court retains jurisdiction of the Fourth and Fifth Counts, plaintiff requests that the Court stay any further proceedings pending a resolution of the claims relating to the invalidity of the Magistrate Court judgments as set out in the Second Amended Complaint.

/s/ Edward A. Bertele
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ebertele@msn.com
Attorney for Plaintiff Roosevelt Simmons

December 2, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
ROOSEVELT SIMMONS,

Plaintiff,

v.

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

Defendants,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10- 1084
2011

MOTION FOR SUMMARY JUDGMENT

BY

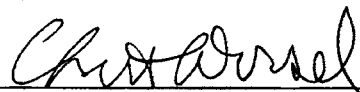
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CLERK OF COURT

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Comes now Defendants, J. AL CANNON, JR., CHARLESTON COUNTY SHERIFF'S
OFFICE, CHARLESTON COUNTY, CHARLESTON COUNTY REVENUE COLLECTIONS
DEPARTMENT, and HARRY LONG ("These Defendants"), pursuant to the South Carolina Rules
of Civil Procedure, Rule 56 and notify you that on the 10th day or as soon thereafter as possible,
These Defendants will move this Honorable Court for an Order granting summary judgment. This
motion will be more fully supported by the record, affidavits and deposition transcripts which may
be submitted and a memorandum to be submitted.

RESPECTFULLY MOVED,



CHRISTOPHER T. DORSEY

Senn Legal, LLC

P.O. Box 12279

Charleston, SC 29422

(843) 556-4045

Attorneys for Defendants

February 20, 2012
Charleston, South Carolina

2101

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

ROOSEVELT SIMMONS,

Plaintiff,

v.

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

Defendants,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-

**MOTION TO DISMISS AS TO
DEFENDANT HARRY LONG**

BEFORE the court is the defendant, Harry Long, moving to dismiss the amended complaint as filed against him as Mr. Long was and is a governmental employee, employed by the Charleston County Sheriff's Office, and as such should enjoy immunity from suit pursuant to SC Code Ann.15-78-10 *et seq.*

Wherefore, and for the forgoing reason, the defendant, Harry Long, prays that this case be dismissed against him and that the plaintiff be allowed to proceed solely against the Charleston County Sheriff's Office and the other co-defendants.

A Memorandum of Law will follow.

RESPECTFULLY MOVED,



CHRISTOPHER T. DORSEL

Senn Legal, LLC

P.O. Box 12279

Charleston, SC 29422

(843) 556-4045

Attorneys for Defendants Charleston
County Sheriff's Office, Charleston
County, Charleston County Revenue
Collections, and Harry Long

February 20, 2012
Charleston, South Carolina

R102

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO. 2011CP10-1084

ROOSEVELT SIMMONS)
Plaintiff)

Vs.)

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

FILED
2012 APR -2 PM 1:36
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

**PLAINTIFF'S MOTION TO AMEND
SECOND AMENDED COMPLAINT**

PLEASE TAKE NOTICE that on the tenth day following service of the within
NOTICE of MOTION or as soon thereafter as counsel may be heard, plaintiff Roosevelt
Simmons, by his attorney, Edward A. Bertele, Esq. shall move before the Court of Common
Pleas for the Ninth Judicial Circuit at the Charleston County Courthouse, 100 Broad Street,
Charleston, SC 29401 for an Order pursuant to South Carolina Rules of Civil Procedure 15(a) for
leave to amend the Second Amended Complaint. Plaintiff relies upon the pleadings filed
heretofore and the reasons set forth herein for the filing of this motion.

BASIS FOR THIS MOTION

Plaintiff filed the within action to vacate a Sheriff's sale and deed of certain real
property to defendant Mase and Company previously owned by him on Johns Island, South
Carolina. The complaint asserted that the judgment upon which the execution and sale was based

was void because the Magistrate's Court did not have jurisdiction over the subject matter, a claim by the county for an overdue user fee. The complaint was subsequently amended (prior to answer by defendants) to add claims against the county for civil rights violations in connection with the execution and sale (Amended Complaint) and with consent to add tort claims against the Sheriff's Department for wrongful retention of the deputy who oversaw sale of the property (Second Amended Complaint).

In early March 2012, plaintiff's counsel requested that counsel for all defendants consent to a further amendment to the Second Amended Complaint and provided them with a copy of the proposed amendment, attached to this motion as Exhibit A. Counsel for Mase and Company agreed but counsel for the County defendants refused without explanation. Accordingly, plaintiff moves pursuant to SCRCF 15 (a) for leave to amend.

SCRCF 15(a) provides that leave of court shall be freely given in the interest of justice and when no other party is prejudiced. Plaintiff asserts that it is in the interest of justice to allow him to add an additional claim to recover his property; and that no other party is prejudiced. Plaintiff seeks to add an additional claim to vacate the sheriff sale, namely, that the amount of the sale was grossly inadequate. As set forth in the proposed Amendment to Second Amended Complaint, the sheriff's sale yielded an amount insufficient to satisfy the judgment debt and was grossly inadequate in relation to the fair market value of the property. See paras. 41-44.

The proposed Amendment relies upon facts which were previously alleged in earlier pleadings. The proposed amendment merely adds an additional legal theory. The parties are continuing to engage in discovery and have recently entered into a scheduling Order which provides that the trial shall not occur before September 2012. Counsel for defendant Mase and Company, LLC, the purchaser of the property did not object to this amendment. Counsel for the

county defendants refused to consent but did not assert any reason to object to this amendment so that plaintiff's counsel had not opportunity to address any alleged prejudice. Under the circumstances, plaintiffs' counsel does not believe that the county defendants will be prejudiced as the trial will not occur sooner than September 2012 and there is adequate time for them to conduct any additional discovery they may require.

Accordingly, plaintiff respectfully requests that the court grant this motion and allow the amendment in the form annexed herein.

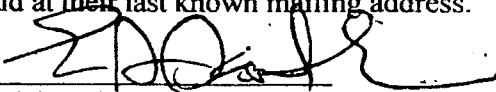
Respectfully submitted,

Edward A. Bertele, Esq.
1812 Pierce Street
Charleston, SC 29492
(843) 471-2082
Attorney for plaintiff, Roosevelt Simmons
By: 

Dated: March 30, 2012
Charleston, SC

CERTIFICATION OF SERVICE

I hereby certify that a true copy of the within motion to amend the Second Amended Complaint and Appendix was served upon the defendants' attorneys, Christopher Dorsel, Esq. and Wendy Keefer, Esq. by regular mail postage prepaid at their last known mailing address.


Edward A. Bertele, Esq.

March 30, 2012

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO. 2011-CP10-1084

ROOSEVELT SIMMONS)
Plaintiff)

Vs.)

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

**AMENDMENT TO
SECOND AMENDED COMPLAINT**

SIXTH COUNT
(Inadequacy of Sale price)

38. Plaintiff repeats and realleges each and every allegation of Paragraphs 1-37 of the Second Amended Complaint as if more fully set forth herein.

39. On or about November 4, 2009, Harry Long in his capacity as Deputy Sheriff of defendant Charleston County Sheriff's Department conducted a judicial sale of real property known as TMS 283-00-00-498 then owned by plaintiff.

40. The sale was purportedly to satisfy a judgment in Case No. 2000-JG -10-1817 issued by the Magistrates Court against plaintiff Roosevelt Simmons for nonpayment of a user fee imposed against TMS 282-00-00-138 also owned by plaintiff.

41. Defendant Mase and Company, LLC purchased the subject property for the sum of six hundred dollars (\$600.00) but the judgment remains unsatisfied.

42. On or about February 2010, defendant J. Al Cannon, Jr., Sheriff of Charleston County (the Sheriff) executed a deed purporting to transfer title to TMS 498 to defendant Mase and Company, LLC. The deed was recorded in the office of the Register of Mesne Conveyances of Charleston County in Deed Book 0109 page 498.

43. The sale price was so grossly inadequate as to shock the conscience.

44. The fair market value of the subject property is approximately \$70,000.00

WHEREFORE, plaintiff requests that judgment be entered against the defendants as follows:

1. A declaration that the Sheriff's deed to real property designated as TMS 283-00-00-498 to defendant Mase and Company, LLC, recorded in the office of the RMC of Charleston County in Deed Book 0109 page 498 is void and of no effect and that an Order thereupon be entered in the record of the Recorder of Mesne Conveyances;
2. A declaration invalidating all judgments entered against Simmons relating to payment of user fees imposed against TMS 282-00-00-138 and TMS 311-00-00-024 and 311-00-00-032;
3. Declaratory and injunctive relief against defendants' future imposition of user fees;
4. Compensatory damages;
5. Punitive damages;
6. An award of counsel fees and costs to the plaintiff;
7. Such other relief as the Court deems just and equitable.

Edward A. Bertele, Esq.
1812 Pierce Street
Charleston, SC 29492
(843) 471-2082 phone
Attorney for Plaintiff Roosevelt Simmons

Dated: November 29, 2012

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ROOSEVELT SIMMONS,

Plaintiff,

v.

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

Defendants,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: ~~2012~~-CP-10-1084

2011-

MOTION FOR SUMMARY JUDGMENT
AS TO CO-DEFENDANT MASE AND
COMPANY, LLC CROSS-CLAIM

BY

JS

JULIE J. ARMSTRONG
CLERK OF COURT

2012 JUN 27 PM 12:07

FILED

Comes now Defendants, J. AL CANNON, JR., CHARLESTON COUNTY SHERIFF'S OFFICE, CHARLESTON COUNTY, CHARLESTON COUNTY REVENUE COLLECTIONS DEPARTMENT, and HARRY LONG ("these Defendants"), pursuant to the South Carolina Rules of Civil Procedure, Rule 56 and notify you that on the 10th day or as soon thereafter as possible, these Defendants will move this Honorable Court for an Order granting summary judgment as to co-defendant Mase and Company, LLC, ("Mase") cross-claim.

Brief Statement of Facts

Plaintiff owned several pieces of property on Johns Island. For several years, Plaintiff refused to pay the County mandated Solid Waste Recycling and Disposal User Fee ("User Fee") based on the mistaken belief that if he did not get trash pick-up, he did not have to pay the User Fee. Deposition Roosevelt Simmons, 55:11 - 56:13 (October 10, 2011). Plaintiff also didn't pay the Storm Water Fee "[b]ecause I don't feel that I have to pay for an act of God, stop it from raining." Depo. Simmons, 59:9-19. Plaintiff's position is "a user fee, business license fee, storm water bill,

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none of that pertained to me. So if it don't pertain to me, why should I pay for it." Depo. Simmons, 56:9-11. After Plaintiff refused to pay the User Fees, Charleston County instituted collections actions against him in Charleston County Magistrate Court and obtained multiple judgements against Plaintiff.

In 2009, the County requested that the Charleston County Sheriff's Office execute on a judgement against Plaintiff for unpaid user fees. Deposition Harry Long, 22:12 - 23:23 (September 22, 2011). The Sheriff's Office attempted to collect on the judgement by contacting Plaintiff by telephone and by sending him several written notices from the Sheriff's Office. Depo. Long, 40:13 - 41:15, 51:16 - 52:7. Plaintiff treated considered these official Sheriff's notices as junk mail and did not respond. Depo. Simmons, 107:8 - 109:11. Based on the non-response and continued non-payment, Long conducted a Sheriff's Sale for the property, which resulted in a sale of the subject property to Mase.

Plaintiff filed the current action seeking to invalidate the sale of the property and invalidate the User Fee and Judgments against him, claiming a civil rights violation, and claiming negligence on behalf of the Sheriff's Office. Plaintiff also named Mase as a Defendant, and Mase filed a cross-claim against the Sheriff's Office for indemnification.

Argument

I. These Defendants are entitled to immunity under the South Carolina Tort Claims Act as to any claims by Mase.

The South Carolina Tort Claims Act bars Mase's claims against these Defendants. Under S.C. Code Ann. § 15-78-60, "The governmental entity is not liable for a loss resulting from:

- (1) legislative, judicial, or quasi-judicial action or inaction;
- (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;

(3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;

(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;

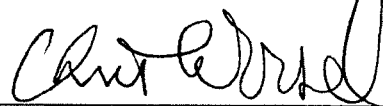
(5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;

(11) assessment or collection of taxes or special assessments or enforcement of tax laws;

(23) institution or prosecution of any judicial or administrative proceeding;

S.C. Code Ann. § 15-78-60. In the current case, the Sheriff's Office conducted a Sheriff's Sale to execute and enforce a court ordered judgment obtained by Charleston County against Plaintiff. For that reason, Defendants are entitled to the immunities provided by the South Carolina Tort Claims Act cited above.

RESPECTFULLY MOVED,



CHRISTOPHER T. DORSEL

Senn Legal, LLC

P.O. Box 12279

Charleston, SC 29422

(843) 556-4045

Attorneys for Defendants J. Al

Cannon, Jr., Charleston County

Sheriff's Office, Charleston County,

Charleston County Revenue

Collections Department, and Harry

Long

June 25, 2012

Charleston, South Carolina

R 110

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO. 2011-CP10-1084

ROOSEVELT SIMMONS)
Plaintiff)

Vs.)

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

FILED
2012 JUL 16 PM 4:08
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

**PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that on the tenth day following service of the within
NOTICE of MOTION or as soon thereafter as counsel may be heard, plaintiff Roosevelt
Simmons, by his attorney, Edward A. Bertele, Esq. shall move before the Court of Common
Pleas for the Ninth Judicial Circuit at the Charleston County Courthouse, 100 Broad Street,
Charleston, SC 29401 for an Order pursuant to South Carolina Rules of Civil Procedure 56 for
partial summary judgment as to the First, Second and Third Counts of the Second Amended
Complaint. Plaintiff relies upon the pleadings filed heretofore, the discovery on file and the
reasons set forth herein.

FACTS RELEVANT TO THIS MOTION

At all relevant times Simmons was the owner of real property known as TMS 282-00-00-
138 (TMS 138) located on Johns Island. TMS 138 contains a residential dwelling and is
accessible only by private road off Kitford Road. See Second Amended Complaint (SAC) at
para. 1. S.C. Code Section 44-55-1210 authorizes a county to provide and regulate solid waste

collection and disposal and to levy user fees only against persons for whom services are provided. On or about 1987, defendant Charleston County (the County) adopted Ordinance Section 10-56 to impose user fees upon the owners of real property located in the county for the express purpose of paying the costs of garbage and trash disposal at the county's facilities. Section 10-56 by its terms was intended to conform to S.C. Code Section 44-55-1210.

Thereafter, pursuant to Ordinance Section 10-56, Charleston County imposed an "annual disposal user fee" on property owners in Charleston County including real property owned by Simmons. The user fee was included in the annual tax bill sent out by the Charleston County Auditor. See Exhibit A. Simmons contends that each year after the user fee was included on his tax bill for TMS 138, he went to the Auditor's office to object to these fees being included with his taxes and requested that the fee be removed. The Auditor's office said that it would be removed and gave Simmons a form indicating that it had been. See Exhibit B-1. Simmons then paid his taxes less the user fee. Simmons was not informed by the employees of the Auditor's Office that the user fee was still owed.

In May 2000, George Boniface, manager of legal processing for the Charleston County Business License/User Fee Department(now known as the Revenue Collections Department) filed a complaint in the Magistrate's Court for Charleston County. The complaint alleged that Simmons was the owner of TMS 138, that Simmons had failed to pay the amount of the user fee imposed against this property in the amount of \$89.00 for the year 2000. See Exhibit C- 1,2, 3 Boniface was not an attorney and the county had not adopted a resolution authorizing the filing of any complaints by employees of the Business License/User Fee department to collect user fees. Simmons asserts that he was never served with the summons and complaint. It is not disputed that Simmons did not appear at the hearing on the complaint. A judgment, 2000-JG-10-

1817, was entered on the complaint in the amount of the user fee plus costs totaling the sum of \$144.00. See Exhibit D Simmons never received notice of entry of the judgment. The Business License/User Fee Department filed other complaints against Simmons in Magistrate's Court to collect the annual user fee for subsequent years and default judgments were entered on them.

In February 2009, the Business License/User Fee Department sent six judgments for annual user fees to the Charleston County Sheriff's Department for enforcement including the following: 2000-JG-10-1817; 2002-JG-10-0021; 2002-JG-10-923; 2003-JG-10-170; 2004-JG-10-444; 2006-JG-10-931. See Exhibit E 1,2,3,4,5. These were processed by Deputy Harry Long. Deputy Long who did a public records search for assets in the name of Roosevelt Simmons. At that time, Simmons held title to several parcels of real property in addition to TMS 138, including TMS 282-00-00-135 (TMS 135), 283-00-00-498 (TMS 498) and 283-00-00-145 (TMS 145) also located on Johns Island, all of which are undeveloped and vacant land. See exhibit I -1,2,3. Simmons also owned several motor vehicles, and various pieces of heavy construction equipment and a boat. See Exhibit J-1,2,3. Deputy Long prepared a levy against Simmons interest in TMS 498 on the 2000 judgment (2000-JG-10-1817) and ignored Simmons ownership of numerous vehicles. When Deputy Long served the levy on Simmons at his home, the vehicles and other personalty were in plain sight.

Deputy Long conducted a sale of TMS 498 in November 2009. According to the Sheriff's Department record of the sale, the property was sold to the highest bidder, defendant Mase & Company, LLC for \$600. The sale proceeds were not sufficient to satisfy the amount of the judgment and costs of sale and the judgment remains unsatisfied. See Exhibit H On or about February 2010, defendant J. Al Cannon, Jr., Sheriff of Charleston County (the Sheriff) executed a deed purporting to transfer title to TMS 498 to defendant Mase & Company, LLC. See Exhibit

G-1,2,3. The Sheriff's Department did not attempt to levy against Simmons property on any other judgments and they were returned to the Business License/User Fee Department.

The First Count of the Second Amended Complaint alleges that the 2000 judgment in against Simmons is void since the Magistrates Court had no jurisdiction or authority to proceed against plaintiff Roosevelt Simmons for nonpayment of a user fee of \$89.00 imposed upon TMS 138 and that the Sheriff's deed is also void because the judgment upon it is based is void. Id.

Para. 10. The First Count also alleges that defendant Sheriff had no authority to levy and execute on TMS 498 for payment of user fees on TMS 138; that the method to enforce a user fee is governed by SC Code Section 12-49-10 and laws applicable to real property taxes and that such sale is also subject to a statutory right of redemption pursuant to South Carolina Statutes Section 12-51-90. Charleston County Code of Ordinances Section 10-56 states: " [t]he annual disposal user fee shall be due and payable within the time and in the manner prescribed by law for county ad valorem taxes pursuant to section 12-45-70 of the code . . . or other law of similar import. The treasurer shall bill and collect the annual disposal user fee established by the county council in the same manner as taxes are collected "

The Second Count of the Second Amended Complaint alleges that defendant County does not provide any trash removal services to TMS 135, 138, 498 or 499; that Simmons was not required to pay a user fee under Ordinance Section 10-56 because the County did not remove any trash from TMS 135, 138, 498 or 499 ; and that all user fees imposed by the County against TMS 135, 138, 498 or 499 are illegal because Simmons as owner derived no benefit from this charge as required by SC Code Section 44-55-1210. Simmons asserts that defendant Revenue Collections Department (then known as the Business License/User Fee Department) wrongfully commenced actions against Simmons for nonpayment of user fees imposed against TMS 138 and

obtained several default judgments. The following are judgments of record against Simmons for nonpayment of user fees: 2002-JG-10-0021; 2002-JG-10-923; 2003-JG-10-170; 2004-JG -10-444; 2006-JG-10-931; 2009 -JG-10-391; 2010- JG -10-3099. See Exhibits E-1,2,3,4,5 and F -1,2. Simmons asserts that all of these judgments entered against Simmons for nonpayment of user fees are void since the Magistrates Court had no jurisdiction or authority to proceed against plaintiff Roosevelt Simmons for nonpayment of a user fee.

The Third Count of the Second Amended Complaint alleges that the County issued tax bills against certain real property known and designated as TMS 311-00-00-024 (TMS 024) which included user fees; that according to the records of the Charleston County Tax Assessor, TMS 024 was owned by the estate of Sam Balaam. Simmons asserts that he was one of the heirs of Samuel Balaam and in order to preserve his family's interest, Simmons had his name added to the Auditor's records to receive the tax bill. See Exhibit I-4. Simmons regularly and timely paid the taxes assessed on TMS 024 and made written application to the Charleston County Auditor for waiver of the user fees. See Exhibit B-2 Notwithstanding his voluntary payment of real estate taxes, Simmons asserts he had no legal obligation to pay user fees imposed against TMS 024 . Simmons asserts that notwithstanding the waiver of the user fees by the Auditor, the Revenue Collections Department commenced various law suits against Simmons in the Magistrate's Court of Charleston County for collection of the user fee imposed on TMS 024 . A portion of judgment 2009-JG-10-391 entered against Simmons includes users fees imposed against TMS 024. See Exhibit K. Simmons contends that the Magistrate's Court had no jurisdiction or authority to proceed against him for nonpayment of a user fee and that all judgments or portions thereof entered against Roosevelt Simmons for nonpayment of user fees imposed upon TMS 024 are void.

Simmons asserts that he is entitled to partial summary judgment as matter of law as to the First, Second and Third Counts of the Second Amended Complaint. These counts allege that the judgments obtained by defendant Revenue Collections Department Business (formerly known as License/User Fee Department) for nonpayment of user fees entered against Simmons by the Magistrate's Court are void and the resulting sale of TMS 498 based upon one of them is also void. The applicable law supports Simmons contention.

LEGAL ARGUMENT

Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 119, 542 S.E.2d 736, 738 (Ct. App. 2001), cert. denied; Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999); see also Bruce v. Durney, 341 S.C. 563, 534 S.E.2d 720 (Ct. App. 2000) (a motion for summary judgment shall be granted if pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and moving party is entitled to judgment as a matter of law). Under SC Rule 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Baughman v. A.T. & T., 306 S.C. 101, 115, 410 S.E.2d at 545. (1991). Once the moving party carries its initial burden, the "opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial.'" Id. (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986)) (emphasis in original). The party opposing summary judgment cannot simply rest on

mere allegations or denials contained in the pleadings. Id.; George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (2001).

A. The Magistrate's Court lacked subject matter jurisdiction over a suit to collect a user fee.

Subject matter jurisdiction refers to the court's "power to hear and determine cases of the general class to which the proceedings in question belong." Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994); Great Games, Inc. v. S.C. Dep't of Revenue, 339 S.C. 79, 83 n. 5, 529 S.E.2d 6, 8 n. 5 (2000). The judgments complained off were all entered by the Magistrate's Court of Charleston County for unpaid user fees. The Magistrate's Court has limited jurisdiction which does not include a claim for fees due to the county. SC Code Ann. Section 22-3-10(1) provides that the Magistrate's Court has concurrent jurisdiction (with the Circuit Court) "in actions arising on contracts"; Section 22-3-10 (3) provides for jurisdiction "in actions for a penalty, fine or forfeiture". An action to collect the amount of an unpaid user fee is neither an action on a contract or for a fine or penalty. Accordingly, the Magistrate had no jurisdiction to hear and decide the case.

Further, the particular ordinance authorizing the payment of a user fee, Charleston County Code of Ordinances Section 10-56 states: "[t]he annual disposal user fee shall be due and payable within the time and in the manner prescribed by law for county ad valorem taxes pursuant to section 12-45-70 of the code . . . or other law of similar import. The treasurer shall bill and collect the annual disposal user fee established by the county council in the same manner as taxes are collected" There was no authorization given to collect the user fee by suit in Magistrate's Court. Since the governing ordinance requires that the user fee be collected like "ad valorem taxes" the method to enforce a user fee is governed by SC Code Section 12-49-10

and laws applicable to real property taxes and that such sale is also subject to a statutory right of redemption pursuant to South Carolina Statutes Section 12-51-90.

The user fee is a variety of a tax. As the South Carolina Supreme Court stated in Powell v. Chapman, 260 S.C. 516, 197 S.E.2d 287 (1973): “The essential characteristics of a tax are that it is not a voluntary payment or donation, but an **enforced contribution**, enacted pursuant to legislative authority, in the exercise of the taxing power, the contribution being of a proportional character, payable in money, and imposed, levied, and collected for the purpose of raising revenue, to be used for public or governmental purposes.” (emphasis added) See 84 C.J.S. Taxation s 1, at page 32. Therefore, under the statute proving jurisdiction to the Magistrate’s Court or the Ordinance creating the user fees, the Magistrate’s Court had no jurisdiction over the suits brought by the Business License/User fee Department.

B. A judgment of a court without subject matter jurisdiction is void.

Simmons filed this action under R 60(b), SCRPC to vacate an earlier judgment by default which was entered against him based upon a lack of subject matter jurisdiction. It is not disputed that this judgment was entered on the basis of a default and that Simmons did not appear to contest the claim. Simmons denies receiving notice of this complaint or of the entry of the judgment. Simmons contends that he was only aware of the judgment when a deputy Sheriff came to his home to execute on the judgment in August 2009. Simmons filed this action after he discovered that TMS 498 had been sold in 2010.

The law is clear that a judgment of a court without subject matter jurisdiction is void and constitutes grounds for the court to vacate the judgment under Rule 60(b). “A void judgment is one that, from its inception, is a complete nullity and is without legal effect. . . .” Thomas & Howard Co., Inc. v. T.W. Graham & Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995). The

South Carolina Supreme Court has consistently adhered to the rule that the acts of a court without jurisdiction are without effect. Toomer v. Toomer, 244 S.C. 399, 137 S.E.2d 406 (1964) As stated in Ex parte Hart, 186 S.C. 125, 133, 195 S.E. 253, 256 (1938): "It is a universal principle as old as the law, that the proceedings of a Court without jurisdiction are a nullity, and its judgment without effect, either on the person or property." Ross v. Richland County, 270 S.C. 100, 240 S.E.2d 649, 651 (S.C. 1978)

It is elementary that lack of jurisdiction of the cause or subject matter can be raised at any time, including for the first time on appeal. State v. Castleman, 219 S.C. 136, 64 S.E.2d 250 (1951); State v. Adams, 73 S.C. 435, 53 S.E. 538 (1906). It is immaterial that the defendant failed to appeal from the earlier ruling or the intermediate ruling even if it be assumed that he had the right to do so. State v. Funderburk, 259 S.C. 256, 191 S.E.2d 520,523 (1972); Town of Hilton Head Island v. Godwin, 370 S.C. 221, 634 S.E.2d 59 (Ct. App. 2006); Amisub of S.C., Inc. v. Passmore, 316 S.C. 112, 114, 447 S.E.2d 207, 208 (1994). The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court. See, e.g., Lake v. Reeder Constr. Co., 330 S.C. 242, 248, 498 S.E.2d 650, 653 (Ct.App.1998). In Rock Hill Body Co. v. Rainey, 294 S.C. 426, 430, 365 S.E.2d 228 (Ct. App. 1987), the court ruled that the jurisdiction of the Magistrate's Court was limited under South Carolina Code Section 22-3-10 to enforcement of a lien and not a determination of the amount; and vacated the lower court judgment. Rock Hill Body Co. v. Rainey stands for the proposition that the Magistrate's Court is of limited jurisdiction and extends only to what the legislature specifically authorized.

In Bunkum v. Manor Properties, 321 S.C. 95,100, 467 S.E.2d 758 (Ct. App. 1996), plaintiff commenced an action pursuant to Rule 60(b), SCRPC, seeking to have a "Supplemental

Order of Judgment of [sic] Costs" entered by the Charleston County Master In Equity declared void because the master exceeded the scope of his authority. The Court of Appeals noted that the plaintiff failed to appear before the master at the hearing on the motion, and failed to directly appeal the master's order. However, the court held that "issues relating to subject matter jurisdiction may be raised at any time, cannot be waived even by consent, and should be taken notice of by this court on our own motion." The Court of Appeals concluded that the master lacked jurisdiction to issue the Order and reversed. See Johnson v. State, 319 S.C. 62, 459 S.E.2d 840 (1995); State v. Richburg, 304 S.C. 162, 403 S.E.2d 315 (1991); State v. Gorie, 256 S.C. 539, 183 S.E.2d 334 (1971); Eichor v. Eichor, 290 S.C. 484, 351 S.E.2d 353 (Ct.App.1986).

Bunkum has been relied upon subsequently in Ness v. Eckerd Corp., 350 S.C. 399, 566 S.E.2d 193, 195 (Ct. App. 2002); Brown v. Greenwood School Dist. 50 Bd. of Trustees, 344 S.C. 522, 544 S.E.2d 642, 643 (Ct. App. 2001) and Eldridge v. City of Greenwood, 331 S.C. 398, 408 503 S.E.2d 191, 196 (Ct. App. 1998).

Plaintiff has found no comparable precedent in which an appellate court refuses to allow the plaintiff to seek to vacate an earlier default judgment based upon a lack of subject matter jurisdiction and asserts that the Bunkum case controls this situation. Therefore, plaintiff contends that the law is clear that the lack of subject matter jurisdiction can be a basis for vacating an earlier judgment and partial summary judgment should be granted as to the First, Second and third Counts of the Second Amended Complaint vacating all judgments entered against Simmons for the payment of a user fee in the Magistrate's Court.

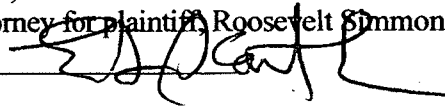
C. The Sheriff's sale and Deed pursuant to a void judgment are void

Because the underlying judgment is void, the Sheriff's sale and deed based upon the execution on that pursuant are also void. S.C. Code Ann Section 15-39-610 provides for sale of property following execution upon a judgment which remains unpaid for 5 days. The sale relies upon the validity of the execution which relies upon the validity of the judgment. Therefore, the Sheriff sale and deed which was based upon the invalid judgment should be also be vacated .

CONCLUSION

Plaintiff has established that he is entitled to judgment as matter of law that the Magistrate's Court judgments are void and respectfully requests that the court grant his motion.

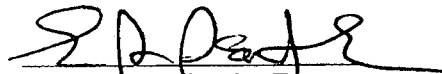
Respectfully submitted,

Edward A. Bertele, Esq.
1812 Pierce Street
Charleston, SC 29492
(843) 471-2082
Attorney for plaintiff, Roosevelt Simmons
By: 

Dated: July 13, 2012
Charleston, SC

CERTIFICATION OF SERVICE

I hereby certify that a true copy of the within motion to amend the Second Amended Complaint and Appendix was served upon the defendants' attorneys, Christopher Dorsel, Esq. and Wendy Keefer, Esq. by regular mail postage prepaid at their last known mailing address.


Edward A. Bertele, Esq.

July 13, 2012

SIMMONS V MASE & COMPANY, LLC ET AL. 2011-CP10-1084

EXHIBITS TO PLAINTIFF'S PARTIAL SUMMARY JUDGMENT MOTION

- A. Charleston County 1995 tax bill for TMS 282-00-00-138
- B. Solid Waste Annual Disposal User Fee Application for Review
- C. Summons and Complaint filed by Charleston County Business License/User Fee Department in Case No. 2000SC-86-2578
- D. Judgment 2000-JG-10-1817 entered in Case No. 2000SC-86-2578
- E. Judgment 2002-JG-10-0021; Judgment 2002-JG-10-923; Judgment 2003-JG-10-170; Judgment 2004-JG -10-444; Judgment 2006-JG-10-931
- F. Judgment 2009 -JG-10-391; Judgment 2010- JG -10-3099
- G. Sheriff's deed to Mase & Company, LLC
- H. Partial Satisfaction of Judgment 2000-JG-10-1817
- I. Charleston County Tax System real property inquiry
- J. Charleston County Tax System Motor Vehicle inquiry
- K. Charleston County Notice of past due user fees

THIS 1995 TAX BILL DOES NOT REFLECT ANY TAXES YOU MIGHT OWE FOR PREVIOUS YEARS.

COMBINED TAXES FOR : CHARLESTON COUNTY-WIDE AND ST. JOHNS FIRE DISTRICT 5-1

REAL PROPERTY TAXES FOR PERIOD COMMENCING : 01-01-1995

TAX BILL DATE 09-29-1995

REPT NO.	APPRAISED VALUE	ASMT. RATIO(S)	TOTAL ASSESSMENT	TOTAL MILLS	TOTAL TAXES
102125	76,000	QR4 QA4	3,160	231.8	732.46
TYPE	# OF BUILDINGS	ACRES	MORTGAGE CODE/ID		
00	2	15.00			
PROPERTY DESCRIPTION: MAIN RD SIMMONS				COUNTY SALES TAX CREDIT	-106.52
PARCEL ID: 282-00-00-138				STATE PROPERTY TAX RELIEF BENEFIT (SAVINGS)	-255.36
				SOLID WASTE RECYCLING AND DISPOSAL FEE	112.00
				PAY THIS AMOUNT (ON OR BEFORE 01-17-1996) \$	482.61



SIMMONS ROOSEVELT L AND GARY H
3416 KITFORD RD
JOHNS ISLAND SC 29455-8943

AMOUNT DUE AFTER

01-17-1996 *****493.73
02-01-1996 *****519.67
03-19-1996 *****538.20

BILLS	TAXES	DISTRIBUTION OF YOUR TAX DOLLARS		PERCENT
62.3	\$	90.35	COUNTY GOVERNMENT OPERATING	
18.6	\$	58.78	COUNTY GOVERNMENT BOND ISSUES	
1.2	\$	3.79	DEPT OF ALCOHOL & OTHER DRUG ABUSE SERVICES	31.7 %
84.0	\$	10.08	SCHOOL BOARD OPERATING	
15.9	\$	50.24	SCHOOL BOARD BOND ISSUES	12.5 %
9.0	\$	28.44	PARK AND RECREATION COMMISSION	5.9 %
2.8	\$	8.85	TRIDENT TECHNICAL COLLEGE	1.8 %
3.3	\$	10.43	ST. JOHNS FIRE BONDS	
34.7	\$	109.65	ST. JOHNS FIRE DISTRICT	24.9 %
	\$	112.00	SOLID WASTE RECYCLING AND DISPOSAL FEE	23.2 %
231.8	\$	482.61	TOTAL	

A
R123



CHARLESTON COUNTY
USER FEE DEPARTMENT
2 Courthouse Square, Room 105
Charleston, S.C. 29401-2260

For Office Use Only

REVIEW OF FEE

- ☐ No Change
☐ Increased Amount
☐ Decreased Amount
☐ Documentation Attached

Year: 2001 **SOLID WASTE ANNUAL DISPOSAL USER FEE**

Application for Review

TMS#: 283-00-00-138 TAX DISTRICT: _____
Owner's Name: Simmons, Roosevelt L. & Gary J.
Contact Name: _____ Phone# 559 1351
Property Location: 3416 Kiltford Rd. (WORK) (HOME)

Reason for Review: Requesting that user-fee
be removed as taxes can be
paid, unable to pay user-fee.

Findings: _____
Inspector: _____

I certify that the descriptions and statements contained in this application are to the best of my knowledge both correct and true. I understand that the User Fee Department will review my claim and notify me of their findings. I acknowledge that my failure to pay the user fee may result in a \$100 fine or (30) thirty days in jail.

(SIGNATURE)

(DATE SIGNED)

1-11-2002

Keep pink copy; Return white and yellow copies to:

Charleston County User Fee Department
2 Courthouse Square, Room 105
Charleston, South Carolina 29401

White- Business License/User Fee

B-1
Yellow- Auditor
D124

Pink- Property Owner

User-fee
removed
1-11-2002
POE



CHARLESTON COUNTY
USER FEE DEPARTMENT
2 Courthouse Square, Room 105
Charleston, S.C. 29401-2260

For Office Use Only

REVIEW OF FEE

- ☐ No Change
☐ Increased Amount
☐ Decreased Amount
☐ Documentation Attached

Year: _____ **SOLID WASTE
ANNUAL DISPOSAL USER FEE**

Application for Review

TMS#: _____ TAX DISTRICT: _____

Owner's Name: _____

Contact Name: _____ Phone# _____
(WORK) (HOME)

Property Location: _____

Reason for Review: _____

Findings: _____

Inspector: _____

I certify that the descriptions and statements contained in this application are to the best of my knowledge both correct and true. I understand that the User Fee Department will review my claim and notify me of their findings. I acknowledge that my failure to pay the user fee may result in a \$100 fine or (30) thirty days in jail.

(SIGNATURE) _____ (DATE SIGNED) _____

Keep pink copy; Return white and yellow copies to:

Charleston County User Fee Department
2 Courthouse Square, Room 105
Charleston, South Carolina 29401

White - Business License/User Fee

Yellow - Auditor

Pink - Property Owner

B-3
12125

00-SC-86-

2578

May 30, 2000

STATE of SOUTH CAROLINA

COUNTY of CHARLESTON

995 MORRISON DRIVE
CHARLESTON, SC 29403

Charleston County Business License
User Fee Department
Plaintiff

vs. ROOSEVELT L SIMMONS AND GARY H SIMMONS
Defendant

2 Courthouse Square, Room 105
Street Address

3416 KITFORD RD
Street Address

Charleston, South Carolina 29401
City State Zip

JOHNS ISLAND, SC 29455
City, State Zip

(843) 724-6727
Phone

559-1351
Phone

Small Claims Court

Summons

DATE: May 30, 2000

TO: ROOSEVELT L SIMMONS AND GARY H SIMMONS, Defendant

You are hereby notified that the Plaintiff has filed a claim and is asking for judgment against you as stated in the complaint.

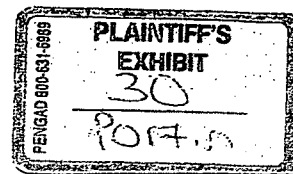
You have a right to file or present an answer to this complaint within thirty (30) days after service of this complaint upon you. If you do not answer, judgment by default may be entered against you. Your answer must be filed in writing to the Small Claims Court prior to the expiration of the 30 days. A clerk is available to assist you at the Small Claims Court from 9:00 a.m. to 1:00 p.m. and 2:00 p.m. to 5:00 p.m., Monday through Friday.

The Court will schedule a hearing on this claim at the time your answer is filed. If you have witnesses, books, receipts or other writings bearing on this claim, you should bring them with you at the time of the hearing. If you wish to have witnesses summoned, see the Clerk of the Small Claims Court for assistance.

If you have a claim against the Plaintiff arising out of the same matter, you should file it with the Court at the time you file your answer.

MAGISTRATE, SMALL CLAIMS COURT

C-1
2126



OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Charleston County, a
political subdivision of
the State of South Carolina,
Plaintiff,

vs.

ROOSEVELT L SIMMONS AND GARY H SIMMONS
3416 KITFORD RD
JOHNS ISLAND, SC 29455
Defendant.

IN THE SMALL CLAIMS COURT

COMPLAINT

Plaintiff, complaining of the Defendant above-named would respectfully show unto the Court:

1. That Plaintiff is a political subdivision of the State of South Carolina, organized and existing pursuant to S.C. Const. Art. VIII, Subsection 1 and 7 and Section 4-1-10, 4-3-100, 4-9-25 and 4-9-30, Code of Laws of South Carolina, 1976, as amended, and having such powers, among others, as set forth therein.
2. That at all times relevant hereto, Defendant was the owner of that certain real and/or personal property known and designated on Exhibit "A" (attached).
3. That Plaintiff is vested with the power to engage in the collection and disposal of solid waste and to levy service charges against persons for whom collection services are provided pursuant to Section 44-55-1210, Code of Laws of South Carolina, 1976.
4. That Articles II and IV of Chapter 10 of the Charleston County Code of Ordinances provide for the disposal of solid waste, and that Sections 10-55 through 10-65 of Article IV provide for the assessment and collection of certain fees for the disposal of solid waste, more commonly known as "User Fees".
5. Thereafter, as each Annual User Fee became due and payable, the Plaintiff gave notice to the Defendant of the amount of the User Fee, the date by which the User Fee was to have been paid, and the address at which payment would be received. The User Fee was not paid by the due date and remains unpaid at this time.
6. That Defendant failed to pay the amount of the User Fee as set forth in Exhibit "A".
7. That Plaintiff is informed and believes that as a result of Defendant's failure to pay the User Fee, Plaintiff is entitled to judgment against Defendant for the sum of EIGHTY NINE DOLLARS AND 00/100 (\$89.00) and FIFTY-FIVE DOLLARS AND 00/100 (\$55.00) court costs.

WHEREFORE, the Plaintiff prays:

- A. That Plaintiff be awarded judgment in the sum of EIGHTY NINE DOLLARS AND 00/100 (\$89.00) ;
- B. That Plaintiff be awarded the costs of this action FIFTY-FIVE DOLLARS AND 00/100 (\$55.00); and
- C. That Plaintiff be awarded such other and further relief that this Court deems just and proper.

CHARLESTON COUNTY BUSINESS LICENSE/USER FEE DEPARTMENT

By: George B. Boniface

George B. Boniface, Legal Processing Manager
#2 Courthouse Square, Room 105
Charleston, SC 29401
(843) 724-6727

Charleston, South Carolina
May 30, 2000

Note: See Information/Instruction page for Instructions on how to settle this case . If the case is not settled, you must file an answer with the Court within 30 days.

C-2
127



County of Charleston
Business License/User Fee Legal Division
Customer Account
Exhibit A

ROOSEVELT L SIMMONS AND GARY H SIMMONS
3416 KITFORD RD
JOHNS ISLAND, SC 29455-8943

Location	PID	Year	User Fee
MAIN RD	282-00-00-138	2000	89.00
Total Due :			\$89.00

CASE NO. 00-SC-86-2578
STATE OF SOUTH CAROLINA)

00-JG-10-1817 69-271
MAGISTRATES COURT

COUNTY OF CHARLESTON)

TRANSCRIPT OF JUDGMENT

11/15/05-RETURN TO PLAINTIFF AGAINST PLAINTIFF'S REQUEST. ATTORNEY

NAME: ROOSEVELT L. SIMMONS
GARY H. SIMMONS
ADDRESS: 3416 KITFORD ROAD
JOHNS ISLAND, SC 29455

JUDGMENT IN FAVOR OF
CHARLESTON COUNTY BUSINESS
NAME: LICENSE USER FEE DEPT.
2 COURTHOUSE SQUARE, ROOM 105
ADDRESS: CHARLESTON, SC 29401

DAMAGES AND COST

AMOUNT OF JUDGMENT.....	\$ 89.00
INTEREST.....	\$
ATTORNEY FEES.....	\$
COST.....	\$ 55.00
TOTAL.....	\$ 144.00

JUDGMENT RENDERED JULY 18 2000

Kerry W. Greer
MAGISTRATE

EXECUTION AGAINST PROPERTY

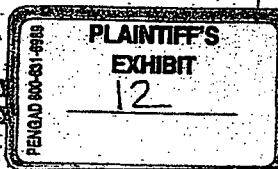
TO THE SHERIFF OF CHARLESTON COUNTY:

The above judgment was docketed in the office of the Clerk of the Court of Common Pleas, County of Charleston, the 19 day of Sept. 2000.

THEREFORE, WE REQUEST YOU, that you satisfy the said judgment out of the personal property of the said judgment debtor within your county, or if sufficient personal property cannot be found, that out of the real property in your County belonging to such judgment debtor on the day when the said judgment was so docketed in your County, or at any time thereafter, in whose hands soever the same may be, and duly return this execution, according to law, to the Clerk of the Court of Common Pleas for the County of Charleston.

WITNESSED *Judith J. Armstrong* Clerk of the Court of Common Pleas of Charleston County, this 19 day of Sept. 2000.

James R. Pate
Deputy Sheriff or District Attorney



CASE NO. 01-SC-86-3047

2002-JG-10-0021 09-277

STATE OF SOUTH CAROLINA)

MAGISTRATES COURT

COUNTY OF CHARLESTON)

TRANSCRIPT OF JUDGMENTJUDGMENT AGAINSTATTORNEY

NAME: ROOSEVELT L SIMMONS & GARY H SIMMONS
 ADDRESS: 3416 KITFORD RD
 JOHNS ISLAND, SC 29455

JUDGMENT IN FAVOR OF

NAME: CHARLESTON COUNTY BUSINESS
 LICENSE USER FEE DEPARTMENT
 ADDRESS: 4045 BRIDGE VIEW DRIVE
 N CHARLESTON S.C. 29406

DAMAGES AND COST

AMOUNT OF JUDGMENT	\$	89.00
INTEREST	\$	
ATTORNEY FEES	\$	
COST	\$	55.00
TOTAL	\$	144.00

JUDGMENT RENDERED OCTOBER 2, 20 01

MAGISTRATE

EXECUTION AGAINST PROPERTYTO THE SHERIFF OF CHARLESTON COUNTY:

The above judgment was docketed in the office of the Clerk of the Court of Common Pleas,
 County of Charleston, the 4 day of Jan, 2002.

THEREFORE, WE REQUEST YOU, that you satisfy the said judgment out of the personal
 property of the said judgment debtor within your county, or if sufficient personal property
 cannot be found, that out of the real property in your County belonging to such judgment
 debtor on the day when the said judgment was so docketed in your County, or at any time
 thereafter, in whose hands soever the same may be, and duly return this execution, according to
 law, to the Clerk of the Court of Common Pleas for the County of Charleston.

WITNESS, Julia A. Armstrong Clerk of the Court of Common Pleas of Charleston
 County, this 4 day of Jan, 2002.

Janice Porter
 Plaintiff or Plaintiff's Attorney

21-19

E-1
D 130

STATE OF SOUTH CAROLINA)

MAGISTRATES COURT

COUNTY OF CHARLESTON)

TRANSCRIPT OF JUDGMENT

JUDGMENT AGAINST	ATTORNEY
NAME: ROOSEVELT L. SIMMONS & GARY H. SIMMONS ADDRESS: 3416 KITTFORD RD. JOHNS ISLAND, SC 29455-8943	
JUDGMENT IN FAVOR OF	
NAME: CHARLESTON COUNTY BUSINESS LICENSE USER FEE DEPARTMENT 4045 BRIDGE VIEW DRIVE ADDRESS: N. CHARLESTON, SC 29405	

FILED
2002 MAY 3 PM 4:11
CLERK OF COURT
B.K.

DAMAGES AND COST

AMOUNT OF JUDGMENT	\$ 89.00
INTEREST	\$
ATTORNEY FEES	\$
COST	\$ 55.00
TOTAL	\$ 144.00

JUDGMENT RENDERED MARCH 19, 20 02

Henry W. General
MAGISTRATE

EXECUTION AGAINST PROPERTY

TO THE SHERIFF OF CHARLESTON COUNTY:

The above judgment was docketed in the office of the Clerk of the Court of Common Pleas, County of Charleston, the 3 day of May, 20 02.

THEREFORE, WE REQUEST YOU, that you satisfy the said judgment out of the personal property of the said judgment debtor within your County, or if sufficient personal property cannot be found, that out of the real property in your County belonging to such judgment debtor on the day when the said judgment was so docketed in your County, or at any time thereafter, in whose hands soever the same may be, and duly return this execution, according to law, to the Clerk of the Court of Common Pleas for the County of Charleston.

WITNESS *J. A. Armstrong* Clerk of the Court of Common Pleas of Charleston County,
this 3rd day of May, 20 02.

Janice Porty
Plaintiff or Plaintiff's Attorney

NAME: _____

CASE NO. 02-SC-86-3493

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

05-26-10-170
MAGISTRATES COURT

09-2779

TRANSCRIPT OF JUDGMENT

JUDGMENT AGAINST	ATTORNEY
NAME: ROOSEVELT L SIMMONS AND GARY H SIMMONS ADDRESS: 3416 KITFORD ROAD JOHNS ISLAND, SC 29455	
JUDGMENT IN FAVOR OF	
NAME: CHARLESTON COUNTY BUSINESS LICENSE USER FEE DEPARTMENT ADDRESS: 4045 BRIDGE VIEW DRIVE N. CHARLESTON, S.C. 29405	

FILED
JAN 13 2003
JULIE H. STRONG
CLERK OF COURT
AM 11:24

DAMAGES AND COST

AMOUNT OF JUDGMENT	\$ 178.00
INTEREST	\$
ATTORNEY FEES	\$
COST	\$ 55.00
TOTAL	\$ 233.00

JUDGMENT RENDERED OCTOBER 22

, 20/02

Kenny W. Lucard
MAGISTRATE

EXECUTION AGAINST PROPERTY

TO THE SHERIFF OF CHARLESTON COUNTY:

The above judgment was docketed in the office of the Clerk of the Court of Common Pleas, County of Charleston, the 13 day of Jan, 2003.

THEREFORE, WE REQUEST YOU, that you satisfy the said judgment out of the personal property of the said judgment debtor within your County, or if sufficient personal property cannot be found, that out of the real property in your County belonging to such judgment debtor on the day when the said judgment was so docketed in your County, or at any time thereafter, in whose hands soever the same may be, and duly return this execution, according to law, to the Clerk of the Court of Common Pleas for the County of Charleston.

WITNESS, *Julie H. Strong* Clerk of the Court of Common Pleas of Charleston County,
this 13 day of Jan, 2003.

James Porter
Plaintiff or Plaintiff's Attorney

CASE NO. 03-SC-86-2844

04-56-10-447042110

STATE OF SOUTH CAROLINA)

MAGISTRATES COURT

COUNTY OF CHARLESTON)

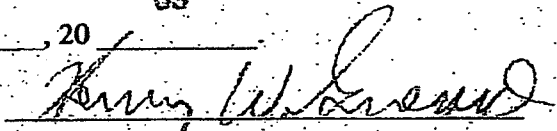
TRANSCRIPT OF JUDGMENT

JUDGMENT AGAINST	ATTORNEY
NAME: ROOSEVELT SIMMONS ADDRESS: 3416 KITFORD ROAD N CHAS, SC 29418	FILED 2004 FEB 27 AM 11:36 JULIE CLERK OF COURT
NAME: CHARLESTON COUNTY BUSINESS LICENSE USER FEE DEPARTMENT ADDRESS: 4045 BRIDGE VIEW DRIVE N. CHARLESTON, S.C. 29405	

DAMAGES AND COST

AMOUNT OF JUDGMENT	\$ 126.00
INTEREST	\$
ATTORNEY FEES	\$
COST	\$ 55.00
TOTAL	\$ 181.00

JUDGMENT RENDERED OCTOBER 21, 2003


MAGISTRATE

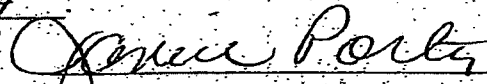
EXECUTION AGAINST PROPERTY

TO THE SHERIFF OF CHARLESTON COUNTY:

The above judgment was docketed in the office of the Clerk of the Court of Common Pleas, County of Charleston, the 27th day of Feb, 2004.

THEREFORE, WE REQUEST YOU, that you satisfy the said judgment out of the personal property of the said judgment debtor within your County, or if sufficient personal property cannot be found, that out of the real property in your County belonging to such judgment debtor on the day when the said judgment was so docketed in your County, or at any time thereafter, in whose hands soever the same may be, and duly return this execution, according to law, to the Clerk of the Court of Common Pleas for the County of Charleston.

WITNESS Julie Armstrong Clerk of the Court of Common Pleas of Charleston County,
this 27th day of Feb, 2004


Plaintiff or Plaintiff's Attorney

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)

MAGISTRATES COURT
 TRANSCRIPT OF JUDGMENT

JUDGMENT AGAINST	ATTORNEY
NAME: ROOSEVELT L. SIMMONS GARY H. SIMMONS 3416 KITFORD ROAD ADDRESS: JOHNS ISLAND, SC 29455	BY <u> </u> JULIE J. ARMSTRONG CLERK OF COURT
JUDGMENT IN FAVOR OF NAME: COUNTY OF CHARLESTON ADDRESS: 4045 BRIDGE VIEW DRIVE N. CHARLESTON, S.C. 29405	
DAMAGES AND COST	

AMOUNT OF JUDGMENT\$ 215.00
 INTEREST\$
 ATTORNEY FEES\$
 COST\$ 80.00
 TOTAL\$ 295.00

JUDGMENT RENDERED APRIL 13, 2006

Kenny W. Swensell
 MAGISTRATE

EXECUTION AGAINST PROPERTY

TO THE SHERIFF OF CHARLESTON COUNTY:

The above judgment was docketed in the office of the Clerk of the Court of Common Pleas, County of Charleston, the 27 day of July, 20 06.

THEREFORE, WE REQUEST YOU, that you satisfy the said judgment out of the personal property of the said judgment debtor within your County, or if sufficient personal property cannot be found, that out of the real property in your County belonging to such judgment debtor on the day when the said judgment was so docketed in your County, or at any time thereafter, in whose hands soever the same may be, and duly return this execution, according to law, to the Clerk of the Court of Common Pleas for the County of Charleston.

WITNESS, Julie J. Armstrong Clerk of the Court of Common Pleas of Charleston County,
 this 27 day of July, 20 06.

JO [Signature]
 Plaintiff or Plaintiff's Attorney

2006-01-27-931

FILED

2006 JUL 27 AM 8:40
 JULIE J. ARMSTRONG
 CLERK OF COURT

CASE NO. 08-SC-86-1848

STATE OF SOUTH CAROLINA)

MAGISTRATES COURT

COUNTY OF CHARLESTON)

TRANSCRIPT OF JUDGMENT

JUDGMENT AGAINST	ATTORNEY
NAME: ROOSEVELT L. SIMMONS 3416 KITFORD ROAD ADDRESS: JOHNS ISLAND, SC 29455	2009 MAR 12 PM 4:04 JULIE J. ARMSTRONG CLERK OF COURT
JUDGMENT IN FAVOR OF	
NAME: COUNTY OF CHARLESTON LONNIE HAMILTON, III PSB ADDRESS: 1045 BRIDGE VIEW DRIVE NORTH CHARLESTON, SC 29405	
DAMAGES AND COST	
AMOUNT OF JUDGMENT	\$ 599.00
INTEREST	\$
ATTORNEY FEES	\$
COST	\$ 80.00
TOTAL	\$ 679.00

JUDGMENT RENDERED December 31, 20 08

Henry H. Givens
MAGISTRATE

EXECUTION AGAINST PROPERTY

TO THE SHERIFF OF CHARLESTON COUNTY:

The above judgment was docketed in the office of the Clerk of the Court of Common Pleas, County of Charleston, the ____ day of _____, 20 ____.

THEREFORE, WE REQUEST YOU, that you satisfy the said judgment out of the personal property of the said judgment debtor within your County, or if sufficient personal property cannot be found, that out of the real property in your County belonging to such judgment debtor on the day when the said judgment was so docketed in your County, or at any time thereafter, in whose hands soever the same may be, and duly return this execution, according to law, to the Clerk of the Court of Common Pleas for the County of Charleston.

WITNESS, _____ Clerk of the Court of Common Pleas of Charleston County,
this ____ day of _____, 20 ____.

Ding
Plaintiff or Plaintiff's Attorney

(R-10/01)

F-1
R135

FILED

09.4029

2009-JG-10-391

CASE NO. 09-SC-86-2435

STATE OF SOUTH CAROLINA)

MAGISTRATES COURT

COUNTY OF CHARLESTON)

TRANSCRIPT OF JUDGMENT

2010-CP-10-3099

JUDGMENT AGAINST	ATTORNEY
NAME: ROOSEVELT L. SIMMONS GARY H. SIMMONS ADDRESS: 3416 KITFORD ROAD JOHNS ISLAND, SC 29455-8943	2010 APR 15 PM 11:32 JULIE J. ARNISTONG CLERK OF COURT
JUDGMENT IN FAVOR OF	
NAME: CHARLESTON COUNTY 4045 BRIDGE VIEW DRIVE NORTH CHARLESTON, SC 29405 ADDRESS:	
DAMAGES AND COST	

AMOUNT OF JUDGMENT	\$ 465.55
INTEREST	\$
ATTORNEY FEES	\$
COST	\$ 80.00
TOTAL	\$ 545.55

JUDGMENT RENDERED

3/2, 20 10


MAGISTRATE

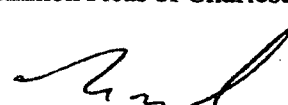
EXECUTION AGAINST PROPERTY

TO THE SHERIFF OF CHARLESTON COUNTY:

The above judgment was docketed in the office of the Clerk of the Court of Common Pleas, County of Charleston, the ____ day of _____, 20 ____.

THEREFORE, WE REQUEST YOU, that you satisfy the said judgment out of the personal property of the said judgment debtor within your County, or if sufficient personal property cannot be found, that out of the real property in your County belonging to such judgment debtor on the day when the said judgment was so docketed in your County, or at any time thereafter, in whose hands soever the same may be, and duly return this execution, according to law, to the Clerk of the Court of Common Pleas for the County of Charleston.

WITNESS, _____ Clerk of the Court of Common Pleas of Charleston County,
this ____ day of _____, 20 ____.



Plaintiff or Plaintiff's Attorney

(R-10/01)

F-2
R136

FILED



BP0109498

THE STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

SHERIFF'S DEED - NO WARRANTY
SUBJECT TO ALL LIENS,
MORTGAGES AND ENCUMBRANCES

RMC BK 1109
498 : pg 1

To All Whom These Presents May Come:

WHEREAS: I, J. Al Cannon, Jr., Sheriff of Charleston County

SEND GREETING:

WHEREAS, Charleston County Business License/User Fee Department did obtain a judgment on July 18, 2000, against Roosevelt Simmons, and the same was docketed in the Court of Common Pleas of the Ninth Judicial Circuit on September 19, 2000, as evidenced by the records of the Clerk of Court of Charleston County in Case No. 2000-JG-10-1817; and

Whereas, on September 19, 2000 an execution was issued by the Court of Common Pleas to satisfy the said judgment; and

WHEREAS, following a levy by the Sheriff of Charleston County against the interests and only the interests of Roosevelt Simmons of John's Island, South Carolina, in the below described property, a public auction was held on August 1, 2009, and property was purchased by the Grantee herein on November 4, 2009, as prescribed by Section 15-39-710 of the Code of Laws of South Carolina, 1976, as amended.

NOW, KNOW ALL MEN BY THESE PRESENTS, That I, the said J. Al Cannon, Jr., Sheriff of Charleston County for and/in consideration of the sum of Six Hundred and 00/100 Dollars (\$600.00) to me in hand paid at and before the sealing and delivery of these presents by Mase and Company, LLC, (the receipt whereof is hereby acknowledged) have remised, released and forever quit-claimed, and by these presents do remise, release and forever quit-claim unto the said:

Mase and Company, LLC, his heirs and assigns, forever, the interests and only the interests of Roosevelt Simmons of John's Island, South Carolina, in the following described real property, to wit:

ALL that lot, piece, or parcel of land situate, lying, and being on Johns Island, County of Charleston, State of South Carolina, known and designated as Lot C, as shown on a plat made by HLA, Inc., entitled "PLAT SHOWING LOT A (1.139 ACRES), LOT B (0.743 ACRES) LOT C (1.375 ACRES), CONTAINING 3.257 ACRES, PROPERTY OF ROOSEVELT SIMMONS LOCATED ON JOHNS ISLAND, CHARLESTON, COUNTY SOUTH CAROLINA", dated May 12, 2005, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book DE at Page

9-1
R137

RMC BK 0109 Pg 498 Pg 2 *

692. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

BEING a portion of the same property conveyed to Roosevelt Simmons by quitclaim deed of Cheryl Simmons, dated August 29, 2003 and recorded in the RMC Office for Charleston County, South Carolina in Book Z468 at Page 508.

TMS # 283-00-00-498

PROPERTY ADDRESS : 0 KITFORD RD
JOHNS ISLAND, SC 29455

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Mase and Company, LLC, his heirs and assigns, forever so that neither I the said J. Al Cannon, Jr., Sheriff of Charleston County nor my heirs, nor any other person or persons, claiming under me or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

WITNESS my hand and seal this 9th day of Feb, in the year of our Lord Two Thousand Ten and in the Two Hundred Thirty Third year of the Sovereignty and Independence of the United States of America.

J. Al Cannon, Jr. (L.S.)
J. Al Cannon, Jr., Sheriff of Charleston County

Signed, Sealed and Delivered
in the presence of:
[Signature]
[Signature]

9-2
2138

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



Special Operations Department
100 Broad Street
Charleston, SC 29401-2206

PARTIAL SATISFACTION

CHARLESTON COUNTY BUSINESS
LICENSE USER FEE DEPARTMENT

-VS-

ROOSEVELT L. SIMMONS

Case No. 00-JG-10-1817

Public auction held on November 4, 2009 resulted in the sale of property in the amount of \$600.00. Proceeds shown below:

Bid Amount: \$600.00
Plaintiff Only Pays Cost

Advertising:	\$	550.00
Sheriff's Cost:		3.75
Partial Satisfaction:		46.25
TOTAL:	\$	600.00


Chief Deputy R. Sowers
Charleston County Sheriff's Office

FILED
2009 DEC -9 PM 2:16
JULIE J. ARMSTRONG
CLERK OF COURT

U101 CHARLESTON COUNTY TAX SYSTEM 03-12-2009
 OPER: CPRSDP REAL PROPERTY - GENERAL INQUIRY 15:09:20
 TX YR: 2008 PID: 282-00-00-138 PR YR: RCPT: 2008 - 137906 ACT: I RC: 60
 TD: 51 JUR: 01 HE CD/PCT: E 100 ASSR RC: 21 WILL: MTG CD: STAT: CP
 OWN1 1ST: SIMMONS ROOSEVELT L AND GARY H UPD OP/DT: AUTCPB 01-09-2009
 OWN2 1ST: DEED: 01-01-1969 Y092-132
 OWN1 NXT: PLAT: B-117
 OWN2 NXT: ACREAGE APPRAISAL
 TX ADR: 3416 KITFORD RD HIGH: 15.00 LAND: 6,900
 CARE OF: MRSH: IMPR: 300
 ML ADR: 3416 KITFORD RD SWMP: BLDG: 124,000
 C,S,Z: JOHNS ISLAND SC 29455 8943 TOT: 15.00 TOT: 131,200
 LEGL DESC: GEN/PAR: SFR 10R

BLDG	APPRAISAL	ASSESSMENT	SUBD: SIMMONS	ADJ:
QR 100%	131,200	5,250	LUSE: UNITS	UNIT: 2
			MILLS: 199.5	TAXES: 1,071.30
QA	2,900	120	BILLED: 09-30-2008	CREDITS: 792.11
			PD DT: 12-31-2008	USER FEE: 0.00
			NB DT:	% INT: 0.00
			RLB: 5,640	PEN: 0.00
TOT	134,100	5,370	PRCT:	NET AMT: 279.19
MA	96,000	5,760	NRCT:	MLOD FCTR: 0.00

 ACTION COMPLETE
 PF2= T904 SCRN PF4=TAX CREDIT NEXT SCREEN:

U101 CHARLESTON COUNTY TAX SYSTEM 03-12-2009
 OPER: CPRSDP REAL PROPERTY - GENERAL INQUIRY 15:01:40
 TX YR: 2008 PID: 282-00-00-145 PR YR: RCPT: 2008 - 137900 ACT: I RC:
 TD: 51 JUR: 01 HE CD/PCT: ASSR RC: 01 WILL: MTG CD: STAT: CP
 OWN1 1ST: SIMMONS ROOSEVELT UPD OP/DT:
 OWN2 1ST: DEED: 04-01-2004 F489-753
 OWN1 NXT: PLAT: MC13-5
 OWN2 NXT: ACREAGE APPRAISAL
 TX ADR: KITFORD RD HIGH: 2.00 LAND:
 CARE OF: MRSH: IMPR:
 ML ADR: 3416 KITFORD RD SWMP: BLDG:
 C,S,Z: JOHNS ISLAND SC 29455 8943 TOT: 2.00 TOT :
 LEGL DESC: LT 271/4 GEN/PAR: AGR 811
 BLDG APPRAISAL ASSESSMENT SUBD: PART CALIFORNIA ADJ:
 LUSE: OTHER LAND USE UNIT:
 MILLS: 199.5 TAXES: 3.98
 QA 500 20 BILLED: 09-30-2008 CREDITS: 0.43
 PD DT: 01-14-2009 USER FEE: 0.00
 NB DT: % INT: 0.00
 RLB: 380 PEN: 0.00
 TOT 500 20 PRCT: NET AMT: 3.55
 MA 6,666 400 NRCT: MLOD FCTR: 0.00
 ACTION COMPLETE
 PF2= T904 SCR N PF4=TAX CREDIT NEXT SCREEN:

21-7

I-2
R141

U101 CHARLESTON COUNTY TAX SYSTEM 08-09-2011
 OPER: AUTPAE REAL PROPERTY - GENERAL INQUIRY 12:25:56
 TX YR: 2009 PID: 283-00-00-498 PR YR: RCPT: 2009 - 139546 ACT: I RC: 65
 TD: 51 JUR: 01 HE CD/PCT: ASSR RC: 07 WILL: MTG CD: STAT: CP
 OWN1 1ST: SIMMONS ROOSEVELT UPD OP/DT: AUTBMJ 01-12-2010
 OWN2 1ST: DEED: 09-26-2003 Z468-508
 OWN1 NXT: PLAT: DE-692
 OWN2 NXT: ACREAGE APPRAISAL
 TX ADR: KITFORD RD HIGH: 1.38 LAND: 23,900
 CARE OF: ROOSEVELT SIMMONS MRSH: IMPR:
 ML ADR: 3416 KITFORD RD SWMP: BLDG:
 C,S,Z: JOHNS ISLAND SC 29455 8943 TOT: 1.38 TOT: 23,900
 LEGL DESC: LOT C GEN/PAR: VCR 10R

BLDG	APPRAISAL	ASSESSMENT	SUBD:	ADJ:
			LUSE: VACANT	UNIT:
OT	100%	23,900	1,430	MILLS: 203.5 TAXES: 291.02
				BILLED: 09-30-2009 CREDITS: 16.97
				PD DT: 01-13-2010 USER FEE: 0.00
				NB DT: % INT: 0.00
				RLB: PEN: 0.00
TOT	23,900	1,430	PRCT:	SW FEE: 0.00
			NRCT:	NET AMT: 274.05
				MLOD FCTR: 0.00
				NEXT SCREEN:

ACTION COMPLETE

PF2= T904 SCR N PF4=TAX CREDIT

U101 CHARLESTON COUNTY TAX SYSTEM 08-08-2011
 OPER: AUTPAE REAL PROPERTY - GENERAL INQUIRY 11:46:47
 TX YR: 2004 PID: 311-00-00-024 PR YR: RCPT: 2004 - 005205 ACT: I RC: 60
 TD: 51 JUR: 01 HE CD/PCT: ASSR RC: 08 WILL: MTG CD: STAT: CP
 OWN1 1ST: BALAAM SAM ESTATE UPD OP/DT: AUTOBRR 01-14-2005
 OWN2 1ST: DEED: 04-21-2004 L491-742
 OWN1 NXT: SIMMONS ROOSEVELT PLAT: DD-470
 OWN2 NXT: ACREAGE APPRAISAL
 TX ADR: 1435 RIVER RD HIGH: 15.44 LAND: 18,400
 CARE OF: ROOSEVELT SIMMONS MRSH: 3.00 IMPR: 200
 ML ADR: 3416 KITFORD ROAD SWMP: BLDG: 4,100
 C,S,Z: JOHNS ISLAND SC 29455 8943 TOT: 18.44 TOT: 22,700
 LEGL DESC: W PT LT 11 GEN/PAR: SFR 10R
 BLDG APPRAISAL ASSESSMENT SUBD: MURRAY - GIBBS ADJ:
 LUSE: RESIDENTIAL UNIT: 1
 OT 100% 22,700 1,360 MILLS: 216.8 TAXES: 318.70
 QA 2,800 110 BILLED: 10-15-2004 CREDITS: 30.09
 PD DT: 01-14-2005 USER FEE: 0.00
 NB DT: % INT: 0.00
 RLB: 5,050 PEN: 0.00
 TOT 25,500 1,470 PRCT: SW FEE: 0.00
 MA 86,000 5,160 NRCT: NET AMT: 288.61
 ACTION COMPLETE MLOD FCTR: 0.00
 PF2= T904 SCR N PF4=TAX CREDIT NEXT SCREEN:

U504
OPER: CPRSDP

CHARLESTON COUNTY TAX SYSTEM
MOTOR VEHICLE INQUIRY

03-12-2009
15:08:00

TX YR: 2008 ACCT: 00314400 PR YR: RCPT: 2008 - 471783 ACTION: I RC: 02 A
OWNER 1: SIMMONS ROOSEVELT L STAT: CP
OWNER 2: EXEM CD:
C/O:

TAX ADDR 3416 KITFORD RD UNIT: CREATE DATE: 10-20-2008
C,S,Z: JOHNS ISLAND SC 29455 CORR: BILL DATE: 10-20-2008
PAID DATE: 10-20-2008

MAIL ADDR UNIT: N.B. DATE:
C,S,Z: CORR: HWY LETTER:
SUSPEND:

ORIGIN CODE: 2 YEAR: 1992 MAKE: FORD MODEL: RELEASE:
VIN: 1FTDF15Y6NNA81908 SCTC MODEL: FINAL NOTICE:
WEIGHT: BODY: VEHICLE TYPE: 1 UPDATE DATE: 10-20-2008
UPDATE ID: AUTLML

TAG DATE: 10-2008 EXP DATE: 10 2009 TAG MONTHS: 12
TAG NUMBER: TAX DIST: 51

ORIG ASMT: 50 TX ASMT: 50 RENEWAL: .00 NET TX: 8.76
VALUE TYP: S TAX RELIEF: N INSURANCE REQ:
ACTION COMPLETE

PF2=CO INQ PF4=CREDIT

NEXT SCREEN:

21-1

J-1

R 144



U504
OPER: CPRSDP

CHARLESTON COUNTY TAX SYSTEM
MOTOR VEHICLE INQUIRY

03-12-2009
15:07:20

TX YR: 2008 ACCT: 00196535 PR YR: RCPT: 2008 - 878394 ACTION: I RC:
OWNER 1: SIMMONS ROOSEVELT L STAT: CP
OWNER 2: EXEM CD:
C/O:
TAX ADDR 3416 KITFORD RD UNIT: CREATE DATE: 06-11-2008
C,S,Z: JOHNS ISLAN SC 29455 8943 CORR: BILL DATE: 06-27-2008
MAIL ADDR UNIT: PAID DATE: 08-29-2008
C,S,Z: CORR: N.B. DATE:
ORIGIN CODE: 0 YEAR: 1955 MAKE: DESO MODEL: 503 SUSPEND:
VIN: 50347812 SCTC MODEL: RELEASE:
WEIGHT: 30 BODY: 4S VEHICLE TYPE: 1 FINAL NOTICE:
TAG DATE: 08-2008 EXP DATE: 08 2009 TAG MONTHS: 12 UPDATE DATE: 06-11-2008
TAG NUMBER: 190RPR TAX DIST: 51 UPDATE ID: AUV007
ORIG ASMT: 50 TX ASMT: 50 RENEWAL: .00 P NET TX: 8.76
VALUE TYP: S TAX RELIEF: N INSURANCE REQ: N
ACTION COMPLETE
PF2=CO INQ PF4=CREDIT
NEXT SCREEN:

21-2

J-2
R 145

U504
OPER: CPRSDP

CHARLESTON COUNTY TAX SYSTEM
MOTOR VEHICLE INQUIRY

03-12-2009
15:07:43

TX YR: 2008 ACCT: 00252576 PR YR:
OWNER 1: SIMMONS ROOSEVELT L
OWNER 2:
C/O:

RCPT: 2008 - 921834 ACTION: I RC:
STAT: CP
EXEM CD:

TAX ADDR 3416 KITFORD RD
C,S,Z: JOHNS ISLAN

UNIT:
SC 29455 8943 CORR:

CREATE DATE: 08-12-2008
BILL DATE: 08-29-2008
PAID DATE: 10-20-2008

MAIL ADDR
C,S,Z:

UNIT:
CORR:

N.B. DATE:
HWY LETTER:
SUSPEND:
RELEASE:
FINAL NOTICE:
UPDATE DATE: 08-12-2008
UPDATE ID: AUV007

ORIGIN CODE: 0 YEAR: 1979 MAKE: TOYT MODEL: LD5
VIN: TE51343365 SCTC MODEL:
WEIGHT: 22 BODY: 2S VEHICLE TYPE: 5

TAG DATE: 10-2008 EXP DATE: 10 2009 TAG MONTHS: 12
TAG NUMBER: 897KAB TAX DIST: 51

PREV RCPT:
NEXT RCPT:
.00 P NET TX: 8.76

ORIG ASMT: 50 TX ASMT: 50 RENEWAL:
VALUE TYP: S TAX RELIEF: N INSURANCE REQ: N
ACTION COMPLETE

PF2=CO INQ PF4=CREDIT

NEXT SCREEN:

21-3

J-3
R146

Lonia Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, SC 29405-7464
Telephone: (843) 202-6080
FAX: (843) 202-6086



Department of Revenue Collections
Accommodations Division
Bankruptcy Division
Business License Division
Legal Processing Division
Solid Waste Disposal Fee Division

Thursday, August 28, 2008

Roosevelt L Simmons
3416 Kitford Road
Johns Island, SC 29455-8943

FINAL NOTICE
PAYMENT DEADLINE:
Thursday, September 18, 2008

RE: Case ID# 29579

Dear Sir or Madam:

The following debts in your name are owed to Charleston County and have been referred to the Legal Processing Division for collection. If you have filed for protection under the Federal Bankruptcy Laws, please be aware that the County has not received your Notice of Commencement, from the Federal Bankruptcy Court. You are requested to contact the County's Bankruptcy Division at (843) 202-6092, in order that we may assist you in resolving this matter.

This is the County's final attempt to collect the below listed debts prior to initiating legal action.

<i>Department</i>	<i>Date</i>	<i>Balance Due</i>	<i>Debt Description</i>	<i>Account Information</i>
User Fee		89.00	User Fee	3110000024 2006
User Fee	03/15/2004	89.00	User Fee	3110000024 2003
User Fee		126.00	User Fee	2820000138 2006
User Fee	03/15/2004	126.00	User Fee	2820000138 2003
County	04/10/2006	80.00	Court Filing Fee: Case	
User Fee	03/15/2005	89.00	User Fee	3110000024 2004
Total Balance Due:		\$599.00		

To avoid additional court costs, interest and other collection costs you must pay the total balance due, in full, not later than the payment deadline shown above.

Please direct any questions you may have regarding these debts to the Legal Processing Division at the address or phone number shown above. If you prefer, you may contact me directly as indicated below. Thank you in advance for your prompt attention to this urgent debt notification.

Sincerely,

Denise Bessinger
Legal Assistant I
(843) 202-6093

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO. 2011-CP10-1084

ROOSEVELT SIMMONS)
Plaintiff)

Vs.)

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

PLAINTIFF'S MOTION TO COMPEL DISCOVERY
AND TO IMPOSE SANCTIONS AGAINST
COUNTY DEFENDANTS

FILED
2012 JUL 23 PM 2:10
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PLEASE TAKE NOTICE that on the tenth day following service of the within
NOTICE of MOTION or as soon thereafter as counsel may be heard, plaintiff Roosevelt
Simmons, by his attorney, Edward A. Bertele, Esq. shall move before the Court of Common
Pleas for the Ninth Judicial Circuit at the Charleston County Courthouse, 100 Broad Street,
Charleston, SC 29401 for an Order pursuant to South Carolina Rules of Civil Procedure 37 to
compel discovery, an award of legal fees and for sanctions for failure to comply. Plaintiff relies
upon the pleadings filed heretofore and reasons set forth herein. Counsel hereby affirms that he
has communicated with the defendant's counsel in a good faith attempt to avoid the filing of this
motion

BASIS FOR THIS MOTION

Plaintiff commenced this action to vacate a certain Sheriff's sale and deed of property
known as TMS 282-00-00-498 (TMS 498) which occurred in 2009 and 2010. Plaintiff contends

that the sale and deed are invalid because the judgment on which they were based, a default judgment entered in 2000 by the Magistrate's Court for an \$89.00 user fee and court costs, was invalid because the Magistrate's Court did not have jurisdiction over the Revenue Collections Department (formerly known as the Business License/User Fee Department) suit for nonpayment of a user fee. The complaint also seeks to invalidate not only the 2000 judgment but several others entered in later years on the same basis. Defendants are the current owner of TMS 498 (Mase & Company, LLC) and the county department and agencies and the individual responsible for obtaining and enforcing the judgments (county defendants).

In addition to seeking to invalidate the user fee judgments, the Second Amended Complaint (Fourth Count) alleges among other things that the county defendants including defendant Deputy Harry Long violated plaintiff's right to equal protection of the laws in the manner in which the judgment was enforced and the sale conducted. Discovery provided by the Sheriff's Department establishes that Deputy Long improperly levied upon real property owned by Simmons (TMS 498) when there were numerous vehicles and equipment owned by Simmons which could have been used to satisfy the judgment. Defendant Long subsequently sold this parcel which was assessed by the County Tax Assessor for \$24,000 for \$600. After deducting the costs of sale, this amount was insufficient to satisfy the \$144.00 judgment. Discovery provided by the Sheriff's Department and defendant Mase & Company, LLC disclosed that Deputy Long sold two other parcels of real property to Mase & Co., LLC to satisfy user fee judgments against Herbert Fraser and George Garrett. Simmons requested discovery of the Sheriff's Department files relating to enforcement of user fee judgment against those two property owners to determine whether there is a pattern or practice in the manner in which the Deputy Long levies

upon real property. See Exhibit A. To date, the Sheriff's Department has failed to provide the requested information.

The Fifth Count of the Second Amended Complaint alleges among other things that the county defendants committed a tort by wrongfully retaining Deputy Long in 2005. Pursuant to plaintiff's discovery requests, defendant Sheriff's Department produced Deputy Long's personnel file. According to Sheriff's Department records, Deputy Long was subject to several disciplinary actions since joining the department including two (2) suspensions and three (3) letter of reprimand. The reasons for Long's most recent suspension were redacted from his personnel file contrary to the Sheriff's Department own policy which states: "Suspensions will be **permanently** documented in the employee's personnel file." See Exhibit B. In May 2012 plaintiff requested "all documents pertaining to the redaction indicating when and by whom it was authorized and performed" but the Sheriff's department has failed to comply. See Exhibit C.

One of Deputy Long's reprimands was due to his failure to transport a prisoner, Karlton Hillyard that Long had arrested to a trial on a traffic summons that Long has issued. As a result, Hillyard was held in contempt and three bench warrants were issued for his arrest. Long's conduct was described "irresponsible" and "unprofessional". Plaintiff requested discovery of Karlton Hillyard's arrest record to determine the circumstances involving Deputy Long's arrest of Hillyard and whether it might be relevant to Deputy Long's conduct toward Simmons. Counsel for the Sheriff's Department responded that this information was not relevant and is public information, See Exhibit D. Since neither of these reasons is a proper basis for objection or failure to comply, plaintiff has renewed his request for production. See Exhibit E.

Finally, plaintiff requested by Notice to Produce dated November 8, 2011 that the Sheriff's Department provide a copy of its Policies and Procedures. See Exhibit F. Plaintiff renewed this request several times and made a final request on May 27, 2012. See Exhibit C.

The county defendants had an obligation to provide the requested information. The Sheriff's Department files relating to enforcement of user fee judgments against Herbert Fraser and George Garrett can provide information relating to the custom and practices of Deputy Long in the enforcement of user fee judgments and are relevant to Simmons claim of a violation of equal protection. Documents pertaining to the redaction of Deputy Long's suspension relate to Simmons claim that the Sheriff's Department wrongfully retained Long after a series of disciplinary infractions and may evidence a cover up since the redaction violates the Department's policy that all suspension must permanently remain part of the personnel file. Karlton Hillyard's arrest record may contain evidence of the reasons for Deputy Long's irresponsible and unprofessional behavior that support Simmons claim that he was wrongfully retained by the Department. The Sheriff's Department Policy and Procedures Manual is relevant to the personnel practices by the Department in retaining Deputy Long. Therefore, all of the requested information is demonstrably relevant to the issues raised by Simmons.

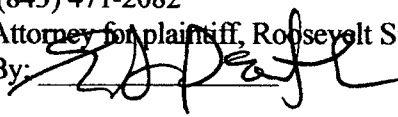
Plaintiff requests that defendants be ordered to provide the discovery requested within 10 days. Plaintiff also requests that defendants' failure to do so should result in sanctions including dismissal of their answer. Finally, plaintiff request an award of legal fees since the defendants have not timely filed any valid objection to the information requested and have willfully failed to comply with reasonable discovery requests.

CONCLUSION

Plaintiff has established that he is entitled to relief due to the county defendants' failure to provide discovery and respectfully requests that the court grant his motion including an order to provide discovery within 10 days, an award of legal fees for failure to comply and order dismissing the county defendants Answer if they fail to comply within the time required.

Respectfully submitted,

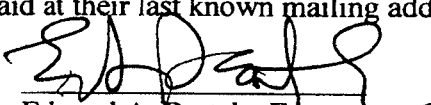
Edward A. Bertele, Esq.
1812 Pierce Street
Charleston, SC 29492
(843) 471-2082

Attorney for plaintiff, Roosevelt Simmons
By: 

Dated: July 20, 2012
Charleston, SC

CERTIFICATION OF SERVICE

I hereby certify that a true copy of the within motion to amend the Second Amended Complaint and Appendix was served upon the defendants' attorneys, Christopher Dorsel, Esq. and Wendy Keefer, Esq. by regular mail postage prepaid at their last known mailing address.


Edward A. Bertele, Esq.

July 21, 2012

SIMMONS V MASE & COMPANY, LLC et al
2011-CP10-1084

EXHIBITS TO MOTION TO COMPEL

- A. Notice to Produce Documents dated May 30, 2012
- B. Charleston County Sheriff's Office Policy and Procedure Manual, Page 3-08
- C. Letter to Christopher Dorsel, Esq. dated May 27, 2012
- D. Letter by Christopher Dorsel, Esq. dated March 29, 2012
- E. Letter to Christopher Dorsel, Esq. dated April 5, 2012
- F. Notice of Deposition and to Produce Documents dated November 8, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO. 2011CP10-1084

ROOSEVELT SIMMONS)
Plaintiff)
Vs.)
MASE and COMPANY, LLC,)
J. AL CANNON, JR.,)
CHARLESTON COUNTY)
SHERIFF'S DEPARTMENT,)
CHARLESTON COUNTY,)
CHARLESTON COUNTY)
REVENUE COLLECTIONS)
DEPARTMENT and)
HARRY LONG)
Defendants)

NOTICE TO PRODUCE DOCUMENTS

Please take notice that pursuant to R 34, SCRCP defendants shall produce the following whether in written, electronic or any other tangible form within the time provided by the South Carolina Rules of Civil Procedure:

1. All documents relating to the levy, execution and sale of the real property designated as TMS 762-00-00-138 by the Sheriff of Charleston County for judgments for user fees against George Garrett as shown on documents previously produced by Charleston County, Bates No. 148, 152;
2. All documents relating to the levy, execution and sale of the real property designated as TMS 460-07-04-153 by the Sheriff of Charleston County for judgments for user fees against Herbert Fraser as shown on documents previously produced by Charleston County, Bates No. 153;
3. All agreements for reimbursement of the Business License/User Fee Department by Charleston County for the period 1987 to present;

A.
R 154

4. Statements of payments made to the Business License/User Fee Department by Charleston County for the period 1987 to present;
5. All ordinances adopted by Charleston County authorizing reimbursement of the Business License/User Fee Department for the period 1987;

Respectfully.

Edward A. Bertele
1812 Pierce Street
Charleston, SC 29492
Attorney for plaintiff

May 30, 2012

2155

3. The written reprimand will identify the violations charged against the employee or the failures in work performance of the employee and will specify corrective action. It will warn the employee that repeated offenses will lead to sterner measures, including possible discharge. The written reprimand will be documented in the employee's personnel file. Written reprimands may be removed from the employee's personnel file after one year upon written application and approval of the Sheriff or his designee.

F. Suspension:

1. A suspension is a serious disciplinary action in which the employee must forfeit pay for misconduct considered to be serious or part of a continuing pattern of behavior involving repeated misconduct.
2. When necessary, supervisors may issue the following suspensions:
 - a. Sergeants: one to three days
 - b. Lieutenants: one to five days
 - c. Captains: one to 10 days
 - d. Majors: one to 20 days
 - e. Chief Deputies: one to 30 days.
 - f. Sheriff/Assistant Sheriff: one day through termination.
3. Any personnel placed on suspension must turn in agency identification, badge, weapon(s), keys, key cards, and vehicle.
4. Suspensions will be permanently documented in the employee's personnel file.
5. Employees under suspension have no authority to represent the Sheriff's Office. (Ref: CALEA 26.1.5)

B
R 156

EDWARD A. BERTELE, ESQ.
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 27, 2012

VIA TELEFAX

Christopher T. Dorsel, Esq.
Senn Law Firm, LLC
PO Box 12279
Charleston, SC 29422

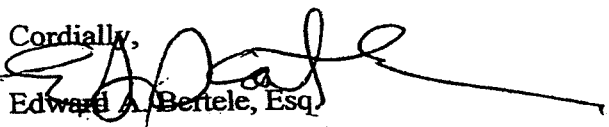
Re: Simmons v. Mase and Co, LLC. et al
2011-CP10-1084

Dear Chris:

As we discussed earlier, the documents your office previously provided in response to my November 8, 2011 Notice to Produce, specifically item No. 1 requesting the "Charleston County Sheriff's Office Policies and Procedures were not fully responsive. In particular, your office provided only Procedures 3-02 and 3-08 of the Manual. Accordingly please comply with the original request.

Also, I previously requested the unredacted pages of Master Deputy Long's personnel file, Bates No. 551-552. Your office advised that these came to you in redacted form. Those pages documented that Master Deputy Long had been suspended. Procedure 3-08, Section III (F) (4) indicates that all suspensions that be permanently documented in the employee's file. Accordingly, I request all documents pertaining to the redaction indicating when and by whom it was authorized and performed in violation of department policy.

Cordially,


Edward A. Bertele, Esq.

CC: Wendy Keefer, Esq.

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Senn Legal, LLC.
Attorneys at Law

3 Wesley Drive
Post Office Box 12279
Charleston, South Carolina 29422-1279
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Sandra J. Senn
Robin L. Jackson
Christopher T. Dorsel
Caitlin E. Pierson

Of Counsel
Hon. Jenny A. Horne
(House District 94)
(Licensed in SC & NC)

March 29, 2012

Edward A. Bertele, Esquire
1812 Pierce Street
Charleston, SC 29492

RE: Roosevelt Simmons v. Masc and Company, LLC. Et al
Civil Action.: 2011-CP-10-1084

Dear Ed,

Please allow this letter to serve as both a response to your March 2, 2012 letter as well as a supplemental discovery response.

- A) Counsel for Defendant is unaware of any specific ordinance addressing this matter, but attaches to this letter an Ordinance regarding the User Fee bates labeled 0755-1104 through 0755-1118.
- B) The documents listed as Bates No. 551 and 552 were redacted in 2004 (as indicated on the actual documents. These documents were not redacted by my office and due to the time elapsed from those documents and this lawsuit, the redacted material cannot be provided. You further request copies of a third party, Karlton Hillyard, arrest record. I object to this request as I fail to see how a third party's arrest record bears any relevance to the claims made by your client in this lawsuit. Further, an arrest record is a matter of public record.
- C) Please see the enclosed documents Bates Labeled 0755-1119 through 0755-1143. We are continuing to work on obtaining the Storm Water documents.
- D) In my email to you of February 10, 2012, I have responded to items No.4 & 5 advising that no such documents exist.

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Edward A. Bertele, Esquire
March 29, 2012
Page 2

With kind regards, I am,

Sincerely,

A handwritten signature in cursive script, appearing to read "Chris Dorsel".

Christopher T. Dorsel

CTD/lem
Enclosure

cc: Wendy J. Keefer, Esquire (w/out enclosures)

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**EDWARD A. BERTELE, ESQ.
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April 5, 2012

VIA TELEFAX

Christopher T. Dorsel, Esq.
Senn, McDonald & Leinbach, LLC
PO Box 12279
Charleston, SC 29422

Re: Simmons v. Mase and Co, LLC. et al
2011-CP-1084

Dear Chris:

With your March 29th letter, you provided certain documents in response to my earlier discovery requests. In your letter you identify Bates Nos. 0755-1119 to 1143 as responsive to my September 13, 2011 Notice to Produce, item No. 2 which requested: "Annual statement of the solid waste disposal fees received and disbursed by the "Solid Waste User Fee Revenue Fund" as provided under Ordinance 10-56 from 1988 to present". I have reviewed these documents and do not believe that they are fully responsive because they do include any information about the receipts and disbursements from the Solid Waste User Fee Revenue Fund as requested. Accordingly, I request that you provide this information forthwith. This request has been outstanding since September and is relevant to plaintiff's claims that the user fee is a tax. Please advise when you will comply.

I also request that you provide a SCRPC 30(b) (6) representative having knowledge of how the information contained on the summary reports, Bates Nos. 0755-1119 to 1143, is collected and compiled and what each category shown on these reports represents for deposition which should be scheduled for the week of April 17th or the following week at the convenience of the witness and your office.

Finally, I renew my request for the Sheriff's Department arrest record of Karlton Hillyard. Your objection on relevancy grounds does not satisfy the South Carolina Rules for refusing to comply. Thank you for your previous courtesy and cooperation.

Cordially,

Edward A. Bertele, Esq.

CC: Wendy Keefer, Esq.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

ROOSEVELT SIMMONS)
Plaintiff)

Civil Action No: 2:11-cv-00709-RMG-BM

Vs.)

MASE and COMPANY, LLC,)
J. AL CANNON, JR.,)
CHARLESTON COUNTY)
SHERIFF'S DEPARTMENT,)
CHARLESTON COUNTY,)
CHARLESTON COUNTY)
REVENUE COLLECTION)
DEPARTMENT and)
HARRY LONG)
Defendants)

Notice of Deposition
and Document Production

Please take notice that the plaintiff requests that pursuant to FRCP 30 the defendant Sheriff of Charleston County produce the following persons whose testimony shall be taken under oath before a person authorized by law commencing at 10:00 am on the date and place set forth herein and to continue thereafter day to day until complete.

1. Sgt. Angie Palmer
2. Captain G. Stanley
3. E. Wilson
4. M. Garrison
5. Deputy Tice
6. Rater on Deputy Long Annual Employee Evaluation for Oct.1, 2004 - April 22, 2005
7. Reviewer on Deputy Long Annual Employee Evaluation for Oct.1,2004 - April 22, 2005

Date: November 18, 2011

Place: Senn, McDonald & Leinbach, LLC, 3 Wesley Drive, Charleston, SC

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R 161

Please take further notice that pursuant to FRCP 34, defendants shall produce the following whether in written, electronic or any other tangible form at the time and place of the taking of the testimony referenced herein:

1. Charleston County Sheriff's Office Policies and Procedures
2. Deputy Harry Long Annual Employee Evaluation August 31, 2009 - August 31, 2010
3. Deputy Harry Long Annual Employee Evaluation August 31, 2010 - August 31, 2011

Respectfully,



Edward A. Bertele
1812 Pierce Street
Charleston, SC 29492
Attorney for plaintiff

November 8, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ROOSEVELT SIMMONS,

Plaintiff,

v.

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

Defendants,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: ~~2012~~-CP-10-1084

2011

**MEMORANDUM IN SUPPORT OF
DEFENDANTS J. AL CANNON, JR.,
CHARLESTON COUNTY SHERIFF'S
OFFICE, CHARLESTON COUNTY,
CHARLESTON COUNTY REVENUE
COLLECTIONS DEPARTMENT, and
HARRY LONG'S MOTION FOR
SUMMARY JUDGMENT**

JUL 27 AM 10:32
J. ARSTRONG
CLERK OF COURT

FILED

DS

Defendants, J. AL CANNON, JR., CHARLESTON COUNTY SHERIFF'S OFFICE, CHARLESTON COUNTY, CHARLESTON COUNTY REVENUE COLLECTIONS DEPARTMENT, and HARRY LONG ("Defendants") file this Memorandum in Support of their Motion for Summary Judgment.

OVERVIEW

Plaintiff owned several pieces of property on Johns Island. For several years, Plaintiff refused to pay the County mandated Solid Waste Recycling and Disposal User Fee ("User Fee") based on the mistaken belief that, if he did not get trash pick-up, he did not have to pay the User Fee. Deposition Roosevelt Simmons, 55:11 - 56:13 (October 10, 2011). Plaintiff also didn't pay the Storm Water Fee "[b]ecause I don't feel that I have to pay for an act of God, stop it from raining." Depo. Simmons, 59:9-19. Plaintiff's position is "a user fee, business license fee, storm water bill, none of that pertained to me. So if it don't pertain to me, why should I pay for it." Depo. Simmons,

2163

56:9-11.

After Plaintiff refused to pay the User Fees, Charleston County instituted collections actions against him in the Charleston County Magistrate Court and obtained multiple judgements against Plaintiff. The Sheriff's Office was directed to collect on the outstanding judgments and eventually sold a piece of real property belonging to Plaintiff at a Sheriff's Sale. Plaintiff filed a Second Amended Complaint against the above named Defendants alleging the following causes of action: (1) Invalidate Sheriff's Deed of TMS 490; (2) Invalidation of User Fees and judgments; (3) Invalidation of judgments for non owned real property; (4) Civil Rights violation, and (5) Tort Claim. Defendants filed a Motion for Summary Judgment as to all causes of action.

STATEMENT OF FACTS

Plaintiff owned several pieces of property on Johns Island, including a parcel know as TMS 282-00-00-138 (TMS 138), which had a residential dwelling on it and was therefore subject to a User Fee. For years, Plaintiff refused to pay the User Fee because he did not believe it applied to him. Depo. Simmons, 55:11 - 56:13.

In accordance with S.C. Code § 44-55-1210, Charleston County established a User Fee through a county ordinance in 1987. Deposition George Boniface, 24:10-13. The primary purpose of the User Fee is for the disposal of solid waste. Depo. Boniface, 20:25 - 21:23; See Ordinance 10-53. It is not a tax, but rather a fee that all residents of Charleston County are subject. Deposition Peggy Ellington, 39:2-6; Depo. Boniface, 33:10 - 34:2. Although the User Fee is not a tax, it was added to the property tax bills issued by the County in order to save tax payer money on mailing. Depo. Mosley, 14:5-17. If a resident of Charleston County requests that the User Fee be taken off his property tax bill, the Office of the Auditor will automatically do this as a ministerial function. Depo. Ellington, 49:5-25 and 70:9-11. However, simply because the User Fee is taken off does not

mean that the User Fee is waived for that particular resident. Depo. Ellington, 51:10-18; Depo. Boniface, 51:13-18. Instead, a new property tax bill is generated and the User Fee department is notified so that a separate bill for the User Fee can be sent to the resident. Depo. Ellington, 49:5-25; Depo. Boniface, 50:9-17.

If a resident does not pay the User Fee, the Business License/User Fee Department ("Revenue Department") may choose to institute proceedings to collect the User Fee from the resident. Additionally, if a county resident asserts that his or her property should not be subject to a User Fee, the Revenue Department sends inspectors to the property to determine if a User Fee should apply to the property. Depo. Boniface, 57:10 - 58:19. This was done for Plaintiff's property in 1999, and the Revenue Department inspector determined that Plaintiff's property was subject to a User Fee. Depo. Boniface, 75:16-19

Plaintiff owned property on Johns Island. At some point in the 1990's, Plaintiff discovered that he could request that the User Fee be removed from his tax bill. Depo. Simmons, 71:13-21. In Plaintiff's mind, removing the User Fee from the bill meant that he didn't have to pay it. Id. Plaintiff believed that the User Fee was for trash pick-up and since a garbage truck didn't come to his house, he did not believe that he was required to pay a User Fee. Depo. Simmons, 55:11 - 56:13. As a result of Plaintiff's misunderstanding of the law, several years of User Fees remained unpaid, and after some time, the User Fee Department instituted Court proceedings to obtain judgments against Plaintiff for the unpaid fees. Depo. Boniface, 102:2 - 103:8. Several judgments against Plaintiff were sent to the Charleston County Sheriff's Office for enforcement. Depo. Boniface, 103:16 - 104:19.

In our current case, one of the judgments was from 2000 and was sent to the Sheriff's Office for levy and execution. Deposition Harry Long, 22:12 - 23:23 (September 22, 2011); See Exhibit

A. At that time, Master Deputy Harry Long was in charge of the non-commercial judgment division within the Sheriff's Office. Depo. Long, 18:14-19. Long first conducted research to determine what property Plaintiff owned that might satisfy the judgment. Depo. Long, 33:12-15.

In an effort to collect the judgment, the Sheriff's Office first attempted to contact Plaintiff by letter dated March 3, 2009. See Exhibit B. After no response was given, Long sent a second letter on April 1, 2009. Depo. Long, 37:13-17; See Exhibit C. Long also spoke with Plaintiff on the telephone on April 3, 2009, but was unable to obtain cooperation from Plaintiff. Depo. Long, 38:3-8. The Sheriff's Office sent Plaintiff additional letters advising of the judgment against him on May 11, 2009, and June 18, 2009. Depo. Long, 46:25 - 47:15 and 52:3-7; See Exhibits D and E. No response from Plaintiff was received, and in fact, Plaintiff testified that he treated the notices from the Sheriff's Office as junk mail. Depo. Simmons, 107:8 - 109:11.

Long conferred with his superior officer in July 2009 about this matter and about proceeding with an execution against property, which was proper procedure within the Sheriff's Office. Depo. Long, 53:22 - 54:8. His superior officer, Lt. McCray, also called Plaintiff to explain the situation, but Plaintiff hung up on McCray. 65:2-22. Long then made a discretionary decision to proceed against TMS-498. Depo. Long, 57:13-22. Long personally served notices on Plaintiff at his residence that his property was going to be sold. Depo. Long, 74:12-25; See Exhibit F.

After the sale was properly noticed, Plaintiff property was auctioned off at a Sheriff's Sale on November 4, 2009. Depo. Long, 94:1-24. Two bidders were present, and the property was sold to the highest bidder, co-defendant Mase and Company. Depo. Long 94:25-95:11.

ARGUMENT

- I. **The Charleston County Solid Waste and Recycling User Fee is a valid fee, which Plaintiff is required to pay.**

Plaintiff alleges that the User Fee should be invalidated in general and as it applies to him. Our South Carolina Supreme Court has addressed the propriety of counties assessing fees in addition to taxes and has held that user fees are proper.

S.C.Code Ann. § 4-9-30 (1991), which sets out the general powers which counties may exercise under the Home Rule Act, grants counties the power:

(5)(a) to assess property and levy ad valorem property taxes and *uniform service charges* ... and make appropriations for functions and operations of the county, including ... *roads, ...; water, ...; sewage....* (emphasis added).

Without ambiguity and by its express terms, this section provides counties with additional and supplemental methods for funding improvements. This is consistent with the intention of the drafters of the Home Rule Act to provide county government with the option of imposing service charges or user fees upon those who use county services in order to reduce the tax burden which otherwise would have to be borne by taxpayers generally.

Brown v. County of Horry, 308 S.C. 180, 183, 417 S.E.2d 565, 567 (1992). Based on South Carolina Supreme Court precedent, the assessment of user fees is a proper function of County governance.

The Supreme Court has also addressed solid waste user fees specifically and has explained that they are not a tax and are valid if applied in a uniform manner.

Counties have the power to assess service charges for solid waste disposal. S.C.Code Ann. § 4-9-30(5)(a). Unlike a tax, a service charge or user fee is imposed on those members of the community who receive a special benefit from the proceeds of the charge. To be valid, a service charge must be uniform. *Brown v. County of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992).

Skyscraper Corp. v. County of Newberry, 323 S.C. 412, 415-416, 475 S.E.2d 764, 765-766 (1996).

In the current case, Plaintiff has made no allegation that the User Fee was not uniform. Therefore, based on the precedent in Brown and Skyscraper Corp., the User Fee in this case was and is valid.

Plaintiff's allegations that he should not have to pay the user fee are based on Plaintiff's misunderstanding of the purpose of a user fee. Plaintiff believes that the user fee is solely for trash pick-up. Depo. Simmons, 55:11 - 56:13. Because he doesn't get his trash picked up by the County, Plaintiff doesn't believe the user fee applies to him. Id.

The South Carolina legislature gave the counties the power to regulate solid waste collection and disposal. S.C. Code § 44-55-1210. Specifically, "[t]he governing body of any county may by ordinance or resolution provide that the county shall engage in the collection and disposal of solid waste." Id. For Charleston County, the User Fee was established by Charleston County Ordinance, Article IV (the "Ordinance"). One of the purposes outlined in the Ordinance is "to make available to all inhabitants and persons within the county the solid waste disposal and resource recovery system for the disposal of all solid waste generated within or brought into the county." Article IV, Section 10-53. The Ordinance explains that "inefficient and improper methods of managing solid waste create hazards to public health, cause pollution of air and water resources, constitute a waste of natural resources, have an adverse effect on land values, and create public nuisances." Article IV, Section 10-54.

In order to accomplish these goals, the Ordinance provides for a user fee, and states that "[t]he treasurer shall bill and collect the annual disposal user fee established by the county council in the same manner as taxes are collected and the revenues collected shall be held by the treasurer in a special fund designated 'solid waste user fee revenue fund' and shall be paid out of such fund by the treasurer at the direction of the county administrator."

Article IV, Section 10-56. The ordinance includes the following definitions in Section 10-52:

Solid waste means all types of solid waste such as, but not limited to, residential solid waste, garbage, trash, rubbish, refuse and miscellaneous household wastes including solid waste materials

resulting from industrial, commercial operations, governmental operations, and from community activities, but excluding special wastes described in subsection 10-68(a).

Solid waste disposal and resource recovery system or system means the entire system utilized by the county to dispose of solid waste which includes sanitary landfills, the facility owned and operated by FWCR, transfer stations, and electrical generation and transmission equipment.

The purpose of the ordinance is to provide the County with a means to regulate solid waste. This includes both the collection and disposal of solid waste and includes the "entire system utilized by the county to dispose of solid waste." Article IV, Section 10-52. The user fee is not for solid waste collection alone, but rather is for the entire system of solid waste disposal. Plaintiff's belief that the user fee is only meant for solid waste collection is clearly incorrect based on the Ordinance. Based on the Ordinance combined with South Carolina Supreme Court precedent and S.C. Code § 44-55-1210, the User Fee was valid, and Plaintiff was required to pay the User Fee.

II. Removal of the User Fee from Plaintiff's tax bill was a ministerial function and did not exclude Plaintiff from the obligation to pay the User Fee.

The Charleston County Auditor's office is responsible for sending out property tax bills, which also include a line item for the User Fee. Depo. Moseley, 12:23 - 14:17. This inclusion on the tax bill is outlined in the Ordinance. Article IV, Section 10-59 ("Such notice may be included with the real property tax notice mailed to any owner against whom such user fee is imposed.") As the User Fee is not a tax (See Skyscraper Corp., 323 S.C. at 415-416), a county resident can come to the auditor's office and request that the User Fee be taken off the tax bill and that a new tax bill be generated. Depo. Ellington, 49:5-25, 70:9-11. This is a purely ministerial function and does not waive or abolish the User Fee. Depo. Ellington, 49:5-25, 70:9-11, and 51:10-18; Depo. Boniface, 51:13-18.

Plaintiff alleges that every year he has gone to the auditor's office and requested that the User

Fee be removed from his tax bill. Depo. Simmons, 71:13-21. In Plaintiff's mind, once the auditor performed the administrative task of generating a new tax bill without the User Fee, he was no longer responsible for paying the User Fee. Id. The Ordinance specifically states that "[n]o ministerial act or omission or commission on the part of the auditor, the treasurer or the county council shall operate to defeat the payment of the annual disposal user fee imposed under the provisions of this article." Article IV, Section 10-58. Further, Plaintiff's misunderstanding is in direct contrast with the Application for Review he has completed on numerous occasions. See Exhibit G. In that Application, there is a certification at the bottom that states "I understand that the User Fee Department will review my claim and notify me of their findings. I acknowledge that my failure to pay the user fee may result in a \$100 fine or (3) thirty days in jail."

Plaintiff is also aware that the User Fee department conducts reviews of applications to waive the User Fees. In 1999, an employee from the User Fee department went to Plaintiff's property to investigate whether the residence was liveable and therefore subject to a User Fee. Depo. Boniface, 75:16-19. Upon investigation, the residence was found liveable and therefore, the User Fee was not waived for Plaintiff's property. Id.

Based on all of the above, Plaintiff's claims against the County Auditor's department are without merit. Further, the County Auditor is insulated from liability through certain exceptions to the waiver of immunity provided in the Tort Claims Act. S.C. Code Section 15-78-60 explains that a governmental entity is immune from suit if the allegations arise from:

(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;

(11) assessment or collection of taxes or special assessments or enforcement of tax laws; . . .

The User Fee is established by Ordinance and the Auditor has been tasked with the duty of sending out tax bills with the User Fee on it. Based on S.C. Code § 15-78-60(4), the Auditor cannot be held liable for complying with the ordinance or any other law that requires it to request payment of the User Fee. Further, as the User Fee is a special assessment, S.C. Code § 15-78-60(11) provides immunity to the Auditor for the assessment or collection of the User Fee.

III. The Charleston County Revenue Department obtained valid judgments against Plaintiff for non-payment of the User Fee.

The Charleston County Magistrate Court had jurisdiction to enter judgments against Plaintiff for non-payment of User Fees. This is outlined in our South Carolina Code of Laws:

SECTION 4-9-30. Designation of powers under each alternative form of government except board of commissioners form.

Under each of the alternate forms of government listed in Section 4-9-20, except the board of commissioners form provided for in Article 11, each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof: ...

(14) to enact ordinances for the implementation and enforcement of the powers granted in this section and provide penalties for violations thereof not to exceed the penalty jurisdiction of magistrates' courts. Alleged violations of such ordinances shall be heard and disposed of in courts created by the general law including the magistrates' courts of the county. County officials are further empowered to seek and obtain compliance with ordinances and regulations issued pursuant thereto through injunctive relief in courts of competent jurisdiction. No ordinance including penalty provisions shall be enacted with regard to matters provided for by the general law, except as specifically authorized by such general law;

One of the enumerated powers granted to county government is the assessment of "uniform service charges" for "sanitation, including solid waste collection and disposal." S.C. Code § 4-9-30(5)(a).

This is precisely what is covered in the Ordinance that mandates a User Fee. Therefore, based on

S.C. Code § 4-9-30, non-payment of a User Fee (i.e. violation of the Ordinance) may be heard in "magistrates' courts of the county."

IV. Actions taken by the Charleston County Revenue Department are insulated from liability pursuant to the South Carolina Tort Claims Act.

Any claims by Plaintiff against the Revenue Department for instituting litigation and seeking a judgment by Plaintiff are invalid. S.C. Code Section 15-78-60 provides several exceptions to the waiver of immunity that would apply to the Revenue Department in this matter:

(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;

(5) [t]he governmental entity is not liable for a loss . . . resulting from the exercise of discretionary judgment by a governmental employee or the failure to perform any act or service which is in the discretion or judgment of the employee.

(11) assessment or collection of taxes or special assessments or enforcement of tax laws;

(23) institution or prosecution of any judicial or administrative proceeding;

The Revenue Department is charged with collecting User Fees. In carrying out this duty, the Revenue Department institutes collection actions against county residents who have delinquent User Fees. In our current case, a Summons and Complaint were filed seeking collection of unpaid User Fees from Plaintiff. In doing so, the Revenue Department was complying with applicable laws regarding collecting User Fees and using its discretion in seeking collection of a special assessment through the institution of a judicial proceeding. As such, the Revenue Department is immune from any claims pursuant to S. C. Code § 15-78-60 (4), (5), (11), and (23).

V. Plaintiff's claims regarding non-owned real property are not valid and therefore Plaintiff cannot succeed on invalidating the User Fee or judgments on those properties.

Plaintiff claims that User Fees were improper against two properties because the County "did not remove any trash." Second Am. Complaint, ¶ 24. Therefore, Plaintiff does not believe that he was required to pay the User Fee on those properties. Plaintiff also believes that the Magistrate Court did not have jurisdiction to enter a judgment against him on those properties. For the reasons, set forth in the preceding sections, Plaintiff claims regarding these properties must fail. Further, with regard to property designated TMS 311-00-00-024, County records for multiple years show that Plaintiff was the owner of this property. See Exhibit H.

VI. The Sheriff's Office followed proper procedure to enforce a judgment and cannot be held liable pursuant to the South Carolina Tort Claims Act.

Pursuant to the Ordinance, the Sheriff's Department is authorized to collect delinquent User Fees. Article IV, Section 10-60. In our current case, Master Deputy Harry Long received several judgments against Plaintiff from the Revenue Department and was instructed to seek collection on those judgments. In doing so, Long spent several months attempting to contact Plaintiff directly to collect on the delinquent user fee, and due to no response nor cooperation from Plaintiff, was finally left with the only option of selling Plaintiff's property at a Sheriff's Sale.

Pursuant to the South Carolina Tort Claims Act, the Sheriff's Department is not liable for Plaintiff's claims in this case. The following exceptions to the waiver of immunity apply:

- (1) legislative, judicial, or quasi-judicial action or inaction;
- (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
- (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;
- (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule,

regulation, or written policies;

(5) [t]he governmental entity is not liable for a loss . . . resulting from the exercise of discretionary judgment by a governmental employee or the failure to perform any act or service which is in the discretion or judgment of the employee.

(11) assessment or collection of taxes or special assessments or enforcement of tax laws;

(23) institution or prosecution of any judicial or administrative proceeding;

A Sheriff's Sale is considered a judicial sale and therefore, is quasi-judicial in nature. Pursuant to S.C. Code § 15-78-60 (1) and (2), the Sheriff's Office is not liable for any actions taken in connection with the sale. Further, the Sheriff's Office was given a judgment from a Charleston County Magistrate Court and was asked to enforce that judgement. Therefore, the Sheriff's Office is not liable under S.C. Code § 15-78-60 (3).

The Sheriff's Office is also not liable to Plaintiff pursuant to S.C. Code § 15-78-60 (4). S.C. Code § 44-55-1210 gives counties the power to enact ordinances to manage solid waste collection and disposal. The Ordinance for Charleston County authorizes the Sheriff's Office to collect delinquent user fees. Therefore, the Sheriff's Office was complying with statute and ordinance in attempting to collect the delinquent user fee from Plaintiff and therefore is not liable pursuant to S.C. Code § 15-78-60 (4).

Further, S.C. Code § 15-78-60 (5) states, "[t]he governmental entity is not liable for a loss . . . resulting from the exercise of discretionary judgment by a governmental employee or the failure to perform any act or service which is in the discretion or judgment of the employee." § 15-78-60 (5). "A governmental entity is not liable for losses resulting from an exercise of discretion by its

employees.” Faile v. South Carolina Dept. of Juvenile Justice, 350 S.C. 315, 330, 566 S.E.2d 536, 544 (2002). “Discretionary immunity is contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards.” Sabb v. South Carolina State University, 350 S.C. 416, 428, 567 S.E.2d 231, 237 (2002). In the current case, Master Deputy Long conducted research lengthy research in order to determine how to collect the judgment against Plaintiff. Depo. Long, 33:12-15. As a result and in his discretion, Deputy Long determined that the only property with clear title in Plaintiff’s name was a piece of real property with tax map number TMS-485. Depo. Long, 57:13-22. The decision to sell this property to collect a judgment against Plaintiff was a discretionary decision which is excluded from liability pursuant to S.C. Code § 15-78-60 (5).

VII. Deputy Long is not a proper party pursuant to the South Carolina Tort Claims Act.

Deputy Long was and is a governmental employee, employed by the Charleston County Sheriff’s Office, and as such should enjoy immunity from suit pursuant to SC Code Ann.15-78-70. This section provides that an employee acting within the scope of his employment is immune from suit and the Plaintiff must name the governmental entity as the proper party Defendant. Deputy Long’s actions in this case were all taken in the course and scope of his employment as a Charleston County Sheriff’s deputy, and there is no valid evidence to the contrary. Therefore, Deputy Long is not a proper party to this lawsuit and should be dismissed.

VIII. Plaintiff has not stated any valid constitutional claim against any defendants.

Plaintiff claims that his equal protection rights pursuant to the United States Constitution were violated. He alleges that the practices and procedures used by the County and the Revenue Department in collecting user fees and obtaining judgments violated his rights. He also alleges that

Deputy Long and the Sheriff's Office violated his rights by "arbitrarily and discriminatorily" executing judgments against his property.

The South Carolina Supreme Court has addressed whether a user fee violates equal protection rights in Skyscraper Corp. V. County of Newberry. In that case, the Supreme Court held:

Equal protection requires that "all persons be treated alike under like circumstances and conditions, both in privileges conferred and liabilities imposed." If a classification is reasonably related to a proper legislative purpose and the members of each class are treated equally, any challenge under the equal protection clause fails. Equal protection is satisfied if: (1) the classification bears a reasonable relation to the legislative purpose; (2) the members of the class are treated alike under similar circumstances; and (3) the classification rests on some reasonable basis.

Skyscraper Corp., 323 S.C. at 417 (internal citations omitted). The Court ultimately held that the user fee in question did not violate equal protection.

In our current case, the User Fee is established to regulate collection and disposal of solid waste and therefore bears a reasonable relationship to the legislative purpose. The User Fee is assessed against landowners for the reasonable basis of managing solid waste. Therefore, any claims by Plaintiff that the User Fee as it applied to him violated his equal protection rights is invalid. Further, any claims by Plaintiff that he was singled out or treated differently from other County residents who are delinquent on User Fees are equally without support and therefore invalid.

IX. Plaintiff has presented no evidence that Defendants Sheriff Office and Deputy Long were negligent.

Plaintiff alleges that the Sheriff's Office was negligent in retaining Deputy Long and that Deputy Long acted with malice and intent to injure Plaintiff when he "caused a levy to be placed against real property owned by Simmons which resulted in a sale and loss of Simmons interest in the property." Although Plaintiff has taken multiple depositions in this matter of members of the

Sheriff's Office, Plaintiff has not found any evidence that the Sheriff's Office was negligent in retaining Deputy Long. Therefore, any claims against the Sheriff's Office for negligent retention should be dismissed.

Plaintiff's claims that Deputy Long acted intentionally and with malice are equally without support. The record shows that Deputy Long made several attempts to contact Plaintiff and that he along with other members of the Sheriff's Office sent letters to Plaintiff. See Exhibits B -E. By Plaintiff's own testimony, he treated these letters as junk mail. Depo. Simmons, 107:8 - 109:11. Further, Deputy Long personally served Plaintiff with the notice regarding the Sheriff Sale. See Exhibits F. Plaintiff again ignored this notice, did not attempt to pay the judgment against him, and did not show-up for the Sheriff's sale.

Additionally, Defendants Sheriff's Office and Deputy Long were not negligent pursuant to the Public Duty Rule. "Under South Carolina's public duty doctrine, public officials are not liable to individuals for their negligence in discharging public duties as the duty is owed to the public at large rather than to anyone individually." Arthurs v. Aiken County, 338 S.C. 253, 262, 525 S.E.2d 542, 546 (S.C.App.1999) (citations omitted). Various exceptions to the Public Duty Rule have been found as they apply to police agencies. One such exception is when a "special duty" is created. "To make out such a prima facie case, *plaintiff must show that an actual promise was made by the police to create a special duty, that this promise was reasonably relied upon by plaintiff, and that this reliance was causally related to the injury ultimately suffered by plaintiff.* Arthurs v. Aiken County 338 S.C. at 269 (emphasis in original).

In our current case, the Sheriff's Office and Deputy Long are charged with the duty of enforcing judgments and to conduct Sheriff's sales of property. These are public duties discharged to the public at large. Plaintiff cannot show that any special duty was created in this particular case

that would entitle him to an exception to the Public Duty Rule. Therefore, Defendants were not negligent pursuant to the Public Duty Rule.

CONCLUSION

For all the reasons stated herein along with all of the applicable statutes, ordinances, and case law, Defendants respectfully request that this Honorable Court grant their Motion for Summary Judgment and dismiss Plaintiff's complaint with prejudice.

RESPECTFULLY,



CHRISTOPHER T. DORSEL

Senn Legal, LLC

P.O. Box 12279

Charleston, SC 29422

(843) 556-4045

Attorneys for Defendants J. Al Cannon, Jr.,
Charleston County Sheriff's Office,
Charleston County, Charleston County
Revenue Collections Department, and Harry
Long

July 26, 2012
Charleston, South Carolina

2178

EXHIBIT A

R179

CASE NO. 00-SC-86-2578
STATE OF SOUTH CAROLINA)

00-JG-10-1817
MAGISTRATES COURT

69-271

COUNTY OF CHARLESTON)

TRANSCRIPT OF JUDGMENT

11/15/05--RETURN TO PLAINTIFF, PER PLAINTIFF'S REQUEST. ATTORNEY

ROOSEVELT L. SIMMONS
NAME: GARY H. SIMMONS
3416 KITFORD ROAD
ADDRESS: JOHNS ISLAND, SC 29455

JUDGMENT IN FAVOR OF

CHARLESTON COUNTY BUSINESS
NAME: LICENSE USER FEE DEPT.
2 COURTHOUSE SQUARE, ROOM 105
ADDRESS: CHARLESTON, SC 29401

FILED
2009 SEP 19 PM 2:08
CLERK OF COURT
JULIE J. ARMSTRONG

DAMAGES AND COST

AMOUNT OF JUDGMENT.....	\$	89.00
INTEREST.....	\$	
ATTORNEY FEES.....	\$	
COST.....	\$	55.00
TOTAL.....	\$	144.00

JUDGMENT RENDERED JULY 18 2000

Kenn W. Givens
MAGISTRATE

EXECUTION AGAINST PROPERTY

TO THE SHERIFF OF CHARLESTON COUNTY:

The above judgment was docketed in the office of the Clerk of the Court of Common Pleas, County of Charleston, the 19 day of Sept. 2000.

THEREFORE, WE REQUEST YOU, that you satisfy the said judgment out of the personal property of the said judgment debtor within your county, or if sufficient personal property cannot be found, that out of the real property in your County belonging to such judgment debtor on the day when the said judgment was so docketed in your County, or at any time thereafter, in whose hands soever the same may be, and duly return this execution, according to law, to the Clerk of the Court of Common Pleas for the County of Charleston.

WITNESS: *Julie J. Armstrong* Clerk of the Court of Common Pleas of Charleston County, this 19 day of Sept. 2000.

Shirley Porter
Deputy Sheriff or Plaintiff's Attorney

EXHIBIT B

R181

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



Special Operations Department
100 Broad Street
Charleston, SC 29401-2206

March 3, 2009

ROOSEVELT L. SIMMONS
GARY H. SIMMONS
3416 KITFORD RD
JOHN'S ISLAND, SC 29455

CHARLESTON COUNTY BUSINESS LICENSE AND USER FEE VS. ROOSEVELT
L. SIMMONS & GARY H. SIMMONS

Dear Sir / Madam,

A judgment has been filed with the Clerk of Court for Charleston County in regard to the above referenced case. An Execution against property has been issued in this office for service.

This notice is not required by law, but is a courtesy extended to you by the Judgments and Executions Unit, Charleston County Sheriff's Office to avoid any possible embarrassment and inconvenience to you. Pursuant to South Carolina State Law, it is incumbent upon the Sheriff to seek payment in full. There are several methods of payment to satisfy this judgment. You can send a certified check, money order, or cash. All cashier checks or money orders should be made out to C.C.S.O. We do NOT accept personal checks. Failing this, the Sheriff must seek out and seize any property owned by the defendant and sell at public auction to satisfy the judgment. Failure to respond will result in the Sheriff's Office proceeding under statute.

I will be available, except on holidays, Monday through Friday between the hours of 9:00 A.M. and 4:00 P.M. My office is located at the above address in room 381. Please contact the Judgments/Execution Unit (843) 958-2108 within the next ten (10) business days to discuss this Judgment and making the necessary arrangements.

Yours very truly,

Master Deputy Harry Long
Special Operations Department
Charleston County Sheriff's Office

EXHIBIT C

12183

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



Special Operations Department
100 Broad Street
Charleston, SC 29401-2206

April 1, 2009

ROOSEVELT L. SIMMONS
GARY H. SIMMONS
3416 KITFORD RD
JOHNS ISLAND SC 29455

RE: Charleston County Business User Fee Department vs. ROOSEVELT SIMMONS &
GARY SIMMONS

Dear Sir/ Madam

A judgment has been filed with the Clerk of Court in Charleston County in regard to the above captioned case. An execution against your property has been issued in this office for service.

On March 3, 2009, a letter was sent to you in reference to this judgment. The letter was sent to the above address. As of the date of this letter, I have not heard from you. The judgment is 00-JG-10-1817. It is imperative that you contact me to make **payment** arrangements. This office is required by South Carolina Law to diligently attempt to execute this judgment and satisfy it. You are putting your property at risk of being sold at public auction. I will work with you on paying this judgment in whatever manner you can afford. I CAN ONLY ACCEPT CASH, CASHIER CHECK, OR MONEY ORDER. They must be made out to the Charleston County Sheriff's Office. This is an interest bearing judgment. The interest goes up daily. I hope you will adhere to this notice and contact my office.

I will be available, except on Holidays, Monday through Friday between the hours of 9:00A.M. and 4:00 P.M. to discuss these matters. My office is located at the above address in room 381. Please contact me at 843-958-2108 within the next ten working days to discuss this judgment and making the necessary payment arrangements. I look forward to working with you on this situation.

Sincerely,

Master Deputy Harry Long
Special Operations Division
Charleston County Sheriff's Office

EXHIBIT D

R185

May 11, 2009

ROOSEVELT L. SIMMONS
GARY H. SIMMONS
3416 KITFORD RD
JOHNS ISLAND, SC 29455

re: 2000 Business User Fee
Civil Case

Final Notice

Mr. Simmons,

Master Deputy Long has attempted on several occasions to contact you in reference to your delinquent 2000 Charleston County Business License User Fee. Several letters has been sent in an attempt to work out a payment schedule for your case with no response.

The Business License and User Fee Department has reviewed this case to start legal proceedings if you do not work out a payment plan.

Please do not ignore this matter as it can place your property at risk of being sold at a public auction, if this is not satisfied.

It is imperative that you contact M/Deputy Long to satisfy your judgment amount of \$379.09 by May 28, 2009. Payment can be sent in following forms: Cashier Check, Money Order, or Cash. *Personal Checks are not accepted.*

If you have any questions, please feel free to contact the Civil Process Unit, Master Deputy Long at (843) 958- 2108 Monday – Friday during normal business hours.

Respectfully,

Lieutenant L. A. McCray
Charleston County Sheriff's Office

EXHIBIT E

R187

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



Special Operations Department
100 Broad Street
Charleston, SC 29401-2206

June 18, 2009

ROOSEVELT SIMMONS
GARY SIMMONS
3416 KITFORD RD
JOHN'S ISLAND SC 29455

Final Notice

2004 Business User Fee
Civil Case

Mr. Simmons,

Master Deputy Long has attempted on several occasions to contact you in reference to your delinquent 2004 Charleston County Business License User Fee. Several letters has been sent in an attempt to work out a payment schedule for your case with no response.

The Business License and User Fee Department has reviewed this case to start legal proceedings if you do not work out a payment plan.

Please do not ignore this matter as it can place your property at risk of being sold at a public auction, if this is not satisfied.

It is imperative that you contact M/Deputy Long to satisfy your judgment amount of \$365.25 by July 2, 2009. Payment can be sent in following forms: Cashier Check, Money Order, or Cash. *Personal Checks are not accepted.*

If you have any questions, please feel free to contact the Civil Process Unit, Master Deputy Long at (843) 958- 2108 Monday – Friday during normal business hours.

Respectfully,

Lieutenant L. A. McCray
Charleston County Sheriff's Office

EXHIBIT F

R 189

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



Special Operations Department
100 Broad Street
Charleston, SC 29401-2206

September 9, 2009

ROOSEVELT L. SIMMONS
GARY H. SIMMONS
3416 KITFORD RD
JOHNS ISLAND, SC 29455

Re: Levy Notice
Charleston County Business License/User Fee Department sv. Roosevelt
Simmons & Gary H. Simmons

Dear Sir/Madam:

Enclosed please find documents pertaining to the above captioned case. The documents are self-explanatory and serve notice to you of legal action in regard to your property. This property is being sold at public auction by the Charleston County Sheriff's Office.

Should you have any questions or concerns, do not hesitate to contact our office at 843-958-2110.

Yours very truly,

Angie Palmer
Sergeant, Special Operations
Charleston County Sheriff's Office

AP/olg

Enclosures

cc:

Charleston County Business License/User Fee Department

0755-0123

R190

SHERIFF'S SALE

CHARLESTON COUNTY BUSINESS
LICENSE USER FEE DEPARTMENT
COUNTY OF CHARLESTON

ROOSEVELT L. SIMMONS
GARY H. SIMMONS

CASE NO: 2000-G-T0-1817

By virtue of an Execution to me directed, in the above stated case, I will sell to the highest bidder at Public Auction, within the legal hours of sale, at 11:00 A.M. at the Charleston County Judicial Center, at 100 Broad Street, Charleston, South Carolina 29401, on Monday, the 5th day of OCTOBER A.D., 2009, the following described property to wit: Only the interest of the defendant in all that tract or parcel of land, situate, lying and being in the county of Charleston, South Carolina, known as and containing:

283-00-00-498

KITFORD RD

LOT C

DEED: 7468-508

PLAT BOOK: DE-692

to satisfy the aforesaid Execution and costs.

TERMS- CASH/CASHIER'S CHECK/MONEY ORDER: THIS PROPERTY WILL BE ADVERTISED IN THE CHARLESTON POST AND COURIER ON September 14, September 21, September 28, 2009 AS PRESCRIBED BY SOUTH CAROLINA LAW.

J. AL CANNON, JR., ESQ.
Sheriff of Charleston County

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

CASE NO: 2000-JG-10-1817

CHARLESTON COUNTY BUSINESS
LICENSE USER FEE DEPARTMENT

Plaintiff,

NOTICE
OF
LEVY

-VS-

ROOSEVELT E. SIMMONS
GARY H. SIMMONS

Defendant,

To Defendant above named, PLEASE TAKE NOTICE

Pursuant to the authority and direction of an execution to me directed in the above entitled matter issued out of the Court of Common Pleas for the County of Charleston and State of South Carolina on the 18TH Day of JULY 2000, I have this day, for purpose of satisfaction of said judgment levied upon as and for the property of Defendant, the property and/or premises hereinafter described and only the interest of the defendant.

283-00-00-498

KILLBURN RD

LOT 6

DEED: 7-668-508

PLAT BOOK: DL-692

Unless payment of said judgment is made within five (5) days from the date of notice, I will proceed to sell the property above described for the satisfaction of said judgments and costs.

LEVIED THIS THE ____ DAY OF ____ 2009, A.D.

J. AL CANNON, JR., ESQ.
SHERIFF OF CHARLESTON COUNTY

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



Special Operations Department
100 Broad Street
Charleston, SC 29401-2206

CHARLESTON COUNTY BUSINESS
LICENSE USER FEE DEPT.

-VS-

**NOTICE OF
SHERIFF'S SALE**

ROOSEVELT L. SIMMONS
GARY H. SIMMONS

Case Number: 2000-JG-10-1817

Under and by virtue of an execution issued to me and entered in the Office of the Clerk of Court in the County of Charleston on the 19th day of **September 2000**, against the above captioned defendant(s) in the amount of **\$144.00** plus costs, I have levied on and will sell to the highest bidder at Public Auction on **Monday the 5th day of October 2009**, at **11:00 A.M.**, at the Front Entrance of the Charleston County Judicial Center, **100 BROAD STREET, CHARLESTON, SOUTH CAROLINA**, all of the Right, Title or intent in the following real properties owned by the above captioned defendant(s) (and/or others), **and only the interest of the defendant**, as prescribed by the code of Laws of South Carolina, to satisfy the above mentioned execution. The property is described in the Charleston County R.M.C. Office as:

**283-00-00-498
0 KITFORD RD
LOT C
PLAT BOOK: DE-692
DEED BOOK: Z468-508**

The highest bidder will be required to deposit with the Sheriff, at the conclusion of the bidding, cash or certified check in the amount of five percent (5%) of the bid and the said deposit to be applied to the purchase price. Second Upset sale to be held thirty (30) days after the 1st sale, on **November 4, 2009**. Payment in full required at the time of the second sale. Minimum bid must exceed exemption values as given in Title 15, Chapter 41, S.C. Code, 1988 as amended.

J. AL CANNON, JR., ESQUIRE
SHERIFF, CHARLESTON COUNTY

**NOTE: SALES ARE SUBJECT TO ALL MORTGAGES, LIENS AND ENCUMBRANCES.
ANY QUESTIONS MAY BE REFERRED TO THE JUDGMENT UNIT AT (843) 958-2110.**

EXHIBIT G

R194



CHARLESTON COUNTY
USER FEE DEPARTMENT
2 Courthouse Square, Room 105
Charleston, S.C. 29401-2260

For Office Use Only

REVIEW OF FEE

- ☐ No Change
☐ Increased Amount
☐ Decreased Amount
☐ Documentation Attached

SOLID WASTE

Year: 2001 ANNUAL DISPOSAL USER FEE

Application for Review

TMS#: 283-00-00-138 TAX DISTRICT: _____

Owner's Name: Simmons, Roosevelt L. & Gary J.

Contact Name: _____ Phone# 554 1351

Property Location: 3416 Kiltford Rd. (WORK) (HOME)

Reason for Review: Requesting that user-fee
be removed as taxes can be
paid, unable to pay user-fee.

Findings: _____

Inspector: _____

I certify that the descriptions and statements contained in this application are to the best of my knowledge both correct and true. I understand that the User Fee Department will review my claim and notify me of their findings. I acknowledge that my failure to pay the user fee may result in a \$100 fine or (30) thirty days in jail.

(SIGNATURE)

(DATE SIGNED)

1-11-2002

Keep pink copy; Return white and yellow copies to:

Charleston County User Fee Department
2 Courthouse Square, Room 105
Charleston, South Carolina 29401

White- Business License/User Fee

B-1
2195

User-fee
removed

1-11-2002

POE

EXHIBIT H

2196

U101 CHARLESTON COUNTY TAX SYSTEM 08-08-2011
 OPER: AUTPAE REAL PROPERTY - GENERAL INQUIRY 11:46:56
 TX YR: 2005 PID: 311-00-00-024 PR YR: RCPT: 2005 - 158938 ACT: I RC: 60
 TD: 51 JUR: 01 HE CD/PCT: ASSR RC: 21 WILL: MTG CD: STAT: CP
 OWN1 1ST: SIMMONS ROOSEVELT UPD OP/DT: AUTCKJ 01-03-2006
 OWN2 1ST: DEED: 04-21-2004 L491-742
 OWN1 NXT: PLAT: DD-470
 OWN2 NXT: ACREAGE APPRAISAL
 TX ADR: 1435 RIVER RD HIGH: 15.44 LAND: 11,500
 CARE OF: MRSH: 3.00 IMPR: 200
 ML ADR: 3416 KITFORD ROAD SWMP: BLDG: 16,300
 C,S,Z: JOHNS ISLAND SC 29455 8943 TOT: 18.44 TOT: 28,000
 LEGL DESC: W PT LT 11 GEN/PAR: SFR 10R

BLDG	APPRAISAL	ASSESSMENT	SUBD: MURRAY - GIBBS	ADJ:
			LUSE: RESIDENTIAL	UNIT: 1
OT 100%	28,000	1,680	MILLS: 182.4	TAXES: 326.50
QA	2,800	110	BILLED: 10-28-2005	CREDITS: 27.72
			PD DT: 12-30-2005	USER FEE: 0.00
			NB DT:	% INT: 0.00
			RLB: 13,030	PEN: 0.00
TOT	30,800	1,790	PRCT: 2005-124775	SW FEE: 0.00
MA	219,000	13,140	NRCT:	NET AMT: 298.78
ACTION COMPLETE				MLOD FCTR : 0.00
PF2= T904 SCR N PF4=TAX CREDIT PF7= PREV RCPT				NEXT SCREEN:

U101 CHARLESTON COUNTY TAX SYSTEM 08-08-2011
 OPER: AUTPAE REAL PROPERTY - GENERAL INQUIRY 11:47:04
 TX YR: 2006 PID: 311-00-00-024 PR YR: RCPT: 2006 - 129189 ACT: I RC: 60
 TD: 51 JUR: 01 HE CD/PCT: ASSR RC: 21 WILL: MTG CD: STAT: CP
 OWN1 1ST: SIMMONS ROOSEVELT UPD OP/DT: AUTLRD 12-27-2006
 OWN2 1ST: DEED: 04-21-2004 L491-742
 OWN1 NXT: PLAT: DD-470
 OWN2 NXT: ACREAGE APPRAISAL
 TX ADR: 1435 RIVER RD HIGH: 15.44 LAND: 11,500
 CARE OF: MRSH: 3.00 IMPR: 200
 ML ADR: 3416 KITFORD RD SWMP: BLDG: 16,300
 C,S,Z: JOHNS ISLAND SC 29455 8943 TOT: 18.44 TOT: 28,000
 LEGL DESC: W PT LT 11 GEN/PAR: SFR 10R

BLDG	APPRAISAL	ASSESSMENT	SUBD: MURRAY - GIBBS	ADJ:
			LUSE: RESIDENTIAL	UNIT: 1
OT 100%	28,000	1,680	MILLS: 183.3	TAXES: 328.11
QA	2,800	110	BILLED: 09-30-2006	CREDITS: 28.95
			PD DT: 12-28-2006	USER FEE: 0.00
			NB DT:	% INT: 0.00
			RLB: 13,030	PEN: 0.00
TOT	30,800	1,790	PRCT:	SW FEE: 0.00
MA	219,000	13,140	NRCT:	NET AMT: 299.16

 ACTION COMPLETE MLOD FCTR : 0.00
 PF2= T904 SCR N PF4=TAX CREDIT NEXT SCREEN:

2198

U101 CHARLESTON COUNTY TAX SYSTEM 08-08-2011
 OPER: AUTPAE REAL PROPERTY - GENERAL INQUIRY 11:47:11
 TX YR: 2007 PID: 311-00-00-024 PR YR: RCPT: 2007 - 134504 ACT: I RC: 60
 TD: 51 JUR: 01 HE CD/PCT: ASSR RC: 21 WILL: MTG CD: STAT: CP
 OWN1 1ST: SIMMONS ROOSEVELT UPD OP/DT: AUTJAM 01-11-2008
 OWN2 1ST: DEED: 04-21-2004 L491-742
 OWN1 NXT: PLAT: DD-470
 OWN2 NXT: ACREAGE APPRAISAL
 TX ADR: 1435 RIVER RD HIGH: 15.44 LAND: 11,500
 CARE OF: MRSH: 3.00 IMPR: 200
 ML ADR: 3416 KITFORD RD SWMP: BLDG: 16,300
 C,S,Z: JOHNS ISLAND SC 29455 8943 TOT: 18.44 TOT: 28,000
 LEGL DESC: W PT LT 11 GEN/PAR: SFR 10R

BLDG	APPRAISAL	ASSESSMENT	SUBD: MURRAY - GIBBS	ADJ:
			LUSE: RESIDENTIAL	UNIT: 1
OT 100%	28,000	1,680	MILLS: 190.5	TAXES: 341.01
QA	2,800	110	BILLED: 09-28-2007	CREDITS: 28.95
			PD DT: 01-11-2008	USER FEE: 0.00
			NB DT:	% INT: 0.00
			RLB: 13,030	PEN: 0.00
TOT	30,800	1,790	PRCT:	SW FEE: 0.00
MA	219,000	13,140	NRCT:	NET AMT: 312.06
ACTION COMPLETE				MLOD FCTR : 0.00
PF2= T904 SCR N PF4=TAX CREDIT				NEXT SCREEN:

U101 CHARLESTON COUNTY TAX SYSTEM 08-08-2011
 OPER: AUTPAE REAL PROPERTY - GENERAL INQUIRY 11:47:38
 TX YR: 2008 PID: 311-00-00-024 PR YR: RCPT: 2008 - 137903 ACT: I RC: 99
 TD: 51 JUR: 01 HE CD/PCT: ASSR RC: 21 WILL: MTG CD: STAT: CR
 OWN1 1ST: SIMMONS ROOSEVELT UPD OP/DT: AUR010 02-03-2009
 OWN2 1ST: DEED: 04-21-2004 L491-742
 OWN1 NXT: PLAT: DD-470
 OWN2 NXT: ACREAGE APPRAISAL
 TX ADR: 1435 RIVER RD HIGH: 15.44 LAND: 11,500
 CARE OF: MRSH: 3.00 IMPR: 200
 ML ADR: 3416 KITFORD RD SWMP: BLDG: 16,300
 C,S,Z: JOHNS ISLAND SC 29455 8943 TOT: 18.44 TOT: 28,000
 LEGL DESC: W PT LT 11 GEN/PAR: SFR 10R

BLDG	APPRAISAL	ASSESSMENT	SUBD: MURRAY - GIBBS	ADJ:
OT 100%	28,000	1,680	LUSE: RESIDENTIAL	UNIT: 1
QA	2,800	110	MILLS: 199.5	TAXES: 357.10
			BILLED: 09-30-2008	CREDITS: 26.49
			PD DT: 12-31-2008	USER FEE: 0.00
			NB DT: 02-03-2009	% INT: 0.00
			RLB: 13,030	PEN: 0.00
TOT	30,800	1,790	PRCT:	SW FEE: 0.00
MA	219,000	13,140	NRCT: 2008-185608	NET AMT: 330.61

 ACTION COMPLETE MLOD FCTR : 0.00
 PF2= T904 SCRN PF4=TAX CREDIT PF8= NEXT RCPT NEXT SCREEN:

12200

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO. 2011CP10-1084

ROOSEVELT SIMMONS)
Plaintiff)
)
Vs.)
)
MASE and COMPANY, LLC,)
J. AL CANNON, JR.,)
CHARLESTON COUNTY)
SHERIFF'S DEPARTMENT,)
CHARLESTON COUNTY,)
CHARLESTON COUNTY)
REVENUE COLLECTIONS)
DEPARTMENT and)
HARRY LONG)
Defendants)

PLAINTIFF'S OPPOSITION TO MOTIONS OF
DEFENDANTS COUNTY OF CHARLESTON,
SHERIFF'S DEPARTMENT AND HARRY LONG
FOR SUMMARY JUDGMENT

Plaintiff, Roosevelt Simmons (Simmons) herewith opposes the motions of defendants Sheriff of Charleston County, Charleston County , Charleston County Revenue Collections Department and Harry Long (collectively the County defendants) for summary judgment. Plaintiff opposes these motions on both procedural and substantive grounds: (1) defendants are not entitled to judgment as matter of law (2) material facts upon which the plaintiff's claims are based are in dispute; (3) the motions are premature since discovery in not complete. Plaintiff relies upon the pleadings filed heretofore, the discovery on file, the affidavit of Roosevelt Simmons submitted in opposition to these motions and this Memorandum with these objections more fully set forth below. Simmons has filed a separate motion for partial summary judgment as to the First, Second and Third Counts of the Second Amended Complaint seeking to void all of the outstanding user fee judgments which is incorporated by reference.

FACTS RELEVANT TO THIS MOTION

It is not disputed that Simmons owned real property known as TMS 282-00-00-138 (TMS 138), TMS 282-00-00-135 (TMS 135), 283-00-00-498 (TMS 498) and 283-00-00-499 (TMS 499) located on Johns Island, South Carolina and resides on TMS 138. It is not disputed that TMS 135, 498 and 499 are vacant and unimproved. On or about February 2010, defendant J. Al Cannon, Jr., Sheriff of Charleston County (the Sheriff) executed a deed purporting to transfer title to TMS 498 to defendant Mase and Company, LLC. The deed was issued pursuant to a Sheriff's sale after levy and execution on a judgment, No. 2000-JG -10-1817, issued by the Magistrates Court against Simmons for nonpayment of a user fee of \$89.00 imposed against TMS 138. See Exhibit A to County Defendants' Motion for Summary Judgment.

Simmons commenced this action to vacate the Sheriff's sale and deed of TMS 498 and other user fee judgments and for damages relating to the conduct of the levy and sale. The First Count of the Second Amended Complaint alleges that the judgment in Case No. 2000-JG -10-1817 is void since the Magistrate's Court has no jurisdiction or authority to proceed against Simmons for nonpayment of a user fee of \$89.00 imposed upon TMS 138; and that the Sheriff's deed is also void because the judgment upon it is based is void. Simmons also contends that the method to enforce a user fee is governed by SC Code Section 12-49-10 and laws applicable to real property taxes and that sale of any real estate is also subject to a statutory right of redemption pursuant to South Carolina Statutes Section 12-51-90.

The Charleston County User fee Ordinance

S.C. Code Section 44-55-1210 authorizes a county to provide and regulate solid waste collection and disposal and to levy user fees only against persons for whom services are provided. On or about 1987, defendant Charleston County adopted Ordinance Section 10-51 et

seq. to impose user fees upon the owners of real property located in the county for the express purpose of paying the costs of garbage and trash disposal at the county's facilities. Section 10-51 et seq. was intended to conform to S.C. Code Section 44-55-1210. See Ordinance Section 10-51(8). Ordinance Section 10-56 states: "[t]he annual disposal user fee shall be due and payable within the time and in the manner prescribed by law for county ad valorem taxes pursuant to section 12-45-70 of the code . . . or other law of similar import. The treasurer shall bill and collect the annual disposal user fee established by the county council in the same manner as taxes are collected" Ordinance 10-51 does not contain any provision for the county to collect a user fee by commencing suit in the Magistrate's Court.

Simmons contends he started received tax bills from the County for TMS 138 which included a user fee as part of the taxes owed. Each time he received the tax bill, Simmons went to the Auditor's Office and objected and the Auditor's Office had him fill out a form entitled "Solid Waste Annual Disposal User Fee Application for Review" and he signed it. The employee of the Auditor's office usually Ms. Peggy Ellington would then note on it that the "user fee had been removed". Simmons affidavit, para, 4; Exhibit G to Defendants' Motion for Summary Judgment. Whereupon Simmons paid the real estate taxes and believed that he was no longer responsible for the user fee since no one at the Auditor's Office told him he was. Id.

The 2000 User Fee judgment

In May 2000, the Charleston County Business License/User Fee Department filed a Summons and Complaint in Case No 00-SC-86-2578 to collect an \$89.00 user fee for TMS 138 from Simmons. Exhibit A. Simmons contends that he did not receive notice of this complaint or of the judgment entered against him, 2000-JG -10-1817. The judgment was entered on default and Simmons did not have the opportunity to present a defense. Simmons Affidavit, para. 5.

Simmons contends that defendant County does not provide any trash removal services to TMS 138 and that Simmons should not be required to pay a user fee. Id. para. 3.

Other user fee judgments entered

The Charleston County Business License Fee/User Fee Department commenced several other actions against Simmons for nonpayment of user fees imposed against TMS 138 and obtained several judgments identified as follows: 2002-JG-10-0021; 2002-JG-10-923; 2003-JG10-170; 2004-JG -10-444; 2006-JG-10-931; 2009 -JG-10-391; 2010- JG -10-3099. See Exhibit D to Plaintiff's Motion for partial summary Judgment. The Second Count alleges that all these judgments entered against Simmons for nonpayment of user fees are void since the Magistrates Court had no jurisdiction or authority to proceed against Simmons for nonpayment of a user fee; that they were entered on default and that he has a valid defense thereto, including waiver of the fee and the lack of any services or benefit as required by the statute. Simmons Affidavit, para. 9.

Invalidation of judgments on non owned property

The Third Count alleges that the County issued tax bills against real property designated as TMS 311-00-00-024 (TMS 024) which included user fees. Simmons contends that the county does not provide any services including trash removal, water, sewer or storm water control to TMS 024. Simmons affidavit para. 10. In prior years, Simmons paid the taxes on TMS 024 which was then held in the name of "the estate of Sam Balaam" who was married to Simmons grandmother Hester Singleton Balaam. Because the taxes were not being paid regularly by family members and Simmons had to pay them to avoid a tax sale, he had the Tax Assessor send him the bill even though he was not the legal owner. Id. The county mistakenly listed him as the owner. See Exhibit H to county defendants Motion for Summary Judgment. He

did this in order to protect his family heirs' interest in this property. Simmons affidavit , para 10. Because the tax bill contained a user fee, he asked the Auditor to remove in as he had done for TMS 138 since this property did not receive any trash removal or use the county disposal facilities. Id. In 2004, other persons claiming to be heirs of Sam Balaam (whom they identified as Sam Bailum) filed suit against Simmons and other relatives to quiet title in TMS 024 and several other parcels of heirs' property. A judgment was entered in 2006 allowing Simmons the right to purchase it. Exhibit B. The Special Referee later refused to issue a deed to him and title to TMS 024 was divided between Franklin Smith and LMC, LLC. As a result Simmons never acquired title to TMS 024. Simmons affidavit para. 10.

One of the judgments identified above, JG 2009-10-391 involve user fees charged against TMS 024. In his pending motion for partial summary judgment, Simmons contends that the Magistrate's Court had no jurisdiction to proceed against Simmons for nonpayment of a user fee imposed against TMS 024 and such judgments are void. Simmons also contends that the judgment for user fees against TMS 024 should be vacated for an additional reason, that it would be inequitable for it to have prospective effect because Simmons was never the owner of TMS 498 and obtained no services from the county. Simmons affidavit, Para. 10.

Collection of User Fees by the County

The county designated George Boniface as its R. 30(b)(6) representative concerning the collection of user fees. Boniface testified that he was the manager of the Legal Division within the Business License Fee/User Fee Department (later changed to the Revenue Collections Department). Exhibit C, Boniface Deposition page 16 line 9 to 18 .~~The Legal Division~~ was responsible to prepare summons and complaints, appear in court and record judgments but that there were no attorneys in the Legal Division. Id. page 19 line 3 to page 20 line 13.

His responsibilities including going to court and representing the county without a lawyer present. Id. at page 26, line 23 to page 27, line 20. He stated that in 2004 the county decided that they didn't want him going to court and they would get attorneys involved. Id. at page 28, line 6 to 17. Boniface was familiar with the user fee ordinance and agreed that the purpose of the user fee was to collect money from people owning property in the county for whom services were provided. Id page 25, line 12 to 17. The Business License/User Fee Department was consolidated with the Delinquent Tax Department in 2008 but the collection of user fees is separate and distinct from the collection of delinquent taxes. Id page 31, line 10 to page 33, line 9. Boniface did not have anything to do with the Solid Waste Annual Disposal User Fee Application for Review form used by the Auditor's Department. Id at page 48, line 6 to 21.

The complaint filed to collect the user fee in 2000 was signed by Boniface and recited the provisions of the Ordinance Section 10-56 that provided for the collection of "user fees" and sought judgment in the amount of the unpaid user fees. See Exhibit A. Other complaints contained the same language. See Exhibit A. When the collection of user fees was turned over to the County Attorney, the complaints still requested payment of the user fee. See Exhibit A.

Alleged constitutional violation in enforcement of judgments

The Fourth Count alleges among other things that the county defendants including defendant Deputy Harry Long acting under authority of the County violated plaintiff's right to equal protection of the laws by commencing actions in Magistrate's Court of Charleston County and executing on those judgments against other real property owned by Simmons in violation of SC Code Section 15-39-80; and thereby have deprived Simmons of equal protection of the law in violation of the Fourteenth Amendment of the United States Constitution and Simmons rights under 42 USC section 1983. Second Amended Complaint Para 29 & 30. Simmons contends that

the county had no rational basis to apply the user fee ordinance against him when he receives none of the services for which the fee is imposed.

Simmons also alleges that Deputy Long was motivated by malice or ill will in ignoring readily available personal property to levy on real estate out of desire to get Simmons for threatening him. Simmons was the record owner of various items of personal property such as several autos registered to his name, a boat, several pieces of heavy equipment, all of which were in plain view to anyone including defendant Long when he came to Simmons house in August 2009. Simmons Affidavit, para.7. Simmons contends that Deputy Long improperly levied upon real property owned by Simmons (TMS 498) when there were numerous vehicles and equipment owned by Simmons which could have been used to satisfy the judgment. Simmons further alleges that Deputy Long conducted the sale improperly and not in accordance with South Carolina law resulting in a judgment deficiency also out of improper motive. Simmons has filed a motion to amend the Second Amended Complaint to set aside the sale based upon a grossly inadequate price. Simmons had the property appraised a few years earlier and it was valued at \$70,000. Simmons Affidavit para. 8; Exhibit E.

Enforcement of the User fee judgments

Since 2007, defendant Harry Long was assigned to the Judgment Section of the Sheriff's Department. His primary role was to collect user fee judgments and to assist another deputy in collecting on other civil judgments. Exhibit D, Long Deposition page 147, line 6 to 13. In February 2009, Long received six (6) user fee judgments from the Business License/user fee Department against Roosevelt Simmons, all involving user fees due on TMS 138. Long testified that the 2000 judgment was originally received by the Sheriff's office in 2005 but was returned by the Sheriff at the county's request. Id. page 28, line 23 to page 29, line 8. In March 2009,

Long did a record search and found several motor vehicles titled in Simmons name but disregarded them and did not go to Simmons house to determine what personal property was there. Id. at page 34, page 22 to 35 line 7. He thought that one of the vehicles was told but did not investigate the others although he admitted they might be worth looking into. Id., page 128, line 2 to 16. Deposition Exhibits 21-2 & 3. Long admitted that it was no more work to levy and sell personal property than to do this for real estate. Id. page 135, line 19-21. He based his decision on "life experience" - not any training he received. Id. page 135, line 25 to page 136 line 3. None of the other Sheriff's Department personnel had anything to do with this case. Id. page 137, line 1 to 24.

Long also found real property in Simmons name including property designated as TMS 138, 135, 498 and 499. Id. page 68, line 10 to page 70, line 9. TMS 138 was in the joint names of Roosevelt Simmons and Gary Simmons. TMS 138 was the property on which the user fee was delinquent resulting in the judgment he was enforcing. Id. page 70, line 23 to page 71, line 14. Long testified that he received a phone call in early April from someone representing himself as Simmons. Long stated that this person made threats against him. Id. at page 39, line 5 to 8. Long believed what this person said that he was going to take down the whole sheriff's department. Id. at page 45 line 17 to 25. Long filed an incident report which became a permanent record against Simmons. Id. at page 41, line 15 to page 44, line 8. County Document Bates No 203. He also "blue flagged" the Simmons property with the Communications Dept so that any other Sheriff's Department employee calling in to that location would be warned of a potential threat. Id. at page 44 line 9 to 22. County Document Bates No 40. On July 23 Long decided to proceed against real property designated as TMS 498 owned by Simmons, not the property where Simmons lived (TMS 138) which was subject to a homestead exemption, meaning that the sale would have to

start at a higher price. Long Deposition page 53, line 18 to page 58, line 11; page 60 lines 2 to 8. To insure that this sale could go forward, Long even went to the office of the Master in Equity in August 2009 to confirm that pending suit involving TMS 498 had been dismissed. Id. at page 63, line 7 to 20. Long never confirmed his decision to proceed real property specifically, TMS 498 instead of personal property with his superior. Id. at page 66, line 4 to 16. On August 26th, Deputy Long went to Simmons house to serve the writ of execution. Id. at page 74, line 9-10, page 75, line 23-25. Long was accompanied by another Deputy, who was substituting for Long's regular partner. However, this deputy was not familiar with the procedures for levy and sale. Id. page 72, line 13 to 16; page 74, line 2 to 6; page 75, line 12 to 22. Long didn't remember seeing any personal property during his visit. Long Id. at page 76, line 11 to 20. Simmons did not behave belligerently or aggressively toward him and nothing out of the ordinary happened. Id. at page 76, line 23 to page 77 line 8. Long claimed that he made the decision to levy on TMS 498 based upon the appraised value in the county tax system of \$23,900. Id. at page 80, line 25 to page 81 line 19.

Sale of TMS 498

Deputy Long conducted the sale of TMS 498 on October 5, but there were no bids. Id. at page 94, line 4 to 13. He held the second sale on November 4th and the property was sold for \$600, being the highest bid. Id. at page 94, line 18 to page 95, line 7. The minimum bid was \$490.62 representing the cost of advertising but that sale price was not sufficient to satisfy the judgment. Id. at page 96, line 4 to 22. Long claimed that state law required him to set the minimum bid at the cost to advertise and that it doesn't include the amount off the judgment. Id. at page 96, line 4 to 16. The Sheriff's Department Policy and Procedure Manual, procedure 5-04 for Civil Process does not contain any requirement that the minimum bid shall be the cost of sale.

County Document Bates No. 206-229. Deputy Long acknowledged that he had a copy of the Policy and Procedure Manual. Long Deposition page 107, line 24 to page 108, line 19. He never received any formal training in the procedures pertaining to civil process. Id. at page 110, line 5 to 10. He stated that he "probably breezed through it" in connection with the sergeant's exam. Id. at page 109, line 19 to 23. After deducting the costs of sale, this amount was insufficient to satisfy the \$144.00 judgment. Id. at page 96, line 24 to page 97, line 1. Long testified that in the hundreds of executions of user fee judgments in which he was involved over 4 ½ years, in only two other cases did he have to sell real property. Exhibit G, Sheriff's Department Answers to Interrogatories at No. 17.

Discovery relating to other sales withheld by county

The highest bid at the second sale was made by Charles Masencup. Masencup also acquired two other properties that Deputy Long sold for judgments for user fees. Id. at page 97, line 22 to 99, line 13. Discovery provided by the Sheriff's Department and defendant Mase & Company, LLC disclosed that the judgments were against Herbert Fraser and George Garrett. Simmons requested discovery of the Sheriff's Department files relating to enforcement of these judgments to determine whether there is a pattern or practice in the manner in which the Deputy Long levies and sells real property. To date, the Sheriff's Department has failed to provide the requested information and this failure is the subject of a pending motion to compel discovery which is incorporated by reference.

Tort Claim

The Fifth Count of the Second Amended Complaint alleges among other things that the county defendants committed a tort by wrongfully retaining Deputy Long and that Long acted out of ill will and malice toward Simmons in connection with enforcement of the judgment

causing Simmons the loss of valuable real estate. Discovery revealed that Deputy Long had a "checkered" employment history.

Deputy Long employment history

According to Sheriff's Department records, Deputy Long was subject to several disciplinary actions since joining the department including two (2) suspensions and three (3) letters of reprimand. County Document bates No. 512-513,551-552. See Exhibit F. The reasons for Long's most recent suspension were redacted from his personnel file. See County Document bates No. 551-552. This redaction contrary to the Sheriff's Department own which states: "Suspensions will be **permanently** documented in the employee's personnel file." Exhibit H, Policy and Procedures Manual Section 3-08 at page 5. One of Deputy Long's reprimands was due to his failure to transport a prisoner, Karlton Hillyard that Long had arrested to a trial on a traffic summons that Long has issued. As a result, Hillyard was held in contempt and three bench warrants were issued for his arrest. Long's conduct was described "irresponsible" and "unprofessional". Deputy Long had taken the sergeants exam on numerous occasion and received very good scores (above 90%) but had been passed over for promotion by 20-30 other officers. Exhibit D, Long deposition page 13, line 13 to page 14, line 6, page 15, lone 6 to 11.

Discovery of details of misconduct refused

Simmons requested discovery of Karlton Hillyard's arrest record to determine the circumstances involving Deputy Long's arrest of Hillyard and whether it might be relevant to Deputy Long's conduct toward Simmons. Counsel for the Sheriff's Department responded that this information was not relevant and is public information. Simmons also requested "all documents pertaining to the redaction of the reasons for Long's suspension indicating when and by whom it was authorized and performed" but the Sheriff's department has failed to comply.

Finally, plaintiff requested the Policy and Procedures Manual which specified the type of offenses for which Long was disciplined. These and other discovery requests are the subject of a pending motion to compel and are incorporated by reference.

ARGUMENT

I. COUNTY DEFENDANTS ARE NOT ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW

A. The Summary Judgment Standard

Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 119 S.E.2d 736, 738 (Ct. App. 2001), cert. denied; Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999). Simmons asserts that the county defendants are not entitled to summary judgment as matter of law as to the First, Second and Third Counts of the Second Amended Complaint. These counts allege that the various judgments entered against Simmons by the Magistrate's Court are void and the resulting sale of TMS 498 based upon one of them is also void. The applicable law supports Simmons contention. Simmons has filed a separate motion for partial summary judgment as to the counts and the facts and arguments are incorporated herein. Simmons also alleges that the county defendants are not entitled to summary judgment as to the Fourth and Fifth Counts because there are disputes of material fact and the county defendants have failed to provide relevant discovery, which is the subject of a pending motion. See below.

B. County defendants are not entitled to summary judgment as a matter of law on Counts One, Two and Three because the Magistrate Court's lacked subject matter jurisdiction

Subject matter jurisdiction refers to the court's "power to hear and determine cases of the general class to which the proceedings in question belong." Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994) ; Great Games, Inc. v. S.C. Dep't of Revenue, 339 S.C. 79, 83 n. 5, 529 S.E.2d 6, 8 n. 5 (2000). The judgments complained off were all entered by the Magistrate's Court of Charleston County for unpaid user fees. The Magistrate's Court has limited jurisdiction which does not include a claim for fees due to the county. SC Code Ann. Section 22-3-10(1) provides that the Magistrate's Court has concurrent jurisdiction (with the Circuit Court) "in actions arising on contracts"; Section 22-3-10 (3) provides for jurisdiction "in actions for a penalty, fine or forfeiture". An action to collect the amount of an unpaid user fee is neither an action on a contract or for a fine or penalty. Accordingly, the Magistrate had no jurisdiction to hear and decide the case.

Further , the particular ordinance authorizing the payment of a user fee, Charleston County Code of Ordinances Section 10-56 states: " [t]he annual disposal user fee shall be due and payable within the time and in the manner prescribed by law for county ad valorem taxes pursuant to section 12-45-70 of the code . . . or other law of similar import. The treasurer shall bill and collect the annual disposal user fee established by the county council in the same manner as taxes are collected" There was no authorization given to collect the user fee by suit in Magistrate's Court. Since the governing ordinance requires that the user fee be collected like "ad valorem taxes" the method to enforce a user fee is governed by SC Code Section 12-49-10 and laws applicable to real property taxes and that such sale is also subject to a statutory right of redemption pursuant to South Carolina Statutes Section 12-51-90.

The user fee is a variety of a tax. As the South Carolina Supreme Court stated in Powell v. Chapman, 260 S.C. 516, 197 S.E.2d 287 (1973): "The essential characteristics of a tax are that it is not a voluntary payment or donation, but an **enforced contribution**, enacted pursuant to legislative authority, in the exercise of the taxing power, the contribution being of a proportional character, payable in money, and imposed, levied, and collected for the purpose of raising revenue, to be used for public or governmental purposes." (emphasis added) See 84 C.J.S. Taxation Sect 1, at page 32. Therefore, under the statute proving jurisdiction to the Magistrate's Court or the Ordinance creating the user fees, the Magistrate's Court had no jurisdiction over the suits brought by the Business License/User fee Department.

In their argument that the Magistrate's Court had jurisdiction, the county defendants rely entirely upon General Provisions of the County Government Law, Section 4-9-30(14) authorizing counties to "enact ordinances for the implementation and enforcement of the powers granted . . . and provide penalties for violations thereof not to exceed the penalty jurisdiction of magistrates' courts." Plaintiff asserts that this interpretation of the statute is wrong as a matter of law for several reasons: 1) the language of the County Government Law does not give counties authority to sue in Magistrate's Court- only to enact penalties which are within the Magistrate court's jurisdiction; 2) S.C. Code Ann. Section 22-3-10 governs jurisdiction of the Magistrate's Court; 3) the county has never asserted in the pleadings it filed against Simmons that it was enforcing any penalty and should be barred from arguing that position in this case.

The Court should recognize that S.C. Code Ann. Section 4-9-30(14) is an enabling statute for counties to adopt ordinances to carry out the enumerated powers. It does not authorize counties to create courts and therefore it does not create an independent source of authority by which counties can vest jurisdiction of their claims in the Magistrate's Court; that power remains

in the South Carolina legislature. The plain language of the statute allows for ordinances to be enacted that may provide for **penalties** within the Magistrate Court jurisdiction.

As is set forth above, the Magistrates Court does have jurisdiction over suits on a penalty or fine or forfeiture, but the county never sought any fine, penalty or forfeiture in the suits it filed against Simmons. See below. By directing that “violations . . . shall be heard and disposed of in courts created by the general law including the magistrates’ courts of the county”, the legislature was simply stating that suits for ordinance violations would be resolved like other claims – in the courts created by general law, i.e. S.C. Code Ann. Section 22-3-10.

Furthermore as referenced above, the Charleston County Ordinance 10-56 adopted to regulate solid waste does not contain any provision for enforcement of a claim for solid waste disposal fees (user fees) in Magistrates Court. In other words, even if the county had the power (which Simmons denies) to enact an ordinance, Charleston County didn’t do it. Therefore, the county’s argument about the effect of Section 4-9-30(14) fails for two reasons: the plain language of the statute doesn’t authorize county ordinances to collect fees in Magistrate’s Court only that penalties may be enforced and second, the ordinance enacted by Charleston County does not itself provide for suits in Magistrates’ Court to collect any fees due.

Plaintiff contends that the lack of plain language (of Section 4-9-30(14)) and lack of a conforming Charleston County ordinance are fatal to the county’s claim that jurisdiction over collection of a user fee is within the Magistrate’s Court. Generally accepted principles of statutory construction also compel the same result. It is a general principle of statutory interpretation that statutes will be interpreted so as to be consistent and not to be in conflict. S.C. Code Ann. Section 4-9-30 governs the powers of county. S.C. Code Ann. Section 22-3-10

governs jurisdiction of the Magistrate's Court. This court should interpret S.C. Code Ann.

Section 4-9-30(14) so as to be consistent with SC Code Ann. Section 22-3-10(3).

Moreover, 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 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 jurisdiction is limited to suits for a fine, penalty or forfeiture and does not include jurisdiction over collection of unpaid fees.

Finally, the judgments at issue here are not based upon any ordinance to collect any fine penalty or forfeiture. R 8(a), SCRCF requires that the pleading state the statute upon which the court's jurisdiction depends. None of the complaints referred to S.C. Code Ann. Section 4-9-30(14). All of the complaints recite the provisions of the Charleston County Ordinance Section 10-56 that provide for the collection of "user fees". See Exhibit A. All of the complaints seek judgment for the amount of the unpaid user fees. All the judgments were entered for the amount of user fees (plus court costs). Simmons notes that the earlier complaints were filed in the name of the Business License/ User Fee Department by George Boniface, a non lawyer. However the county is bound by his acts since he testified that he was its authorized representative to prepare these complaints. Quail Hill LLC v. County of Richland, 379 S.C. 314, 665 S.E.2d 194 (Ct. App. 2008). The subsequent complaints were filed by the County Attorney but still requested payment

of the user fee. See Exhibit A. Since the county commenced all of the suits for the payment of the user fee, the county cannot not change its theory and argue a different basis for jurisdiction. "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 (S.C. App. 1993) (citing Elrod v. All, 243 S.C. 425, 134 S.E.2d 410 (1964)). The county defendants 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." Defendant's Motion at page 10. (emphasis added)

In summary, principles of statutory construction, the plain language of the Magistrates Court jurisdiction statute and the complaints and admissions made by these defendants all compel the same conclusion: that the user fee judgments are void because the Magistrates' Court did not have jurisdiction to collect a user fee.

C. County defendants are not entitled to summary judgment as a matter of law on Counts One, Two and Three because of questions of fact.

In addition to asserting that the judgments for user fees are void due to lack of jurisdiction, the Second and Third Counts allege that they were the result of mistake, inadvertence or excusable neglect. R 60(b), SCRPC permits the court to entertain an independent action to relieve a party of a judgment based upon unusual circumstances justifying equitable relief. See T. v T., 378 S.C. 127, 135, 662 S.E. 2d 413,417(Ct. App. 2008). Simmons contends that it is a question of fact as to whether there were unusual circumstances justifying relief. The judgments were all based upon defaults. Simmons had reason to believe that the county had waived the fee. Simmons reasonably believed had a valid defense, i.e. that he was not

liable because he received no services. Simmons also contends that it would be inequitable to enforce a judgment against him for user fees imposed on TMS 032 which he never owner, but only held in his name to protect his family's heirs interest. Simmons was later denied the right to acquire title in an action to quiet title and title was vested in other parties to the case. The circumstances justifying equitable relief are all present here.

The County contends that Simmons is obligated to pay the user fee regardless of what he was told and refers to Ordinance Section 10-58. Defendants Motion at page 8. This section of the Ordinance may provide the county with a defense to Simmons claim of a waiver of the fee. However, it does not preclude Simmons from asserting the existence of unusual circumstances in claiming that he reasonably relied upon the Auditor's office removal of the fee. Furthermore, that section does not create any further obligation on Simmons to pay the fee if he is not legally obligated to do so, as contended herein.

D. County Defendants are not entitled to summary judgment on the Equal Protection claim

The county defendants assert that they are entitled to summary judgment on the Fourth Count alleging a violation of equal protection because the user fee was reasonably related to the management of solid waste and was uniformly applied. Defendants' Motion at page 14. They rely upon Skyscraper Corp. v County of Newberry, 323 S.C. 412 (1996) which upheld the imposition of a user fee on an owner of a multi tenant commercial property. In Skyscraper Corp., the owner contended that it should not be liable for the **portion** of the solid waste generated by its tenants. 323 S.C. 416-417. The Supreme Court held: "The purpose of Ordinance 135 is to charge those persons who **generate solid waste** for the collection and disposal of the waste. Since multi-tenant property owners benefit from the collection and disposal of waste from their property, requiring multi-tenant property owners to pay the solid waste disposal fees of their

tenants is reasonably related to the purpose of the ordinance.” Brown v. County of Horry, 308 S.C. 180, 417 S.E.2d 565 (S.C. 1992) also cited by the county supports the same proposition. In Brown, the Supreme Court said: “A service charge is imposed on the theory that the portion of the community which is required to pay it receives some **special benefit** as a result of the improvement made with the proceeds of the charge.” (emphasis added).

Simmons contends that just like the user fee ordinance in Skyscraper Corp., the purpose of the Charleston County Ordinance 10-51 was to collect user fees from the persons who utilize the disposal facilities, that are why they are called user fees. Ordinance Section 10-51(8) specifically states that it is relying on S. C. Code Ann. Section 44-55-1210 which “grants the county council the power to provide and regulate solid waste . . . and to levy fees against **persons for who services are provided.**”(emphasis added). The county’s own witness, George Boniface admitted this as well. Boniface, designated as the county’s designated representative regarding the collections of user fees (pursuant to R 30(b) (6)), testified that the purpose of the user fees was to collect money from the persons for whom services were provided. Therefore, the county is bound by plain language of its own ordinance and the testimony of its witness that the solid waste user fees are due only from persons for whom services are provided and it cannot now claim that Simmons is liable as a matter of law.

Simmons contends that it is not disputed that he does not receive any trash collection pickup or use any county facilities for solid waste collection and the county’s motion for summary judgment has not provided any evidence to refute this. Ordinance 10-51 et seq. does not mandate that Simmons send his trash to a county facility. He can dispose of it on his own property as long as he does not create a nuisance. See Ordinance Section 10-69 (2). Therefore

Simmons is not liable under ordinance 10-56 because he is not a "person for who services are provided".

As demonstrated above, Simmons is not similarly situated with all other persons for whom the user fee was imposed because he receives no benefit from these services. The county has no rational basis to collect a user fee from a person who receives no benefit of the services for which the fee is imposed and its efforts to collect it are arbitrary and discriminatory. In essence the county is asserting that persons who do not derive a special benefit can still be charged and is treating the user fee as a tax, applied to all residents which are contrary to their position that it is not a tax.

None of the case cited by the county support its contention that the imposition of a user fee does not constitute a violation of equal protection because they all dealt with persons receiving the benefit of the services provided. Research has not uncovered equal protection cases dealing with the imposition of a user fee against persons who do not receive the benefit of the services being provided as required under Skyscraper Corp. and Brown. Therefore, the court should be guided by the general principles laid down in Harbit v. City of Charleston, 382 S.C. 383, 675 S.E.2d 776 (Ct. App. 2009). The Court of Appeals addressed the Equal Protection issue: "[A] state may not 'deny to any person within its jurisdiction the equal protection of the laws.' U.S. Const. amend. XIV, § 1; see S.C. Const. art. I, § 3. . . This clause requires that 'the states apply each law, within its scope, equally to persons similarly situated, and that any **differences of application must be justified by the law's purpose.**'"(citation omitted) (emphasis added). Simmons is not similarly situated to persons whose garbage is collected or who receive a benefit from the county disposal facilities. The country has no rational basis to

enforce an ordinance against a person for whom it was not intended to apply. Simmons objected to the user fee every year it was put on his tax bill.

In summary, the case law clearly does not support the county's contention that it is not a violation of equal protection to apply a user fee ordinance against someone who does not benefit. Ordinance 10-51 sets forth the legislative intent, which is consistent with the enabling statute. The county has no rational basis to attempt to collect it from Simmons. By doing so repeatedly over many years, it has violated his right to equal protection and violated 42 USC Section 1983.

Simmons also contends that the county is not entitled to summary judgment on his claim that the Sheriff's Department and Deputy Long violated his right to equal protection by arbitrarily and discriminatorily enforcing judgments against his property. County defendants motion at page 14. Simmons contends that Deputy Long was motivated by ill will toward Simmons due to the alleged phone threats that Simmons made toward him and the Sheriff's Department. Discovery is not complete on this issue since the Sheriff's Department has failed to provide documents involving other possible racial incidents involving Deputy Long. See below.

Deputy Long was obliged to follow the law in carrying out his duties. 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." The facts are not in dispute that Simmons owned several motor vehicles that were registered with the Department of Motor Vehicles and well as a boat and several large pieces of construction and farm equipment, all in plain view around his home. Deputy Long ignored the motor vehicles that he uncovered in his record search as being too old even though he admitted that one or more of them might be worth

pursuing. The 1955 Dodge is a "classic" The judgment he was enforcing was for a minimal amount.

Simmons contends that the equal protection standard applicable here was discussed in Village of Willowbrook v. Olech, 528 U.S. 562 (2000). There the Supreme Court stated that "[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." Id at 564. The Supreme Court found that allegations that municipal action was "irrational and wholly arbitrary" . . . are sufficient to state a claim for relief under traditional equal protection analysis." Id. at 565. (Citation omitted). Olech recognized that disparate treatment which violates equal protection need not be directed at a class of persons but may involve only a single individual, i.e. a class of one. Id. See Town of Iva ex rel. Zoning Administrator v. Holley, 374 S.C. 537, 649 S.E.2d 108 (Ct. App. 2007) (violation of the Equal Protection Clause may be based on arbitrary and purposeful discrimination in the administration of the law being enforced). In addition, governmental action based upon ill will or vindictiveness or other ulterior motive may violate equal protection. Engquist v. Oregon Dep't of Agriculture, 478 F.3d 985, 993 (9th Cir.2007)(In an equal protection claim based on selective enforcement of the law, a plaintiff can show that a defendant's alleged rational basis for his acts is a pretext for an impermissible motive); Forseth v. Village of Sussex, 199 F.3d 363 (7th Cir. 2000)(allegations of pecuniary advantage); Esmail v. Macrane, 53 F.3d 176 (7th Cir. 1995) (equal protection violate predicated on prosecutorial discretion exercised out of an illegitimate desire to 'get' defendant). In Lazy Y Ranch Ltd. v. Behrens, 546 F.3d 580, 591 (9th Cir. 2008)

the Court of Appeals held that administrative costs were not a valid basis to defeat a prima facie claim of disparate treatment.

The county defendants contend that Simmons claims that Long acted maliciously are without merit because Long claims to have made several attempts to contact Simmons to resolve the judgment and Simmons disregarded these. County Defendants' Motion at page 15.

Simmons denies receiving the letters or speaking to Long before he came to Simmons house in August 2009 to serve the writ of execution. Simmons contends that undisputed facts support an inference of ill will. Deputy Long believed that Simmons threatened him and the entire Sheriff's Department. Deputy Long ignored personal property belonging to Simmons that may have been worthwhile to pursue real estate instead, contrary to S.C. Code. Ann Section 15-39-80. Sale of the personal property would not have been any more work than the real estate. Deputy Long sold TMS 498 without a minimum bid. Deputy Long claimed that he was required to offer the property for the amount of the advertising but the Sheriff's Department Policy and Procedure Manual, which Long had a copy of, does not contain any such requirement. Deputy Long only "breezed through it. Moreover, there is no requirement under the South Carolina Code for setting the minimum bid of sheriff sale, except for S. C. Ann. Section 15-41-10 which requires a minimum bid in the case of property subject to homestead exemption in the amount of the exemption and no less. Finally, S.C. Code Ann. Section 15-39-610 states that the "sheriff or officer shall and may sell, by auction, the lands, tenements, goods and chattels so taken or so much thereof as shall be sufficient to **satisfy** the judgment for the best price that can be got for them. (emphasis added). Deputy Long sold property appraised at \$70,000 and assessed for \$24,000 for \$600. The sale proceeds were insufficient to satisfy the judgment. In over the course of 4 ½ years, Deputy long only sold two other properties for user fee judgments. Exhibit G.

In summary, there are sufficient facts upon which to establish the existence of ill will or ulterior motive and accordingly, the county's motion for summary judgment should be denied.

Simmons has made out prima facie case of a violation of 42 USC Section 1983. He has shown that the defendant (1) acted under the color of state law, and (2) deprived him of a constitutional right – to equal protection of the law. See e.g. Ewing v. City of Stockton, 588 F.3d 1218, 1223 (9th Cir. 2009) “ A person acts under color of state law, if he exercise[s] power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.” Dang Vang v. Vang Xiong X. Toyed, 944 F.2d 476, 479 (9th Cir. 1991). Deputy Long was authorized to conduct the levy and sale of property to satisfy judgments. Simmons contends that the manner, in which he performed these duties, by exercising his power out of ill will and a desire to get Simmons for an alleged threat, deprived of his interest in TMS 498.

E. Defendants are not entitled to summary judgment on the Tort Claim

The County asserts that summary judgment should be granted on the Fifth Count due to its immunity under the Tort claims act and the “Public Duty Rule”. The Fifth Count asserts that the Sheriff's Department was negligent in retaining Deputy Long and that Long exhibited ill will toward Simmons resulting in his loss of his property. Discovery has also revealed that there was negligent supervision of Simmons. Simmons contends that the county has failed to establish as a matter of law that it is entitled to any of the Tort Claim Act immunities asserted in its motion against a common law claim for negligent retention and supervision. Simmons also contends that the Public Duty rule is asserted for the first time in this motion and is impermissible ; alternatively, it is inapplicable to these facts. These points are discussed more fully below.

1. County defendants have not met the burden of proof to establish Tort Claim immunity.

Immunity under the Tort Claim Act is an affirmative defense and the county defendants have the burden of proof to establish that the alleged tort is subject to immunity. Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997). Defendants cite various provisions of the Tort Claims act Section 15-78-60 on which they base a claim of immunity, Subsections (1),(2),(3),(4) (5), (11) and (23). Motion at page 11-12. Because the claim against the county is for negligent retention and supervision, the various immunities cited by the county for quasi action/inaction, Subsection(1); administrative action/inaction of a judicial or quasi judicial nature, Subsection (2); execution of court orders, Subsection (3); compliance with any law, Subsection (4); collection of any taxes, subsection (11); and institution of judicial proceedings subsection (23) are not applicable. Nowhere in its motion does the county establish how any of these immunities applies to a claim for negligent retention.

Assuming but not conceding that the discretionary function provision, subsection (5) is applicable, Simmons contends that the county has failed to address how it exercised its discretion concerning the retention and supervision of Deputy Long. Discretionary immunity is contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards. Wooten ex rel. Wooten v. South Carolina Dep't of Transp., 333 S.C. 464, 511 S.E.2d 355 (1999). The governmental entity bears the burden of establishing discretionary immunity as an affirmative defense. Summer v. Carpenter, supra. The county's motion addresses Deputy's Long exercise of discretion in enforcing the user fee judgment. Motion at page 13. In so far as the discretionary function immunity has been asserted as to Deputy Long, Simmons contends that it is not an absolute bar. As established in Jensen v. Anderson County Dept. of Social Services, 304 S.C.

195, 403 S.E.2d 615 (S.C. 1991), “ [i]n a tort suit against a public official whose duties are discretionary, it must be shown that in the performance or non-performance of those duties the public official was guilty of corruption, or bad faith, or influenced by malicious motives, before a recovery can be had.” The assertions against Deputy Long are that he was acting out of malice. Also S.C. Code Ann. Sect 115-78-70(b) prevents the application of any immunity in such as case as this : “Nothing in this chapter may be construed to give an employee . . . immunity from suit if is proved that employee’s conduct . . . constituted actual malice [or]intent to harm....” Therefore the immunity for discretionary function does not apply to acts resulting from malice or intent to harm.

In summary, there are no legal theories or facts in the county’s Motion to support the application of the discretionary function provision as to the allegations of negligent retention or supervision. In order to avail itself of the discretionary function immunity, the Sheriff’s Department is obligated to present proof as to how it exercised its discretion, actually weighed competing considerations and made a conscious decision to act or not to act. Niver v. South Carolina Department of Highways & Public Transportation, 302 S.C. 461, 395 S.E.2d 728 (Ct.App.1990). Since the county has failed to address this issue in its motion, it should be precluded from asserting any law or facts in reply to this opposition since Simmons will be denied the opportunity required by R 56, SCRCF to provide a response.

2. Evidence of negligent retention

Notwithstanding its failure to establish the immunity for discretionary function, the county asserts that there is no evidence of negligence in the retention of Long. Motion at page 15. Simmons contends that the county has failed to provide discovery relating Long’s suspension and other disciplinary actions which prevent him from fully responding to this issue.

Simmons also requested the Sheriff's Department entire Policy and Procedures Manual after it became apparent that the sections provided by the department did not address all of the issues. These are all the subject of the pending discovery motion. See Point III below. Simmons requests the opportunity to supplement his response upon the resolution of the motion.

Nonetheless, Simmons submits the following as evidence of negligent retention and supervision by the Sheriff's Department. According to Sheriff's Department records, Deputy Long was subject to several disciplinary actions since joining the department including two (2) suspensions and three (3) letters of reprimand. The reasons for Long's most recent suspension were redacted from his personnel file contrary to the Sheriff's Department own policy. The findings contained in the letter of suspension were based upon a portion of the Policy and Procedures Manual that was not produced in discovery although requested. County Document Bates No. 552, Exhibit F. The other of Deputy Long's suspensions was due to a neglect of duty, namely leaving his post to let his dog out. County Document Bates No. 559, Exhibit F. One of the written reprimands was given because Deputy Long failed to transport a prisoner, Karlton Hillyard that Long had arrested, to a trial on a traffic summons that Long has issued. As a result, Hillyard was held in contempt and three bench warrants were issued for his arrest. Long's conduct was described "irresponsible" and "unprofessional". County bates No. 561, Exhibit F. Another of the written reprimands was given a laundry list of violations including making a warrantless search without probable cause; yelling at supervisors after being removed from an interview of a suspect; failure to respond to a call; failure to document a crime victim interview; and unauthorized appearance at a search. County Document Bates. No. 554-555, Exhibit F. Lastly, Long was reprimanded because he had a motor vehicle accident while on duty in a Sheriff's Department vehicle for which he was found to be at fault. County Document Bates. No.

557, Exhibit F. Although the Sheriff's Department claims to utilize the principle of progressive punishment, Section 3-08 at page 2, see Exhibit H, at no time did the Department take a comprehensive look at what Long had done. Each of his offenses were considered in isolation, without regard to the cumulative effect. The Policy Manual provides only that employees are subject to termination for "consistent performance failures" or lying, cheating or stealing. See Exhibit F, Section 3-08 at page 7.

Long frequently passed the sergeant's exam with a high score (according to him) but was passed over for sergeant by 20-30 other officers. In response to Simmons request for all documents pertaining to decisions not to promote Deputy Long to sergeant, the country responded: "none". Exhibit I. The fact that the Department has no documentation raises a question as to why Long was not qualified to be promoted or what was the Department not willing to put down in writing. Testimony by Sergeant Wilson, one of Long's superiors raises questions as to the credibility of performance evaluations given by Long's superiors. See Exhibit F. Wilson evaluated Long during the period following his latest suspension. Wilson Deposition page 20, line 10-15. Wilson did not confer with his prior superior even though he had not been Long's superior for the entire evaluation period. Id. page 23, line 5 to 18. Long's prior supervisor had made report of unprofessional conduct by Long but Long did not know the circumstances of the infraction or talk to the other officer about it. Id. page 43, line 13 to 25. Wilson believed that what happened in the past had no bearing on his evaluation of Long. Id. page 35, line 15 to page 36, line 2. Even though Wilson had access to Long's personnel file, he never consulted it as to past misconduct. Id. page 27, line 19 to page 28, line 8. Wilson was not aware that Long was on probation during the period he evaluated him. Id. page 47, line 16 to 20.

The existence of the suspension would not necessarily affected Wilson's evaluation of Long's behavior. Id. page 48, line 10-15.

Simmons contends that Long's history of disciplinary problems raises a the question of why his status was not terminated. Long's personnel file had a redaction of the basis for a suspension; this raises a question as to why and when was it done and what did the file contain that had to be redacted. Destruction of evidence (spoliation) can be the basis for a negative inference charge to the jury. The lack of documentation to deny promotion creates an inference that the Department did not want to document the reasons why Long was not qualified to be promoted. The evaluation process as exemplified by Sergeant Wilson only considers the conduct of the officer in the most recent period and ignores what happened before . In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn there from must be viewed in the light most favorable to the nonmoving party. Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). If triable issues exist, those issues must be submitted to the jury. Young v. South Carolina Dept. of Corrections, 333 S.C. 714,718, 511 S.E.2d 413,415 (Ct. App. 1999). Simmons contends that the evidence and inferences support his contention of wrongful retention.

In Doe v. ATC, Inc., 367 S.C. 199, 206 624 S.E.2d 447 (Ct. App. 2005), the Court of Appeal noted that " 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." The Court found that such cases generally turn on two fundamental elements--knowledge of the employer and foreseeability of harm to third parties.

“From a practical standpoint, these elements are analyzed in terms of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused. Such factual considerations--especially questions related to proximate cause inherent in the concept of foreseeability--will ordinarily be determined by the factfinder, and not as a matter of law.” Id. (citations omitted). Deputy’s Long disciplinary problems were well known to the Sheriff’s Department. They almost entirely relate to his failure to follow procedure and his temper. Simmons asserts that these problems are what caused Long to violate procedure in the levy and sale of his property. According, under the approach in Doe, supra, this court should permit the factfinder to decide the issue.

Simmons also contends, based upon discovery, that the Sheriff’s Department was negligent in its supervision of Long. See Degenhart v. Knights of Columbus, 309 S.C. 114, 116-17, 420 S.E.2d 495, 496 (1992) (recognizing the tort of negligent supervision). Long was allowed to perform his duties enforcing judgments without any input from superiors. He testified that no one else was involved in his efforts to levy upon Simmons property. Long stated that he had no formal training in enforcement of judgments and had breezed through the Departments Policy Manual on that topic. In discovery, the Department submitted a Certificate of Attendance that Long went to a training class but Long obviously retained nothing from it. Long was allowed to go to Simmons house without another officer trained in enforcing judgments when there was reason to believe that Simmons would be belligerent.

In summary, Simmons contends that there is sufficient evidence that the Sheriff’s Department did not use reasonable care in deciding to retain Long and in supervising him to submit the matter to a jury; and that summary judgment should be denied.

3. The Public Duty Rule is inapplicable

The County defendants allege that they are not liable to Simmons for a tort claim under the public duty rule, citing Arthurs v Aiken County, 338, SC 253, 525 S.E. 2d 542 (Ct. App. 1999). Simmons objects to the assertion of this defense since it was not pleaded by the county previously as required by R (c) , SCRC(answer shall set forth all matter constituting an avoidance or affirmative defense). See Resolution Trust Corp. v Eagle Lake and Golf Condominiums, 310 S.C. 473,475 427 S.E.2d 646, 647-648(1993)(disapproving of the practice of raising a defense in summary judgment). Simmons is surprised by this assertion and requests the opportunity to supplement its opposition pursuant to R 56(e).

Notwithstanding this request, Simmons contends that the public duty rule as applied in Arthurs is inapplicable to this case because Arthurs involved alleged negligence by a police officer in performing law enforcement duties causing the death of a crime victim, not executing on a civil judgment. The public duty rule as announced in Parker v. Brown, 195 S.C. 35, 52 10 S.E.2d 625, 632 (1940) provides that “ an individual has no right of action against a public officer for breach of a duty owing to the public only, even though such individual be specially injured thereby. Where a duty is owing to the public only, an officer is not liable to an individual who may have been incidentally injured by his failure to perform it.”

Simmons contends that this case does not fall within the public duty rule because the purpose of the various statutes controlling Deputy Long's conduct of an execution and sale on judgments are intended to provide protection for debtors not the public in general. For example: the execution must occur against personal property first, there must be a report of the levy , the sale must be advertised, the debtor is given time to satisfy the judgment before the sale. See generally, S.C. Code Ann. Sections 15-39-80,100, 120, 130, 140, 610. Also, S.C. Code Ann.

Section 15-41-30 provides for various exemptions from attachment, levy and sale. In Tanner v. Florence Co. Treasurer, et al., 336 S.C. 552, 563 521 S.E.2d 153, 159 (1999), the Supreme Court found that requirement under S.C. Code Ann. § 12-51-40 of sending notice prior to a delinquency sale of that property created a special duty “intended for the protection of the taxpayer against surprise or the sacrifice of his property and are regarded as mandatory and are strictly enforced.” In Rayfield v. South Carolina Dep't of Corrections, 297 S.C. 95, 106, 374 S.E.2d 910, 916 (Ct. App. 1988) the Court of Appeals held that “a plaintiff may prevail against a public duty defense if the statute not only concerns the duties of a public office, but also has the essential purpose of protecting identifiable individuals from a particular kind of harm. In such cases, the statute creates a special duty which may give rise to a negligence suit against an officer for failure to perform his duties properly.” The Court of Appeals articulated a six-part test for determining whether a statute creates a special duty to an individual member of the public: (1) an essential purpose of the statute is to protect against a particular kind of harm; (2) the statute, either directly or indirectly, imposes on a specific public officer a duty to guard against or not cause that harm; (3) the class of persons the statute intends to protect is identifiable before the fact; (4) the plaintiff is a person within the protected class; (5) the public officer knows or has reason to know of the likelihood of harm to members of the class if he fails to do his duty; and (6) the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office. Id. See Jensen v. Anderson County Dep't of Soc. Servs., 304 S.C. 195, 403 S.E.2d 615 (1991) (adopting Rayfield six step special duty analysis as an exception to the public duty rule).

There is no case which specifically addresses the application of the public duty rule to the enforcement of a civil judgment. Nonetheless, Simmons contends that the six part test in

Rayfield is satisfied by the various provisions of S.C. Code Ann. Sections 15-39-80, 100, 120, 130, 140, 610. The apparent purpose of these provision is to provide uniformity and certainty to the debtor and creditor and to guard against random and arbitrary actions by Sheriffs which could prejudice the property rights of debtors, who are the intended protected class; the specific special duties are spelled out in great detail; Simmons is among the protected class ; Deputy Long has reason to know Simmons will suffer harm if he fails to conduct the sale properly; and Deputy Long had the authority to act.

Simmons contends that by analyzing the overall contents and structure of the provisions of S.C. Code Ann. relating to execution, levy and sale, the Court should conclude that the public duty rule is inapplicable. "The public duty rule is a rule of statutory construction which aids the court in determining whether the legislature intended to create a private right of action for a statute's breach." Vaughan v. Town of Lyman, 370 S.C. 436, 442, 635 S.E.2d 631, 634 (2006) (recognizing that the dispositive issue is not whether the statute creates a duty, but rather whether the statute was intended to provide an individual a private right of action). Therefore, the county defendant argument that the public duty rule precludes this suit should be rejected.

The records supports the imposition of liability upon the Sheriff's office for the conduct of its employee, Harry Long. The Sheriff's office had a duty to carry out the law pertaining to execution and sale of property to satisfy a judgment. Long was negligent in not conducting an adequate investigation of Simmons assets prior to levying upon real estate; and in no setting a minimum bid to satisfy the judgment. Long offered no explanation for these actions other than to say they were based on his life experiences.

G. County defendants not entitled to summary judgment as to Harry Long

The county defendants contend that Deputy Harry Long is a government employee and immune from suit pursuant to S.C. Code Ann. Section 15-78-70. Simmons acknowledges that Section 70(a) confers immunity upon a governmental employee from suit for a tort while acting within the scope of his employ; however subsection (b) removes any governmental immunity for "conduct not within the scope of his official duties or that constituted . . . actual malice [or] intent to harm . . ." See South Carolina State Budget and Control Bd .v Prince, 304 S.C.241, 403 S.E.2d 643 (1991)(no Tort claim immunity for employee who acted with actual malice). The Fifth Count asserts a Tort Claim against the Sheriff's Department based upon the actions of its employee, defendant Long, specifically that Long "exhibited hostility toward Simmons and with malice and intent to injure Simmons, caused a levy to be placed against real property owned by Simmons which resulted in a sale and loss of Simmons interest in the property." In interpreting the analogous language of Section 60(17) of the Tort Claims Act, the Court of Appeals stated that: "Actual malice in this situation refers to common law actual malice, and has been defined by situations where "defendant was actuated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff." Swicegood v. Lott, 379 S.C. 346, 665 S.E.2d 211 (Ct. App. 2008) (quotations omitted). Accord McBride v. School Dist. of Greenville County, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010) (Common law malice means the defendant acted with ill will toward the plaintiff, or acted recklessly or wantonly, i.e., with conscious indifference of the plaintiff's rights).

There is ample evidence in the record to support a claim of malice. Long believed that Simmons threatened him. Long filed an incident report and "blue flagged" Simmons property meaning that Sheriff's Department employees were to be cautious when entering there.

Long never investigated to see what condition Simmons motor vehicles were in or whether there were other items of personalty that he could levy upon. He ignored numerous items of personalty when he went to the Simmons house in August 2009 because he had already made up his mind to punish Simmons. Therefore defendant are not entitled to summary judgment based upon Long's status as an employee in the face of Simmons claim that he acted with malice and hostility toward Simmons. In addition, the Fourth Count asserts a civil rights claim against Long for which there is no governmental immunity.

II. COUNTY DEFENDANTS ARE NOT ENTITLED TO SUMMARY JUDGMENT DUE TO DISPUTES OF MATERIAL FACT

Simmons contends that summary judgment should be denied as to all counts of the Second Amended Complaint because there are disputes of material fact. Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Baughman v A.T. & T, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). With respect to an issue upon which the nonmoving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the nonmoving party's case. *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). Once the moving party carries its initial burden, the "opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial.'" *Id.* (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986)) (emphasis in original). The party opposing summary judgment cannot simply rest on mere

allegations or denials contained in the pleadings. Id.; George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (2001). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn there from must be viewed in the light most favorable to the nonmoving party. Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). If triable issues exist, those issues must be submitted to the jury. Young v. South Carolina Dept. of Corrections, 333 S.C. 714, 718, 511 S.E.2d 413, 415 (Ct. App. 1999). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Pye v. Aycock, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). Under the summary judgment standard, the court gives every benefit of the doubt to the non-moving party. Watters v. Terminix Service, Inc. 376 S.C. 632, 635, 658 S.E. 2d 110, 111 (Ct. App. 2008). Arguments of counsel are not the basis for summary judgment. Trivelas v. SC Dept. of Transp. 348 SC 125, 141, 558 S.E. 2d 271, 279 (Ct. App. 2001). Simmons contends that as to each count there are material issues of disputed fact.

A. The disputed issues of fact as to enforceability for user fee judgments

Simmons asserts he never received notice of the complaint in Magistrate's Court that was filed in 2000 or the entry of a judgment. He denies that he ever received notice of efforts to enforce the judgment from the Sheriff's Department until Deputy Long came to his house in August 2009. Simmons also denies that he had notice of the subsequent complaints or judgments

for user fees. Simmons asserts that the county official with whom he dealt told him that all the user fees had been removed and never told him he would still have to pay them even though they were removed from the tax bill. These facts none of which the county has admitted are material to the issue of voiding the judgment dues to mistake, inadvertence or excusable neglect.

In addition, Simmons denies that he was the owner of TMS 024 and contends that the Tax Assessor erroneously placed Simmons name as the record owner after Simmons requested that the tax bills be sent to him because they were not getting paid. The property was listed under the "estate of Sam Balaam" up to that time and Simmons was not the legal owner and had no liability for payment of a user fee. Simmons lost any claim to TMS 024 as a result of judgment in a quiet title action, Bailum v Simmons, 2004 CP10-1459. These facts are material to Simmons claim that it would be inequitable to enforce the user fee judgment against him prospectively. The county asserts that Simmons is liable for a user fee judgment against TMS 024 merely because his name was on the tax records.

B. Disputed issues of fact as to enforcement of judgment

Simmons denies calling the Sheriff's Office in April 2009 or threatening Deputy Long. Simmons claims that there were numerous items of personal property at his home when Deputy Long came there in August 2009. Deputy Long claims that he can't remember seeing anything. These facts are material to the issue of whether Deputy Long acted out of ill will toward Simmons.

III. DISCOVERY HAS NOT BEEN COMPLETED

Simmons contends that summary judgment should not be granted on the Fourth and Fifth Counts because discovery is not complete. Simmons has filed a motion to compel discovery from the county which is pending. These discovery demands include Sheriff's

Department files relating to enforcement of user fee judgment against those two property owners to determine whether there is a pattern or practice in the manner in which the Deputy Long levies upon real property; and information pertaining to the conduct of Deputy Long that resulted in a reprimand which was contained in his personnel file. These also relate to Simmons claims of ill will and possible bias. Simmons has requested documentation concerning the basis for the redaction of pertinent information from Deputy Long's personnel file including the testimony of the person(s) responsible. The redacted portion of the personnel apparently contains the specific basis for his suspension and is highly relevant to whether the Sheriff's Department tried to cover up wrongful behavior by Long which should have resulted in his termination. Plaintiff also requested a copy of Sheriff's Department arrest file that defendant Long was disciplined for mishandling, which relates to his propensity to violate Department procedures and a possible racial motivation. Finally, Simmons requested the Sheriff's Department Policy and Procedures Manual containing the regulations relating to disciplinary violations.

Simmons is entitled to have the requested material in order to respond to the county's summary judgment motion. The requested material is relevant to Simmons allegations regarding Deputy Long's conduct toward him; The information is solely within the control of the county. The county has known about all these discovery requests for many months. Simmons is prejudiced by the county's refusal to provide it. Therefore, the court should deny the county's motion based upon its failure to provide relevant material pertaining to Simmons claims.

CONCLUSION

The county defendants have failed to establish that they are entitled to summary judgment as matter of law. Simmons has demonstrated that there are material issues of disputed

facts and that discovery is incomplete. For all of these reasons, Simmons respectfully requests that the Court deny their motion.

Respectfully submitted,

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1812 Pierce Street
Charleston, SC 29492
(843) 471-2082
Attorney for plaintiff, Roosevelt Simmons
By: _____

Dated: August 2, 2012
Charleston, SC

CERTIFICATION OF SERVICE

I hereby certify that a true copy of the within opposition to county defendants motion for summary judgment and Appendix was personally served upon the defendants' attorneys, Christopher Dorsel, Esq. and Wendy Keefer, Esq. by regular mail postage prepaid at her last known mailing address.

Edward A. Bertele, Esq.

August 2, 2012

APPENDIX

SIMMONS V MASE & COMPANY 2011CP10-1084

EXHIBITS TO PLAINTIFF'S OPPOSITION TO SUMMARY JUDGMENT

- A. Complaints and Deed
- B. Bailum v Simmons, 2004 CP10-1459
- C. Deposition of George Boniface
- D. Deposition of Harry Long
- E. Appraisal of TMS 498
- F. Deputy Long employment file (under seal)
- G. Sheriff's Department Answers to Interrogatories
- H. Sheriff's Department Policy and Procedure Manual Section 3-08 and 5-04 (portions)
- I. Notice to produce, dated October 26, 2011 and County Response
- J. Deposition of Sgt. John Wilson

A. Complaints and Deed

R241

OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE SMALL CLAIMS COURT

Charleston County, a
political subdivision of
the State of South Carolina,
Plaintiff,

vs.

COMPLAINT

ROOSEVELT L SIMMONS AND GARY H SIMMONS
3416 KITFORD RD
JOHNS ISLAND, SC 29455
Defendant.

Plaintiff, complaining of the Defendant above-named would respectfully show unto the Court:

1. That Plaintiff is a political subdivision of the State of South Carolina, organized and existing pursuant to S.C. Const. Art. VIII, Subsection 1 and 7 and Section 4-1-10, 4-3-100, 4-9-25 and 4-9-30, Code of Laws of South Carolina, 1976, as amended, and having such powers, among others, as set forth therein.
2. That at all times relevant hereto, Defendant was the owner of that certain real and/or personal property known and designated on Exhibit "A" (attached).
3. That Plaintiff is vested with the power to engage in the collection and disposal of solid waste and to levy service charges against persons for whom collection services are provided pursuant to Section 44-55-1210, Code of Laws of South Carolina, 1976.
4. That Articles II and IV of Chapter 10 of the Charleston County Code of Ordinances provide for the disposal of solid waste, and that Sections 10-55 through 10-65 of Article IV provide for the assessment and collection of certain fees for the disposal of solid waste, more commonly known as "User Fees".
5. Thereafter, as each Annual User Fee became due and payable, the Plaintiff gave notice to the Defendant of the amount of the User Fee, the date by which the User Fee was to have been paid, and the address at which payment would be received. The User Fee was not paid by the due date and remains unpaid at this time.
6. That Defendant failed to pay the amount of the User Fee as set forth in Exhibit "A".
7. That Plaintiff is informed and believes that as a result of Defendant's failure to pay the User Fee, Plaintiff is entitled to judgment against Defendant for the sum of EIGHTY NINE DOLLARS AND 00/100 (\$89.00) and FIFTY-FIVE DOLLARS AND 00/100 (\$55.00) court costs.

WHEREFORE, the Plaintiff prays:

- A. That Plaintiff be awarded judgment in the sum of EIGHTY NINE DOLLARS AND 00/100 (\$89.00) ;
- B. That Plaintiff be awarded the costs of this action FIFTY-FIVE DOLLARS AND 00/100 (\$55.00); and
- C. That Plaintiff be awarded such other and further relief that this Court deems just and proper.

CHARLESTON COUNTY BUSINESS LICENSE/USER FEE DEPARTMENT

By: George B. Boniface

George B. Boniface, Legal Processing Manager
#2 Courthouse Square, Room 105
Charleston, SC 29401
(843) 724-6727

Charleston, South Carolina
May 30, 2000

Note: See Information/Instruction page for instructions on how to settle this case . If the case is not settled, you must file an answer with the Court within 30 days.

12242




County of Charleston
Business License/User Fee Legal Division
Customer Account
Exhibit A

ROOSEVELT L SIMMONS AND GARY H SIMMONS
3416 KITFORD RD
JOHNS ISLAND, SC 29455-8943

Location	PID	Year	User Fee
MAIN RD	282-00-00-138	2000	89.00
Total Due :			\$89.00

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE SMALL CLAIMS COURT

Charleston County, a
political subdivision of
the State of South Carolina,
Plaintiff,

vs.

COMPLAINT

ROOSEVELT L SIMMONS AND GARY H SIMMONS
3416 KITFORD RD
JOHNS ISLAND, SC 29455
Defendant.

Plaintiff, complaining of the Defendant above-named would respectfully show unto the Court:

1. That Plaintiff is a political subdivision of the State of South Carolina, organized and existing pursuant to S.C. Const. Art. VIII, Subsection 1 and 7 and Section 4-1-10, 4-3-100, 4-9-25 and 4-9-30, Code of Laws of South Carolina, 1976, as amended, and having such powers, among others, as set forth therein.
2. That at all times relevant hereto, Defendant was the owner of that certain real and/or personal property known and designated on Exhibit "A" (attached).
3. That Plaintiff is vested with the power to engage in the collection and disposal of solid waste and to levy service charges against persons for whom collection services are provided pursuant to Section 44-55-1210, Code of Laws of South Carolina, 1976.
4. That Articles II and IV of Chapter 10 of the Charleston County Code of Ordinances provide for the disposal of solid waste, and that Sections 10-55 through 10-65 of Article IV provide for the assessment and collection of certain fees for the disposal of solid waste, more commonly known as "User Fees".
5. Thereafter, as each Annual User Fee became due and payable, the Plaintiff gave notice to the Defendant of the amount of the User Fee, the date by which the User Fee was to have been paid, and the address at which payment would be received. The User Fee was not paid by the due date and remains unpaid at this time.
6. That Defendant failed to pay the amount of the User Fee as set forth in Exhibit "A".
7. That Plaintiff is informed and believes that as a result of Defendant's failure to pay the User Fee, Plaintiff is entitled to judgment against Defendant for the sum of EIGHTY NINE DOLLARS AND 00/100 (\$89.00) and FIFTY-FIVE DOLLARS AND 00/100 (\$55.00) court costs.

WHEREFORE, the Plaintiff prays:

- A. That Plaintiff be awarded judgment in the sum of EIGHTY NINE DOLLARS AND 00/100 (\$89.00);
- B. That Plaintiff be awarded the costs of this action FIFTY-FIVE DOLLARS AND 00/100 (\$55.00); and
- C. That Plaintiff be awarded such other and further relief that this Court deems just and proper.

CHARLESTON COUNTY BUSINESS LICENSE/USER FEE DEPARTMENT

By: George B. Boniface

George B. Boniface, Legal Processing Manager
4045 Bridge View Drive
North Charleston, SC 29405-7464
(843) 202-6091

Charleston, South Carolina
August 13, 2001

Note: See Information/Instruction page for Instructions on how to settle this case. If the case is not settled, you must file an answer with the Court within 30 days.

R 244



County of Charleston
Business License/User Fee Legal Division
Customer Account
Exhibit A

ROOSEVELT L SIMMONS AND GARY H SIMMONS
3416 KITFORD RD
JOHNS ISLAND, SC 29455

Location	PID	Year	User Fee
MAIN RD	282-00-00-138	1999	89.00
Total Due :			\$89.00

OF SOUTH CAROLINA

NTY OF CHARLESTON

IN THE SMALL CLAIMS COURT

Charleston County, a
political subdivision of
the State of South Carolina,
Plaintiff,

vs.

COMPLAINT

ROOSEVELT L SIMMONS AND GARY H SIMMONS
3416 KITFORD RD
JOHNS ISLAND, SC 29455-8943
Defendant.

Plaintiff, complaining of the Defendant above-named would respectfully show unto the Court:

1. That Plaintiff is a political subdivision of the State of South Carolina, organized and existing pursuant to S.C. Const. Art. VIII, Subsection 1 and 7 and Section 4-1-10, 4-3-100, 4-9-25 and 4-9-30, Code of Laws of South Carolina, 1976, as amended, and having such powers, among others, as set forth therein.
2. That at all times relevant hereto, Defendant was the owner of that certain real and/or personal property known and designated on Exhibit "A" (attached).
3. That Plaintiff is vested with the power to engage in the collection and disposal of solid waste and to levy service charges against persons for whom collection services are provided pursuant to Section 44-55-1210, Code of Laws of South Carolina, 1976.
4. That Articles II and IV of Chapter 10 of the Charleston County Code of Ordinances provide for the disposal of solid waste, and that Sections 10-55 through 10-65 of Article IV provide for the assessment and collection of certain fees for the disposal of solid waste, more commonly known as "User-Fees".
5. Thereafter, as each Annual User Fee became due and payable, the Plaintiff gave notice to the Defendant of the amount of the User Fee, the date by which the User Fee was to have been paid, and the address at which payment would be received. The User Fee was not paid by the due date and remains unpaid at this time.
6. That Defendant failed to pay the amount of the User Fee as set forth in Exhibit "A".
7. That Plaintiff is informed and believes that as a result of Defendant's failure to pay the User Fee, Plaintiff is entitled to judgment against Defendant for the sum of EIGHTY NINE DOLLARS AND 00/100 (\$89.00) and FIFTY-FIVE DOLLARS AND 00/100 (\$55.00) court costs.

WHEREFORE, the Plaintiff prays:

- A. That Plaintiff be awarded judgment in the sum of EIGHTY NINE DOLLARS AND 00/100 (\$89.00) ;
- B. That Plaintiff be awarded the costs of this action FIFTY-FIVE DOLLARS AND 00/100 (\$55.00); and
- C. That Plaintiff be awarded such other and further relief that this Court deems just and proper.

CHARLESTON COUNTY BUSINESS LICENSE/USER FEE DEPARTMENT

By: George B. Boniface

George B. Boniface, Legal Processing Manager
4045 Bridge View Drive
North Charleston, SC 29405-7464
(843) 202-6091

Charleston, South Carolina
February 11, 2002

Note: See Information/Instruction page for Instructions on how to settle this case . If the case is not settled, you must file an answer with the Court within 30 days.

R 246



County of Charleston
Business License/User Fee Legal Division
Customer Account
Exhibit A

ROOSEVELT L SIMMONS AND GARY H SIMMONS
3416 KITFORD RD
JOHNS ISLAND, SC 29455

Location	PID	Year	User Fee
MAIN RD	282-00-00-138	1998	89.00

Total Due : \$89.00

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
COUNTY OF CHARLESTON,

Plaintiff,

vs.

ROOSEVELT L SIMMONS
3416 Kitford Road
Johns Island, SC 29455-8943,

Defendant.

IN THE SMALL CLAIMS COURT

COMPLAINT

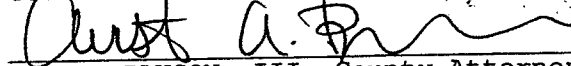
The Plaintiff complaining of the Defendant alleges and states as follows:

1. Plaintiff County of Charleston is a political subdivision of the State of South Carolina organized and existing pursuant to S.C. Const. Art. VIII, Subsections 1 and 7 and S.C. Code Ann. Section 4-9-25 et seq. and having such powers as set forth herein.
2. Defendant was provided services from Plaintiff and incurred the debt designated on Exhibit 'A' which is attached hereto and made a part hereof by reference.
3. All real property owners in the County of Charleston are assessed a fee to pay the costs of garbage and trash disposal at the County of Charleston's waste-to-energy incinerator and landfill.
4. Defendant received the services from Plaintiff, and thereafter as the fee became due and payable, Plaintiff gave notice to Defendant of the amount of the fee, the due date of payment, and the address at which payment was to be made. Defendant did not pay the fee by the due date.
5. Defendant failed to pay and continues to fail to pay the fee for services rendered as set forth in Exhibit 'A.'
6. Plaintiff is informed and believes that as a result of the Defendant's failure to pay for the services rendered, Plaintiff is entitled to judgment against Defendant for the sum of: FIVE HUNDRED NINETY NINE AND NO/100 DOLLARS (\$599.00);

WHEREFORE, the Plaintiff prays that this Honorable Court:

- A. Award Plaintiff judgment in the amount of: FIVE HUNDRED NINETY NINE AND NO/100 DOLLARS (\$599.00);
- B. Award Plaintiff the costs of this action: EIGHTY AND NO/100 DOLLARS (\$80.00);
- C. Award Plaintiff such other and further relief as this Court deems just and proper.

COUNTY OF CHARLESTON


JOSEPH DAWSON, III, County Attorney
BERNARD E. FERRARA, JR., Deputy County Attorney
BERNICE M. JENKINS, Deputy County Attorney
AUSTIN A. BRUNER, Deputy County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
4045 Bridge View Drive, Suite B-314
North Charleston, South Carolina 29405
Telephone: (843) 958-4010
Facsimile: (843) 958-4017

ATTORNEYS FOR PLAINTIFF

October 1, 2008
Charleston, South Carolina

2248



Defendant Account

Exhibit A

ROOSEVELT L SIMMONS
3416 Kitford Road
Johns Island, SC 29455-8943

<i>Department</i>	<i>Date</i>	<i>Balance Due</i>	<i>Debt Description</i>	<i>Account Information</i>
User Fee		126.00	User Fee	282-00-00-138/2006/
User Fee		89.00	User Fee	311-00-00-024/2006/
User Fee	3/15/2004	89.00	User Fee	311-00-00-024/2003/
User Fee	3/15/2004	126.00	User Fee	282-00-00-138/2003/
User Fee	3/15/2005	89.00	User Fee	311-00-00-024/2004/
County	4/10/2006	80.00	Court Filing Fee: Case	
Total Balance Due:		<u>\$599.00</u>		

2249

**THE STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**



To All Whom These Presents May Come:

WHEREAS: I, J. Al Cannon, Jr., Sheriff of Charleston County

SEND GREETING:

WHEREAS, Charleston County Business License/User Fee Department did obtain a judgment on July 18, 2000, against Roosevelt Simmons, and the same was docketed in the Court of Common Pleas of the Ninth Judicial Circuit on September 19, 2000, as evidenced by the records of the Clerk of Court of Charleston County in Case No. 2000-JG-10-1817; and

Whereas, on September 19, 2000 an execution was issued by the Court of Common Pleas to satisfy the said judgment; and

WHEREAS, following a levy by the Sheriff of Charleston County against the interests and only the interests of Roosevelt Simmons of John's Island, South Carolina, in the below described property, a public auction was held on August 1, 2009, and property was purchased by the Grantee herein on November 4, 2009, as prescribed by Section 15-19-710 of the Code of Laws of South Carolina, 1976, as amended.

NOW, KNOW ALL MEN BY THESE PRESENTS, That I, the said J. Al Cannon, Jr., Sheriff of Charleston County or and/in consideration of the sum of Six Hundred and 00/100 Dollars (\$600.00) to me in hand paid at and before the sealing and delivery of these presents by Mase and Company, LLC, (the receipt whereof is hereby acknowledged) have remised, released and forever quit-claimed, and by these presents do remise, release and forever quit-claim unto he said:

Mase and Company, LLC, his heirs and assigns, forever, the interests and only the interests of Roosevelt Simmons of John's Island, South Carolina, in the following described real property, to wit:

ALL that lot, piece, or parcel of land situate, lying, and being on Johns Island, County of Charleston, State of South Carolina, known and designated as Lot C, as shown on a plat made by HLA, Inc., entitled "PLAT SHOWING LOT A (1.139 ACRES), LOT B (0.743 ACRES) LOT C (1.375 ACRES), CONTAINING 3.257 ACRES, PROPERTY OF ROOSEVELT SIMMONS LOCATED ON JOHNS ISLAND, CHARLESTON, COUNTY SOUTH CAROLINA", dated May 12, 2005, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book DE at Page

692. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

BEING a portion of the same property conveyed to Roosevelt Simmons by quitclaim deed of Cheryl Simmons, dated August 29, 2003 and recorded in the RMC Office for Charleston County, South Carolina in Book Z468 at Page 508.

TMS # 283-00-00-498

PROPERTY ADDRESS : 0 KITFORD RD
JOHNS ISLAND, SC 29455

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Mase and Company, LLC, his heirs and assigns, forever so that neither I the said J. Al Cannon, Jr., Sheriff of Charleston County nor my heirs, nor any other person or persons, claiming under me or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

WITNESS my hand and seal this 9th day of Feb, in the year of our Lord Two Thousand Ten and in the Two Hundred Thirty Third year of the Sovereignty and Independence of the United States of America.

J. Al Cannon, Jr. (L.S.)
J. Al Cannon, Jr., Sheriff of Charleston County

Signed, Sealed and Delivered
in the presence of:

[Signature]
[Signature]

Witness #1

THE STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness

Dwight A. Jenkins

Witness #1

oath that he/she saw the within named J. Al Cannon, Jr., Sheriff of Charleston County, sign, seal, and as his act and deed, deliver the within written Deed; and that he/she with *J. Al Cannon, Jr.* the other witness subscribed, witnessed the execution thereof.

Dwight A. Jenkins
Witness

Witness

SWORN to before me this *9th*

day of *July*, A.D. 2010

Dwight A. Jenkins

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 8/2/2017

B. Bailum v Simmons, 2004 CP10-1459

12253

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2004-CP-10-1459

) CASE NO.: 2004-CP-10-1459

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JULIE J. ARMSTRONG
CLERK OF COURT

2254

Defendants.

JURISDICTION

PROCEDURAL HISTORY

2 Jan

Q255

To ensure that all interested persons' interests were fully protected, the Pleadings were also served upon all defendants, and J. Doe and M. Roe by publication. The final Affidavit of Publication was filed on December 13, 2006. Francis X. McCann was appointed as Guardian-ad-Litem to protect the interests of any heir or heirs or person or persons known or unknown either named as a defendant or not who may have an interest in this litigation or this property. No response was received by any person to the published notices. At the time of the trial, counsel for the parties entered into the record several stipulations.

First, this action involves the quieting of the title, partition and sale of the four parcels of land identified by the TMS Numbers 311-00-00-024 (Parcel 1); 312-00-00-065 (Parcel 2) 312-00-00-032 (Parcel 3) and 312-00-00-067 (Parcel 4).

Second, since 1904, the "Bailum" name has sometimes been spelled as "Balaam". The parties stipulate that reference to "Balaam" is reference to "Bailum" and the caption shall reflect "Bailum a/k/a Balaam". Further, there are instances where "Hester Bailum" is referred to as "Esther Bailum". The parties stipulate that Hester Bailum and Esther Bailum are the same person. The caption shall reflect "Hester Bailum a/k/a Esther Bailum".

Third, the parties shall be realigned such that the living heirs of Samuel Bailum; to wit: Hattie Bailum, Ruby Bailum, Verdone Gray, Julie Johnson and Monica Middleton shall appear in the caption as Plaintiffs. The known living heirs of Hester Bailum shall remain as defendants.

Fourth, the parties stipulate that due to health, age, and travel considerations, Hattie Bailum, James Bailum, Verdone Gray, Julie Johnson, Leon Singleton and Melvin Singleton were permitted to testify by telephone.

Fifth, the parties stipulate to the admissibility of previously marked exhibits which were submitted and reviewed by counsel for all parties and the Guardian ad Litem prior to trial.

Sixth, the Guardian ad Litem, Francis X. McCann is to be paid for his services in equal shares by the Plaintiffs and Defendants. His fee is to be paid at the time of the sale of all or a portion of the property identified above. The Guardian ad Litem's fee is \$200 per hour.

Seventh, the Special Referee is to be paid for his services in equal shares by the Plaintiffs and Defendants. His fee is to be paid at the time of the sale of all or a portion of the property identified above. The Special Referee's fee is \$200.00 per hour.

Eighth, the prayer for relief is amended by stipulation to seek to have Title to the four above-mentioned parcels quieted and that once Title is established, the parcels be partitioned

3
Jan

and/or sold with the respective shares of the proceeds being distributed to the heirs of Samuel Bailum, Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton or the heirs of Hester Bailum as determined appropriate by this Court.

Ninth, the parties stipulate to the court reporter's qualifications.

FINDING OF FACT

This action is brought to determine the heirs of Samuel Balaam (a/k/a Bailum) and Hester Balaam (a/k/a Bailum) and the extent of each heirs interest in the parcels of land distributed hereinafter, and to Code Section 15-61-10, et seq. of the South Carolina Code of Laws, for the purpose of partitioning the parcels in kind or by sale. The real property that is the subject of this action is more particularly described as follows:

Parcel 1:

All that lot, piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing — twenty (20) acres more or less; butting and bounding on the north by Lots No. 3 and 4; east by Lot No. 10; south by a public road and west by Lot No. 12. Said lot being known and recorded on the plat of the Gibbs-Murray tract on Johns Island, Lot #11. The current TMS number for this property is 311-00-00-024.

(NOTE: This parcel now is reflected as 15 acres on the Charleston County Tax Rolls, by appraisal, and by survey)

Parcel 2:

All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing twenty-four (24) acres and being a part of Lot No. 24 of fifty-four acres conveyed in 1905 by Nettie and Eliza Hane on January 20, 1904 and recorded in the R.M.C. office in Charleston County in Book J24, page 137, December 1905. Lot 24 being bounded as follows: on the north by lots No. 25 and No. 27 on the east by Lots 26, 27, and 28, on the south by Lot 23, and on the west by a public road, which said boundaries are shown on a plat made by W.B.

R 257

Guerard in January 1883. The current TMS number for this property is 312-00-00-065.

Parcel 3: All that certain piece or parcel of land situate and lying and being on Johns Island in the County of Charleston and State of South Carolina, measuring and containing five (5) acres and being a part of Lot No. 24 of fifty-four (54) acres conveyed in 1905 by Nettie and Eliza Hane on January 20, 1904, and recorded in the R.M.C. office in Charleston County in Book J24, page 137, December 1905. The current TMS number for this property is 312-00-00-067.

Parcel 4: All that certain piece or parcel of land situate and lying and being on Johns Island I the County of Charleston and State of South Carolina, measuring and contain five (5) acres and being a part of Lot No. 24 of fifty-four (54) acres conveyed by Nettie and Eliza Hane on January 20, 1904, and recorded in the R.M.C. office in Charleston County in Book J24, page 137, December 1905. The current TMS number for this property is 312-00-00-032.

PARCEL 1

On July 2, 1910, Samuel Bailum (hereinafter "Samuel") purchased twenty acres from Amarantha Hane Smith and Nettie M. Hane as described and recorded in Book H29 on page 185. ~~On information and belief, this Samuel Bailum died intestate, leaving as heirs, his~~ wife Hester Bailum, and his children: Willis Bailum, Thomas Bailum, Tony Bailum, Samuel Bailum (hereinafter "Sam") Mary Bailum and Fannie Bailum. Hester Bailum received a statutory one-third (1/3) interest in the property. Samuel's children would have shared a two-third's (2/3) interest. Current tax map references, surveys, property cards and appraisals indicate the correct acreage is fifteen (15) acres of highland.

Hester Bailum had six children from a previous marriage. These children were Eugene Singleton, Arthur Singleton, Jerry Singleton, Carrie Burns, Elouise Singleton and Josh Singleton. Hester Bailum died intestate, leaving her children as her sole heirs.

R258

The Plaintiffs, herein Hattie Bailum, Ruby Bailum, Verdone Gray, Julie B. Johnson and Monica Middleton are descendants of "Samuel". Through their ancestors, they share the 2/3 interest in parcel one.

Hester Bailums' descendants, the Defendants' herein, share her one (1/3) interest in parcel one. Walter Burns, Alonzetta Burns, Sheila Owens, Louise Canty, Maybell Hicks and Leon Singleton have deeded their interest in the property to the Defendant Roosevelt Simmons, and as such no longer have an interest in this litigation.

PARCELS 2,3, & 4

Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton, the children of Samuel Bailum, acquired approximately fifty-four acres on Johns Island from Nettie M. Hane and Eliza A. Hane on January 20, 1904, as described and recorded in Book T24 on page 137. On December 15, 1905, those five collectively divided and conveyed parcels of the fifty-four (54) acres described in Book T24 on page 137, as follows: to Sam Bailum, twenty-four (24) acres, (Book W24, at Page 327); Tony Bailum, ten (10) acres (Book O25, at Page 181); Thomas Bailum, ten (10) acres (Book W24, at page 188); Mary Bailum, five (5) acres (Book E26, at Page 257); and Fannie Bailum Middleton, five (5) acres (Book W25, at Page 284). Subsequent conveyances out have left as remaining heirs' property parcels 2, 3, and 4 as described hereinabove. The heirs of Hester Singleton Bailum have no claim or interest in parcel 2, 3 or 4 as her husband Samuel Bailum had no interest in this property.

SAMUEL BAILUM HEIRS

The Court took testimony from Hattie Bailum, James Bailum, Verdone B. Gray and Julie B. Johnson. The Court also reviewed numerous exhibits. The Court finds that the following were the sole heirs of Samuel Bailum (with regards to Parcel 1) and Sam Bailum, Tony Bailum, Thomas Bailum, Mary Bailum, and Fannie B. Middleton (with regards to Parcels 2, 3, & 4).



Hattie Bailum is the daughter of Sam Bailum's son Thomas (deceased) and granddaughter of Sam Bailum (deceased) and great granddaughter of Samuel Bailum. (deceased)

Ruby Bailum is the wife of Sam Bailum's son Sammy (deceased). She is the mother of Verdone Gray. Sam Bailum was Sammy's father and Ruby's father-in-law. Samuel is her grandfather-in-law.

Monica Middleton is the daughter of Fannie Bailum Middleton (deceased), the granddaughter of Sam Bailum, and the great granddaughter of Samuel Bailum

Julie Bailum Johnson is the daughter of Sam Bailum. Sam Bailum took as a second wife Mary Warren (deceased). Julie Bailum Johnson is the granddaughter of Samuel Bailum. The witnesses all testified that there are no other Bailum heirs alive other than the Plaintiffs to this action.

Thus, the heirs of Samuel Bailum who are living and who share a 2/3 interest in Parcel 1 are Hattie Bailum, Ruby Bailum, Julia Bailum Johnson and Monica Middleton.

The heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie B. Middleton, who are living and who share the entire interest in Parcels 2, 3, and 4 are Hattie Bailum, Ruby Bailum, Monica Middleton and Julie Bailum Johnson.

HESTER BAILUM HEIRS

The Court took testimony from Roosevelt Simmons, Leon Singleton and Melvin Singleton. The Court also received numerous exhibits including a family tree prepared by Mr. Simmons with the assistance of prior counsel, Ruth Cupp, Esq. As noted above when Hester Bailum died, she was survived by six children. All of these children are now deceased. The Defendants in this action are descendents of Hester Bailum's six children. Of those heirs, Walter Burns, Alonzetta Burns, Sheila Owens, Louise Canty and Mabell Hicks have deeded their interest in Parcel 1 to Roosevelt Simmons. The remaining Hester Bailum heirs have not deeded their intestate interests and as such would receive their pro-rata share of the sale proceeds from Parcel 1 if a sale is ordered. Those other heirs are Melvin Singleton and Marie Smith.

R260

7
B

LEGAL ISSUES

The issues before the Court are the action for Declaratory Judgment to determine the heirs and their respective interests in the above referenced parcels, to quiet Title, the Partition in land or sale and the counterclaim of adverse possession by the Defendant Roosevelt Simmons.

Declaratory Judgment and Partition

From a review of the pleadings, testimony and exhibits, it is clear that all the parties desire to have the title to the property quieted, through a declaratory judgment. In some cases, interests in the property has passed by intestate distribution through three generations. The court finds it in the best interest of all that the title be established as a matter of law. Once the ownership interests were established the Court would have considered if partition in kind could be fairly and equitably accomplished. Since the only answering Defendant, Roosevelt Simmons, has, through his counsel, withdrawn his request for Partition of Parcel 1, this will not be necessary. Therefore, the court may proceed with a sale of all the property.

A Partition and sale procedure must be fair and equitable to all parties of the action. *Pruitt v. Pruitt*, 298 S.C. 411, 380 S.E. 2d 862 (Ct. App. 1989). If a Court determines that a partition cannot be fairly and equitably made, the Court may order a sale of the property and a division of the proceeds according to the rights of the parties. S. C. Code Ann. § 15-61-100, et seq. (2005). Additionally, if partition in kind or by allotment cannot be fairly and impartially made without injury to any of the parties in interest, then the Court has jurisdiction to order sale of the property and the division of the proceeds. S.C. Code Ann. §15-61-50 (2005).

In this case, due to the size, shape and location of Parcel 1, a partition in kind is not practicable or expedient. It would be practically impossible to partition the property, leave multiple parcels with ingress and egress, not lose substantial value to all parcels or even create parcels suitable for building. Thus, a sale is an appropriate resolution. The Defendant, Roosevelt Simmons concurs. Further, the Plaintiffs do not request a judicial sale wherein the sale price is an unknown amount. There is a ready and willing purchaser for this property who has agreed to

R261

8/2/11

pay the value that this Court sets for this parcel of property. The parties are guaranteed to receive the full fair-market value of the property, as determined by the Court. The Court in a prior hearing ordered an appraisal of Parcel 1. That appraisal is part of the record herein.

Plaintiffs, by and through Hattie Bailum, contracted to sell parcels 1, 2, 3 and 4 in August, 2003. This action was necessary because of the dispute regarding ownership of Parcel 1 and the value of the property. As Ordered by the Court, an independent appraiser inspected the property and provided the parties with its value. The appraiser was Trina Walters of Atlantic Appraisals. She determined that the appraised fair-market value of parcel 1 was Two Hundred Twenty Thousand and 00/100ths (\$220,000.00) Dollars.

The Plaintiffs agree that the Defendants have an interest in Parcel 1 and are willing to deliver one-third (1/3) of the net closing proceeds for Parcel 1 to the Heirs of Hester Bailum in accordance with their interests therein. Plaintiffs have asked that the Court order the funds be disbursed accordingly.

The Court, based upon the testimony, and exhibits concurs that the Heirs of Hester Bailum possess a one-third (1/3) interest in Parcel 1. The Court also concludes that the Heirs of Hester Bailum possess no interest in Parcels 2, 3 or 4. The Heirs of Samuel Bailum, possess a two thirds (2/3) interest in Parcel 1. Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton possess the full interest in Parcels 2, 3 and 4.

ADVERSE POSSESSION

I.

(In General)

The Defendants, specifically, Roosevelt Simmons, raised as a defense and claim the theory of adverse possession.

To prevail upon an adverse possession theory, Mr. Simmons, as the adverse possessor, must prove each element of the theory. These elements are:

- (1) Continuous;
- (2) Hostile;
- (3) Open and Notorious;
- (4) Actual; and

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(5) Exclusive

These elements of adverse possession have been determined in South Carolina by an extensive body of case law. (see eg. Lusk vs. Callahan 339 SE 2nd 56 (Ct App. 1986 and the cases cited therein.) To prevail, a claimant must establish that each element exists and is concurrent.

A.

CONTINUOUS

Possession must be continuous and uninterrupted for the requisite period. Temporary occupation does not constitute possession. (Atlantic CLR Co. vs. Searson 133 SE 567 (1926). Roosevelt Simmons does not occupy the property. Roosevelt Simmons testified that if any other rightful heir sought to use the property, they would be entitled to do so. As such, possession, if found to exist, would not be uninterrupted.

B.

HOSTILE

Hostile possession is possession with the intent to dispossess the true owner. Ouzts vs. McKnight 108 SE 561 (1920). There must be a trespass by the adverse possessor against the owner Massey v. Duren 3 SE 34 (1871). An heir going upon the property does not acquire title by adverse possession as he is not a trespasser but rather he is an owner. Permissive entry is not hostile. If the possessor has permission or an ownership interest, there can be no adverse possession. One who enters land with permission cannot acquire title by adverse possession. (Fradv vs. Ivester 110 SE 135 (1921). Lastly, as to the possession being hostile, an heir coming into possession cannot obtain title by adverse possession against other heirs claiming an interest in the property. The heir in possession of the property as it relates to the other heirs is that of a fiduciary (Vaux vs. Nesbit 6 SE Eq. (1 McCord) 352 (1826). There has been no testimony that any heir with an interest in this property has attempted to dispossess any other rightful owner. To the contrary, testimony is that Roosevelt Simmons acted with regard to preserving the property for all the Bailum Heirs and not with regard to dispossessing any other true owner.

C.

OPEN & NOTORIOUS

The intent to possess the land must not be hidden but apparent. The possession must be so notorious that a legal owner by ordinary diligence should have known of the intent to possess. (*Graniteville Co. vs. Williams* 39 SE 2d 202 (1946). Possession with knowledge by the owners of an heir acting in a fiduciary capacity is not indicative of intent to possess. As evidenced by numerous letters in evidence, there was not intent to possess by Roosevelt Simmons for his own interest. By letter, dated October 19, 2003, Mr. Simmons writes to Hattie and Clara Bailum with a request that the matter of ownership interests of the family be decided by the Probate Court. He signed the letter "Roosevelt Simmons and Family". Leon Singleton, another Hester Bailum heir, wrote to Ruth Cupp, Esq. on December 27, 2004. His letter references the "Bailum property". Mr. Singleton also wrote to Hattie Bailum in June 2005 and describes Roosevelt Simmons as follows: "Roosevelt, my first cousin, has been the caretaker as well as taxpayer for the land...". He also describes the land as holding the family heritage to be passed down through the generations. Lastly, Leon asks that if Hattie decides to sell, that Leon and Roosevelt be given the percentage of their ownership for the work they have put into the land. Roosevelt Simmons testified that he was not possessing the property in his own right but serving as a caretaker.

D.

ACTUAL

There can be no adverse possession of land against an owner where there has been no possession for which the true owner could bring a trespass claim. *Steadman vs. Hilliard* 37 SCE (3 Rich) 10 (1846). This, if a party has a legal right as an owner by virtue of his being a legal heir, there can be no trespass and thus no trespass claim would follow. In the absence of the ability to bring a trespass claim, there can be no adverse possession as a matter of law. Roosevelt Simmons has a legal right as an owner to use the property. As such, he cannot be classified as a trespasser.

E.

EXCLUSIVE

Possession must be such as to indicate exclusive ownership of the property. Curtis vs. Deschamps 350 SE 201 (Ct. App. 1986). When the owner(s) of the property and an occupant are both in possession, the possession of the legal owner prevails to the exclusion of the adverse possessor. The exclusiveness provision is not satisfied if occupancy is shared with an owner or agent of the owner. Butler vs. Lindsey 361 SE 2d 621 (Ct. App. 1987). Roosevelt Simmons shares ownership with numerous heirs. As evidenced by testimony and exhibits, other heirs would clearly have occupied the property if not for the County disallowing their requests, a fact acknowledged by witnesses for the Plaintiffs and Defendants. Roosevelt was not acting as an exclusive owner, but rather as the family caretaker.

ADVERSE POSSESSION

II.

(by Heirs)

In addition to the numerous cases addressing adverse possession by the third parties, South Carolina Courts have also confronted the issue of adverse possession by heirs. For adverse possession by an heir against all others to be found to exist, the previously discussed five elements must be proven as well as a sixth element of ouster.

With heirs property, possession is presumed to follow legal title. Lynch vs. Lynch 115 SE 2d 201 (1960). When an heir "occupies" property, there is every presumption that such occupancy is subordinate to legal title. Occupancy by the family or other relation **does not** create hostility in possession. Knight vs. Hilton 79 SE 2d 873.

Permissive entry or possession by an heir under color of title is not hostile. One who enters and with permission or under color of title cannot acquire title by adverse possession absent a disclaimer of the owner or other heirs. No disclaimer has been given by any of Samuel Bailum's heirs or Hester Bailum's heirs in this dispute.

Further, where one seeks to acquire title by adverse possession against his brothers and sisters "such an unconscionable claim should not be sustained..." The presumption is that the possession of a tenant is of the benefit of all. It must appear that the holding heir claimed the

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property as his own and has in unequivocal terms so notified the other heirs". Whitaker vs. Jeffcoat 122 SE 495 (1924).

Thus to prevail, an heir must prove by conclusive evidence that he has complied with the law of ouster in order to adversely possess against other heirs. Fender vs. Heirs of Smashum 581 SE 2d 853 (Ct. App. 2003).

Ouster is the actual turning out or excluding a party entitled to possession of any real property. The acts must be unequivocal and distinctly hostile. There must be unequivocal terms notified to the other heirs. Fender at 642. Only in rare extreme cases will the ouster of one heir by another heir be implied for dealings with the property. Fender at 642.

The well-established principle is that possession by one is the possession for all. Watson vs. Little 79 SE 2d 384 (1953). To prevail on an adverse possession claim, one tenant must overcome the presumption that he holds possession in recognition of the co-tenants. The fact that a claimant paid taxes does not constitute Ouster. Fender at 643. Payment of taxes by a co-tenant entitled the co-tenant to only proportionate contribution from the other co-tenants and nothing more. See Watson at 387. Mr. Simmons has testified that there is no ouster of his family or any other rightful heir with an interest in the property. To the contrary, by his own testimony, if they sought to use the property, he would welcome them.

Mr. Simmons has for several years served a vital role as caretaker of this heirs' property. He has watched over the property, collected rent, and paid taxes. The Court recognizes his efforts in this regard.

CONCLUSIONS OF LAW

A.

Declaratory Judgment

The Court concludes as a matter of law that the title to this property be quieted as set out specifically hereinbelow. As for Parcel 1 (311-00-00-024) Title is vested in the Heirs of Hester Bailum (one-third (1/3) interest) and the Heirs of Samuel Bailum (two-thirds (2/3) interest). As for Parcels 2, 3, and 4, title is vested in the Heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie Bailum Middleton. Those heirs are the Plaintiffs in this action.

R266

12
Jan

PARTITION

The Court concludes as a matter of law that the property is to be partitioned by sale and the proceeds divided fairly and equitably. The Plaintiff's have requested a sale. The Defendants Roosevelt Simmons and Marie Smith have requested they be allowed to purchase the other heirs interest in Parcel 1 if the Court determined that Roosevelt Simmons was not the owner through adverse possession

SALE

As to Parcel 1, in 2003, Hattie Bailum entered a contract of sale. As part of this action, this Court ordered an appraisal of Parcel 1. The independent appraisal established a fair-market value on the property at \$220,000.00. The Court finds this value fair and reasonable. The parties have executed an addendum to their contract to sell Parcel 1 for the appraised value. The Court concludes that since the sale price is the fair-market value price, it is in the best interests of all the parties that the contract be fully performed. Doing so eliminates the need to list and sell the property thus saving six percent (6%) to ten percent (10%) of the purchase price in real estate commissions and avoids unnecessary delays. By ordering the sale, the heirs who will share in the proceeds will receive a greater share, not diminished by unnecessary costs and delays.

Mr. Roosevelt Simmons and Mrs. Marie Smith have asked for the opportunity to purchase Parcel 1. This matter has been pending for several years. Mr. Simmons, on previous occasions, has been offered the opportunity by this Court to buy out the remaining heirs with an interest in Parcel 1. The Court shall grant to Roosevelt Simmons and Mrs. Marie Smith the opportunity to acquire Parcel 1. This opportunity is assignable but only to individuals related by blood or marriage to a party herein. Mr. Simmons or Mrs. Marie Smith shall have ten (10) days from the date of service of this Order to provide to the Court written confirmation of a loan approval or of funds available by a licensed lender. Mr. Simmons or Mrs. Marie Smith shall have thirty (30) days to consummate the sale from the date of service of this Order. Should Mr. Simmons or Mrs. Marie Smith fail to provide the letter or consummate the transaction, the property shall be immediately sold in accordance with the contract for the fair-market value price of Two hundred twenty thousand (\$220,000.00) Dollars.



The Court recognizes that over time certain heirs, both plaintiff and defendant herein, have contributed to the taxes and maintenance expenses for the four parcels. Those contributions can not be fixed with certainty. However, in recognition of Mr. Simmons' efforts to preserve the property for the benefit of all the heirs, the Court concludes he is to be given \$10,000.00 from the proceeds of the sale of the four parcels over and above his interest as an heir in Parcel 1. The parties agree that this sum is fair and equitable compensation for his dedicated service in preserving this property for the benefit of all Bailum heirs.

The net proceeds from the sale, shall be distributed after the fees for the Special Referee and Guardian ad Litem are deducted, with one-third (1/3) being forwarded to the Heirs of Hester Bailum and two-thirds (2/3) being forwarded to the Heirs of Samuel Bailum.

The Hester Bailum net proceeds shall be disbursed as follows:

Roosevelt Simmons	Two-ninths (2/9)
Melvin Singleton	One-eighteenth (1/18)
Marie Smith	<u>One-eighteenth (1/18)</u>
Total Hester Bailum net disbursement	One-third (1/3)

The Samuel Bailum net proceeds shall be disbursed as follows:

Hattie Bailum	One-sixth (1/6)
Ruby Bailum	One-twelfth (1/12)
Verdone Gray	One-twelfth (1/12)
Julie B. Johnson	One-sixth (1/6)
Monica Middleton	<u>One-sixth (1/6)</u>
Total Samuel Bailum net disbursement	Two-thirds (2/3)

As to Parcels 2, 3, and 4, in 2003 Hattie Bailum entered a contract for sale with a purchaser who is an adjoining land owner. This property was also appraised pursuant to Court Order. The independent appraisal establishes the combined fair-market value of these parcels at \$337,000.00. The Court finds their value fair and reasonable. The parties have executed an addendum to their contract to sell Parcels 2, 3, and 4 for the appraised value.

The Court concludes that since the sale price is fair-market value, it is in the best interest of the sole heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Mary Bailum and Fannie B.

Middleton that the contract be fully performed. This conclusion is in accord with the relief sought in the Plaintiff's complaint, wishes and prayers. The net proceeds from the sale shall be distributed, after usual and customary closing costs are deducted as follows:

Hattie Bailum	One-fourth (1/4)
Ruby Bailum	One-eighth (1/8)
Verdone Gray	One-eighth (1/8)
Julie B. Johnson	One-fourth (1/4)
Monica Middleton	One-fourth (1/4)

ADVERSE POSSESSION

The Court concludes that the Defendant Roosevelt Simmons did not prove the required elements of an adverse possession theory. By his own testimony, each of the elements was negated rather than proved.

COSTS AND EXPENSES

The Court concludes that although S.C. Code 15-61-10, et seq. permits it to award Plaintiffs' fees and costs, the Court will decline to do so. The Court does not find that the Defendants' position was baseless or meritless. To the contrary, all parties concede that the title must be quieted. The objection by Mr. Simmons as to the partition and sale was not entered into lightly or frivolously. He raised fair questions for this Court to decide. The court concludes that each side shall pay their attorney's fees and costs.

As customary in such case and as stipulated by the parties, the Guardian ad Litem's fees (\$1,200.00) and the Special Referee's fee (\$6,000.00) are to be paid from the sale of the four parcels before distribution to the heirs.

ORDER

This Court issues its Order as follows:

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1. Title to Parcel 1 is vested in the Heirs of Hester Bailum (one-third (1/3) interest) and the Heirs of Samuel Bailum (two-thirds (2/3) interest).

2. By Special Referee Deed, Parcel 1 may be sold to Roosevelt Simmons and Marie Smith or their permitted assigns if and only if Mr. Simmons and Mrs. Smith or their permitted assigns provides to the Clerk of Court for filing and date stamp within ten (10) days of the date of service of this Order a loan approval letter for \$220,000.00 (less the sum due, before costs are deducted of \$58,888.89). Mr. Simmons and Mrs. Smith or their or their assigns must consummate this transaction within thirty (30) days of this Order. Failure to produce the required proof or his or his assigns' ability to pay or close in the time allotted will result in a Special Referee's Deed conveying Parcel 1 in accordance with the contract

3. The Guardian ad Litem's fee of \$1,200.00 shall be deducted pro rate from the closing proceeds for the sale of all four parcels with those being charged against Parcel 1 being in the same proportion as the sale price for Parcel 1 as to the total sale price.

4. The Special Referee's fee of \$6,000.00 shall be deducted pro rate from the closing proceeds from the sale of all four parcels with those being charged against Parcel 1 being in the same proportion as the sale price for Parcel 1 as to the total sale price.

5. Ten Thousand Dollars (\$10,000.00) shall be paid at closing to Mr. Roosevelt Simmons and deducted from the closing proceeds from the sale of all four parcels with those being charged against Parcel 1 being in the same proportion as the sale price for Parcel 1 as to the total sale price.

6. All standard and customary closing costs of the seller with regard to Parcel 1 shall be deducted from the closing proceeds from the sale of Parcel 1.

7. The net proceeds from the closing proceeds from the sale of Parcel 1 shall be distributed as follows:

The Hester Bailum net proceeds shall be disbursed as follows:

Roosevelt Simmons	Two-ninths (2/9)
Melvin Singleton	One-eighteenth (1/18)
Marie Smith	<u>One-eighteenth (1/18)</u>
Total Hester Bailum net disbursement	One-third (1/3)

The Samuel Bailum net proceeds shall be disbursed as follows:

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Hattie Bailum	One-sixth (1/6)
Ruby Bailum	One-twelfth (1/12)
Verdone Gray	One-twelfth (1/12)
Julie B. Johnson	One-sixth (1/6)
Monica Middleton	<u>One-sixth (1/6)</u>
Total Samuel Bailum net disbursement	Two-thirds (2/3)

8. Title to Parcels 2, 3, & 4 are vested in the Heirs of Sam Bailum, Thomas Bailum, Tony Bailum, Fanne B. Middleton and Mary Bailum.

9. By Special Referee Deed, Parcels 2, 3, and 4 are sold in accordance with the contract for the sum of \$337,000.00

10. All standard and customary closing costs of the seller shall be deducted from the closing proceeds from the sale of Parcels 2, 3 and 4. The closing shall occur within thirty (30) days of the date of this Order.

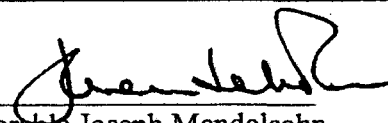
11. The net proceeds from the closing proceeds from the sale of Parcels 2, 3, and 4 shall be distributed as follows:

Hattie Bailum	One-fourth (1/4)
Ruby Bailum	One-eighth (1/8)
Verdone Gray	One-eighth (1/8)
Julie B. Johnson	One-fourth (1/4)
Monica Middleton	One-fourth (1/4)

12. The Defendants' claim of Title by adverse possession is denied.

AND IT IS SO ORDERED!

February 16, 2007
Charleston, South Carolina


Honorable Joseph Mendelsohn
Special Referee

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C. Deposition of George Boniface

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION
Civil Action No. 2:11-cv-00709-RMG
ROOSEVELT SIMMONS,
Plaintiff,
vs.
MASE AND COMPANY, LLC,
J. AL CANNON, JR., SHERIFF OF
CHARLESTON COUNTY, AND CHARLESTON
COUNTY,
Defendants.

DEPOSITION OF
GEORGE BONIFACE

DATE: August 10, 2011
TIME: 2:00 p.m. - 5:22 p.m.
LOCATION: Senn, McDonald & Leinbach, LLC
3 Wesley Drive
Charleston, South Carolina
REPORTED BY: Lorraine A. Wharton

LAW SERVICES OF S.C.
Post Office Box 1498
Goose Creek, SC 29445
Tel.: (843) 607-3779
LAW.Services.SC@gmail.com

Page 2

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A-P-P-E-A-R-A-N-C-E-S
For the Plaintiff:
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Attorney at Law
1812 Pierce Street
Charleston, SC 29492
(843) 471-2082
ebertele@msn.com

For the Defendants:
By: Christopher T. Dorsel, Esquire
SENN, McDONALD & LEINBACH, LLC
3 Wesley Drive
Charleston, SC 29407
(843) 556-4045
Also Present: Roosevelt Simmons

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It is stipulated by and between the
parties that this deposition is taken pursuant to
notice and that all questions as to notice are
waived; that all objections, save as to the form of
the question, are reserved until the time of trial;
that this deposition is taken pursuant to the Federal
Rules of Civil Procedure for the purposes allowed
therein; and that the deponent was explained his
right to read and sign the transcript of the
deposition and waived that right.
(GEORGE BONIFACE, having been first duly sworn,
deposes as follows:)

MR. DORSEL: For the record, this
witness is being presented pursuant to Federal Rule
of Civil Procedure 30(b)(6), in specific reference
to the Notice of Deposition served by Mr. Bertele.
He is being presented pursuant to section 3(d) for
the purposes of testifying as to the procedures for
the processing of any appeal, waiver, or other
request for relief from any user fee imposed by the
County in the periods they have -- on here, it's
1987 to 2010. This witness can testify from 1999 to
2010.

MR. BERTELE: So he is a 30(b)(6)
witness under (d)?

1 (Pages 1 to 4)

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Veritext Corporate Services

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1 **A And I studied and took the exams.**
 2 **Q Understood. Okay. Thank you.**
 3 Well, is it fair to say that your
 4 career in the Air Force did not involve duties and
 5 responsibilities where financial analysis was
 6 required?
 7 **A If you want to call budgeting not a**
 8 **financial analysis, then that is a correct statement.**
 9 **But I was required in some of the positions that I**
 10 **held to do budgets.**
 11 **Q Okay. Well, you understand what I'm**
 12 **getting at; don't you? The work that you did in the**
 13 **Air Force didn't involve the kind of forensic**
 14 **analysis that you did in the business license**
 15 **department; did it?**
 16 **A That's correct.**
 17 **Q Okay. So up until 1999, your job was to**
 18 **examine financial statements of private companies to**
 19 **determine whether they were correctly reporting their**
 20 **revenue for purposes of taxing them under the**
 21 **business license law?**
 22 **A Yes, sir.**
 23 **Q Anything else that you did in that**
 24 **capacity?**
 25 **A Other than the financial, we would just**

1 **make sure that they were in the right**
 2 **classifications and they were being taxed properly.**
 3 **Q Okay.**
 4 **A And telephone numbers, contact numbers,**
 5 **all of those.**
 6 **Q Okay.**
 7 **A Audit; they are part of the financial**
 8 **audit.**
 9 **Q Okay. Would another way of describing**
 10 **your work be sort of in the nature of compliance:**
 11 **Whether these companies were complying with the**
 12 **business license law?**
 13 **A That's correct.**
 14 **Q And were you required to go out in the**
 15 **field to do this?**
 16 **A Yes.**
 17 **Q And I assume that meant that you had to**
 18 **exercise some independent judgment about what was**
 19 **going on and how it related to the financial**
 20 **statements?**
 21 **A Yes.**
 22 **Q Okay. Now we're not here today for any**
 23 **issue related to business licenses, so let's just --**
 24 **I'll withdraw the question. I don't think it's**
 25 **necessary.**

1 Okay. So in 1999, you then went
 2 into another area of employment in Charleston
 3 County?
 4 **A In 1999, I was asked to do an additional**
 5 **duty, and that was to coordinate and to write -- and**
 6 **to represent the County in front of the Business**
 7 **License/User Fee Appeals Board, as an additional**
 8 **duty. Later in that year, I was assigned to some**
 9 **other -- other than the business license.**
 10 **Q Okay. So just so I understand your**
 11 **testimony -- withdrawn.**
 12 Let me go back for a moment to the
 13 business license area. Your title was Business
 14 License Auditor?
 15 **A Yes.**
 16 **Q Okay. And then in 1999, did they give**
 17 **you another title?**
 18 **A No; there was no other title. I was**
 19 **still an auditor, but I -- but as an additional duty,**
 20 **the function was to represent the County and argue to**
 21 **the Appeals Board on behalf of the County for**
 22 **business license and user fee appeals.**
 23 **Q Okay. Did they give you more money?**
 24 **A No.**
 25 **Q And they didn't give you another title,**

1 either?
 2 **A They did, later in that year.**
 3 **Q Okay.**
 4 **A But that was my first introduction to the**
 5 **Appeals Board, other than having been an observer.**
 6 **Q Okay. All right. Well, just tell me**
 7 **what that additional title was and then we'll get**
 8 **back to what your duties were.**
 9 **A The additional title after I left the**
 10 **business license side of the auditing was Manager of**
 11 **Legal division.**
 12 **Q Okay. Now explain to me -- well, let's**
 13 **do this. The business license auditor position; as**
 14 **an employee of Charleston County, where does that fit**
 15 **into the County organization?**
 16 **A It was a division within the department,**
 17 **business license department, which was later changed**
 18 **to the revenue collections department.**
 19 **Q Okay. Let's see if -- help me understand.**
 20 **Let's stay with 1996. When you went to work for the**
 21 **County, you were hired as an auditor for the business**
 22 **license department. Is that the department that you**
 23 **worked in: business licenses?**
 24 **A Business license department.**
 25 **Q Okay. And the business license**

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1 department is part of a bigger department?

2 **A It's part of an administrative**
3 **department, deputy administrative department.**

4 **Q** Okay. So if we had an organizational
5 chart back in 1996, your position would fall under
6 that, quote, "County administration," so to speak?

7 **A The accounting -- County, not accounting;**
8 **County administration. There's a County**
9 **Administrator and there's deputy administrators. And**
10 **underneath the deputy administrators are the**
11 **department heads. Okay? The department at that time**
12 **was the business license department.**

13 **Q** Okay. Thank you.

14 **A Which included the user fee.**

15 **Q** In 1996?

16 **A** In 1996.

17 **Q** Okay. Thank you. So again, initially
18 you are working only in the area of business license
19 fees and compliance within the business license
20 department?

21 **A** If you want to break it down into
22 divisions, you could break it down into divisions.
23 There was a business license division, there was a
24 user fee division, and there were business license --
25 there was a business license inspector division

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1 **within the department. So if you wanted --**
2 **if you want an organizational chart, you got the**
3 **Administrator, the deputy administrators --**

4 **Q** Right.

5 **A The departments are broken down into**
6 **divisions. I was in the department in the auditor's**
7 **division. There was an inspector division, auditor**
8 **division, user fee division, and the CSRs -- the**
9 **customer service division.**

10 **Q** Okay. The business license department?

11 **A** Yes.

12 **Q** And then what you've told me is that
13 there are other --

14 **A** Yes.

15 **Q** -- lower-level parts of the organization?

16 **A** Yes.

17 **Q** Okay. Including -- among them was the
18 user fee?

19 **A** User fee.

20 **Q** Okay.

21 **A** In the legal processing division. They
22 call it the legal processing division.

23 **Q** All right. So in 1999, you were asked to
24 take on additional responsibilities related to user
25 fees; correct?

1 **A The legal division processing**
2 **portion of the user fee. It's a division.**

3 **Q** Okay. All right. So the legal division
4 is within the business license department?

5 **A** Yes, sir.

6 **Q** Legal division.

7 **A They call it a legal division. There are**
8 **no attorneys in there.**

9 **Q** Okay.

10 **A There's a paralegal in there; there's a**
11 **paralegal assigned to two researchers.**

12 **Q** Okay. I just want to be sure -- when you
13 give me an answer, I want to be sure I understand the
14 context of this organization, so just bear with me.

15 **A** Sure.

16 **Q** You are very helpful. Legal division of
17 business license department. Okay. Now, did the
18 legal division encompass activities -- did the legal
19 division's activities include user fee aspects?

20 **A** In the fact that it used the user fee
21 collection activity. That was a portion of the user
22 fee collection activity, for delinquent user fees.

23 **Q** Okay. So as I understand your testimony,
24 in 1999 you were given additional responsibilities,
25 and then the title as the manager of the legal

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1 division within the business license fee
2 department?

3 **A** Let me correct legal division to legal
4 processing division, if I could.

5 **Q** Sure; absolutely.

6 **A** Because there are no -- there are no
7 attorneys in there.

8 **Q** I understand.

9 **A** We process the paperwork --

10 **Q** Right.

11 **A** -- for Summonses and Complaints, and we
12 did the affidavits necessary to record judgments and
13 satisfactions of judgments.

14 **Q** Okay. Now you mentioned to me earlier
15 that these new duties that you were given included
16 being involved in the appeal of user fees?

17 **A** Business license/user fee. It's one
18 Board.

19 **Q** Okay. Now let's -- help me understand
20 this nomenclature. I understand what a business
21 license is, which is if someone is in business, they
22 have a certain obligation with respect to paying
23 charges for operating out of the County; true?

24 **A** That's correct.

25 **Q** And a user fee, in this case, relates to

5 (Pages 17 to 20)

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1 the collection of a charge for collecting
2 garbage?

3 A No, sir; it does not.

4 Q Okay. What do you mean by --

5 A It's a solid waste and recycling fee.

6 And I apologize; "user fee" is the acronym we use for
7 it.

8 Q It's --

9 A It gets it down -- if you start saying
10 "solid waste and recycling fee," it's easier to say
11 "user fee," so.

12 Q I understand.

13 A My fault there.

14 Q No, no; I appreciate that distinction.

15 A What that is, is the -- not the pickup of
16 any kind of garbage. Once it's on a truck, something
17 has to be done to it. We don't have any involvement
18 with getting it onto a truck, whether it's from a
19 municipality or if that truck is paid for by the
20 business or homeowner. What we have to do is get rid
21 of it, and that means either burning it or taking it
22 somewhere to get rid of it. That is what the County
23 charges the user fee for.

24 Q Okay. Now is it fair to say that your
25 department doesn't have any responsibility for

1 Q Okay. You'll agree that that's a --

2 A User fee.

3 Q That's an appropriate way to talk about
4 it, shorthand?

5 A Shorthand.

6 Q Okay. Thank you, sir. I couldn't say
7 that every time, you know.

8 All right. So in 1999, you became
9 responsible for appeals of user fees?

10 A Business license and user fees; that's
11 correct.

12 Q Thank you. Okay. So let me try to
13 focus -- I understand that you had responsibilities
14 for both areas, but let me try to ask you about the
15 user fee license. And if it's different for the
16 business license in some way, you can tell me that.
17 But we're here today to talk about that user fee.
18 Okay?

19 So now with respect to the collection
20 of user fees, you had no prior experience with the
21 County when you took over that responsibility;
22 true?

23 A The peripheral, from just being in the
24 department.

25 Q So you heard about it. But it wasn't

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Page 24

1 performing any of those solid waste collection
2 and recycling functions?

3 A We do not pick it up, but we are
4 responsible. We are responsible for making sure that
5 it gets there and is accounted for, gets to the -- in
6 this case, when I started, it was going to an
7 incinerator. Now we have to worry about it, once
8 they shut the incinerator down, getting it to a
9 transfer station, and getting it out of the transfer
10 station into locations outside of the County.

11 Q Okay. Is that part of your job? Do you
12 get involved in any of this?

13 A I do not get involved. I did not get
14 involved in that. My function at that time was to
15 concern myself with the delinquent user fees.

16 Q Okay. So how the garbage was collected
17 and when it was collected and where it went and what
18 happened to it, was not your responsibility?

19 A Not my responsibility.

20 Q Okay. All right. So is it fair to
21 say -- or is it fair if I use the term "user fee"
22 throughout, as representing the solid waste --

23 A Recycling.

24 Q Recycling, et cetera?

25 A Disposal fee.

1 something you were involved in?

2 A No.

3 Q And how did you learn about how this user
4 fee was handled by the business license/user fee
5 department; did somebody teach you, did they give you
6 a booklet, a manual, did you look at the statute and
7 ordinance? How did you?

8 A Ordinance. Pretty much the ordinance.
9 The ordinance.

10 Q So are you aware that Charleston County
11 enacted a solid waste recovery, et cetera -- what
12 we'll call the user fee -- sometime in 1987?

13 A That's correct.

14 Q Did you review the ordinance?

15 A Yes; I did.

16 Q So you're familiar with it?

17 A I'm pretty familiar with it. I've
18 reviewed the study that went into it, so.

19 Q I'm sorry? I didn't hear what you said.

20 A Oh. I reviewed the study that led to the
21 development of the ordinance, too.

22 Q That was performed by who?

23 A Peat Marwick Accounting Firm.

24 Q Okay. And where would I find a copy of
25 that study?

6 (Pages 21 to 24)

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1 A [No response.]
 2 Q Well, where would you find a copy of that
 3 study; let me ask that question.
 4 A My desk drawer.
 5 Q So you have a copy?
 6 A Yes.
 7 Q Okay. Thank you. So if I went to your
 8 desk, I could find it in there?
 9 A I've got a lot of them in there. It
 10 might take you a while to find it.
 11 Q All right. Thank you.
 12 So did you understand from reviewing
 13 that study and the ordinance that was enacted,
 14 that the purpose of the user fee was to collect
 15 money from people owning property in the County
 16 for whom these services have been provided?
 17 A That's correct.
 18 Q And when you took on these additional
 19 responsibilities in 1999, what were you been doing as
 20 opposed to your financial analysis and forensic work
 21 in the area of business licenses; how did your duties
 22 change along the way?
 23 A Well, it changed in that I was doing two
 24 separate functions for a while. And I thought I
 25 could handle that and had enough time to devote to do

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1 the same amount of work in the audits that I
 2 was doing, and I found out that I was not capable.
 3 I got no extra funds for doing it, so I asked the
 4 boss to just -- if I could concentrate on one or the
 5 other and which one did he want me to concentrate
 6 on, and he wanted me to concentrate on the legal
 7 processing side of the house.
 8 Q Okay. And so the legal processing side
 9 included both the business license and the user fee?
 10 A Well, I had enough background in the
 11 business license, he had me just supervise that
 12 rather than actually go out and physically do those,
 13 actually do the 40 or 50 audits that I was doing a
 14 month. He just had me supervise auditors, and we
 15 hired one to replace me.
 16 Q Okay. So in 1999 you weren't going out
 17 to the field anymore, but he was sending other people
 18 to do the work that you had been doing?
 19 A Yes; that's correct. Doing before.
 20 Q But then, in addition, you have this job
 21 of -- also had this job of dealing with the user fee?
 22 A That's correct.
 23 Q Okay. And what were your
 24 responsibilities regarding the user fee, in general
 25 terms?

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1 A My responsibility was to ensure and
 2 assist the researchers and the paralegal in the
 3 performance of their duties, to ensure that the
 4 paperwork that was provided to go to court. And at
 5 that time I was asked to go to court to represent the
 6 County as a witness.
 7 Q As a witness on behalf of the County?
 8 A Well, they had me going as representing
 9 the County.
 10 Q So where did you go to court?
 11 A Small Claims Court.
 12 Q That was Judge Gerard?
 13 A Yes.
 14 Q Okay. So you would show up on behalf of
 15 the County before Judge Gerard?
 16 A Yes.
 17 Q And you did that on many occasions?
 18 A Yes.
 19 Q Was there a lawyer present?
 20 A No.
 21 Q Well, what other aspects of the user fee
 22 subject -- what other aspects concerning user fees
 23 did you perform when you first made this transition
 24 in 1999, other than going to court and overseeing the
 25 efforts to prepare the necessary paperwork to go to

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1 court?
 2 A That was primarily the responsibility for
 3 the legal department -- and answer any responses and
 4 respond to any customer questions about user fee
 5 issues.
 6 Q Okay. Well, did your responsibilities
 7 stay pretty much the same from 1999 until you became
 8 Director of Revenue Collections recently?
 9 A No; they changed.
 10 Q Tell me about when, and what happened.
 11 A About 2004, they said they -- the County
 12 determined that they didn't want me going to court to
 13 represent them and they would get the attorneys
 14 involved, so my responsibilities were reduced
 15 somewhat there in that that's all I had to do, was
 16 worry about the paperwork. And that was pretty much
 17 under control with the paralegal.
 18 And the boss wanted me to take care of
 19 and look at the rest of the department, and he
 20 wanted me to manage the rest of the department as
 21 the Deputy Director.
 22 Q Okay. That would be the revenue
 23 collections department?
 24 A At the time it hadn't -- well, yes; it
 25 eventually became the revenue collections department,

7 (Pages 25 to 28)

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1 Q Okay. I take it then that
2 Ms. Scarborough reports to you today?
3 A Yes.
4 Q Now, when you were in charge of the legal
5 division of BL/UF, you were not involved with
6 delinquent real estate taxes; correct?
7 A No, sir.
8 Q That was handled by Mary Scarborough?
9 A That's correct.
10 Q Okay. Is it your understanding, from
11 reviewing the ordinance and the Peat Marwick report,
12 that a user fee is a tax?
13 A No; it is not my understanding of that.
14 Q Okay. What is your understanding of what
15 it is?
16 A It's a fee.
17 Q And your understanding is based on what?
18 A My understanding is based on the fact --
19 and I have not seen a ruling, but the courts
20 supposedly have ruled that it's a fee. So I can't
21 say that, other than the fact that it's a fee for
22 services and it allows the non-profits and church
23 organizations to be charged a fee.
24 They are not allowed to be taxed, and we
25 do charge churches and non-profit organizations fees

1 because they do produce waste which has to be
2 disposed of.
3 Q Well, they produce a lot of things which
4 you can't tax them for, too.
5 A True.
6 Q Okay. So you believe that this user fee
7 is a fee, not a tax, so that you can collect it from
8 churches and other organizations which would be
9 exempt from taxes?
10 A We do collect it from churches and other
11 organizations that are non-profit.
12 Q Okay. Are you -- withdrawn.
13 Since becoming head of or Director of
14 Revenue Collections, have you become familiar with
15 the procedures for the collection of delinquent
16 real estate taxes which are used in the department
17 headed up by Ms. Scarborough?
18 A It's not a department; it's a division.
19 Q Division. Okay. Can you answer the
20 question?
21 A Yes.
22 Q So you are familiar?
23 A I'm getting familiar; yes.
24 Q Okay. And that's not what you do with
25 respect to user fees; is it?

1 A No; it is not.
2 Q And in what way is it different, to your
3 knowledge?
4 A It's a whole other function. It has
5 nothing to do with the fees that we charge.
6 Q Okay. But my question was, how is the
7 collection of delinquent real estate taxes different
8 than the collection of user fees?
9 A In what regard? I mean --
10 Q In any way? I mean if you know how
11 they're collected and how user fees are collected,
12 can you explain what the difference is? If you
13 can't, I understand.
14 A Well, no. I guess I'm trying to figure
15 out -- I've never even thought of it that way, that
16 it's a different issue. It's a collection of
17 something that is due from a taxpayer, so.
18 Q I mean -- okay. Let me go back to them
19 and see if we can be on the same page. And in order
20 to do that, I need to go back to (d). Okay. And as
21 we spoke about earlier, you are here as what's called
22 a 30(b)(6) witness who is familiar with the
23 procedures for the processing of any appeal, waiver,
24 or other relief from any tax, fee, or charge imposed
25 by the County. So that's why I'm asking the

1 question: the difference between collecting
2 delinquent real estate taxes and collecting user
3 fees.
4 MR. DORSEL: For the record, he's only
5 being put forth for the user fees. We can name
6 multiple 30(b)(6) witnesses. He is being named for
7 the purposes of user fees.
8 MR. BERTELE: Okay. Fine. Thank you.
9 Appreciate that.
10 BY MR. BERTELE:
11 Q So I just wanted to make clear that you
12 are not able to talk about the differences between
13 collecting real estate taxes and user fees; you are
14 not here for that purpose and you are not able to
15 talk about the differences?
16 A I can talk procedures, but one is driven
17 by the State and one is driven by the County. That's
18 the primary difference between the two: Procedures
19 are written by the State.
20 Q Okay. Let's talk about the procedure for
21 a taxpayer in Charleston County getting a waiver of a
22 user fee. You are familiar with that?
23 A Yes.
24 Q And your familiarity is back to your days
25 in 1999 when you took on the user fee

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responsibilities?

A Yes.

Q And what procedure -- if you recall, what procedure was in effect in 1999 for a taxpayer asking for a waiver of the user fee?

A A waiver of a user fee, or they want to appeal their user fee?

Q Well, why don't you explain the difference so I can understand.

A An appeal -- the process for doing an appeal is a requirement in accordance with the ordinance by the -- if you look at the original document that was done in 1987 -- October 20, 1987, or somewhere in October 1987 -- it states that if we send a bill out, they have a certain -- they have a -- certainly have a right to appeal. But they must -- in the 1987 version, they must do that appeal within 20 days of the date that the bill was sent out.

And if they do that, they must submit, in writing, an appeal that states the reason for the appeal, and be specific in the reason for it, and that they must submit \$25 for a processing fee to do that.

Q How much was the user fee in 1999?

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A \$39, I believe.

Q So you have them pay \$25 to appeal a \$39 fee?

A Yes.

Q Who set the \$25?

A Council. They wrote the ordinance -- or approved the ordinance.

Q So you think that the \$25 fee was in the original ordinance?

A I'm pretty sure it is.

Q Okay. And just to go back a second, the 20 days that you refer to is 20 days from the issuance of the real estate tax bill?

A The user fee bill. It says the user fee bill.

Q Okay. Well, we've had testimony earlier today in which the Auditor's office representatives stated that the user fee was included in the tax bill. You're aware of that; are you?

A I'm aware that a portion of the user fees that we send out are taken care of on the tax bill. Not all user fees are taken out on the tax bill.

Q Well -- okay. I'll --

A Residential -- the difference is a residential and commercial. Residential is still on

the tax bill.

Q Okay.

A **Commercials do not go on a tax bill, and there's reasons for it.**

Q Okay. Well, for purposes of today, I'll refer to the user fee as -- the user fee which is applied against a residential property only. Okay? That's what this case is about: a user fee, a storm water fee, involving residential property.

A All right.

Q So you can assume that's part of my question.

A Okay.

Q Okay. So you would agree with what's been stated here earlier: that the tax bill would show a user fee when it went out to a property owner?

A That's correct.

Q Going back since you became involved with user fees in 1999?

A That's correct.

Q And has it ever been anything other than that?

A Not on user fees; no.

Q So the user fee department didn't even send out a user fee bill; did it?

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A There was a section that processed it. They have to get the information to the Auditor so she could put it on there.

Q Okay. Now would you have information -- withdrawn.

Would you be familiar enough to testify regarding how those user fees were determined and then sent to the Auditor's office for inclusion on the tax bill?

A For the residential?

Q Yes, sir.

A Yes.

Q So you're able to explain all that to me, in addition to talking about waiver of user fees?

A I can explain that -- if you're asking me how the fee was determined, yes.

Q Okay. Well, I want to be sure that this is something that you are responsible for. The fact that you may know it is different -- you are here as the official representative of the County, to talk about something that you're familiar with as part of your responsibilities. Okay? Let's be clear about that. If you have information about how another department operates or some area that you are familiar with, we are -- I don't want you to

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1 function was primarily to go out and take a
2 look at anything that anybody had a question about.

3 Q You said there were two?

4 A There were -- it was a three-man division
5 within the department, with two of them inspectors.
6 All three of them were qualified inspectors. One of
7 them ran it. And he was out a lot of times, but he
8 did a lot of the financial aspects of it: tracking
9 the haulers and making sure their allocations that
10 they took to the incinerator. There are some
11 bookkeeping issues with doing user fees, as well.

12 Q Okay.

13 A They would field a lot of the questions.
14 And if someone says, "Hey; that house disappeared
15 years ago," then they would have somebody go out
16 there and look and say, "Yeah; the house has
17 disappeared," so we will get rid of the user fee.
18 Or -- we did check with them.

19 If it was five years ago, of course we
20 try to do a little bit more research. If it burned
21 down, then we could certainly check that out and
22 give them back five years, even though we were only
23 supposed to go back three. But they always tried to
24 help the individual.

25 Q So is it fair to say that if somebody

1 came -- withdrawn.

2 I want to go back to something that I
3 should have asked before. When you joined the
4 business license -- BL/UF -- back in 1996, where
5 was your desk?

6 A My desk was in the King and Queen
7 Building, not even -- it was downtown. It was shared
8 with people from another department, not even in our
9 department. I was -- there were two auditors in the
10 room. We were down the hall from inspectors and user
11 fee inspectors, as well as business license
12 inspectors and the legal.

13 Q Just help me out, though. Where was your
14 desk physically located: what address, what room,
15 what office; where?

16 A I don't know the street address. It's
17 King Street. It was King and Queen. It's right
18 there --

19 Q Okay. It's downtown?

20 A Yeah; it was downtown.

21 Q Okay.

22 A Across from the 2 Courthouse Square. The
23 parking lot was in between -- 2 Courthouse Square was
24 on Meeting Street; we were on King Street. We were
25 separated from the department head and the collection

1 office.

2 Q Okay. Where were they located?

3 A 2 Courthouse Square.

4 Q So except for --

5 A On Meeting Street; yeah. Or just off.

6 Q Okay. So -- I'm sorry to interrupt. So
7 is it fair to say that the business license/user fee
8 department was situated, back in 1996, down the
9 Courthouse Square?

10 A No; it was -- well, our mail came through
11 Courthouse Square.

12 Q Well, then where was --

13 A We were physically located on King
14 Street, which was --

15 Q Well, I'm not asking about the Auditor;
16 I'm asking about the -- you know, the entire
17 department. Were they located in different places?

18 A Yes; they were.

19 Q Okay. So where would they have been
20 located back in 1996?

21 A 2 Courthouse Square housed the office
22 manager, the four CSRs -- customer service
23 representatives -- and the Director. Everybody else
24 in the department was located at King and Queen.
25 That included the user fee department, the legal

1 processing department, the inspectors, and the
2 auditors. There were three, six, nine -- 11 people
3 across the street.

4 Q Eleven, 12 people across the street.

5 Okay. So the user fee department was on King Street,
6 and the business license people were on 2 Courthouse?

7 A Business license/user fee customer
8 service representatives that collected the user fees,
9 that collected the business licenses. Right.

10 Q They collected all the money for the
11 department?

12 A Right. They were located on -- they were
13 on 2 Courthouse Square.

14 Q Okay. And they had the office manager
15 who supervises them, the CSRs?

16 A Right. And the Director at that time was
17 located there.

18 Q Okay. And so those CSRs would be
19 responsible for dealing with applications for waiver
20 and appeal of user fees?

21 A Just the collection. If they had any
22 questions, they can answer those questions. If they
23 couldn't answer those questions, then they would
24 defer them with a telephone call to us and then we
25 would handle it.

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1 Q So those people over at 2 Courthouse
2 were not there to answer questions about user fees?

3 A Yes; they are. They're qualified to
4 answer questions. They know the ordinance, they
5 collect the user fees, they deposit the user fees,
6 they understand what the user fee is, and they can --
7 they know what happens to the user fee when it goes
8 out on a tax bill. And they know that it is removed
9 from the tax bill on occasion.

10 Q You told me about inspectors, user fee
11 inspectors; they're within the BL/UF?

12 A Yes.

13 Q Okay. And what's their duties, as far as
14 the user fee?

15 A Their duties are to take a look at
16 anybody that has a question about their user fee.
17 They get reports when businesses change haulers and
18 they change the size of their dumpster, and they go
19 out and confirm the size of their dumpster and make
20 sure that they have got the proper -- that we are
21 charging them correctly, because the fee is
22 calculated on the size of the dumpster and the
23 frequency at which it is picked up. They check
24 those.

25 And then they do periodic sweeps: go

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1 through shopping centers to make sure that they
2 haven't changed and the haulers have not given them
3 the information, and make sure that we aren't
4 overcharging or we aren't undercharging.

5 So if someone says, hey, that mobile
6 home out there is unlivable, they will go out there
7 and make that decision or determine whether it's
8 unlivable or not. And if it's unlivable, then, in
9 accordance with the ordinance, they could remove the
10 user fee.

11 Q So the inspection department is there to
12 determine if the user fee is being properly imposed
13 upon real estate?

14 A Yes, and they also do -- they check the
15 haulers to make sure that the haulers are reporting
16 to us correctly, as well. They get a monthly report
17 from the haulers on the changes, and they make sure
18 that those changes are accurate and updated on our
19 records so that we are charging the correct fee.

20 Q Well, are these commercial haulers the --
21 what we're talking about now?

22 A Yes.

23 Q Okay. So what you just said doesn't
24 really relate to user fee verification on residential
25 property?

1 A No. The residential is a fixed fee.

2 Q Okay. So what I'm getting at, sir, is
3 I'm trying to understand the functioning of the user
4 fee inspector as it pertains to residential property,
5 which is what this case is about.

6 A Well, a mobile home is a residential
7 property.

8 Q Okay.

9 A So they can go out there and check that
10 and see if it's livable. Okay. A house burns down
11 and, if it's not livable, then they will -- they will
12 remove the user fee.

13 Q Okay. Meaning the property owner doesn't
14 have to pay it?

15 A That's correct.

16 Q It's just not off the tax bill; it's
17 gone?

18 A It's gone; yes.

19 Q Okay. Now how does what these people do
20 differ from the appeal of the user fee?

21 A Well, the appeal of the user fee is
22 supposed to be specifically for determination that
23 they shouldn't be charged a legal.

24 Q Well, why -- or why they are charged,
25 why --

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1 A And there are specific reason of why
2 they're not charged. If it's not -- if it's a
3 structure there and it's a fee that is -- and it's a
4 livable structure in accordance with the ordinance,
5 then they are required to pay a user fee.

6 Q Okay. Does the inspector have to go out
7 and do an inspection before the Appeals Board can
8 make a determination?

9 A No.

10 Q So if Mr. Simmons goes to the user fee
11 inspection department and complaints that a house
12 that he's being charged a user fee is unlivable, then
13 the inspection department is supposed to go out and
14 verify that; correct? And he wants --

15 A Yeah.

16 Q Correct?

17 A Yeah. They're supposed to go out there
18 and verify that.

19 Q Okay. And if they come back and say, oh,
20 that house is perfectly livable, that Mr. Simmons
21 could appeal that to the Appeal Board?

22 A That's correct.

23 Q Okay. So he doesn't have to go to the
24 Appeals Board first?

25 A He doesn't have to; no.

15 (Pages 57 to 60)

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D. Deposition of Harry Long

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

EXAMINATION INDEX

ROOSEVELT SIMMONS,)
Plaintiff,) 2:11-CV-00709-RMG
VS)
MASES and COMPANY, LLC,)
J. AL CANNON, JR. SHERIFF)
OF CHARLESTON COUNTY, and)
CHARLESTON COUNTY,)
Defendants.)
September 22, 2011

Mr. Bertele 4
Certificate of Reporter 147

EXHIBIT INDEX

Exhibit 21 (retained by Attorney Bertele) 127

Deposition of DEPUTY HARRY LONG, a Witness herein,
called by the Plaintiff for Examination pursuant to the
South Carolina Rules of Civil Procedure, taken before
me, the undersigned, Naomi E. McCracken, a Computerized
Stenotype Reporter and Notary Public in and for the
State of South Carolina, at the offices of Senn,
McDonald & Leinbach, 3 Wesley Drive, Charleston, South
Carolina, on Thursday, the 22nd day of September, 2011,
commencing at 10:17 o'clock a.m.

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Charleston, SC 29407
(843) 556-4045

Also Present: Roosevelt Simmons

DEPUTY HARRY LONG

Of lawful age, a Witness herein, having been first
duly sworn as hereinafter certified, was deposed and
said as follows:

MR. BERTELE: Let's go on the record.

MR. DORSEL: And before we get started,
is this a 30(b)(6)?

MR. BERTELE: Well, you tell me.

MR. DORSEL: That's what I intended.

Deputy Long has been identified as the 30(b)(6)
witness for 3(a) and (b) of your notice that was
dated July 9th. So I know you have noticed him
again for him personally. So I'm just trying to
figure out how you want to go about this today in
terms of what is a 30(b)(6) and what is a fact
witness deposition.

MR. BERTELE: To answer your question, I
would first note that I'm not aware of any prior
designation of Deputy Long as a 30(b)(6) witness
under any of the categories that I've asked for in
my notices. So, accordingly, I will defer to your
judgment as to whether you are producing him today
as a 30(b)(6) witness under (a), (b), (c) or (d).

MR. DORSEL: Right.

MR. BERTELE: And then we'll proceed on

2 282

1 for and received the title of Master Deputy?

2 A. That's right.

3 Q. Does that involve an increase in pay?

4 A. Yes, sir.

5 Q. And does it involve any other benefits? Do you
6 get a better pension? Do you get any other betterment
7 as a result of being a Master Deputy?

8 A. Well, the pension is based on your salary.

9 Q. Okay.

10 A. So it does increase your pension.

11 Q. I see. And since sometime in the last ten years
12 that you can't remember, you have been -- you've held
13 the position of Master Deputy?

14 A. Yes, sir.

15 Q. Is there an examination to be taken to obtain the
16 position of sergeant?

17 A. Yes, sir.

18 Q. And have you taken that exam?

19 A. Multiple times.

20 Q. And you haven't been able to be successful?

21 A. I'm very successful at it. It's just a list and
22 the Sheriff picks who he promotes from that list.

23 Unsuccessful at getting picked; successful at getting
24 on the list.

25 Q. Do you receive notification of your score?

1 A. Yes, sir.

2 Q. And what's been your score in the past?

3 A. It's a formula they use, but my scores range
4 between 90 and 100 every year.

5 Q. The 100 being the highest score?

6 A. Yes, sir.

7 Q. And 90 being a very good score?

8 A. Yes, sir.

9 Q. And it progresses downward after that? 80 would
10 be a lower score?

11 A. Yes, sir.

12 Q. And what would be a passing score?

13 A. Like I said, it's a formula they use because of
14 the several categories involved. And it just depends
15 on the median of the scores, so it's hard to say. I
16 can't say in 2008 it could have been 74.4 or in 2008 it
17 could have been 90.2; I couldn't tell you that.

18 Q. So it's like what we would call -- what we former
19 students used to call a curve?

20 A. Well, it's not really a curve. It's just based on
21 their formula in how they computed it. Every category
22 has a certain percentage point.

23 Q. But every year you have taken the test you have
24 exceeded the cut-off point?

25 A. Yes, sir.

1 Q. I see.

2 A. And placed on the list.

3 Q. And placed on the list. Okay. And how many
4 people have been promoted to sergeant since you have
5 been taking the sergeant's test?

6 A. Well, different years, a different amount of
7 people. It depends on the vacancies.

8 Q. Well, how many people have been promoted to
9 sergeant since you have taken the sergeant's test?

10 A. It could be anywhere from roughly 20 to 30, 35
11 maybe.

12 Q. Is that each year or in total?

13 A. No, no; total.

14 Q. So when did you first take the sergeant's test?

15 A. I don't remember. I can give a range. I can't
16 give you an exact date, but the range could be around
17 2002, 2003 maybe.

18 Q. So there is five or six years after you joined the
19 office?

20 A. Yes, sir.

21 Q. Okay. And so since then you've not been promoted
22 to sergeant?

23 A. No, sir; I have not.

24 Q. Okay. And 25 or 30 people have?

25 A. Yes, sir.

1 Q. Just one more question: The sergeant's exam is a
2 a written exam?

3 A. It tri-fold. It's a written exam. It's an essay.
4 It's an oral interview. And then there is couple of
5 other categories, like performance evaluations give a
6 certain amount of points, time and grade gives you a
7 certain amount of points.

8 Q. Okay. But the combination of the written part,
9 the job performance and the oral exam or whatever it
10 was is the number that you have told me already that
11 you achieved 90 to 100?

12 A. Yes, combined. Well, you get a score for each
13 one. Take for example, this year --

14 Q. I'm just trying to understand the number that you
15 gave me. You told me you scored between 90 and 100 on
16 the sheriff's exam. Now Does that mean the combined
17 score or just the written exam?

18 A. If I could give you this example, you might
19 understand it better. This year, for example, the
20 written test, 50 question multiple choice test was 90,
21 the essay was 90 and the oral interview I think was 91
22 or 92.

23 Q. Those are your scores?

24 A. Yes.

25 Q. Okay.

1 Tell me what it's intended to be.

2 A. It's our collection of data. It's from the time
3 we get the judgment to the first letter we send, all
4 the way through the process of the case to the
5 conclusion of the case.

6 Q. I see. Are you referring to a particular case
7 when say your case file?

8 A. In this particular case, Roosevelt L. Simmons.

9 Q. Yes, but does that case have an identification
10 number or a case number or something of that type?

11 A. Yes, sir; it does.

12 Q. Go ahead. What is it?

13 A. We list it by name and we put it into a computer
14 system which spits out a case number identified through
15 the Charleston County Sheriff's Office AF-400 system,
16 which in this case was 09-2772.

17 Q. 09-2772, that's a case number which is a reference
18 within the Sheriff's Office; correct?

19 A. Correct.

20 Q. It's not a court case number; correct?

21 A. No, sir.

22 Q. And so is there a court case number that is
23 applicable to this case number that you've given me?

24 A. Yes, sir. In this particular case of Roosevelt L.
25 Simmons and Gary H. Simmons there are several. He had

1 six judgments, so he has six different case numbers.

2 Q. Could you list them for me, please?

3 A. Beginning with Judgment 1, 00-JG-10- --

4 Q. Just a little bit slower.

5 A. 00-JG-10-1817.

6 Q. Uh-huh.

7 A. 02-JG-0021, 02-JG-10-923, 03-JG-10-170.

8 Q. Would you repeat just the last few numbers?

9 A. 170.

10 Q. Thank you.

11 A. Next one 04-JG-10-444. Last one 06-JG-10-931.

12 Q. Okay. And those numbers that you've just given us
13 represents judgments or docket numbers in cases
14 involving Mr. Roosevelt Simmons and Mr. Gary Simmons?

15 A. Yes.

16 Q. What type of cases are these; do you know?

17 A. These are magistrate judgments for Charleston
18 County Business License and User Fee.

19 Q. Now, in the course of your duties, why would you
20 have created a case number of 09-2772 encompassing
21 these six files?

22 A. Okay.

23 Q. Do you follow my question?

24 A. I think I do, yes. When the judgment is received
25 in our office, our legal assistant puts it into a

1 computer system called the AF-400. And, in part, it
2 encompass the defendant's name, address, these case
3 numbers I just read off. And then it gives us what we
4 call a sheriff's service sheet. And it will have the
5 case file number and a Sheriff's Office service sheet
6 number, and that gives us the case number. It's a
7 reference point if we ever have to look it up.

8 Q. Now you told me this case 09-2779; correct?

9 A. 72.

10 Q. I apologize. You did tell me 2772. I misread
11 09-2772. Thank you.

12 Now is it the case that the first two numbers, 09,
13 mean that this case file was opened in 2009?

14 A. Yes, sir.

15 Q. And is it the case that some of these judgments
16 are many years prior to 2009?

17 A. Yes, sir.

18 Q. Okay. What's the reason why this case file was
19 opened in 2009 dealing with judgments that were almost
20 ten years old at the time?

21 A. That's when we received them in our office from
22 the Charleston County Business License and User Fee
23 people.

24 Q. And how would you verify what you have just told
25 me, namely that when you opened this case number in

1 2009, it was based upon receipt of these judgments from
2 another department of the County?

3 A. How can I tell?

4 Q. No. I didn't ask you that.

5 A. I'm sorry.

6 Q. That's okay. I was asking you how can you -- what
7 piece of paper, what computer record or what document
8 would there be to confirm what you just told me, namely
9 that the Sheriff's Department received these judgments
10 in 2009?

11 A. There would be two; one is, it would be time-
12 stamped upon receipt.

13 Q. Meaning the judgment itself would be time-
14 stamped?

15 A. Yes, sir.

16 Q. Okay.

17 A. That's the first one. And the second one is we
18 would run a report off of the AF-400 to show it was
19 received.

20 Q. So your computer system would have some record
21 that these various judgments, the six judgments you've
22 listed, were received by your office sometime in 2009?

23 A. Yes.

24 Q. Is it unusual for you to get judgments that are
25 almost ten years old?

1 A. No, sir. 8/3/09, is Olivia Gilliard -- she was
2 the paralegal at the time. And the rest is mine.
3 Q. What about the third page?
4 A. The third page 9/3/09 is not mine. 9/09 is not
5 mine.
6 Q. Who is 9/3/09?
7 A. It doesn't have an initial, but compare the
8 writing, I believe it's our paralegal Olivia Gilliard.
9 9/09 is not mine. 9/14/21 and 28 is not mine. 10/4/09
10 is not mine. 1/7/10 is not mine. 1/27/10 is not
11 mine.
12 Q. Under the entry of March 12th of 2009, you have
13 made an entry indicating you conducted a search for
14 personal and real property?
15 A. Yes, sir.
16 Q. And that you found property bearing certain TMS
17 numbers?
18 A. Yes, sir.
19 Q. What's QR and QA?
20 A. QR is qualified residence and QA is qualified
21 agriculture.
22 Q. And then after that you said homestead exemption
23 applies to QR?
24 A. Yes, sir.
25 Q. Okay. And then underneath that, you said he has

26 two vehicles. And you list them and you obtained that
27 information from the search of motor vehicle records of
28 the state?
29 A. Yes, sir.
30 Q. So the entries on 3/12 reflect research you did
31 from available databases on Mr. Roosevelt Simmons?
32 A. Yes, sir.
33 Q. You didn't go out to find out what was on his
34 property at that point?
35 A. No, sir.
36 Q. And so is it the case that the only real property
37 you found in the name of Roosevelt Simmons on March
38 12th of 2009 was TMS 2820000138?
39 A. Yes, sir. I wrote that down.
40 Q. But that was my question: Was that the only real
41 estate you found in his name on that date?
42 A. No, sir. I also found TID number 2830000498. Let
43 me specify why --
44 Q. Okay. But that's not shown there on March 12th?
45 A. No, sir.
46 Q. Okay. So why didn't you write that down?
47 A. Because the judgment at this point, I had a
48 judgment referring back to 1817 for Roosevelt L.
49 Simmons and Gary H. Simmons. The 498 property comes
50 back to a Roosevelt Simmons. So at that point -- just

51 at this point, I did not write it down because I didn't
52 know if Roosevelt Simmons at that point was the
53 Roosevelt L. Simmons.
54 Q. Well, how do you know that to be the case? Where
55 is there something that shows me that that's what
56 happened here?
57 A. It's just -- you'll have to take my word. That's
58 just, you know, what was put down for his name.
59 Q. The purpose of this form is to document what
60 efforts you made to collect on a judgment; right?
61 A. Right.
62 Q. And you told me you found other property but you
63 didn't list it.
64 A. Right.
65 Q. How do you know that to be case if there is
66 nothing here on this entry reflecting that you found
67 that property on March 12th?
68 A. I'm sorry. I may have misunderstood your
69 question. Because I have a tax record right here for
70 Roosevelt Simmons for 498.
71 Q. Okay.
72 A. I'm sorry. I misunderstood the question.
73 Q. Okay. So is this the date that you made this
74 inquiry?
75 A. Yes, sir.

76 Q. March 12th of 2009?
77 A. Yes, sir.
78 Q. Okay. All right. Again -- okay. So what led you
79 to -- I'll withdraw the question.
80 On the April 1st notation, is that where you sent
81 a second chance letter?
82 A. Yes, sir.
83 Q. Is that a letter that you sent out?
84 A. Yes, sir.
85 Q. Do you have a copy in your file?
86 A. Yes, sir. This letter -- this is the original
87 letter that was sent, the first letter. It's going to
88 be probably with some other letter. The original
89 letter is March 3rd.
90 MR. DORSEL: It's 31.
91 MR. BERTELE: Huh?
92 MR. DORSEL: It's Bates stamped 31.
93 MR. BERTELE: Thank you, Counsel.
94 THE WITNESS: Now, the letter he's
95 referring to, March 3rd, that's what we first
96 sent, which is mailed out by our legal assistant.
97 Anything after --
98 BY MR. BERTELE:
99 Q. Hold on a second. I asked you about a second
100 chance letter.

1 A. Right.
 2 Q. Is this it?
 3 A. No, sir. I'm getting to that.
 4 Q. Okay. What is this, the first chance letter?
 5 A. Yes, sir.
 6 Q. So there is no entry of this going out, though?
 7 A. Yes, there is.
 8 Q. Where is it on this log?
 9 A. It's marked 2/26 where it says: Mailed Defendant
 10 letter to Kitford Road by my legal assistant. All
 11 first letters are sent out by the legal assistant.
 12 Q. Okay.
 13 A. Now, any subsequent letters that are sent out by
 14 me is purely my own doing. It's not required by law or
 15 procedure within the Sheriff's Office. It's just my
 16 way of trying to collect. So the second chance letter
 17 is what I'm going to now, April 1st.
 18 MR. BERTELE: That's marked 032, correct,
 19 Counsel?
 20 MR. DORSEL: Correct.
 21 THE WITNESS: That is purely something I
 22 generated.
 23 BY MR. BERTELE:
 24 Q. So you wrote this letter up yourself?
 25 A. Yes, sir.

1 Q. Did you run it by the legal department?
 2 A. No, sir.
 3 Q. Okay. And in your log you have an entry of April
 4 3rd, stating that Defendant Roosevelt Simmons called
 5 and stated he is not going to pay. He said it's heirs
 6 property. He said: "County has not done anything for
 7 him;" correct, so far?
 8 A. So far, yes.
 9 Q. Did you write down what he said word-for-word?
 10 A. No, sir; I paraphrased it.
 11 Q. Had you spoken to Mr. Simmons in person or on the
 12 phone before April 3rd of 2009?
 13 A. No, sir.
 14 Q. Did you know Mr. Simmons prior to this contact
 15 between you and him?
 16 A. No, sir.
 17 Q. Had you heard anything about Mr. Simmons from
 18 anybody else in the Sheriff's Office?
 19 A. No, sir.
 20 Q. Okay. So when Mr. Simmons called, did he
 21 reference either of the letters that you have
 22 identified here that you say went out to him?
 23 A. Not to the best of my recollection, no.
 24 Q. Okay. And it's says that he said it's heir's
 25 property; is that correct, "heirs property?"

1 A. Yes, sir.
 2 Q. What does that signify to you? What was he
 3 referring to?
 4 A. Probably had been handed down to him, inherited.
 5 Q. Did that have any particular significance to you
 6 at that time?
 7 A. No, sir.
 8 Q. Okay. And you further state: "He made threats
 9 against me if I come out to post the property;" did I
 10 read that correctly?
 11 A. Yes, sir.
 12 Q. Okay. And what threats did Mr. Simmons make
 13 against you; do you remember?
 14 A. Well, not to the best of my ability.
 15 Q. You didn't write it down here; did you?
 16 A. He was very upset.
 17 Q. Okay. When Mr. Simmons called you on April 3rd,
 18 he sounded upset on the telephone?
 19 A. In my opinion, he sounded upset.
 20 Q. Of course. I understand that you're the one we're
 21 asking questions of.
 22 A. Right.
 23 Q. Did he sound upset to you?
 24 A. To me, he did.
 25 Q. Did he sound angry?

1 A. Yes, sir.
 2 Q. Did he sound frustrated?
 3 A. Yes, sir.
 4 Q. And did you ask him: Mr. Simmons, why are you
 5 angry, frustrated and upset?
 6 A. No, sir. I just let him vent.
 7 Q. Okay. You let him vent. So you didn't do
 8 anything to calm him down?
 9 A. No, sir.
 10 Q. And you stated he made some kind of vague threats
 11 against you?
 12 A. Yes, sir.
 13 Q. And what did you conclude as a result of this
 14 conversation that you had with Mr. Simmons? Let me
 15 withdraw that question.
 16 Did he say anything to Mr. Simmons during the
 17 phone conversation?
 18 A. I tried to.
 19 Q. What did you say?
 20 A. I was trying to explain to him if he would pay
 21 one, we could cancel -- I mean we could get him into a
 22 program where he could make smaller payments one at a
 23 time and work -- you know, get this thing taken care
 24 of.
 25 But at the time, like I said, he was frustrated

1 and excited and I couldn't get any message conveyed to
2 him.

3 Q. Am I correct in saying that you brought up the
4 fact that there were multiple judgments against
5 Mr. Simmons?

6 A. Yes.

7 Q. And that you being the Sheriff's Office were
8 interested in resolving one of them or trying to deal
9 with them all in some sensible way?

10 A. Yes, sir.

11 Q. And how did your conversation with Mr. Simmons
12 end? How did it conclude? What was the result of it?

13 A. Basically, like my notes say, I tried to convey to
14 him, but he just basically ended it. Nothing --
15 nothing was solved by it.

16 Q. Uh-huh. Did you mention a Janice Porter to
17 Mr. Simmons during this phone call?

18 A. I couldn't say for sure.

19 Q. As a result of this call, did you file some kind
20 of complaint against Mr. Simmons?

21 A. It wasn't a complaint. It was an incident report
22 just as an information-type thing, kind of a safety
23 thing for any deputy that might go out there, since he
24 said if I come out there, I better bring the whole
25 Sheriff's Department and if he has to fight, so be it.

1 I didn't want a deputy to get hurt out there, not
2 knowing what he might be getting into if there was a
3 call out there, so I did file an incident report. It
4 would probably be --

5 MR. DORSEL: It's 203.

6 MR. BERTELE: Thank you, Counsel.

7 BY MR. BERTELE:

8 Q. Counsel is referring to Bates Document Number 203.
9 Do you have a copy, Deputy?

10 A. Yes, sir.

11 Q. This is entitled "Incident Report;" correct?

12 A. Yes, sir.

13 Q. And what is this?

14 A. This is the a document of the Charleston County
15 Sheriff's Office uses to report any incident.

16 Q. Who reports on this, any member of the public?
17 Could I file one of these if I went down to the
18 Sheriff's Office?

19 A. Sure. I mean you wouldn't write it out, but you
20 would give us the information and we would write it
21 out.

22 Q. You would prepare it, but if I went to the
23 Sheriff's Office and said somebody threatened me, you
24 would take down that information?

25 A. Yes, sir.

1 Q. Is that the part of the Sheriff's normal duties of
2 law enforcement?

3 A. Yes, sir.

4 Q. And the incident type indicated on this document,
5 Bates 203, is phone threats?

6 A. Yes, sir.

7 Q. Exactly what did Mr. Simmons threaten you with, or
8 how did he threaten you?

9 A. Basically if I come and levy on his property, I
10 better bring the whole Sheriff's Office because he's
11 going down with a fight, and I took it as a threat.

12 Q. Okay. So he was saying: If you show up at my
13 door, watch out, or words to that effect?

14 A. Yes.

15 Q. Okay. But that was not a threat directed at you;
16 was it?

17 A. I'm the only one dealing with him at the time, so
18 I have to assume it was towards me.

19 Q. And so where does this incident report go once
20 it's filled out? Does it go to some type of permanent
21 record?

22 A. Yes, sir.

23 Q. And that's a record maintained by the Sheriff's
24 Office?

25 A. Yes, sir.

1 Q. And is this a record that someone could find in
2 reference to Roosevelt Simmons?

3 A. Yes, sir.

4 Q. And does this record have any consequences in
5 terms of criminal activity or anything of the sort?

6 A. It could. In this particular matter, it did.

7 Q. So there are repercussions from filing this
8 incident report; isn't there?

9 A. Yes; it could be.

10 Q. It becomes a part of a permanent record involving
11 Roosevelt Simmons?

12 A. Yes, sir.

13 Q. And you noted in this incident report, you called
14 dispatch and had them flag the suspect's address; what
15 does that mean?

16 A. It means any time we get a call out to 3416
17 Kitford Road, that the responding deputy would know
18 that we've had prior dealings with him or he may have
19 made some threats or maybe -- and this didn't pertain
20 to him at this point; I'm just giving you an example --

21 Q. No. I want to know what flagging -- what you mean
22 when you say you had them flag his address.

23 A. Basically, like I was saying, it lets the
24 responding deputy know to be a little more cautious.

25 There could have been some problems out there in the

1 past.
 2 Q. So because you filed this incident record, the
 3 Sheriff's Department is going to be more suspicious of
 4 Mr. Simmons?
 5 A. I wouldn't say suspicious, but cautious for their
 6 safety.
 7 Q. Isn't that what you wanted them to be, suspicious
 8 of him?
 9 A. No. I wanted them to be cautious of him.
 10 Q. Cautious, but not suspicious?
 11 A. No; he hasn't done anything to be suspicious of.
 12 Q. But you claimed he threatened you; doesn't that
 13 cause some suspicion?
 14 A. I call it caution.
 15 Q. So this really wasn't a threat report; it was a
 16 caution report?
 17 A. No. It's titled a threat because he did say, you
 18 know, he would go down with a fight and the whole
 19 Sheriff's Office better come out there. I don't
 20 think -- to me, suspicion --
 21 Q. Deputy, did you take that seriously?
 22 A. I always take everything serious when it comes to
 23 my job --
 24 Q. I understand you --
 25 A. -- and my safety.

1 Q. -- you take it seriously in doing your job, but
 2 did you seriously believe that Mr. Simmons was going to
 3 fight the whole Sheriff's Department?
 4 A. I have seen it done.
 5 Q. By someone protesting a user fee?
 6 A. I've seen it done for all kinds of reasons.
 7 Q. By someone protesting a user fee?
 8 A. I have seen it done for a whole lot of reasons.
 9 Q. By someone protesting a user fee, sir?
 10 A. I --
 11 Q. Have you seen that? If so, I would like that
 12 person's name.
 13 A. People get killed all the time.
 14 Q. Did you hear my question?
 15 A. Yes, sir. I'm giving you the best answer I can.
 16 Q. Which is: You don't know of anybody who
 17 threatened the Sheriff's Department in protest of a
 18 user fee; right?
 19 A. I do know someone who has: Mr. Simmons.
 20 Q. Oh, okay.

21 MR. BERTELE: Off the record for a
 22 second.

23 (A discussion was held off the record.)

24 BY MR. BERTELE:

25 Q. So you then sent a letter on the 5th -- excuse

1 me. On the 11th of May, you sent a letter to whom?
 2 A. Mr. Roosevelt Simmons/Gary L. Simmons.
 3 Q. Okay. What does "LT" mean?
 4 A. Lieutenant letter.
 5 Q. Lieutenant letter. Okay. What is the
 6 significance of the lieutenant letter?
 7 A. It's a letter that she signs, you know,
 8 explaining, you know, the County would really like to
 9 work this out and get these paid, that basically Master
 10 Deputy Long has made numerous attempts to contacted you
 11 to work this out. Please don't ignore this or your
 12 property could be at risk for public auction and if you
 13 wish to contact Deputy Long to satisfy your judgment,
 14 the amount and that kind of stuff, where I could be
 15 reached at.
 16 MR. BERTELE: This is marked as Bates
 17 033, correct, Counsel?
 18 MR. DORSEL: Yes. Sorry.
 19 BY MR. BERTELE:
 20 Q. Now, that letter refers to a judgment in the
 21 amount \$379.09.
 22 A. Right.
 23 Q. Which judgment is that?
 24 A. That, I could not tell you, to be honest with you.
 25 Q. Well, how can we find out what \$379.09 represents?

1 A. Here's -- this is going to answer your question,
 2 but it's going to be a way to get to it.
 3 These judgments that you see -- remember when we
 4 looked at that folder at the top, these -- each year
 5 these judgments were calculated according to statute.
 6 And the interest rate is determined by the state
 7 legislature. Every January of each proceeding year,
 8 they give you a rate and you add three points to it.
 9 And it also -- some years were compounded --
 10 Q. Deputy, I understand that. Where did the \$379.09
 11 come from? You can tell me that; can't you?
 12 A. I'd have to recalculate every one of these to find
 13 out which one it was at that time.
 14 Q. Well, excuse me, but does this letter of May 11 of
 15 2009 relate to judgment 1817?
 16 A. I couldn't tell you.
 17 Q. So it could have been any judgment, because there
 18 is no reference to a judgment on here; is there?
 19 A. No, sir; there is not.
 20 Q. Okay. So your testimony, though, is that as of
 21 the date of the letter, the judgment, including
 22 interest -- including interest would be \$379.09; is
 23 that correct?
 24 A. Yes, sir.
 25 Q. But you're not sure which of the six judgments

1 that you were enforcing that number was referred to?
2 A. That's correct.
3 Q. Okay. Now, why did -- withdrawn.
4 The letter that you sent on March 3rd, 2009 --
5 A. Yes, sir.
6 Q. -- didn't refer to any particular judgment,
7 either; does it?
8 A. No, sir.
9 Q. And at the time you had six judgments, which were
10 applicable to Roosevelt and Gary Simmons; true?
11 A. Yes, sir.
12 Q. Okay. So did you send out six letters?
13 A. No, sir.
14 Q. You sent out one letter?
15 A. Yes, sir.
16 Q. And what judgment was the letter supposed to
17 pertain to?
18 A. This is just kind of an advisory that you have a
19 judgment against you. Please contact our office to
20 talk to the deputy and work things out. It doesn't
21 reflect any judgment, other than notifying you there is
22 a judgment.
23 Q. Okay. Well, but, to your knowledge, there were
24 six judgments?
25 A. Yes, sir.

1 Q. But you didn't send out six letters?
2 A. No, sir.
3 Q. And you didn't refer to six judgments in the one
4 letter you did send out?
5 A. No, sir.
6 Q. And the April 1st letter refers to 1817, alone;
7 correct?
8 A. Yes, sir.
9 Q. Okay. Were there any letters sent out with
10 respect to the other five judgments that you listed for
11 me under that initial case number that you gave me?
12 A. No, sir.
13 Q. So is the case when you got these six judgments in
14 2009, you sent a letter out to Mr. Simmons referencing
15 only one judgment and you never sent him letters with
16 respect to the others?
17 A. That's correct.
18 Q. So how did you expect him to pay the others if you
19 didn't tell him he was going to be subject to legal
20 process?
21 A. Well, this letter is to generate some type of
22 communication between the defendant and me so I could
23 explain what he's facing and so I could explain how
24 many he has and what's the best route for him to take.
25 Q. Okay. So when you spoke to Mr. Simmons on April

1 3rd, did you tell him: "Mr. Simmons, we have six
2 judgments in my office here to levy against you and
3 Mr. Gary Simmons and it would be in your best interest
4 to work out a deal?
5 A. I attempted to, but, like I said, he was excited.
6 He was venting. I couldn't get very much in edgewise.
7 Q. So after -- after that conversation on April 3rd,
8 you sent him a letter -- or excuse me -- Lieutenant
9 McCray sent him a letter on May 11th talking about a
10 2000 Charleston County Business license/user fee
11 judgment of \$379.09; right?
12 A. Yes, sir.
13 Q. And she doesn't mention the fact that there are
14 five other judgments sitting out there as well?
15 A. No, sir.
16 Q. Now, this letter of May 11th states that deputy --
17 Master Deputy Long had attempted on several occasions
18 to contact you. Okay? Where do you reference those
19 contacts with Mr. Simmons on your memorandum in this
20 file? Would those be the letters you sent to him?
21 A. Yes, sir.
22 Q. The letter of March 3rd and the letter of April
23 1st?
24 A. Yes, sir.
25 Q. And that would be your only attempt to contact

1 Mr. Simmons?
2 A. Yes, sir.
3 Q. And on June 18th, Lieutenant McCray sends out
4 essentially the same identical letter she sent out on
5 May 11th; correct?
6 A. Yes, sir. Once again to try to generate some type
7 of contact where we could try and work this out.
8 Q. Okay. And do you know when these letters were
9 received by Mr. Simmons?
10 A. I can tell you I do not have any returned letters
11 in my folder, so I have to assume they were.
12 Q. You're telling me that you didn't get back any
13 envelopes from the Post Office marked undelivered?
14 A. Right.
15 Q. But these letters that were generated by you and
16 the lieutenant went out in the regular mail?
17 A. Yes, sir.
18 Q. And you have no reason to believe that they
19 weren't delivered, but you have no reason to believe
20 that they were, either?
21 A. Like I said, I just assume they were since I
22 didn't get them back.
23 Q. Okay. Now, down on the bottom of the first memo
24 page, there is an entry of July 23rd, sent to
25 lieutenant to review and proceed; is that correct?

1 A. Yes.
 2 Q. And I take it you had not received any -- you had
 3 not had any contact with Mr. Simmons as of the time you
 4 wrote that entry on July 23rd?
 5 A. The only contact was May 3rd, and that wasn't real
 6 meaningful.
 7 Q. Did you have Mr. Simmons' telephone number?
 8 A. I wrote down 559-1351.
 9 Q. Okay. I'll stipulate that that's Mr. Simmons'
 10 telephone number.
 11 MR. SIMMONS: For over 60 years.
 12 MR. BERTELE: For at least going back to
 13 2009; correct?
 14 MR. SIMMONS: Since my father was living,
 15 the same phone number.
 16 BY MR. BERTELE:
 17 Q. All right. We'll stipulate that that's been
 18 Mr. Roosevelt Simmons' telephone number for many, many
 19 years.
 20 So you did have his telephone number?
 21 A. Yes, sir.
 22 Q. On the 23rd of July of 2009, you sent the file to
 23 Lieutenant McCray to review?
 24 A. Yes, sir.
 25 Q. And was that a procedure that was normal in

1 dealing with collection of a user fee of some \$89?
 2 A. Yes, sir.
 3 Q. That would be the next step in the procedure to
 4 collect a user fee judgment?
 5 A. After I did my research, send out my letters, if
 6 the County wants to proceed, then the next step would
 7 be for my supervisor to review the case, the documents,
 8 the case, what we find.
 9 Q. Uh-huh. And that's what you did here?
 10 A. Yes, sir.
 11 Q. Okay. And on the 23rd of July, Lieutenant -- is
 12 that Lieutenant McCray's handwriting? I think you told
 13 earlier it was.
 14 A. Yes, sir.
 15 Q. What did she write?
 16 A. "Reviewed file. Suggested delinquent tax sale
 17 check on the 6th nonpayment" -- I don't know what that
 18 letter or word is -- "taxes to the business license
 19 office. If collection cannot be made -- go to page
 20 2" --
 21 Q. Right.
 22 A. -- "continued." Maybe: "The case will be closed
 23 unless the business office wants to move forward
 24 levying on" -- I'm not sure what that word is.
 25 Q. Could it be "on land?"

1 A. "On land;" that's what it is.
 2 Q. And that's her signature?
 3 A. Yes, sir.
 4 Q. So on the 23rd of July, Lieutenant McCray was
 5 suggesting a delinquent tax sale?
 6 A. A note for me to check the delinquent tax sale to
 7 make sure that the property wasn't being moved on by
 8 the delinquent tax office.
 9 Q. Well, it states: Suggested delinquent tax sale,
 10 check on the six nonpayment of taxes to the business
 11 license office. Do you know what she meant by all
 12 that?
 13 A. I can't speak for her, but I would have checked
 14 the delinquent tax sheet to make sure those properties
 15 were still available.
 16 Q. Well, on the 23rd, this file came back to you;
 17 didn't it?
 18 A. Right.
 19 Q. It came back to you on 12/10?
 20 A. Yes, sir.
 21 Q. About three hours, two and a half hours after you
 22 sent it off to her?
 23 A. Yes.
 24 Q. So apparently she looked at it and made these
 25 comments and gave it back to you?

1 A. Right.
 2 Q. And what was your understanding of what was
 3 supposed to happen as a result of her review and
 4 comments?
 5 A. I took it as meaning to go to the delinquent tax
 6 office to check to see if the property was clear for us
 7 to go ahead on it. That's what I interpreted it as.
 8 Q. Did you speak to her about this?
 9 A. I don't believe so.
 10 Q. So based on her notes, what did you do?
 11 A. I went to the delinquent tax office and --
 12 Q. You went to the delinquent tax office?
 13 A. Uh-huh.
 14 Q. Where is that located?
 15 A. 100 Broad Street, the County Office Building
 16 downtown.
 17 Q. And you're nearby that?
 18 A. I went to the same building.
 19 Q. So you went to another office in the same
 20 building?
 21 A. Uh-huh.
 22 Q. Who did you speak to?
 23 A. I did not write it down, so I couldn't tell you.
 24 Q. Okay. So we don't have any -- excuse me. On
 25 7/23, at 13:15 -- that's 1:15 in the afternoon for us

1 civilians; right?

A. Yes, sir.

Q. Is that your handwriting there: "Checked the computer and went by the treasury office?"

A. Right. See if they collect for delinquent taxes and checked on status of 28300498: It is clear.

Q. Okay. So as a result of Lieutenant McCray's comments, you checked the computer. What does that mean?

A. I checked for lis pendens for --

Q. You checked TMS-138?

A. No; 0498.

Q. Well, what happened to 138?

A. 138 is the property that caused the judgment, but that would require a -- it's a qualified residence, which would require a homestead exemption, so I chose to go after property 498, which is another property, which is not entitled to a homestead exemption.

Q. Well, who told to you do that?

A. Discretionary on my part.

Q. Completely on your part?

A. Yes, sir.

Q. Homestead exemption means, as I understand it, that real property that -- that a certain portion of real property is exempt from levy and execution; true?

A. It's not exempt. What a homestead exemption does is if it's Mr. Simmons' primary residence, he is entitled to what we call a homestead exemption of \$50,000 off the top of the sale.

Q. Uh-huh.

A. If we go after anything that is not a qualified homestead residence, such as TMS-498 and other property, it's not qualified for homestead exemption.

Q. So you could have sold 138 but you have to start the bidding at over \$50,000?

A. Yes, sir.

Q. And if you sold 498 you can start at a dollar?

A. Yes.

Q. And that was your call?

A. Yes, sir.

Q. Okay. I just want to be clear: You're were testifying a moment ago, and I think I might have interjected myself; but, again, the entry on July 23rd or at 1:15 or 13:15: "Checked computer." And you've told me that you looked on the database for TMS-498?

A. Yes.

Q. And is there a search showing that in the records that you have in your possession today?

A. Let me take a quick look.

Q. Sure. Let's take short break since we've been

1 here almost two hours.

2 (A short break was taken.)

3 BY MR. BERTELE:

4 Q. We were discussing the reference in your memo of July 23rd in which you stated you checked the computer, and your testimony that that referred to your search of property records for TMS-489; correct?

A. That's correct.

Q. And I was asking whether you have a copy of that search for TMS-498 that you had performed on July 23rd.

A. No, sir; I don't.

Q. And is it your testimony, then, that, to your best recollection, that computer search focused on TMS-498?

A. Yes, sir.

Q. And not on TMS-138?

A. Correct.

Q. And that search was based upon your decision to pursue execution not on the property for which the user fee was imposed but a different piece of property?

A. Correct.

Q. Also in that notation of July 23rd, you stated you went to the Treasurer's Office, since they now collect for delinquent tax; is that an accurate reading?

A. Yes, sir.

Q. And checked on the status of TMS-498, correct?

1 A. Correct.

2 Q. And you further state it is clear?

A. Yes, sir.

Q. Meaning that there are no delinquent taxes on TMS-498?

A. That's correct.

Q. Okay. So your efforts on the 23rd of July of 2009 were focused on executing on TMS-498?

A. That's correct.

Q. And is it fair to say your subsequent activities were in furtherance of that objective, namely to execute on TMS-498?

A. I'm sorry. Can you repeat that question?

Q. Yes. I was asking whether all your activities on July 23rd were focused on that objective, namely on executing TMS-498.

A. Yes, sir.

Q. And on the 30th of July you made an entry stating: Prepared NOL and NOS notices; correct?

A. Yes, sir.

Q. A levy deposit was received --

A. Yes, sir.

Q. -- correct?

A. Yes, sir.

Q. And the "NOL;" is that -- does that mean to

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1 indicate a Notice of Levy?

2 A. Yes, sir.

3 Q. And "NOS," does that mean to indicate a notice of
4 sale?

5 A. A "notice of sheriff's sale."

6 Q. Okay. But we're talking about a sale?

7 A. Yes, sir.

8 Q. So as of the 30th of July, you had already
9 prepared those notices and -- withdrawn.

10 As of the 30th of July you had apparently advised
11 the business license fee and user fee office of your
12 intent to levy on TMS-498?

13 A. Yes, sir.

14 Q. And that is signified by the fact that they sent a
15 deposit?

16 A. Yes, sir.

17 Q. And that deposit was supposed to represent what?

18 A. It's \$550. It covers the posting of the property
19 and advertisement, cost of the sale.

20 Q. On the 30th of August, you made an entry which
21 states -- is that your handwriting?

22 A. No.

23 Q. I apologize. It's not. Excuse me. I was
24 incorrect.

25 So your file contains an entry on August 3rd made

1 by Miss Gilliard; is that correct?

2 A. Yes, sir.

3 Q. And Miss Gilliard is someone who works in the
4 Sheriff's Department?

5 A. At the time she worked with us. She is no longer
6 employed there.

7 Q. Well, she was in 2009?

8 A. Yes, sir.

9 Q. And she was one of the staff?

10 A. Legal assistant.

11 Q. And she serves for -- well, the person engaged in
12 judgment enforcement and such?

13 A. Yes, sir.

14 Q. Let me read this entry and see if you agree as to
15 what it states: "Lis pendens results show there was
16 once an action against the property, but it appears
17 that it has been dismissed. Printed info from Case
18 07-CP-10-2236 for your review." Do you agree that
19 that's what it says?

20 A. Yes, sir.

21 Q. And this notation says that Miss Gilliard has
22 gotten some information about a Charleston County case?

23 A. Yes, sir.

24 Q. Number 2236?

25 A. Yes, sir.

1 Q. Okay. Can you identify those -- or that material
2 from your file?

3 A. Yes, sir. I have it right here.

4 Q. Can I see it, please?

5 A. (Handing.)

6 Q. Thank you.

7 MR. DORSEL: 90 through 93.

8 MR. BERTELE: Thank you, Counsel. That's
9 referring to Bates Numbers 90 to 93.

10 BY MR. BERTELE:

11 Q. Okay. Is it fair to say that you -- as a result
12 of this search that Miss Gilliard did, that you spoke
13 to the Master-in-Equity?

14 A. Yes.

15 Q. What was the purpose of your going to the chambers
16 of the Master-in-Equity on August 10th of 2009?

17 A. To make sure that if this was the same property I
18 was going after, if it was going to cause any problems
19 with my sale and to make sure if I need to cancel the
20 sale and not post. I would do so if Master-in-Equity
21 still had some type of legal proceedings against it.
22 But I spoke to Harriett at the Master-in-Equity court
23 and she said the lawsuit is dismissed and the property
24 is clear.

25 Q. So Harriett is somebody in Judge Scarborough's

1 chamber?

2 A. She used to be; she's no longer employed there.

3 She was.

4 Q. Do you know Master-in-Equity Michael Scarborough?

5 A. Yes, sir.

6 Q. Do you know him personally?

7 A. No, sir.

8 Q. But you know who he is and what his functions are?

9 A. Yes, sir.

10 Q. Had you had any contact with him in the course of
11 your duties in the Sheriff's Department previously?

12 A. Previously to me working judgments or previous to
13 this cases?

14 Q. In any way, at any time.

15 A. Well, I used to work court security and if he
16 needed somebody in his courtroom for protection detail,
17 I could have been assigned there.

18 Q. I see. Okay. But that would have been in a
19 different capacity as a court attendant, as a guard or
20 some other security function?

21 A. Yes, sir.

22 Q. Does the Sheriff's Department have personnel
23 normally stationed in the court room --

24 A. Yes, sir.

25 Q. -- when the things are going on in court?

1 A. Yes, sir.
 2 Q. There is a further entry -- there is a further
 3 entry on the 10th of August, which states: Lieutenant
 4 McCray called and tried to explain. What does that
 5 mean?
 6 A. Poor handwriting on my part or poor expression in
 7 this writing.
 8 Q. Well, I'm just trying to understand what you
 9 wrote.
 10 A. Right. I understand. I'm admitting it was poorly
 11 written. Lieutenant McCray called Mr. Simmons and
 12 tried to explain the process, what we could do to, you
 13 know, get this thing taken care of and he hung up on
 14 her.
 15 Q. Well, it doesn't say she called Mr. Simmons.
 16 A. No, sir. Like I said, it was poorly written by
 17 me.
 18 Q. Well, she didn't make any notation in the file
 19 about that. How do you know that she called him?
 20 A. I was standing there.
 21 Q. Well, did you hear the conversation?
 22 A. On her end; not on his end.
 23 Q. So on the 10th of August you came back from the
 24 Master-in-Equity's office and you went to see
 25 Lieutenant McCray --

1 A. Sometime --
 2 Q. -- is that correct?
 3 A. Yeah. Sometime during that day; I couldn't tell
 4 you the exact time.
 5 Q. Okay. Fair enough. But you did go to see her?
 6 A. Yes.
 7 Q. Did you tell Lieutenant McCray that you had
 8 decided to execute of MTS-498 on the 10th of August as
 9 a result of coming back from visiting the Master-in-
 10 Equity chambers?
 11 A. I couldn't tell you what we talked about that day.
 12 Q. Uh-huh. Okay. So you don't know whether she knew
 13 that there was going to be an execution against
 14 TMS-498?
 15 A. I couldn't tell you.
 16 Q. Well, you didn't tell her?
 17 A. No, sir, not according to my notes.
 18 Q. And do you remember telling her?
 19 A. No, sir, I don't.
 20 Q. So you're standing there; she's calling
 21 Mr. Simmons. This was something that you suggested
 22 that she do?
 23 A. I don't remember who suggested it.
 24 Q. Well, what was the purpose of the phone call?
 25 A. One last ditch effort to work this out before it

1 goes to sale.
 2 Q. Uh-huh. And do you remember what she said?
 3 A. No, sir.
 4 Q. And you wrote that Mr. Simmons discontinued the
 5 phone call or hung up, as you wrote it?
 6 A. I wrote he hung up on her.
 7 Q. That's what she obviously repeated or told you, he
 8 hung up on her?
 9 A. Yes.
 10 Q. Did you hear any of the conversation coming from
 11 him?
 12 A. No, sir.
 13 Q. Okay. If you had any -- I withdraw the question.
 14 In the course of your activities on this case, you
 15 had contact with the business license/user fee
 16 department, would you have made entries in the log or
 17 in the memo reflecting those conversations?
 18 A. Yeah. I probably would have something normally.
 19 Q. What was your practice -- I mean your involvement
 20 in collecting money for the County? When you take on a
 21 file, do you record conversations and things that you
 22 do with respect to your own department and the
 23 defendant, do you record such contacts that you have
 24 with the County, the internal conversations?
 25 A. Yes, sir, if something was said or done that was

1 maybe out of the ordinary or out of the case. If I
 2 don't write it, it could be just general conversation,
 3 this is where your case is at.
 4 Q. Status?
 5 A. Status.
 6 Q. Is it fair to say if there is anything of
 7 consequence that you had to communicate to Janice
 8 Porter, you would have made a note of it?
 9 A. Yes.
 10 Q. Did you tell Janice Porter that you were going to
 11 levy on 498 and not 138?
 12 A. No, probably not.
 13 Q. Maybe I asked you this earlier, but I would ask it
 14 now: The search in which you conducted on March 12th
 15 of 2009, is it true that the only two pieces of real
 16 estate that you found in the name of Roosevelt Simmons
 17 is TMS-138 and TMS-498?
 18 A. Can you give me a moment?
 19 Q. Sure.
 20 A. No. I found a PID Number 2830000499, Roosevelt
 21 Simmons, lot B.
 22 Q. Uh-huh.
 23 A. I did find that one.
 24 Q. Anything else?
 25 A. I did say 138; right?

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1 Q. Yes, sir.
 2 A. And you're talking about real property and not
 3 personal; right?
 4 Q. Yes, sir.
 5 A. I did find a piece of property, but I cannot -- I
 6 could not conclude this was Roosevelt Simmons with us
 7 today or another Roosevelt Simmons in North Charleston
 8 on Snipe Street. I don't know if that answers your
 9 question, but I wanted to include that.
 10 Q. Well, my question is whether the two parcels I
 11 mentioned were the only two parcels that you found in
 12 the name of Roosevelt Simmons, and you said that in
 13 addition to those two, you found a TMS-499 and --
 14 A. Right. And also --
 15 Q. -- on John's Island --
 16 A. Right.
 17 Q. -- and that you found another parcel in the name
 18 of Roosevelt Simmons in North Charleston?
 19 A. Right. And I found another Roosevelt Simmons on
 20 Kitford Road, qualified agricultural, 2820000135. I
 21 don't have a legal description of that one.
 22 Q. Okay. And what does qualified agricultural mean?
 23 A. It means he has listed some type of farm land.
 24 Q. But not entitled to a homestead exemption?
 25 A. Right. I also found a CID 3110000024 for a

1 Roosevelt Simmons, but that is on River Road on John's
 2 Island. I could not conclude -- I wasn't sure if that
 3 was the Roosevelt Simmons here today or another
 4 Roosevelt Simmons. That's another property qualified
 5 agricultural, as well.
 6 Q. I'm sorry. The last three digits of the TMS were
 7 024?
 8 A. Yes, sir.
 9 Q. That was in the name of Roosevelt Simmons?
 10 A. Roosevelt Simmons; 1435 River Road.
 11 Q. And it was TMS-311?
 12 A. 3110000024.
 13 Q. Okay. Thank you.
 14 A. That appears to be all.
 15 Q. You got this information from the Charleston
 16 County Auditor's records on line, I assume?
 17 A. Yes, sir. Tax -- our tax system, the Charleston
 18 tax system.
 19 Q. Yeah. You type in the name of the owner and you
 20 get the TMS numbers?
 21 A. You type in the name and type -- we have three
 22 different property types we look at. And then there is
 23 a list of names that comes up, anything similar to that
 24 name, and you have to differentiate which one is who.
 25 Sometimes it's a little easier than others.

1 Q. Right. But you were proceeding against Roosevelt
 2 Simmons and Gary Simmons?
 3 A. Yes.
 4 Q. And did you search the property records for the
 5 name Gary Simmons?
 6 A. I did. Because it's a joint defendant. And
 7 according to my records, I couldn't come up with
 8 anything that was jointly owned.
 9 Q. Okay. Well, did you ever determine whether Gary
 10 Simmons ever lived on 3416 Kitford Road?
 11 A. No, sir. I'm sorry. Let me modify that.
 12 Property type 138 is Roosevelt L. Simmons and Gary H.
 13 Simmons. So I did find one that was jointly owned, so
 14 I modify my previous answer.
 15 Q. Well, 138 was the property the user fee was
 16 delinquent on; correct?
 17 A. Yes, sir.
 18 Q. So your property search would have had to have
 19 that?
 20 A. Well, I just wanted to keep it -- you had asked if
 21 I had found anything on Gary Simmons and I said no, but
 22 I want to modify that answer to yes, I did.
 23 Q. Okay. Thank you. Thank you. But just to be
 24 clear, you never determined whether Gary Simmons
 25 resided there?

1 A. No, sir, I did not.
 2 Q. So continuing with your memo, the log of
 3 activities on August 26th, your log indicates that at
 4 10:00 a.m., you and Deputy Muirheid -- he's another
 5 deputy at the Sheriff's Department?
 6 A. Yes.
 7 Q. And what's Deputy Muirheid's first name?
 8 A. I do not know.
 9 Q. You call him Deputy?
 10 A. I probably call him either Deputy or Deputy
 11 Muirheid.
 12 Q. How long has he been in the Sheriff's Office?
 13 A. I don't know.
 14 Q. Before you?
 15 A. I don't think so.
 16 Q. Is he your partner? Do the two of you go out on
 17 property executions together?
 18 A. No, sir. He worked -- at that time, on August
 19 26th, he was assigned to the John's Island area.
 20 Q. What does that mean?
 21 A. The County is built up in different districts, and
 22 one district is James Island/John's Island and he is
 23 assigned that area.
 24 Q. Well, explain to me what being assigned to John's
 25 Island means in terms of responsibility. What is he

1 supposed to do? Does he go to John's Island and patrol
2 or does he stay in the home office until somebody asks
3 him to do something on John's Island? What does that
4 whole thing look like?

5 A. He does patrol, answer calls for service, you
6 know, does traffic enforcement and stuff like that.

7 Q. So he's basically on-site on John's Island when
8 he's serving in that position as the Deputy Sheriff's
9 on John's Island?

10 A. Yes, sir.

11 Q. Does he have a vehicle?

12 A. Yes, sir.

13 Q. Okay. Well, on the 26th of August, you didn't
14 bring the whole Sheriff's Department with you; did you?

15 A. No, sir.

16 Q. Okay. So you didn't really take Mr. Simmons at
17 his word; did you?

18 A. Wow. I didn't think I'd get the whole Sheriff's
19 Office out there.

20 Q. But you didn't bring anybody but Deputy Muirheid;
21 did you?

22 A. No, sir.

23 Q. Was it typical for you to go with another deputy
24 when you were serving a Notice of Levy on somebody?

25 A. Yes, sir. Me and my partner do it together, but

1 Q. Okay.

2 A. If he could just stand by with me so everything
3 will go smooth.

4 Q. When we go out with Deputy Tice, that would
5 basically be the same procedure; right?

6 A. Yes, sir.

7 Q. One officer would go up and serve the papers and
8 the other would just be there to watch?

9 A. Well, he don't necessarily have to stay back. He
10 could walk up with me.

11 Q. But he's there to observe?

12 A. Yes.

13 Q. That was true on the 26th?

14 A. Yes, sir.

15 Q. And I believe you said that Deputy Muirheid hadn't
16 been assigned to the section that dealt with levies and
17 executions so he was unfamiliar with the procedures?

18 A. Yes.

19 Q. And so the purpose of having him there was just
20 strictly as an observer?

21 A. Yes.

22 Q. But he wouldn't be in the position to know whether
23 you were correctly or incorrectly carrying out the
24 procedures of your office; would he?

25 A. No.

1 on this day he may have been out on vacation; I
2 couldn't remember.

3 Q. And who was your regular partner?

4 A. Deputy Charles Tice, T-i-c-e.

5 Q. So Deputy Tice wasn't available on the 26th of
6 August to go with you, so you brought along Deputy
7 Muirheid who was the designated deputy for John's
8 Island that day?

9 A. Yes, sir.

10 Q. Is that a fair statement?

11 A. Yes, sir.

12 Q. So you met Deputy Muirheid at Mr. Simmons' house
13 on Kitford Road at 10:00 on the 26th?

14 A. I probably met him at the foot of the street. I
15 didn't need him -- like told him to meet me there. We
16 had a designated spot up the street.

17 Q. So you met nearby and you rode in together?

18 A. Yes, sir.

19 Q. Did you tell him anything about what was going on?

20 A. I probably briefed him a little bit. This was
21 probably Greek to him. He doesn't do judgments and
22 executions. I just told him basically what had
23 transpired over the last few months, that I had to
24 serve these notices of levy on Mr. Roosevelt Simmons'
25 property.

1 Q. Now, you stated in your notes on the 26th that you
2 personally served Defendant; that's Mr. Simmons?

3 A. Yes, sir.

4 Q. Now, this is the first time you met Mr. Simmons?

5 A. Yes, sir.

6 Q. Did you knock on the door -- withdraw the
7 question.

8 When you went to the property, did you see
9 Mr. Simmons?

10 A. He came outside.

11 Q. Okay. So he must have heard you coming or at
12 least saw you coming?

13 A. I would presume, yes.

14 Q. Did you observe anything in the yard of the home?

15 A. Can you be a little more specific?

16 Q. Did you see motor vehicles?

17 A. To be honest with you, I don't remember.

18 Q. Did you see farm machinery?

19 A. I don't remember.

20 Q. Did you see heavy equipment?

21 A. I don't remember.

22 Q. Did you see any personal property whatsoever?

23 A. I'm sorry. I don't remember.

24 Q. But you did see Mr. Simmons?

25 A. Yes.

1 Q. Now, did he act belligerently or aggressively
2 against you and Deputy Muirheid when he came up to
3 you?
4 A. No. No. Once I kind of gave him the paperwork,
5 just like anybody, he got a little excited and upset,
6 you know, their property is now at stake to being lost.
7 But aggressively -- I would describe it as more
8 excited.
9 Q. It wasn't anything out of the ordinary when you
10 have done this at other places?
11 A. No.
12 Q. Now, you stated in your comments on the 26th
13 that: "I explained P/O." I believe that means
14 "payment of?"
15 A. "Payoff."
16 Q. "Payoff." Thank you. "I explained payoff of one
17 judgment, one judgment, could stop sale. He stated he
18 has no money;" is that correct, what I just read?
19 A. Yes, sir.
20 Q. Does that -- do those notes reflect the totality
21 of the conversation between you and Mr. Simmons?
22 A. Pretty much.
23 Q. As far as you can remember, nothing else of
24 significance was said by you or him?
25 A. No, sir.

1 Q. "Then the case turned over to Olivia for admin
2 processing;" is that a correct reading?
3 A. Yes, sir.
4 Q. So that must mean what you did when you came back
5 to your office?
6 A. Yes, sir.
7 Q. So as I understand your notes, you and Deputy
8 Muirheid went to Mr. Simmons' property at 3416 Kitford
9 Road, you gave him a Notice of Levy and a Notice of
10 Sheriff's Sale of TMS-498. You told him that payment
11 of one judgment could stop the sale. He told you he
12 had no money and then you went home?
13 A. Yes, sir.
14 Q. You further record on the 26th: "I noticed a
15 posting of a delinquent sale for account 282132. I
16 will check into it to see if it's the same property as
17 mine;" is that a correct reading?
18 A. Yes, sir.
19 Q. And that refers to another piece of real property,
20 which was -- for which there was a notice of a
21 delinquent -- that's a tax sale?
22 A. Yes.
23 Q. You said a delinquent sale for delinquent real
24 estate taxes?
25 A. A delinquent tax sale.

1 Q. Where did you see this Notice of Delinquency?
2 A. It was a sign posted on the property.
3 Q. On which property, sir?
4 A. Well, not knowing exactly how far and deep
5 Mr. Simmons goes, it's adjacent. It was coming in a
6 little ways before his property off to the side. So I
7 just wanted to check it wasn't was I was posting.
8 Q. Okay. Now, you drove into Mr. Simmons' property
9 off of Kitford Road; correct?
10 A. Correct.
11 Q. Do you remember that?
12 A. Yes, sir.
13 Q. And you leave the road and go on a dirt path for a
14 long distance; correct?
15 A. Yes; if I remember correctly.
16 Q. It's quite a ways; isn't it?
17 A. It's a good little ways.
18 Q. And the property that you passed through, is that
19 part of Mr. Simmons' real estate as well?
20 A. I'd have to look at the plat.
21 Q. Uh-huh.
22 A. But at that time, I didn't have the plat in front
23 of me driving. So I just wanted to make sure to take
24 that extra step that I'm not posting something that's
25 already in a legal proceeding.

1 Q. No. I understand.
2 A. Oh.
3 Q. I was asking about your trip -- this was the one
4 and only visit to Mr. Simmons' property; correct?
5 A. That's correct.
6 Q. On August 26th of 2009?
7 A. Yes.
8 Q. So did you locate -- withdraw.
9 Did you know where TMS-498 was with respect to
10 138?
11 A. Looking at the plat I would, but not without the
12 plat in front of me.
13 Q. So you don't remember today where it is?
14 A. No, sir.
15 Q. And how about the 135, the farm land or
16 agricultural land you said you found in your property
17 search; did you know where that was?
18 A. No, sir.
19 Q. And how about the TMS-499 that you identified; did
20 you know where that was?
21 A. I mean I could look at the plats. If there is a
22 tax address listed, I can find it that way.
23 Q. Okay. But when you were -- I guess what I'm
24 getting at is: When you were driving to Mr. Simmons'
25 property, did you know where those other properties

1 were in relation to where you were going?
2 A. No, sir.
3 Q. Why did you select 498 instead or 499 or 135 or
4 024?
5 A. 499, like I said, was a Lot C, it was well-
6 documented on the plat. It's another property, so
7 there is no homestead exemption. The value of it is a
8 little bit higher than the -- it would cover these
9 judgments if we got enough money to cover them, those
10 things are taken into account.
11 Q. Well, what was -- when you say the value was
12 higher, you're talking the assessment value?
13 A. The appraisal value.
14 Q. Appraisal?
15 A. According to tax system.
16 Q. So what's on the tax system is the assessed value;
17 isn't it?
18 A. Well, they have an appraisal and an assessment.
19 One, the appraisal on this property \$23,900; the
20 assessment was \$1,430.
21 Q. Okay. You're talking 498 now?
22 A. Yes, sir.
23 Q. What about on TMS-499?
24 A. Give me a second. If you want, I'd be glad to
25 look at it; it might speed things along.

1 Q. Well, let's do this, Deputy. Okay? We're trying
2 to determine certain things that happened based upon
3 either your best recollection or your records. So
4 let's do this: I think it's appropriate we take a
5 break now to give the court reporter a rest. So let's
6 do that. We'll break for lunch, and when we come back,
7 if you could identify where in your records the values
8 for 024, 135 and 499 are, we'll go from there. Fair
9 enough?

10 A. That's fair enough.

11 (A lunch recess was taken at 12:35 p.m.

12 and resumed at 1:19 p.m.)

13 BY MR. BERTELE:

14 Q. We were discussing the documentation pertaining to
15 your decision to levy on TMS-498 and your testimony
16 referencing property values and appraisals of other
17 properties that you found in the name of Roosevelt
18 Simmons. Have you found those other records?

19 A. I found two of the three you want. I want to give
20 it one last go around for the last one. If not, maybe
21 you can provide that and I'll be glad to look at it.

22 And that's 499 that I cannot find.

23 Q. Tell me what you have and then we'll go on from
24 there.

25 A. Okay. Property PID 3110000024.

1 Q. Yes, sir.
2 A. It's an OT property. It's also qualified
3 agricultural. It has 100 percent appraisal value for
4 the OT value of \$28,000 and for the qualified
5 resident -- agricultural of \$2,800 for a total of
6 \$30,800.
7 Q. Now, please explain to me those initials you just
8 told me about.
9 A. OT is other property.
10 Q. Right.
11 A. QA is qualified agricultural.
12 Q. What are you referring to in particular now? You
13 have a record in front of you.
14 A. Yes.
15 Q. Okay. This is a general inquiry done on March
16 12th of 2009 regarding 3110000024; correct?
17 A. March 12th of '09, yes.
18 Q. Okay.
19 MR. DORSEL: Bates Number 48.
20 MR. BERTELE: Thank you, Counsel.
21 BY MR. BERTELE:
22 Q. And at the bottom there is a notation: "Not sure
23 if it is Defendant"; is that a correct reading of it?
24 A. That's correct.
25 Q. That's your handwriting?

1 A. That is.
2 Q. So you were making a note when you did your
3 property search in March that you weren't sure that
4 this was the Roosevelt Simmons that you were concerned
5 about?
6 A. Yes, sir.
7 Q. And did you determine whether or not it was the
8 Roosevelt Simmons you were concerned about?
9 A. No; I never -- I never confirmed it, no.
10 Q. So you don't know whether this is property you
11 might have been able to levy and execute on as well?
12 A. Correct.
13 Q. And why was that?
14 A. Well, if you look under this tax record, it has a
15 mailing address and a tax address. The tax address is
16 on River Road and the mailing address is a different
17 one on River Road. And I knew that the Mr. Simmons I
18 was concerned with was on Kitford, so -- I mean, it
19 could have been a previous address. I don't know. I
20 had no way of knowing off of his DL that I ran for
21 previous address. It didn't show up, so I took it may
22 just be Roosevelt Simmons. Simmons is a common name
23 here in South Carolina.
24 Q. So you were never able to confirm if Roosevelt
25 Simmons listed as the on and on TMS 024 was the

1 A. I was making sure it wasn't mine, that I had
2 posted the correct property.
3 Q. Okay. Okay. On the 8th of September, you made an
4 entry stating that Deputy Tice left NOSS, Notice of
5 Sheriff's Sale, at Judge Roll (phonetic); is that
6 correct?
7 A. Yes, sir.
8 Q. What does that signify to you?
9 A. That tells me that the public notice by state
10 statute we have to publicize three public notices in
11 three areas where the public has access to. We did the
12 first one at the courthouse at 100 Broad Street.
13 Q. Right.
14 A. The second one was Judge Roll's office at James
15 Island River Road.
16 Q. Why did you pick him?
17 A. Riverland Road. I'm sorry. We know the public
18 gathers there. It's accessible. It's not really a
19 rhyme or reason.
20 Q. Judge Roll is a magistrate in Charleston County?
21 A. Yes.
22 Q. And his chambers or his office is located on James
23 Island?
24 A. Yes. It's on Riverland Drive. I don't know the
25 exact numerics.

1 Q. You didn't post the public notice on John's
2 Island?
3 A. No, sir. And the third one we required to do I
4 did on 9/10 at the county library at Dorchester and
5 Pinehaven Drive.
6 Q. That's in North Charleston?
7 A. North Charleston, uh-huh.
8 Q. Okay. And I understand from your note then on
9 October 5th, the sheriff -- you conducted a sheriff's
10 sale of TMS-498?
11 A. Yes, sir.
12 Q. Where did that occur?
13 A. In front of the courthouse, 100 Broad Street,
14 Charleston, South Carolina.
15 Q. Uh-huh. And nobody showed up, according to your
16 notes.
17 A. According to my notes, no bids.
18 Q. Okay. And from your note it appears that a second
19 sale was held on October 4th at 11:00; correct?
20 A. October 4th is the -- well, hold on. No, the
21 second sale was November 4th.
22 Q. I beg your pardon? I meant to say November 4th of
23 '09. The second sale was held at 11:00.
24 A. Yes.
25 Q. Thank you. And your notes state two bidders

1 present. A Charles Masencup bid?
2 A. Yes.
3 Q. And the other person did not bid?
4 A. Let me check the bid sheet. Hold on, please. The
5 second sale we do not differentiate -- I can tell you
6 how many bids we have, but we did not differentiate who
7 did what, according to our bid sheet. I can tell you
8 that bidder number 1 started at \$500, then bidder
9 number two did \$550. So I would assume bidder number
10 one bid at \$600 -- that was Mr. Masencup. He won, so I
11 can say he bid the third bid.
12 Q. Uh-huh. Okay. You have a bidder sheet. Okay.
13 MR. BERTELE: Chris, do we have this?
14 MR. DORSEL: I think so.
15 MR. BERTELE: I'm not questioning you.
16 Okay? Let's go off the record.
17 (A discussion was held off the record.)
18 BY MR. BERTELE:
19 Q. It's Bates Number 131. Okay. let's refer to that
20 second sale as -- what do you call this document?
21 A. It's a sheriff's sale real property sheet. It
22 basically gives us the steps on how to conduct the
23 sale, what we do at each sale.
24 Q. So it's a standard form --
25 A. Yes, sir.

1 Q. -- that your office uses on every sale of
2 property?
3 A. Yes, sir.
4 Q. Okay. And so apparently there were two bidders.
5 Referring to Bates Number 131, there were two bidders.
6 And the highest bid or the last bid was \$600; correct?
7 A. Yes, sir.
8 Q. The minimum bid was \$490.62?
9 A. Yes, sir.
10 Q. What did that represent?
11 A. That's the cost of the sale, which covers the cost
12 of advertisement.
13 Q. Okay. It doesn't include the judgment, though?
14 A. No.
15 Q. Okay. Why not?
16 A. By state statute we are only allowed at this point
17 to cover the cost of the sale as an opening bid. So
18 basically the state statute says we start the minimum
19 bid -- opening bid with the cost of the sale, meaning
20 advertisement. On real property, advertisement -- the
21 cost of sale is just advertisement. If I was taking
22 personal property, it would be towing, storage and
23 advertisement. So our minimum bid is higher.
24 Q. Okay. So you have got from TMS-498, but that
25 wasn't enough to cover the judgment?

1 A. No, sir.
 2 Q. Why didn't you incorporate all of these judgments
 3 into one sale and collect all the money the County was
 4 owed at the same time?
 5 A. State statute doesn't allow us to do that.
 6 Q. Meaning what?
 7 A. Meaning we can only cover the cost of the sale.
 8 We can't include the judgments.
 9 Q. No, no. I asked you why you didn't include all of
 10 the judgments in the sale of 498 so that you could
 11 recover money to pay them all off at the same time?
 12 A. Well, you can only go after one piece of property
 13 at a time, and to include them all would be against
 14 state statute.
 15 Q. And that's something which is referenced in some
 16 law some place?
 17 A. Yes, sir. South Carolina Code of Laws, in Title
 18 15, I believe.
 19 Q. Okay. Did you speak to Mr. Masencup before he
 20 started bidding?
 21 A. When you say speak to him, can you be specific a
 22 little more?
 23 Q. Speak -- did you speak to -- Mr. Masencup was at
 24 present at the sale; correct?
 25 A. Yes, sir.

1 Q. Did you know Mr. Masencup prior to his showing up
 2 there to bid on the Simmons property on November 4th of
 3 2009?
 4 A. Yes, sir.
 5 Q. And how did you know Mr. Masencup?
 6 A. He has bought property from our sheriff's sale
 7 before.
 8 Q. And those properties that he's purchased were
 9 purchased at sales that you conducted?
 10 A. Yes, sir.
 11 Q. And how many sales did you conduct at which
 12 Mr. Masencup was in attendance?
 13 A. Best of my recollection, prior to Mr. Simmons'
 14 sale, would be two.
 15 Q. Two that you conducted?
 16 A. Yes, sir.
 17 Q. Uh-huh. And do you remember those properties?
 18 A. Yes, sir.
 19 Q. Give me some reference, their address or TMS or
 20 some reference.
 21 A. One was on River Road in McClellanville and one
 22 was on Line Street in downtown Charleston.
 23 Q. And those two sales were real property?
 24 A. Yes, sir.
 25 Q. And did Mr. Masencup or some company that he was

1 involved with, did they acquire those properties?
 2 A. Yes, sir.
 3 Q. Both of them?
 4 A. Both of them.
 5 Q. And were those properties residences or vacant to
 6 your recollection?
 7 A. One in McClellanville, I want to say -- and I'm
 8 not hundred percent sure, but I want to say that was a
 9 vacant lot. The one in downtown Charleston, I don't
 10 remember.
 11 Q. And what was the action or the claim that gave
 12 rise to these judgments; do you remember?
 13 A. User fees.
 14 Q. So there were two sales of properties involving
 15 judgment for user fees that Mr. Masencup later
 16 acquired?
 17 A. Yes, sir.
 18 Q. When you saw Mr. Masencup there on November 4th,
 19 you knew who he was and why he was there?
 20 A. Yes, sir.
 21 Q. In advance of the bidding, did you speak to him at
 22 all about the property?
 23 A. Not that I remember.
 24 Q. Did he ask you any questions about the property?
 25 Did he say, "Deputy Long, what do you think about this

1 property or what's involved," or anything to the sort?
 2 A. He knows the process, so he wouldn't ask me that.
 3 Q. Regardless of what he knows, I was asking
 4 specifically whether he made any inquiry of you about
 5 the property before the bidding began?
 6 A. Not to my recollection.
 7 Q. Uh-huh. Did you know the other person that
 8 attended the sale?
 9 A. No, sir.
 10 Q. A stranger to you in terms of sheriff's sales?
 11 A. Yes.
 12 Q. So the bid that Mr. Masencup made of \$600 was the
 13 last bid made at the sale on November the 4th; correct?
 14 A. Yes.
 15 Q. And because this was not a homestead, were you
 16 required to accept that bid as the final bid?
 17 A. On this particular sale, because it is the second
 18 sale, yes, we were required to accept it. If it was
 19 the first sale, then somebody would have 30 days to put
 20 in a higher bid.
 21 Q. Okay. But did you understand my question?
 22 A. The way I understood it is: am I required to
 23 accept his bid; and, yes, he won the bid.
 24 Q. But if there had been a homestead exemption on
 25 this property, you would not have been able to accept

1 A. Downtown Charleston.
 2 Q. And the property in McClellanville was what type
 3 of property?
 4 A. It was real. I believe -- it's definitely another
 5 property, because I never sold anything that had a
 6 homestead, so I know there wasn't a homestead
 7 involved. I want to say it was a lot. It may have had
 8 a trailer on it. I don't remember that far back.
 9 Q. Do you remember the name of the judgment debtor?
 10 A. I remember his first name for some reason; but I
 11 can never remember his last name. It was George and I
 12 can't remember his last name. I don't know why it
 13 sticks out.
 14 Q. You're sure George isn't his last name?
 15 A. No; I know it was George.
 16 Q. But you remember George?
 17 A. Yeah. And the downtown property on Line Street --
 18 I remember he was another one that had several
 19 judgments. And I think it was another property because
 20 there was no homestead. I don't remember if there was
 21 any kind of structure on it or not.
 22 Q. Do you remember the name of the debtor?
 23 A. That, I don't know. I don't remember that one.
 24 Q. In answer to Interrogatory Number 19 requesting
 25 the identification of real property sold by the Sheriff

1 resulting from executions on judgments for the
 2 nonpayment of user fees, there is a reference to
 3 property McClellanville, John's island and Charleston
 4 on Line Street, in that answer.

5 A. Number 19?

6 Q. Yes.

7 A. Uh-huh.

8 Q. Is the property on John's Island the Simmons
 9 property?

10 A. Yes.

11 Q. Do you know Peggy Moseley?

12 A. I know that she's our auditor.

13 Q. Do you know Peggy Ellington?

14 A. No; no, sir.

15 Q. Have you had any conversations with Peggy Moseley
 16 regarding the Simmons case?

17 A. No, sir.

18 Q. Have you had any conversations with Peggy Moseley
 19 regarding Mr. Simmons prior to the filing of this
 20 lawsuit in 2010?

21 A. No, sir.

22 Q. Have you spoken to Deputy Muirheid about your
 23 testimony here today?

24 A. No, sir.

25 Q. Have you talked to anyone other than your counsel

1 about your testimony here today?

2 A. No, sir. Let me modify that.

3 Q. Go ahead.

4 A. The county attorney needed some information about
 5 this case and I spoke with him.

6 Q. And who was that, in particular?

7 A. Brad Mitchell, I think is his name.

8 Q. And have you had any contact with Mr. Simmons
 9 subsequent to the 26th of October when you went to his
 10 home to give him the Notice of Sale?

11 A. I'm sorry. Could you repeat that again, please?

12 Q. Yes. I was asking whether you had any subsequent
 13 contact with Mr. Simmons after you went to his house on
 14 August 26th to give him the Notice of Sale?

15 A. Not to the best of my recollection, I haven't
 16 spoken to him since.

17 Q. All right. Your counsel has provided some
 18 documents that I requested in response to a document
 19 demand concerning documents indicating the procedures
 20 used by the Sheriff for levy, execution and sale of
 21 property by the Sheriff for failure to pay any tax fee
 22 or charge. The documents provided are labeled Bates
 23 Number 206 to 229, which we have here.

24 And let me ask you to just look at them for the
 25 purposes of acknowledging that you're familiar with

1 what they are.

2 A. Yes; I'm familiar with this.

3 Q. And would you agree that what I have given you is
 4 the procedure manual, if we could call it that, for the
 5 performance of the duties of your office regarding the
 6 levy and execution of property by the Sheriff's Office?

7 A. Yes.

8 Q. Okay. Did you receive a copy of this when you
 9 became employed by the Sheriff's Office?

10 A. Well, this was revised in '07; so I received a
 11 prior copy than this particular one you've handed me.

12 Q. Fair enough. But to answer my question, you would
 13 have --

14 A. Yes.

15 Q. -- received a copy when you joined the Department
 16 in 1997, of the current procedures?

17 A. Yes, sir.

18 Q. Okay. And then what you have in front of you is
 19 the most recent one?

20 A. Yes, sir.

21 Q. Okay. And so you apparently have received the
 22 updated version?

23 A. Yes, sir.

24 Q. Okay. And for the first several years of your
 25 employment, you weren't called upon to refer to that

1 because you were not engaged in that kind of activity;
 2 correct?
 3 A. That's correct.
 4 Q. So is it fair to say that in the beginning of May
 5 of 2007, your job required to you understand and then
 6 observe the procedures that were set forth in this
 7 manual of procedures?
 8 A. Yes, sir.
 9 Q. Did you receive any training in what was contained
 10 in the manual when you began carrying out the
 11 responsibilities of the section involving execution and
 12 sale of property?
 13 A. I had some OJT from my partner Deputy Tice.
 14 Q. You mean on-the-job training?
 15 A. Yes. Sorry.
 16 Q. That's all right. We understand OJT. So in May
 17 of '07 you were partnered up with Deputy Tice to start
 18 doing levies and execution of sales?
 19 A. And learning the job, yes.
 20 Q. Okay. And he explained things as you went along
 21 and how to do them in the way he understood?
 22 A. Yes, sir.
 23 Q. Have you reviewed this -- let's call it a manual.
 24 Since you joined that section in May of '07, have you
 25 studied it?

1 A. I probably breezed through it. I think we had it
 2 as part of the sergeant's exam a couple of years back.
 3 Q. So you studied it as part of your preparation for
 4 the sergeant's exam?
 5 A. Right.
 6 Q. All right. And Deputy Tice has continued to be
 7 your partner up to the present time?
 8 A. Yes.
 9 Q. But I take it, then, as I understand from your
 10 testimony, that you didn't get taught or you didn't sit
 11 in a room someplace and somebody explained what the
 12 procedures were or answered your questions as part of
 13 some formal process?
 14 A. Correct.
 15 Q. Would that have been true of the other deputies in
 16 your section, if you know?
 17 A. I don't know.
 18 Q. Okay. Well -- bless you -- maybe I'll ask it this
 19 way: You didn't notice other deputies in your section
 20 going to classes on procedure and your not being asked
 21 to attend; did you?
 22 A. No, I haven't.
 23 Q. Okay. Did you do any criminal or other background
 24 check on Roosevelt Simmons as part of your
 25 investigation in March of 2009?

1 A. I ran his driver's license history, and, you know,
 2 if he had a driver's license, which he does.
 3 Q. Did you do any criminal background check?
 4 A. No, sir.
 5 Q. Are you able to do that in your capacity as a
 6 deputy?
 7 A. I do have access to that type of stuff.
 8 Q. Okay. Do you remember if you did it?
 9 A. There was no reason to. He wasn't being
 10 investigated in a criminal investigation. It was a
 11 civil matter. That would be out of the norm for me.
 12 Q. Okay. So what you've told me is you don't
 13 normally do a criminal background check and you didn't
 14 do it in the case of Mr. Simmons?
 15 A. Correct. No, I did not.
 16 Q. Okay. We have been provided with a document Bates
 17 marked 064 and 065. Let me show this to you. Do those
 18 two pages represent one of the driver's record searches
 19 you did for the name of Roosevelt Simmons?
 20 A. Yes, it does.
 21 Q. And the writing on there, is that yours?
 22 A. Yes, it is.
 23 Q. What does it say?
 24 A. "Same guy as judgment."
 25 Q. And how do you know that? I mean how did you know

1 that when you wrote that?
 2 A. When I wrote that, the address on it, 3416
 3 Kitford, Roosevelt L. Simmons. And the judgment was
 4 for Roosevelt L. Simmons, 3416 -- date of birth 7/8/40
 5 matched the information on the tax sheet, so I assumed
 6 that Roosevelt Simmons on property 498, properties
 7 registered to Roosevelt Simmons, had the same address,
 8 3416 Kitford, is same as that. Excuse the pun, but the
 9 nail that hit the coffin was when I went and met him,
 10 saw him face to face, looking at him and his driver's
 11 photo as being the same.
 12 Q. When did you write this is the guy or whatever you
 13 wrote there?
 14 A. To be honest with you, I don't know when I wrote
 15 it.
 16 Q. Okay.
 17 A. I can't remember.
 18 Q. So what's the purpose of running a ten-year driver
 19 record on a defendant against whom the County has a
 20 judgment for a couple of dollars fee?
 21 A. Because I had -- remember in the earlier part of
 22 the deposition, I told you I found several Roosevelt
 23 Simmonses at different locations. If I run a driver's
 24 license check, I can pull up address changes so I can
 25 verify if he lived at some of those addresses and

1 him out?
 2 A. Yes. But I only get paid for one job.
 3 Q. So these 200 cases of business license judgments
 4 you get each year, this is going back to 2007?
 5 A. On an average, 200 per year since '07.
 6 Q. Okay.
 7 A. On average.
 8 Q. And who was doing the job that you're presently
 9 doing before you took it on?
 10 A. The deputy before me was Deputy Robin Ferguson.
 11 Q. Robin, you said? Is that a man or a woman?
 12 A. Woman.
 13 Q. And where is Deputy Ferguson now?
 14 A. She is on medical leave.
 15 Q. And when you came into the Department in '07, was
 16 that the point at which she left?
 17 A. Yes.
 18 Q. And since '07 she has been on medical leave?
 19 A. She left the unit, not medical leave. She's been
 20 on medical leave for roughly a year and a half, give or
 21 take a month or two.
 22 Q. Let me try to ask the question a little
 23 differently, so I can understand the answer. When you
 24 came into -- what is your department called, just to be
 25 clear?

1 A. We're the judgment and executions unit.
 2 Q. Judgment and executions. Okay. And before you
 3 joined this unit, it was Deputy Tice and Deputy
 4 Ferguson?
 5 A. Yes. Before her, there was --
 6 Q. Okay.
 7 A. Before her it was Deputy Beau Harris, who is no
 8 longer with the department.
 9 Q. Uh-huh. Well, has Tice been -- he's been there
 10 going back?
 11 A. He's the same.
 12 Q. How long has Tice been there?
 13 A. Roughly seven or eight years.
 14 Q. So that would be roughly 2004?
 15 A. That sounds about right.
 16 Q. Okay. And you said Deputy Beau Hannan (sic)?
 17 A. No, Beau Harris.
 18 Q. Is that one word or two, Beau Harris?
 19 A. His real name is Deputy Harold, Harold Harris, I
 20 believe.
 21 Q. But he's called Beau?
 22 A. B-e-a-u.
 23 Q. B-e-a-u. Thank you. Harris.
 24 A. He did the job roughly maybe five months.
 25 Q. Okay. So Deputy Ferguson left. She went to

1 another part of the Sheriff's Office and now she's out
 2 on some kind of disability or something?
 3 A. Yes, sir.
 4 Q. Okay. That's fine.
 5 MR. BERTELE: Thank you, Counsel.
 6 Let's figure out a way to identify these
 7 as something so we can -- what we can call them,
 8 because I'd like him to authenticate them for
 9 purposes of getting them out of his file. Can we
 10 just put a marking at the bottom and go from
 11 there?
 12 MR. DORSEL: However you want to do it is
 13 fine.
 14 MR. BERTELE: Okay. Let's do this. I'd
 15 like to have this collective set of pages marked
 16 as Plaintiff's Exhibit 21 consisting of 24
 17 separate pages of documents obtained from the
 18 files of Deputy Long concerning the various
 19 judgments involving Roosevelt Simmons. Fair
 20 enough?
 21 MR. DORSEL: Fair enough.
 22 (Plaintiff's Exhibit 21 (24 pages),
 23 Documents of Deputy Long,
 24 was marked for identification.)
 25 BY MR. BERTELE:

1 Q. Let just go through these exhibits quickly,
 2 Deputy, and I think we'll be able to finish up with
 3 them and go on to other things.
 4 Exhibit 21, Number 1 is a copy of the motor
 5 vehicle inquiry you made concerning the vehicles
 6 registered to Roosevelt L. Simmons; correct?
 7 A. Yes, sir.
 8 Q. Okay. And you wrote "too old" on there?
 9 A. Yes, sir.
 10 Q. 21-2 is the same type of inquiry with respect to
 11 two motor vehicles owned by Roosevelt Simmons?
 12 A. Yes.
 13 Q. 21-3 is the same type of inquiry with respect to
 14 two motor vehicles owned by Roosevelt Simmons?
 15 A. Yes, sir.
 16 Q. You wrote "too old" on that?
 17 A. Yes, sir.
 18 Q. You didn't make any note of the other one; did
 19 you?
 20 A. No, sir.
 21 Q. Meaning what?
 22 A. It might have been worth looking into.
 23 Q. Okay. Did you look any further?
 24 A. No, sir.
 25 Q. 21-4 is property -- a real property inquiry that

1 spoke to Janice Porter about your decision to send all
 2 these other files back?
 3 A. Correct; I can't remember.
 4 Q. Did you hear from her subsequently asking you
 5 whether anything more could be done?
 6 A. Not to the best of any recollection.
 7 Q. Okay. Now, is Janice Porter the only person that
 8 you have dealt with since you've joined the Judgments
 9 and Executions unit in the Sheriff's Office?
 10 A. She's my primary contact, but I have dealt with
 11 George Boniface or Denise Bessinger.
 12 Q. Those are other employees of the business
 13 license/user fee department?
 14 A. Yes, sir. Mostly for informational type stuff.
 15 Janice and I -- she's my contact.
 16 Q. Okay. So you would normally deal with her?
 17 A. Right.
 18 Q. But you may deal with other people on a case-by-
 19 case basis?
 20 A. Yes, sir.
 21 Q. Is there a transmittal form from that department
 22 sending the files to you?
 23 A. I don't know.
 24 Q. Have you ever seen one?
 25 A. No.

1 Q. So you don't think there is one?
 2 A. I don't know. Because they don't come -- the
 3 cases don't come directly to me. First they go to the
 4 legal assistant and she stamps them in and puts them in
 5 the computer. So I have no idea what comes with it.
 6 Q. That would be Miss Gilliard?
 7 A. At that time, for Mr. Simmons' case it would be
 8 Miss Gilliard, but not now.
 9 Q. Okay. Now, if we needed to obtain information
 10 with respect to user fee judgments predating your
 11 joining the department in May of '07, we would have to
 12 obtain that information from Deputy Tice and/or Deputy
 13 Ferguson or Deputy Harris?
 14 A. No. They wouldn't have access to any of them.
 15 Q. I'm sorry?
 16 A. They wouldn't have access to any of our files and
 17 stuff. I mean you're talking about paper, files and
 18 stuff?
 19 Q. Right.
 20 A. If you just want to know what they did as a
 21 deputy, yeah, you could ask them that.
 22 Q. You seem to have personal knowledge of the
 23 judgment that you executed on and I was asking whether
 24 you would be aware that they would be the people who
 25 would have knowledge of judgments executed prior to

1 2007.
 2 A. I mean maybe.
 3 Q. You don't know? Okay. Fair enough.
 4 Now, if you would have chosen to levy upon any of
 5 the personal property that belonged to Roosevelt
 6 Simmons on August 26th, what would you have had to do?
 7 A. I would have had to collect a levy deposit from
 8 the business license/user fee people. Remember back
 9 I told you at that time it may have been \$500 -- excuse
 10 me, it may have been \$550 for a vehicle, but now it's
 11 \$800. I don't remember the exact date it went to \$800.
 12 But either way, it would be \$500 or \$800.
 13 Then after I get the levy deposit, I would draw up
 14 a notice of levy and a notice of sale of personal
 15 property, go out to the residence, find the vehicle
 16 that I was going to go after hand or post, if I
 17 couldn't hand it personally to Mr. Simmons, post it,
 18 call a tow truck, tow the vehicle, place a notice of
 19 levy and sheriff's sale on the vehicle, on that sheet
 20 that's left for Mr. Simmons would get the place, date
 21 and time of the sale, which would be 21 days from the
 22 day of actual seizure of it, because we have to
 23 advertise it three times in the paper. And then we
 24 conduct the sale, then we would give receipt to the new
 25 owner and that would be the end of that.

1 Q. That would be more work than you would have to do
 2 then if you were levying real property?
 3 A. It's not more work. You go by what's the most --
 4 what has the best equity and best chances. You hope to
 5 satisfy judgments. It don't always happen, but you
 6 hope to; that's the goal.
 7 Q. What training do you have in deciding how to make
 8 that decision of which type of property to pursue?
 9 A. Well, there's nothing formal about it. It's just
 10 life experiences, dealing with -- I've sold real estate
 11 before and I have also taken business courses. What
 12 has the most equity? What has the best chance of
 13 sale? What's the economy? What's the history of our
 14 sales? That kind of stuff goes into effect. You weigh
 15 a bunch of factors, if there is a homestead versus
 16 non-homestead.
 17 Q. But you don't have anything -- you didn't receive
 18 anything in the course of your duties as a Deputy
 19 Sheriff that tells you how to do that; do you?
 20 A. No.
 21 Q. And did you learn how to do it from Deputy Tice?
 22 A. He was part of it.
 23 Q. And where did he learn it from?
 24 A. Probably just -- I don't know. I couldn't speak
 25 for him.

1 collected?

2 A. Well, for my personal thing, I would be able to

3 tell that it's a user fee because the judgment is in

4 favor of the business license and user fee department.

5 Q. Okay. But they collect fees for business

6 licenses, too; don't they?

7 A. Right.

8 Q. So this could be a license -- this could be a

9 judgment for a license, couldn't it, a business

10 license?

11 A. I guess it could, but I just know it's not.

12 Q. Because?

13 A. Because of the 489 is what it is, and I don't

14 collect for business licenses. I collect for user

15 fees. They just fall under the business license

16 department.

17 Q. So if the business license/user fee department had

18 a judgment for a business license fee, it would go to

19 somebody else?

20 A. I don't know what they do for people who don't pay

21 their business licenses.

22 Q. But you have never tried to collect a business

23 license fee judgment?

24 A. User fees.

25 Q. Just user fees?

1 A. Just user fees.

2 Q. Is that the nature of your job or did somebody

3 tell you that that's what you're going to be doing, or

4 how could tell me that today?

5 A. The nature of my job and -- I'm under a grant, and

6 I'm here to collect user fees.

7 Q. You're under a grant?

8 A. Uh-huh.

9 Q. Meaning what?

10 A. Meaning my user fee department pays my salary, for

11 a car and for a computer.

12 Q. So your paycheck comes from the user fee

13 department?

14 A. It comes from the Sheriff's Office. I don't know

15 how that's really structured, how all that came about,

16 but I'm under a grant.

17 Q. Who told you that?

18 A. When I got the job, my lieutenant at the time.

19 Q. And you get a vehicle as part of your duties to go

20 out and levy and execute?

21 A. Uh-huh.

22 Q. And the registration of the vehicle is in the name

23 of the County?

24 A. It's my regular assigned patrol car. I guess

25 it --

1 Q. Is it registered to the County?

2 A. Yes. It's Charleston County. It's not my

3 personal vehicle.

4 Q. No, no. I just wanted to be clear about that.

5 A. No problem.

6 Q. So when you say you're under a grant, have you

7 seen any piece of paper that says that, other than

8 being told by some superior in the past?

9 A. No, sir.

10 Q. And you wouldn't know it from how you're paid;

11 would you?

12 A. No, sir.

13 Q. But just so to wind that up: Your duties are

14 limited to collecting judgments imposed on people for

15 not paying user fees?

16 A. Yes, sir.

17 Q. And other than helping out Deputy Tice with his

18 overflow, that's all you've been doing since May of

19 2007?

20 A. Yes, sir.

21 Q. Okay. Very good. Thank you, Deputy. I

22 appreciate it.

23 MR. DORSEL: No questions. You're done.

24 (The Deputy Harry Long deposition

25 was concluded at 3:46 p.m.)

1 CERTIFICATE OF REPORTER

2

3 THE STATE OF SOUTH CAROLINA,)

4) SS:

5 DORCHESTER COUNTY,)

6 I, Naomi E. McCracken, a Computerized Stenotype

7 Reporter and Notary Public within and for the State of

8 South Carolina, duly commissioned and qualified, do

9 hereby certify that the within-named witness, DEPUTY

10 HARRY LONG, was by me first duly sworn to testify the

11 truth, the whole truth, and nothing but the truth in

12 the cause aforesaid; that the testimony then given by

13 him was by me reduced to Stenotypy in the presence of

14 said witness, afterwards prepared and produced by means

15 of Computer-Aided Transcription to the best of my

16 ability and that the foregoing is a true and accurate

17 transcription of the testimony so given by him as

18 aforesaid.

19 I do further certify that this deposition was

20 taken at the time and place in the foregoing caption

21 specified, and was completed without adjournment.

22 I do further certify that I am not a relative,

23 employee of or attorney for any party or counsel, or

24 otherwise interested in this action.

25 IN WITNESS WHEREOF, I have hereunto set my hand

and affixed my seal of office at Summerville, South

Carolina on this 23rd day of March, 2012.

Naomi McCracken,
Computerized Stenotype Reporter
and Notary Public in and for
The State of South Carolina.

My Commission Expires October 4th, 2020

E. Appraisal of TMS 498

**COMPLETE SUMMARY APPRAISAL OF
THE PROPERTY LOCATED AT**

Lot C-1 Kitford Rd

Johns Island, SC 29455

as of

March 1, 2006

for

Roosevelt Simmons

by

EBEL APPRAISAL SERVICES, INC.

1459 EMERALD FORREST PK WY.
CHARLESTON, SC 29414

R306

EBEL APPRAISAL SERVICES, INC.
1459 EMERALD FORREST PKWY.
CHARLESTON, SC 29414
843-556-6864

March 1, 2006

Roosevelt Simmons

Property - Lot C-1 Kitford Rd
Johns Island, SC 29455
Borrower - Roosevelt Simmons
File No. - 060220
Case No. -

Dear :

In accordance with your request, I have made a Complete Appraisal and prepared a Summary Appraisal Report of the real property located at Lot C-1 Kitford Rd, Johns Island, SC.

The purpose of the Summary Appraisal is to provide an opinion of the market value of the property described in the body of this report.

Enclosed, please find the Summary Appraisal which describes certain data gathered during our investigation of the property. The methods of approach and reasoning in the valuation of the various physical and economic factors of the subject property are contained in this report.

An inspection of the property and a study of pertinent factors, including valuation trends and an analysis of neighborhood data, led the appraiser to the conclusion that the market value, as of March 1, 2006 is :

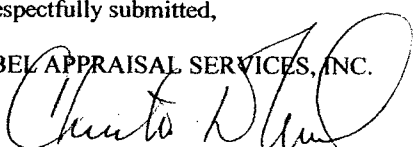
\$70,000

The opinion of value expressed in this report is contingent upon the Limiting Conditions attached to this report.

It has been a pleasure to assist you. If I may be of further service to you in the future, please let me know.

Respectfully submitted,

EBEL APPRAISAL SERVICES, INC.


Christine D. Ebel, MRA
SC Certification #CR133

2307

Complete Appraisal Analysis - Summary Appraisal Report

LAND APPRAISAL REPORT

File No. 060220

IDENTIFICATION	Borrower Roosevelt Simmons		Census Tract 21.01		Map Reference 283-00-00-498	
	Property Address Lot C-1 Kitford Rd					
	City Johns Island		County Charleston		State SC	
	Legal Description Lot C-1					
NEIGHBORHOOD	Sale Price \$NA		Date of Sale NA		Loan Term NA yrs.	
	Actual Real Estate Taxes \$addm (yr.)		Loan charges to be paid by seller \$NA		Other sales concessions NA	
	Lender/Client Roosevelt Simmons					
	Occupant Vacant Land		Appraiser CD Ebel		Instructions to Appraiser Appraise fair Market value	
	Location ☐ Urban ☒ Suburban ☐ Rural		Built Up ☐ Over 75% ☒ 25% to 75% ☐ Under 25%		Employment Stability ☒ Good ☐ Avg. ☐ Fair ☐ Poor	
	Growth Rate ☐ Fully Dev. ☒ Rapid ☐ Steady ☐ Slow		Property Values ☒ Increasing ☐ Stable ☐ Declining		Convenience to Employment ☒ ☐ ☐ ☐	
	Demand/Supply ☒ Shortage ☐ In Balance ☐ Over Supply		Marketing Time ☒ Under 3 Mos. ☐ 4-6 Mos. ☐ Over 6 Mos.		Convenience to Shopping ☒ ☐ ☐ ☐	
	Present Land Use 35 % 1 Family ☐ % 2-4 Fam ☐ % Apts. ☐ % Condo 5 % Commercial		Change in Present Land Use ☒ Not Likely ☐ Likely (*) ☐ Taking Place (*)		Convenience to Schools ☒ ☐ ☐ ☐	
	Predominant Occupancy ☒ Owner ☐ Tenant 0-5 % Vacant		Single Family Price Range \$ 40,000 to \$ 350,000		Adequacy of Public Transportation ☒ ☐ ☐ ☐	
	Single Family Age New yrs. to 70 yrs.		Predominant Age 45 yrs.		Recreational Facilities ☒ ☐ ☐ ☐	
SITE	Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, noise) Johns Island is one of the bedroom communities about 8-10 miles SW of Charleston. Sparcely populated but growing with new home construction (individual houses as well as communities)in progress. Easy access to all amenities. No unfavorable factors noted that would adversely affect the marketability.					
	Dimensions 181 x 262 x 327 x 243 = 1.3 acre +/- ☐ Corner Lot					
	Zoning Classification Residential Present Improvements ☒ do ☐ do not conform to zoning regulations					
	Highest and best use: ☒ Present use ☐ Other (specify) _____					
	Elec. ☐ Public ☒ Other (Describe) utilities		OFF SITE IMPROVEMENTS		Topo level	
	Gas ☐ available		Street Access: ☒ Public ☐ Private		Size typical	
	Water ☐ available		Surface paved asphalt		Shape irregular	
	San. Sewer ☐ Underground Elect. & Tel.		Maintenance: ☐ Public ☐ Private		View average	
			☐ Storm Sewer ☐ Curb/Gutter		Drainage appears adequate	
			☐ Sidewalk ☐ Street Lights		Is the property located in a HUD Identified Special Flood Hazard Area? ☒ No ☐ Yes	
MARKET DATA ANALYSIS	Comments (favorable or unfavorable including any apparent adverse easements, encroachments or other adverse conditions) See attached flood map. There are several utilities easements on the property (see site map) which does make (according to surveyor) several portions of the property (.53 acre acre) non functional. Subject serviced by public water system. Septic systems used.					
	The undersigned has recited three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment, reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior to, or more favorable than, the subject property, a minus (-) adjustment is made, thus reducing the indicated value of subject; if a significant item in the comparable is inferior to, or less favorable than, the subject property, a plus (+) adjustment is made, thus increasing the indicated value of the subject.					
	ITEM	Subject Property	COMPARABLE NO. 1		COMPARABLE NO. 2	
	Address	Lot C-1 Kitford Rd Johns Island	Bohicket Rd TM 277-00-00-120		Hilton Dr TM 285-10-00-083	
	Proximity to Subj.		1.5-2 miles		.5 mile	
	Sales Price	\$ NA	\$ 42,000		\$ 40,000	
	Price	\$	\$		\$	
	Data Source	inspection	MLS 2510139		MLS 2533180	
	Date of Sale and Time Adjustment	DESCRIPTION	DESCRIPTION		DESCRIPTION	
	Location	Average	Average		Average	
Site/View	Average	Average		Average		
Site Area	.77 acre +/-	.32 acre		.34 acre +/-		
Utilities	available	available		available		
excess land	excess .53 acre	none		none		
RECONCILIATION	Sales or Financing Concessions					
	Net Adj. (Total)		☒ Plus ☐ Minus \$ 29,000		☒ Plus ☐ Minus \$ 29,000	
	Indicated Value of Subject		Gross 69.0%		Gross 72.5%	
			Net 69.0% \$ 71,000		Net 72.5% \$ 69,000	
					Net 25.5% \$ 69,000	
	Comments on Market Data: Adjustments for differences in site sizes. Nominal adjustments for the excess land (see above-SITE). Inthe absence of market pairs, the adjustment though somewhat arbitrary, is felt appropriate.					
	Comments and Conditions of Appraisal: NOTE: site map shows subject property at 1.3 acre. It is noted however several power and pipeline easements, rendering several parts of the property not functional, leaving about .77 acre functional. This figure is listed as the site in the sales grid for analytical purposes.					
	Final Reconciliation: Value estimated at \$70,000 with equal consideration given all sales.					
	I ESTIMATE THE MARKET VALUE AS DEFINED OF SUBJECT PROPERTY AS OF March 1 , 2006 to be \$70,000					
	Appraiser(s) Signature Christine D. Ebel, MRA		Review Appraiser (if applicable) ☐ Did ☐ Did Not Physically Inspect Property			
Name Christine D. Ebel, MRA Date 03/01/2006		Signature _____ Date _____				
State SC License ☒ Certification # CR133		State _____ License ☐ Certification # _____				

F. Deputy Long employment file (under seal)



MEMORANDUM

TO: Deputy H. Long
FROM: Lt. B. L. Hoskins ³¹⁰
DATE: October 21, 2004
SUBJ: Duty Performance /Employee Appraisal 2004

In October of this year, an Annual Performance Appraisal was completed evaluating your duty performance during the evaluation period from October 1, 2003, to September 30, 2004. This evaluation was measured as "not meeting standards" in two areas listed below. Sgt. Dulin or I will review the appraisal with you and explain the areas that need improvement and ways to achieve a "meets standards" evaluation and improve your overall performance.

The following are the areas of evaluation that will be required to be brought up to a "meets standards".

1. **USE/MAINTENANCE OF ASSIGNED EQUIPMENT:** Overall score: 1.5
Corrective Action: You will be inspected daily to ensure compliance with the Charleston County Sheriff's Office policy regarding uniform wear and equipment maintenance.
2. **PROFESSIONAL RESPONSIBILITIES:** Overall score: 1.5
Corrective Action: You will comply with all Charleston County Sheriff's Office policies and procedures. You will adhere to all professional responsibilities necessary to accomplish your duties and perform at your position level.

All of the above standards will be reviewed with you on a monthly basis, and more frequently if necessary, and documented in your chorological file. You will be kept informed of any improvements and areas of concern will be discussed with your supervisor.

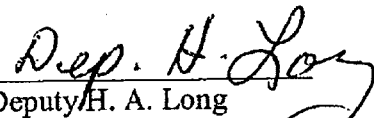
You are advised that you are now placed on a six months probationary status. At the end of six months you will receive another performance evaluation based on your job performance. **Failure to obtain a "meets standards" on your next evaluation may lead to further discipline up to and including termination.** The six months probationary period is to begin October 25, 2004 and will end on April 25, 2005.

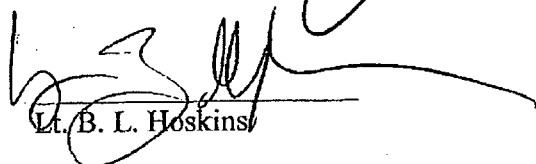


Page 2 of 2

Duty Performance/Employee Appraisal 2004-Dep. Long

I have read and understand the contents of this memorandum this 25th day of October 2004.


Deputy H. A. Long


Lt. B. L. Hoskins

R311

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



3505 Pinehaven Drive
Charleston Heights, SC 29405-7789

MEMORANDUM:

TO: Detective H. Long

THRU: Lieutenant T. Huey, Captain ^{T.H.} *JAK* Kephart, Major G. Van Horn *Brylu*

FROM: Sgt. J.L. Scarborough *J.A.*

DATE: April 13, 2004

SUBJ: Letter of Suspension

04 APR 21 AM 10:29

REDACTED

4/19/04

REDACTED

04/19/04

TEL: (843) 554-4700



FAX: (843) 554-9744

0755-0551

MAY 11 2004
mc
0

R312

Letter of Suspension
Detective H. Long
April 13th 2004
Page 2

041904
REDACTED

I find you have violated Charleston County Sheriffs Office policy and procedure, 1-09 Agency Rules and Regulations III - 10, Unsatisfactory Performance, which states, "failure to conform to work standards established for the employee's rank, grade, or position; failure to take appropriate action on the occasion of a crime...." and "repeated poor evaluations or a written record of infractions of rules, regulations, directives, or orders of the agency."

REDACTED
041904

REDACTED
041904

You are suspended from duty, without pay, for a period of one (1) day. This Letter of suspension will be permanently documented in your personnel file and in the Office of Professional Standards.

During this period of suspension, you will relinquish your service weapon, Sheriff's Office cruiser, badge and law enforcement identification. Additionally, you will have no authority to represent the Sheriff's Office or conduct Sheriff's Office business. During this suspension you should seriously reconsider your decision that day and strive to make better decisions in the future.

Letter of Suspension
Detective H. Long
April 13th 2004
Page 3

Since a Letter of Suspension is a component of the agency's disciplinary process and is permanently documented in the employee's personnel file, in accordance with Procedure 3-07, Grievance Procedures, you have five working days to appeal this action to me if you should desire.

Acknowledgment of Receipt

I acknowledge receipt and understanding of this Letter of Suspension this 19th day of April, 2004

Recipient: _____

H. Long

Witness: _____

Sgt. J. A. [Signature]

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



3505 Pinehaven Drive
Charleston Heights, SC 29405-7789

03 JUN 26 AM 9:50

Office Memorandum

To: Detective Long

From: Sergeant J.L. Scarborough *J.A.*

Subj: Written Reprimand / Unsatisfactory Performance *Letter of Reprimand*

Date: June 12, 2003

On May 1, 2003 you received an investigation into mail being received at the Charleston County Detention Center in the name of "The Justice Project". The mail was being sent in envelopes that appeared to have been tampered with and had been previously post marked for the "Make a Wish Foundation". During the initial investigation, you notified the U.S. Postal Inspector and they began to assist in the investigation due to the mail fraud. You worked on this case for 27 days and chose June 9, 2003 to execute a search warrant at the suspect's residence. A memo was issued to all Detectives on April 10, 2003 advising all C.I.D. personnel that a "Operations Plan" must be submitted prior to any Arrest or Search Warrants that appeared to be involving a violent suspect, multiple suspects, altered schedules or a high profile type cases. Furthermore all Detectives are aware and have been advised on several occasions that no warrant is to be signed by any Judge prior to a supervisor's approval. Neither of these two requirements were met: The search warrant was signed prior to any supervisor seeing it and no Operations Plan was ever filled out and filed. On June 9, 2003 at 11 a.m. you assembled several Detectives along with 2 agents from the U.S. Postal Inspectors Office to go and execute a search warrant on the suspects residence. I personally canceled this mission due to the aforementioned Operations Plan not being filed and reviewed and the lack of intelligence. The group was reassembled at 1 p.m. for the execution of the search warrant. I spoke to you and you stated that you had no probable cause at this time for arrest warrants, and the search warrant would be the only item executed at this time. Upon approaching the suspects residence, you decided to make initial contact to the rear door due to it being the common entrance to the residence. Had the appropriate surveillance been done, you would have known that this would have been a bad door to attempt to gain entry into due to the initial door opening up into a laundry room. A subsequent second secured door entered the residence. Luckily the suspect saw the amount of Law Enforcement present and decided to open the door without incident. Upon gaining entry to the duplex, you began to read the search warrant without properly securing the suspect. It was not until I gave you a direct order that you secured your suspect. Within seconds of the suspect being secured, a semi-automatic / fully loaded handgun was located hidden in a bag within 3 feet of the suspect. This could have been a disaster and is a definite Officer safety issue violation. After the residence was

0755-0554

TEL: (843) 554-4700

RECEIVED

FAX: (843) 554-9744

R 315

secured , myself and several Detectives left so that you and the remaining investigators could execute the search warrant and look for items listed. Several hours later, you notified me that you were clearing up from the jail and that you had arrested the suspect based on information gained during the Search Warrant (warrantless Arrest). On June 10th 2003 you advised Captain Valentine that you had an arrest for Identity Theft and Petit Larceny. Capt. Valentine notified the Media of this arrest and pending bond hearing. In the afternoon of June 10th you advised me that you did not have evidence to prove Identity Theft and only had enough Probable Cause for a Petit Larceny charge. Therefore a warrantless arrest was made when no clear evidence of a felony or a crime was committed in an officers presence.

The above situation details several inequities which could have led to a disastrous end.

I , therefore, am finding you in violation of the following Charleston County Sheriffs Office policy and procedures

1-09 Agency Rules and Regulations III -10 , Unsatisfactory Performance
6-03 Agency Rules and Regulations III- 6 , Arrests without a Warrant

You are reminded that the Charleston County Sheriff's Office Policy and Procedure Manual Procedure 1-09 "Agency Rules and Regulations", section III , Subsection A, Article 10, "Unsatisfactory Performance", partially states, "Employees will maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Employees will perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the agency".

Note / Chronological Entries :

July 2002 : Failed to have a Search Warrant return signed within 10 days.

August 2002 : Failure to answer a page while being on call.
Excessive Use of County Cellular phone.

October 2002 : Failed to take appropriate documentation when dealing with a victim of a serious crime. No statement taken after a lengthy interview.

November 2002 : Unauthorized attendance on a Federal Search Warrant. No supervisors or staff knew Detective Long was participating until days later when he submitted Overtime.

January 2003 : Chrono entry in reference to Detective Long become loud and yelling at Supervisors after being removed from an interview that was going poorly with a A.W.I.K. suspect.

This letter of reprimand is disciplinary in nature and is subject to appeal. You have 5 days to appeal this letter in writing to me if you wish to do so. Its purpose is to establish expectations relative to compliance with Departmental Procedures. This letter will be placed in your personnel file and a copy will be retained in the Office of Professional Standards as well as your chronological file as a record that you have been advised as outlined in this letter.

I HAVE RECEIVED THIS LETTER OF REPRIMAND AND UNDERSTAND ITS CONTENTS

Det. H. Long
DEPUTY

6-13-03
DATE

Capt. J. Kephart
WITNESS

6-13-03
DATE

cc: Chronological File
Office of Professional Standards
Personnel File

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



3505 Pinehaven Drive
Charleston Heights, SC 29405-7789

Memorandum:

TO: DEPUTY HARRY A. LONG
FROM: MAJOR ERNEST SWEAT, JR. (28)
DATE: JULY 7, 1999
REF: ACCIDENT REVIEW BOARD FINDINGS
SUBJ: LETTER OF REPRIMAND

On June 28, 1999, you were involved in a motor vehicle collision while operating a county vehicle. This collision was reviewed by the Chief Deputies on July 6, 1999, and the determination was made that this accident was preventable.

I would remind you that personnel operating vehicles issued by the Sheriff's Office will exercise due regard for the safety of all persons. Further, the public expects the personnel who operate Sheriff's Office vehicles to demonstrate exemplary driving behavior. All Sheriff's Office personnel who operate issued vehicles will comply with all State Laws as well as the safe driving procedures outlined in General Order, 2-5, "Vehicle Operations," paying particular attention when responding to calls for service, engaging in emergency driving or pursuits, and employing defensive driving techniques at all times.

As a result of the board's conclusion, and consistent with the progressive disciplinary policy, I find that it is in the best interest of the Sheriff's Office that you are issued this Letter of Reprimand. Additionally, your privilege to operate a county vehicle has been suspended for a period of ten (10) working days, which will commence at 7 AM on July 19, 1999 and will conclude at 3 PM on July 30, 1999. During this period you will be assigned to duties not requiring the operation of a county vehicle as determined by the Bureau Chief. You will also be required to attend a four (4)-hour Defensive Driving Course that is sponsored by the Charleston County Safety Office. You will be advised by the Bureau Chief when this block of training has been scheduled. Furthermore, any additional accidents that you are involved in that are determined to be preventable could result in further disciplinary action being taken against you, up to and including termination.

0755-0557

TEL: (843) 554-4700



FAX: (843) 554-9744

2318

**LETTER OF REPRIMAND
PAGE TWO
DATE:**

This Letter of Reprimand will be placed in your personnel file. You may request to have this letter removed from your personnel file one year from the date of issuance. Such request should be made in writing, to the Sheriff, through your chain of command. I must further advise you that you have the right to appeal this action. Such appeal should be made in writing to the Sheriff within five (5) days of receipt of this reprimand.

I HAVE RECEIVED THIS LETTER OF REPRIMAND AND I UNDERSTAND ITS CONTENTS.

Rep. Harry Long
EMPLOYEE'S NAME

7-8-99
DATE

Sgt. Jim Martin
WITNESS

7-8-99
DATE

ES/ch

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



CHARLESTON COUNTY
PERSONNEL
3505 Pinehaven Drive
Charleston, Heights, SC 29405-7789
99 MAR 17 AM 11:15

Memorandum:

To: Deputy Harry Long

From: Sgt. G. W. Karges

Date: March 10, 1999

Subject: Letter of Suspension: (G.O. 81-1208 Section 1 Paragraph A. *Violation of Rules*, Paragraph F. *Neglect of Duty*, Paragraph H. *Leaving Duty Post*, Paragraph J. *Unsatisfactory Performance*.

On March 06, 1999 you were assigned to district three on the 7a.m.-3p.m. shift. At approximately 1430 hours, the communications center attempted to raise you on the radio to dispatch you and Deputy Samuels to an alarm call in district three. Communications was unable to raise you on the air for at least ten minutes. This supervisor was monitoring the communications and directed all available units to check the district for your safety and location. Sgt. Orr directed his on-coming 3p.m. - 11p.m. shift units to assist in locating you (see attached statement). Sgt. Orr directed communications to put out an alert tone to prompt your response to the radio and this supervisor directed communications to telephone your residence to check your status and location. Communications reported that contact was made with you via telephone at your residence in Summerville. Based on the above incident I find you in violation of General Order 81-1208 Section 1. Paragraphs A, F, H, and J.

A. Violation of Rules: On September 12, 1998 you were verbally warned and counseled by this supervisor for leaving district three and the County unauthorized. You admitted in a written statement to this supervisor that you went to your residence to check on your wife (see statement). Your violation of my prior directive warning you to not leave the County / district "constitutes a violation of any rule, regulation, directive or order of the department" as stated in paragraph A of this section.

F. Neglect of Duty: You stated in you written statement that you "went home around 1430 to let my dog out" and "I must have forgotten to turn my radio on". You "engaged in activities or personal business which caused you to neglect or be inattentive to your duty" as stated in paragraph F of this section.

H. Leaving Duty Post: You admitted in your statement that you went home to Summerville. This is a clear violation as outlined "employees shall not leave their assigned duty posts during a tour of duty with out authorization of a supervisor" as stated in paragraph H of this section.

0755-0559

TEL: (843) 554-4700



FAX: (843) 554-9744

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



3505 Pinehaven Drive
Charleston Heights, SC 29405-7789

Page 2.
Cont.
Letter of Suspension

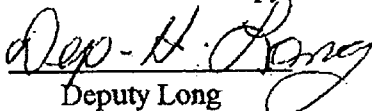
J. Unsatisfactory Performance. Your actions and conduct demonstrate "an unwillingness or inability to perform assigned tasks", a "failure to take appropriate action and provide assistance when requested or other conditions deserving of attention", and "repeated infractions of rules, regulations, directives or orders of the department" as stated in paragraph *J* of this section.

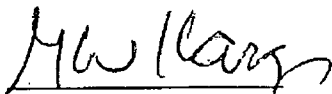
Your actions in this incident are irresponsible and will not be tolerated. I suggest you assess your situation and make whatever adjustments necessary to prevent further reoccurrence of this or similar incidents.

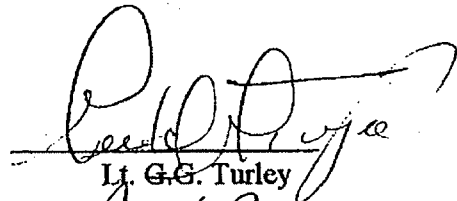
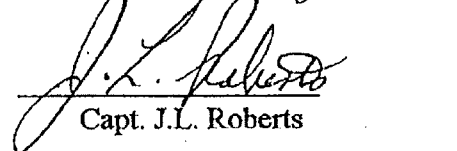
I have concluded that corrective disciplinary action is in order and hereby issue this **Letter of Suspension**. This term of suspension will be three working days.

In conclusion, I am informing you that you can appeal this personnel action if you choose to do so. Such an appeal should be submitted to the Sheriff through your chain of command within five working days. This **Letter of Suspension** will become a permanent part of your personnel record upon final resolution of this incident.

I have received a copy of this suspension.


Deputy Long


Sgt. G.W. Karges


Lt. G.G. Turley

Capt. J.L. Roberts

cc: Sheriff J. Al Cannon
Chief L.B. Oliver
Major E.E. Driggers
Capt. J.L. Roberts
Lt. G.G. Turley
Personnel
Chronological File



J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



3505 Pinehaven Drive
Charleston Heights, SC 29405-7789

Memorandum:

To: Deputy Harry Long
From: Sgt. G. W. Karges
Date: September 21, 1998
Subject: Letter of Reprimand (G. O. 81-1208 Section 1 paragraph j Unsatisfactory Performance)

On September 9, 1998 you notified me that a problem existed regarding a prisoner named Karlton Hillyard you incarcerated in June 1998. You informed me that a court date was set in July 1998, at Judge Summey's Court for the traffic charges you lodged against Hillyard. You also stated that a General Sessions bench warrant was served on Hillyard by the Warrants Division. The problem as you stated in your written statement was the Detention Center informed you on September 4, 1998 that Hillyard needed to be picked up for court on your original traffic charges. This problem became compounded because you failed to check on Hillyard's status at the Detention Center, thus allowing his traffic charges to be signed off by Judge Summey as **Failure to Appear**. Three bench warrants were issued by the court on August 20, 1998. After careful and thorough investigation of this incident I find you in violation of **General Order 81-1208 Section 1 paragraph j. Unsatisfactory Performance**.

1. Your failure to check on Hillyard's jail status demonstrates a lack of professional judgement when you stated, "I figured he (Hillyard) was tied up with his GSC problems. He did not show for court so he was found guilty in his absence." This statement demonstrates a **"Failure to take appropriate action"** and an **"Unwillingness or inability to perform assigned tasks"** as stated in 81-1208.
2. This incident resulted in much unnecessary confusion and work for Judge Summey's Court and office personnel and fails to **"maintain the highest standards of efficiency in carrying out the functions and objectives of the Sheriff's Office"** as stated in 81-1208.

(0755-0561

TEL: (803) 554-4700



FAX: (803) 554-9744

0 277

Page 2

Cont.

Letter of Reprimand

Your actions in this incident are irresponsible and will not be tolerated. I suggest you assess your situation and make whatever adjustments necessary to prevent further reoccurrence of this or similar incidents.

I have concluded that corrective disciplinary action is in order and hereby issue this Letter of Reprimand.

In conclusion, I am informing you that you can appeal this action if you choose to do so. Such an appeal should be submitted to the Sheriff through your chain of command within five working days.

I have received a copy of this reprimand.

CHARLESTON COUNTY
PERSONNEL
28 SEP 28 PM 3:26

Dep. H. Long
Deputy Harry Long

Lt. G. Turley
Lt. G. Turley

Sgt. G. Karges
Sgt. G. Karges

Capt. J. L. Roberts
Capt. J. L. Roberts

cc: Sheriff J. Al Cannon, Jr.
Chief L. B. Oliver
Major E. E. Driggers
Capt. J. L. Roberts
Lt. G. G. Turley
Personnel
Chronological File

Employee Name LONG, HARRYSSN [REDACTED]Job Title Deputy SheriffDepartment Sheriff's Office DEC 13 AM 9:27

Type of Evaluation: Annual XX Probationary (New Hire) _____
 Probation (Promotional) _____ Probation (Disciplinary) _____
 Other _____ Specify _____

Evaluation Period From October 1, 2005 to September 30, 2006

All "outstanding", "marginal", and "unsatisfactory" ratings must have a justification statement. "Marginal" and "unsatisfactory" ratings must indicate areas for improvement. "Outstanding" evaluations must indicate areas of superior accomplishment. Use additional sheets of paper if necessary for your justification statements. **Use whole numbers or numbers rounded to the nearest half. Do not use numbers with any other decimals.**

Section I - Personal work Traits

The overall rating for WORK HABITS is made up of the ratings for punctuality (P), attendance (A), initiative (I), dependability (D), and safety (S). In the space provided, indicate the performance level for WORK HABITS and write your justification statement.

Note: If, during this rating period, the employee has been out on leave for one of the reasons listed below, check the appropriate space and do not rate Attendance (and divide by 4 instead of 5). In addition, indicate in the justification statement the specific reason for not evaluating Attendance.

This employee has been absent for Family/Medical Leave _____ Chronic Illness/Surgery _____ Other Disability _____

Overall Rating for WORK HABITSRating

P 4.0 +A 3.0 +I 3.5 +D 3.5 +S 3.0 ÷ 5 = Rating

3.5Justification Statement

Deputy Long always arrives to work on time and is prepared for duty. Deputy Long is rarely absent for sick leave and schedules annual leave in advance. During roll call he will bring up safety issues that he has learned from training bulletins to benefit the unit. Deputy Long is very dependable and has demonstrated willingness to accept new responsibilities and tasks. Deputy Long practices good officer safety procedures.

The overall rating for INTERPERSONAL RELATIONSHIPS is made up of the ratings for ability to work well with others (W), ability to communicate (C), public relations/professional conduct with the general public (PR), and disposition/outlook (D). In the space provided, indicate the performance level for INTERPERSONAL RELATIONSHIPS and write the justification statement.

Overall Rating for INTERPERSONAL RELATIONSHIPSRating

W 3.0 +C 3.0 +PR 3.0 +D 3.0 ÷ 4 = Rating

3.0Justification Statement

Deputy Long has a pleasant and cheerful disposition and works effectively with his co-workers. Deputy Long is an effective communicator and is capable of speaking to large groups. He uses clear verbal commands which aids in the capacity as an instructor and crises negotiator. Deputy Long presents an approachable but professional image when dealing with the public. Deputy Long is a dependable and loyal employee and consistently continues to seek training to enhance his job performance with this agency.

R324

improvement (SI). In the space provided, indicate the performance level for INDIVIDUAL DEVELOPMENT and desire for self
justification statement. 6640-9920 the

Overall Rating for INDIVIDUAL DEVELOPMENT

Rating

J 3.0 +A 3.0 +SI 3.0 $\div 3 =$ Rating

3.0

Justification Statement

Deputy Long has a great deal of job knowledge and understands proper procedures in the Court Security Unit. Deputy Long demonstrates flexibility in adapting to change and readily accepts new assignments. Deputy Long accepts constructive criticism well and uses it as an opportunity for self improvement.

Section II - Job Performance

Indicate the job duty/element which is being evaluated and its rating. Write the appropriate justification statements. Attach additional sheets for justification statements if necessary. (These job duties/elements are in the employee's personnel file and do not have to be resubmitted to the Personnel Department at this time.)

Job Duty/Element

Rating

(1) REPORT WRITING

3.0

Justification Statement

Deputy Long writes clear and concise reports which are always detailed and accurate and requires little or no corrections. Deputy Long's reports are turned in promptly.

Job Duty/Element

Rating

(2) APPEARANCE/MAINTENANCE OF ASSIGNED EQUIPMENT

3.5

Justification Statement

Deputy Long maintains his appearance and equipment in operable condition which is within the guidelines of the Sheriff's Office Policy and Procedures. Deputy Long always notifies his supervisor of any equipment malfunctions and has met all preventative maintenance inspections without any discrepancies.

Job Duty/Element

Rating

(3) PROFESSIONAL RESPONSIBILITIES

3.0

Justification Statement

Deputy Long has attended all court and training appointments as scheduled. Deputy Long is very knowledgeable of state laws and has a great deal of experience from working in the Criminal Investigation Division which assists him in the decisions he makes. Deputy Long is a conscientious and dependable worker who performs his assigned tasks with tactical competence. No safety violations or abuse of leave this evaluation period.

2325

Job Duty/Element

Rating

(4) INTER OFFICE COMMUNICATIONS

3.0

Justification Statement

Deputy Long demonstrates excellent communication skills and is able to speak to large groups. Deputy Long connects well with others and it allows for more open lines of communications with both the court staff and other deputies. Deputy Long keeps his supervisor abreast of any incidents that affect the Sheriff's Office and ensures that the safety of the courts come first.

Job Duty/Element

Rating

(5) CIVIL PROCESS / WARRANT SERVICE

2.5

Justification Statement

Deputy Long is self-motivated and excels in the process of civil orders. He ensures proper documentation in accordance with state law and Sheriff's Office policy.

Job Duty/Element

Rating

(6) COURT SAFETY / SECURITY

2.5

Justification Statement

Deputy Long conducts daily security inspections for his assigned area of responsibility and documents any incidents. Deputy Long is knowledgeable in the evacuation procedures of the Judicial Complex. He maintains alertness and control of prisoners during court proceedings to ensure future problems are prevented.

Job Duty/Element

Rating

(7) TRANSPORTATION / HANDLING OF PRISONERS

2.5

Justification Statement

Deputy Long adheres to all Sheriff's Office Policies and Procedures and ensures proper searches are conducted to eliminate contraband within the courts. Deputy Long is very safety conscious when handling prisoners and is able to quickly recognize potential threats.

Section III - Employee Development Plan

What was the employee's goal(s) objectives set during the last rating period?

To continue to instruct in Block Training and attend advanced training courses in Criminal Domestic Violence.

Did the employee complete the goals(s)/objective(s)? Yes X No

Explain answer below. Complete development plan for next rating period and submit it with this rating sheet.
Deputy Long has completed his goals by instructing courses during Block Training and attended training for Criminal Domestic Violence.

Section IV - Supervisory Duties/Responsibilities (If Applicable)

Rating

Include supervisory appraisal sheet with this rating sheet.

Justification Statement

2326

Overall Evaluation:

Total Points	29.5	Total Items	10	= Overall Numeric Rating	2.950

The scale to be used for the rating definition of the average indicated above is 0.0 to 0.000, Unsatisfactory; 1.0 to 1.999, Marginal (Also, see note below regarding probationary evaluations.); 2.0 to 2.999, Meets Expectations; 3.0 to 3.799, Exceeds Expectations; 3.8 to 4.0, Outstanding.

An evaluation with an overall numerical rating below 2.0 or with two (2) or more ratings of Marginal/Unsatisfactory indicates substandard performance, and the rating definition will be "Marginal" (regardless of the numerical average). On an annual evaluation, the employee will be placed in a probationary status and shall receive performance counseling and additional evaluation.

The employee is expected to meet performance expectations within this probationary time period and to continue to meet expectations throughout employment with Charleston County. (See Charleston County's Personnel Policies for specific procedures.)

General comments from Supervisor: (if desired)

Employee Notice:

Review the entire appraisal to make sure that you understand its contents. If you have questions, it is your responsibility to have these clarified for you. Sign your name in the appropriate space. (Your signature does not indicate that you necessarily agree with the evaluation. Use the comment section to express yourself regarding the evaluation.)

Employee Comments:

Your signature indicates that your evaluation has been completed and your supervisor has had an evaluation conference with you. An unsigned evaluation will be considered incomplete. No personnel actions (for example, longevity increases) will be processed if the evaluation form is incomplete. An employee who fails to sign his/her appraisal is subject to disciplinary action. (Refer to Charleston county's Personnel Policies and Procedures for details.)

Signatures:

Employee Signature

Date:

10-9-06

Rater Signature/Title

Date:

10/09/06

Reviewer Signature

Date:

10/09/06

* Department Head

Date:

10-9-06

* This signature is necessary only if the Department Head is a person other than the Reviewer.

2327

CHARLESTON COUNTY GOVERNMENT
EMPLOYEE PERFORMANCE APPRAISAL FORM

Section III: DEVELOPMENT PLAN

Name: Long, Harry SSN: [REDACTED] Dept. Sheriff's Office/Special Ops

For Appraisal Period: October 1, 2006 Through September 30, 2007

- A. Goals/Objectives (Each employee should have a job-related goal/objective which they expect to accomplish during the appraisal period. The supervisor and employee will work together in formulating the goal/objective for the appraisal period. The goal/objective listed below should be within the employee's ability to achieve during the upcoming performance appraisal period.)

To improve my skills as a Hostage Negotiator by attending a negotiating seminar. To continue teaching Charleston
County deputies Criminal Domestic Violence and Defensive Tactics.

- B. Personal/Professional Development Plan (This plan includes long-term career and personal development goals which the employee hopes to achieve. This item is for information purposes regarding the employee's interest regarding job enlargement, promotional opportunities, and training needs.)

To be promoted to the rank of sergeant and to participate in all promotional cycles.

Signature: *Harry Long* Date: 10-9-06
Employee

Signature: *Adam [unclear] Sgt* Date: 10.09.06
Rater Reviewer

Charleston County Employee Performance Appraisal Rating Sheet for:

1640-9920
0755-0497

Employee Name LONG - Harry SSN CHARLESTON COUNTY PERSONNEL [REDACTED]
Job Title Deputy Sheriff Department Charleston Co. Sheriff's Office
05 DEC 12 PM 1:20

Type of Evaluation: Annual XX Probationary (New Hire) _____
Probation (Promotional) _____ Probation (Disciplinary) _____
Other _____ Specify _____

Evaluation Period From October 1, 2004 to September 30, 2005

All "outstanding", "marginal", and "unsatisfactory" ratings must have a justification statement. "Marginal" and "unsatisfactory" ratings must indicate areas for improvement. "Outstanding" evaluations must indicate areas of superior accomplishment. Use additional sheets of paper if necessary for your justification statements. Use whole numbers or numbers rounded to the nearest half. Do not use numbers with any other decimals.

Section I - Personal work Traits

The overall rating for WORK HABITS is made up of the ratings for punctuality (P), attendance (A), initiative (I), dependability (D), and safety (S). In the space provided, indicate the performance level for WORK HABITS and write your justification statement.

Note: If, during this rating period, the employee has been out on leave for one of the reasons listed below, check the appropriate space and do not rate Attendance (and divide by 4 instead of 5). In addition, indicate in the justification statement the specific reason for not evaluating Attendance.

This employee has been absent for Family/Medical Leave N/A Chronic Illness/Surgery N/A Other Disability N/A

Overall Rating for WORK HABITS

Rating

P 3.0 +A 3.5 +I 3.0 +D 3.0 +S 3.0 ÷ 5 = Rating 3.0

Justification Statement

Deputy Long is a responsible and dependable employee who regularly reports to work assignments on time. He is rarely absent from work due to illness, using only two days sick leave and schedules annual leave well in advance. Deputy Long is capable of carrying out assignments and willingly assumes extra duties within the courts. He is reliable as is evidenced by his willingness to assume additional duties to train others. Deputy Long uses good officer safety practices and notifies superiors of potential safety problems.

The overall rating for INTERPERSONAL RELATIONSHIPS is made up of the ratings for ability to work well with others (W), ability to communicate (C), public relations/professional conduct with the general public (PR), and disposition/outlook (D). In the space provided, indicate the performance level for INTERPERSONAL RELATIONSHIPS and write the justification statement.

Overall Rating for INTERPERSONAL RELATIONSHIPS

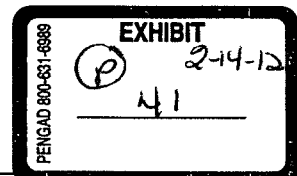
Rating

W 3.0 +C 3.0 +PR 3.0 +D 3.0 ÷ 4 = Rating 3.0

Justification Statement

Deputy Long works effectively with his peers and superiors. He communicates confidently and has a good rapport with other court personnel. Deputy Long deals with the public in a professional manner and has a positive outlook on life. His patience and calm mannerisms are a quality that enables him to work well in stressful situations such as with the Crisis Negotiation Team.

R329



self improvement (SI). In the space provided, indicate the performance level for individual performance. 8640-9970, 0755-0498
justification statement.

Overall Rating for INDIVIDUAL DEVELOPMENT

Rating

J 3.0 +A 3.0 +SI 3.5 ÷ 3 = Rating

3.0

Justification Statement

Deputy Long has sufficient knowledge to perform the tasks of his job in a satisfactory manner. He is adaptable to change and strives to keep abreast with the constant changes within the courts. Deputy Long shows an interest in learning and seeks training that will enhance his job performance.

Section II - Job Performance

Indicate the job duty/element which is being evaluated and its rating. Write the appropriate justification statements. Attach additional sheets for justification statements if necessary. (These job duties/elements are in the employee's personnel file and do not have to be resubmitted to the Personnel Department at this time.)

Job Duty/Element

Rating

(1) REPORT WRITING

3.0

Justification Statement

Deputy Long's reports are completed in a timely manner and turned in without delay with any corrections being made promptly. The reports are clear, concise, grammatically correct and in chronological order.

Job Duty/Element

Rating

(2) APPEARANCE - EQUIPMENT MAINTENANCE/OPERATION

2.5

Justification Statement

Deputy Long is in accordance with departmental policies and procedures, regarding dress, attire and appearance. His assigned equipment is neat and clean with no documented instances of abuse, neglect, or violation of policy.

Job Duty/Element

Rating

(3) PROFESSIONAL RESPONSIBILITIES

2.5

Justification Statement

Deputy Long attends all training functions, courts and daily work schedules without deviation. He is a Training Instructor for Criminal Domestic Violence and Defensive Tactics and is often requested to assist during monthly block training sessions. However, in January of 2005, Deputy Long was counseled by Sergeant Dulin, for failure to comply with a verbal order that directed him to submit tried citations through another supervisor for accountability.

Job Duty/Element

Rating

6670-9970

(4) INNER OFFICE COMMUNICATIONS

Justification Statement

Deputy Long demonstrates an ability to relate with co-workers and other court personnel in a professional manner. He accepts new job assignments willingly and seeks more responsibility in his duties with the courts. Deputy Long keeps his supervisors informed of problems in the Judicial Center.

Job Duty/Element

Rating

3.0

(5) CIVIL PROCESS/WARRANT SERVICE

Justification Statement

Deputy Long assists Civil Process and the Warrants Division on special assignments to relieve excess paperwork and warrants. He ensures proper service and documentation of all papers and warrants in accordance with Sheriff's Office policies and Rules of Civil Procedures.

Job Duty/Element

Rating

3.0

(6) COURT SAFETY/SECURITY

Justification Statement

Deputy Long conducts security inspections of court rooms and assigned areas upon arrival to the Judicial Center. He ensures that court assignments are handled in accordance with Sheriff's Office Policies. Deputy Long maintains control in the courts and uses proper security measures when warranted. He is capable of responding to volatile situations and is knowledgeable in the proper evacuation procedures.

Job Duty/Element

Rating

3.5

(7) TRANSPORTATION/HANDLING OF PRISONERS

Justification Statement

Deputy Long utilizes proper restraints during handling of prisoners as they appear for court hearings. He has strictly complied with our agency's policies and procedure to ensure a safe and smooth operation.

Section III - Employee Development Plan

What was the employee's goal(s) objectives set during the last rating period?

To continue to develop my skills as an Instructor for CDV and Defensive Tactics. Continue participation on the Crisis Negotiation Team.

Did the employee complete the goals(s)/objective(s)? Yes XX No

Explain answer below. Complete development plan for next rating period and submit it with this rating sheet.

Deputy Long maintains certifications for Domestic Violence and Defensive Tactics and continues to teach these courses with the Sheriff's Office. He is also a Crisis Negotiator.

Section IV - Supervisory Duties/Responsibilities (If Applicable)

Rating

N/A

Include supervisory appraisal sheet with this rating sheet.

Justification Statement

N/A

R 331

Overall Evaluation:

Total Points

29.5

+ Total Items

10

= Overall Numeric Rating

0090-9970
2.950

The scale to be used for the rating definition of the average indicated above is 0.0 to 0.000, Unsatisfactory; 1.0 to 1.999, Marginal (Also, see note below regarding probationary evaluations.); 2.0 to 2.999, Meets Expectations; 3.0 to 3.799, Exceeds Expectations; 3.8 to 4.0, Outstanding.

An evaluation with an overall numerical rating below 2.0 or with two (2) or more ratings of Marginal/Unsatisfactory indicates substandard performance, and the rating definition will be "Marginal" (regardless of the numerical average). On an annual evaluation, the employee will be placed in a probationary status and shall receive performance counseling and additional evaluation. The employee is expected to meet performance expectations within this probationary time period and to continue to meet expectations throughout employment with Charleston County. (See Charleston County's Personnel Policies for specific procedures.)

General comments from Supervisor: (If desired)

Employee Notice:

Review the entire appraisal to make sure that you understand its contents. If you have questions, it is your responsibility to have these clarified for you. Sign your name in the appropriate space. (Your signature does not indicate that you necessarily agree with the evaluation. Use the comment section to express yourself regarding the evaluation.)

Employee Comments:

Your signature indicates that your evaluation has been completed and your supervisor has had an evaluation conference with you. An unsigned evaluation will be considered incomplete. No personnel actions (for example, longevity increases) will be processed if the evaluation form is incomplete. An employee who fails to sign his/her appraisal is subject to disciplinary action. (Refer to Charleston County's Personnel Policies and Procedures for details.)

Signatures:

Employee Signature

9-30-05

Rater Signature/Title

Date

9-30-05

Reviewer Signature

Date

9-28-05

*Department Head

Date

9-29-05

*This signature is necessary only if the Department Head is a person other than the Reviewer.

R332

HARLESTON COUNTY GOVERNMENT
EMPLOYEE PERFORMANCE APPRAISAL FORM

1090-9920

Section III: DEVELOPMENT PLAN

Name: LONG - Harry

Dept: Sheriff's Office

For Appraisal Period: October 01, 2005 Through September 30, 2006

- A. Goals/Objectives (Each employee should have a job-related goal/objective which they expect to accomplish during the performance appraisal period. The supervisor and employee will work together in formulating the goal(s)/objective(s) for the appraisal period. The goal(s)/objective(s) listed below should be within the employee's ability to achieve during the upcoming performance appraisal period.)

To continue to instruct in Block Training and attend advanced training courses in

Criminal Domestic Violence.

- B. Personal/Professional Development Plan (This plan includes long-term career and personal development goals which the employee hopes to achieve. This item is for information purposes regarding the employee's interest regarding job enlargement, promotional opportunities, and training needs.)

To participate in the promotional process for the rank of Sergeant.

Signature: *Harry Long* Date: 9-30-05

Employee

Signature: *Sgt J. F. Wilson* Date: 9-30-05

Rater

Reviewer

R 333

Charleston County Employee Performance Appraisal Rating Sheet

2090-9920

Employee Name LONG - Harry SSN [REDACTED]
 Job Title Deputy Sheriff Department Charleston Co. Sheriff's Ofc.

Type of Evaluation: Annual Probationary (New Hire)
 Probation (Promotional) Probation (Disciplinary) XX
 Other Specify

Evaluation Period From October 25, 2004 to April 25, 2005

All "outstanding", "marginal", and "unsatisfactory" ratings must have a justification statement. "Marginal" and "unsatisfactory" ratings must indicate areas for improvement. "Outstanding" evaluations must indicate areas of superior accomplishment. Use additional sheets of paper if necessary for your justification statements. **Use whole numbers or numbers rounded to the nearest half. Do not use numbers with any other decimals.**

Section I - Personal work Traits

The overall rating for WORK HABITS is made up of the ratings for punctuality (P), attendance (A), initiative (I), dependability (D), and safety (S). In the space provided, indicate the performance level for WORK HABITS and write your justification statement.

Note: If, during this rating period, the employee has been out on leave for one of the reasons listed below, check the appropriate space and do not rate Attendance (and divide by 4 instead of 5). In addition, indicate in the justification statement the specific reason for not evaluating Attendance.

This employee has been absent for Family/Medical Leave N/A Chronic Illness/Surgery N/A Other Disability N/A

Overall Rating for WORK HABITS

P 3.0 +A 3.0 +I 3.0 +D 3.0 +S 3.0 ÷ 5 = Rating 3.0

Justification Statement

Deputy Long is a responsible and dependable employee, who is punctual and timely when reporting for duty, assignments and for training. He displays initiative and good judgment and provides assistance to all in need without hesitation. No sick leave abuse or other safety violations this period.

The overall rating for INTERPERSONAL RELATIONSHIPS is made up of the ratings for ability to work well with others (W), ability to communicate (C), public relations/professional conduct with the general public (PR), and disposition/outlook (D). In the space provided, indicate the performance level for INTERPERSONAL RELATIONSHIPS and write the justification statement.

Overall Rating for INTERPERSONAL RELATIONSHIPS

W 3.0 +C 3.0 +PR 3.0 +D 2.5 ÷ 4 = Rating 3.0

Justification Statement

Deputy Long is professional when dealing with the general public. His professional conduct, patience, and calm mannerism have earned him the respect of members of the community and co-workers.

B 5127

R 334

The overall rating for INDIVIDUAL DEVELOPMENT is made up of job knowledge (J), adaptability to change (A), and desire for
justification statement. 8090-9970

Overall Rating for INDIVIDUAL DEVELOPMENT

Rating

J 2.5 +A 3.0 +SI 3.0 ÷ 3 = Rating

3.0

Justification Statement

Deputy Long continues to familiarize himself with the traffic and criminal laws governing our state and county. He further strives to keep abreast of the constant changes and interpretations of our constitutions, (US and SC) and as a member of our Sheriff's Office, the policies and procedures that govern our daily operations. He strives for self improvement as a deputy sheriff assigned to Judicial Security

Section II - Job Performance

Indicate the job duty/element which is being evaluated and its rating. Write the appropriate justification statements. Attach additional sheets for justification statements if necessary. (These job duties/elements are in the employee's personnel file and do not have to be resubmitted to the Personnel Department at this time.)

Job Duty/Element

Rating

(1) REPORT WRITING.

2.5

Justification Statement

Deputy Long's reports are completed in a timely manner and follow all rules, policies and guidelines. He has little to no grammatical errors and his punctuation is always correct.

Job Duty/Element

Rating

(2) APPEARANCE - EQUIPMENT MAINTENANCE/OPERATION.

2.5

Justification Statement

Deputy Long's appearance and assigned equipment are maintained according to policy. No documented instances of abuse, neglect of assigned equipment, or violation of policy this evaluation period.

Job Duty/Element

Rating

(3) PROFESSIONAL RESPONSIBILITIES.

2.0

Justification Statement

Deputy Long is a sincere and dedicated employee, who strives for the accomplishment of the unit's goals and objectives. He has ensures timely and proper attendance of training sessions, courts and daily work schedules. In January of 2005, Deputy Long was counseled by Sergeant Dulin for failure to comply with a verbal order that redirected him to submit tried traffic citations through another supervisor for accountability.

Job Duty/Element

Rating

(4) INNER OFFICE COMMUNICATIONS.

3.0

Justification Statement

Deputy Long promotes teamwork and ensures that his supervisors are kept abreast of all pertinent information. He communicates his thoughts and ideas well.

2335

Job Duty/Element

Rating

0755-0504

(5) CIVIL PROCEDURE/WRIT SERVICE

Justification Statement

Deputy Long ensures proper service and documentation of all papers and warrants in accordance with Sheriff's Office policies and Rules of Civil Procedures.

Job Duty/Element

Rating

(6) COURT SAFETY/SECURITY

2.5

Justification Statement

Deputy Long conducts security inspections of court rooms and assigned areas upon arrival to the Judicial Center. He has assured that court assignments are handled in accordance with Sheriff's Office Policies and with an emphasis on security measures. He is familiar with all security devices used in the Judicial Center. Deputy Long responds, handles and properly documents events and is knowledgeable in the proper evacuation procedures.

Job Duty/Element

Rating

(7) TRANSPORTATION/HANDLING OF PRISONERS

3.0

Justification Statement

Deputy Long ensures that only proper restraints are utilized during the handling of prisoner. He practices compliance with our Agency's Policies and Procedure to ensure a safe and smooth operation.

Section III - Employee Development Plan

What was the employee's goal(s) objectives set during the last rating period?

To attend any training that will enhance our career through our Agency, or other outside Law Enforcement Agencies.

Did the employee complete the goals(s)/objective(s)? Yes XX No

Explain answer below. Complete development plan for next rating period and submit it with this rating sheet.

Section IV - Supervisory Duties/Responsibilities (If Applicable)

Rating

Include supervisory appraisal sheet with this rating sheet.

N/A

Justification Statement

N/A

R 336

Overall Evaluation:

Total Points

27.0

÷ Total Items

10

= Overall Numeric Rating

9090-9920
2.70

The scale to be used for the rating definition of the average indicated above is 0.0 to 0.000, Unsatisfactory; 1.0 to 1.999, Marginal (Also, see note below regarding probationary evaluations.); 2.0 to 2.999, Meets Expectations; 3.0 to 3.799, Exceeds Expectations; 3.8 to 4.0, Outstanding.

An evaluation with an overall numerical rating below 2.0 or with two (2) or more ratings of Marginal/Unsatisfactory indicates substandard performance, and the rating definition will be "Marginal" (regardless of the numerical average). On an annual evaluation, the employee will be placed in a probationary status and shall receive performance counseling and additional evaluation. The employee is expected to meet performance expectations within this probationary time period and to continue to meet expectations throughout employment with Charleston County. (See Charleston County's Personnel Policies for specific procedures.)

General comments from Supervisor: (if desired)

Probationary Release Recommended.

Employee Notice:

Review the entire appraisal to make sure that you understand its contents. If you have questions, it is your responsibility to have these clarified for you. Sign your name in the appropriate space. (Your signature does not indicate that you necessarily agree with the evaluation. Use the comment section to express yourself regarding the evaluation.)

Employee Comments:

Your signature indicates that your evaluation has been completed and your supervisor has had an evaluation conference with you. An unsigned evaluation will be considered incomplete. No personnel actions (for example, longevity increases) will be processed if the evaluation form is incomplete. An employee who fails to sign his/her appraisal is subject to disciplinary action. (Refer to Charleston county's Personnel Policies and Procedures for details.)

Signatures:

Employee Signature

Date 5-9-05

Rater Signature/Title

Date 4/20/05

Reviewer Signature

Date 5/6/05

*Department Head

Date 5/6/05

*This signature is necessary only if the Department Head is a person other than the Reviewer.

2337

Section III: DEVELOPMENT PLAN

Name: LONG - Harry SSN: [REDACTED] Dept: Sheriff's Office

For Appraisal Period: October 01, 2004 Through April 22, 2005

- A. Goals/Objectives (Each employee should have a job-related goal/objective which they expect to accomplish during the performance appraisal period. The supervisor and employee will work together in formulating the goal(s)/objective(s) for the appraisal period. The goal(s)/objective(s) listed below should be within the employee's ability to achieve during the upcoming performance appraisal period.)

To attend any training through our Agency, or other outside Law Enforcement Agencies that will enhance my career.

- B. Personal/Professional Development Plan (This plan includes long-term career and personal development goals which the employee hopes to achieve. This item is for information purposes regarding the employee's interest regarding job enlargement, promotional opportunities, and training needs.)

Attend advanced law enforcement training courses, and to enhance career with the Charleston County Sheriff's Office.

Signature:

Dep. H. Long

Date:

5-9-05

Employee

Signature:

[Signature]
Rater

Date:

5/6/05

Reviewer

Charleston County Employee Performance Appraisal Rating Sheet for:

1090-9920

Employee Name Long, Harry A. SSN [REDACTED]
 Job Title Deputy Sheriff Department Sheriff's Office

Type of Evaluation: Annual XXX Probationary (New Hire) _____
 Probation (Promotional) _____ Probation (Disciplinary) _____
 Other _____ Specify _____

Evaluation Period From October 1, 2003 to September 30, 2004

All "outstanding", "marginal", and "unsatisfactory" ratings must have a justification statement. "Marginal" and "unsatisfactory" ratings must indicate areas for improvement. "Outstanding" evaluations must indicate areas of superior accomplishment. Use additional sheets of paper if necessary for your justification statements. Use whole numbers or numbers rounded to the nearest half. Do not use numbers with any other decimals.

Section I - Personal work Traits

The overall rating for WORK HABITS is made up of the ratings for punctuality (P), attendance (A), initiative (I), dependability (D), and safety (S). In the space provided, indicate the performance level for WORK HABITS and write your justification statement.

Note: If, during this rating period, the employee has been out on leave for one of the reasons listed below, check the appropriate space and do not rate Attendance (and divide by 4 instead of 5). In addition, indicate in the justification statement the specific reason for not evaluating Attendance.

This employee has been absent for Family/Medical Leave

N/A Chronic Illness/Surgery N/A Other Disability N/A

Overall Rating for WORK HABITS

P 3 +A 3 +I 2.5 +D 3 +S 3 + 5 = Rating 3

Justification Statement

Deputy Long reports to work on time and is well prepared for work. Deputy Long does not abuse sick leave. Deputy Long is dependable and possesses good safety skills.

The overall rating for INTERPERSONAL RELATIONSHIPS is made up of the ratings for ability to work well with others (W), ability to communicate (C), public relations/professional conduct with the general public (PR), and disposition/outlook (D). In the space provided, indicate the performance level for INTERPERSONAL RELATIONSHIPS and write the justification statement.

Overall Rating for INTERPERSONAL RELATIONSHIPS

W 3 +C 3 +PR 3 +D 2 + 4 = Rating 3

Justification Statement

Deputy Long works well with his peers. He handles himself in a professional manner at all times. His oral and written communications are clear, concise, and direct. Deputy Long's outlook in regards to his law enforcement career lacks motivation.

The overall rating for INDIVIDUAL DEVELOPMENT is made up of job knowledge (J), adaptability to change (A), and desire for self improvement (SI). In the space provided, indicate the performance level for INDIVIDUAL DEVELOPMENT and write the justification statement.

2339

11-8-04

J 2.5 +A 3.5 +SI 3.5 + 3 = Rating

3.5

Justification Statement

Deputy Long is well versed in the application of SC laws as well as Charleston County Policy and Procedures in the performance of his duties though at times he has been hesitant to make simple decisions. Deputy Long accepts change without question. Deputy Long is a Hostage Negotiator, CDV Instructor, and Defensive Tactics Instructor who is constantly striving to improve through In-house training.

Section II - Job Performance

Indicate the job duty/element which is being evaluated and its rating. Write the appropriate justification statements. Attach additional sheets for justification statements if necessary. (These job duties/elements are in the employee's personnel file and do not have to be resubmitted to the Personnel Department at this time.)

Job Duty/Element

Rating

(1) REPORT WRITING

3

Justification Statement

Deputy Long's reports are submitted in a timely manner, containing all pertinent information. His reports are clear, concise and grammatically correct; however, his penmanship is not very neat.

Job Duty/Element

Rating

(2) USE/MAINTENANCE OF ASSIGNED EQUIPMENT

1.5

Justification Statement

Deputy Long's county issued equipment is maintained within the guidelines of the Charleston County Sheriff's Office with no documented discrepancies. Deputy Long had a chronological entry in reference to his uniforms being untidy and his glg line off center. He also had a chronological entry in reference to wearing jeans to court. Deputy Long has had no chargeable accidents during this evaluation period.

Job Duty/Element

Rating

(3) PROFESSIONAL RESPONSIBILITIES

1.5

Justification Statement

Deputy Long meets all scheduled court and training assignments as scheduled. Deputy Long has a good understanding of his duties and effectively applies SC laws and Charleston County Sheriff's Office Policy and Procedures to ensure proper results at all times. Deputy Long has received several Letters of Appreciation for his handling of calls but he has also received a Letter of Instruction and a Letter of Suspension for unsatisfactory performance during this evaluation period. Deputy Long continues to improve in this area.

R340

Job Duty/ElementRating(4) RESPONSE TO CALLS FOR SERVICE

2

Justification Statement

Deputy Long answers his radio promptly and responds to calls in a safe and timely manner. Deputy Long is familiar with any district that he is assigned and he takes a pro-active approach to his patrol functions. Deputy Long received a Letter of Instruction due being late to a scheduled assignment while in the Criminal Investigation Division. Deputy Long handles calls in a caring and compassionate manner.

Job Duty/ElementRating(5) INVESTIGATIONS

3.5

Justification Statement

Deputy Long has a very good understanding of the requirements needed to conduct follow-up investigations consistent with the patrol division function due to his prior CID experience. He interviews victim's, witnesses, and suspects that are essential to an investigation and obtains warrants when probable cause exists. Deputy Long's investigations are complete and well documented ensuring proper prosecution.

Job Duty/ElementRating(6) PATROL INITIATIVE

3

Justification Statement

Deputy Long takes a pro-active approach in his patrol duties. He is constantly improving at identifying problem areas in his assigned district. Deputy Long enforces traffic violations, patrols residential areas, and problem areas when he is not responding to calls for service.

Section III - Employee Development Plan

What was the employee's goal(s) objectives set during the last rating period?

Deputy Long wanted to become a persons detective as well as a sergeant during this evaluation period. Continue with the promotional process.

Did the employee complete the goals(s)/objective(s)? Yes N/A No XXX

Explain answer below. Complete development plan for next rating period and submit it with this rating sheet.

Deputy Long transferred from the CID Unit before making persons detective and was not promoted to sergeant. He did participate in the promotional process.

Section IV - Supervisory Duties/Responsibilities (If Applicable)Rating

2341

Justification Statement

N/A

Overall Evaluation:

Total Points 24 + Total Items 9 = Overall Numeric Rating 2.666

The scale to be used for the rating definition of the average indicated above is 0.0 to 0.000, Unsatisfactory; 1.0 to 1.999, Marginal (Also, see note below regarding probationary evaluations.); 2.0 to 2.999, Meets Expectations; 3.0 to 3.799, Exceeds Expectations; 3.8 to 4.0, Outstanding.

An evaluation with an overall numerical rating below 2.0 or with two (2) or more ratings of Marginal / Unsatisfactory indicates substandard performance, and the rating definition will be "Marginal" (regardless of the numerical average). On an annual evaluation, the employee will be placed in a probationary status and shall receive performance counseling and additional evaluation. The employee is expected to meet performance expectations within this probationary time period and to continue to meet expectations throughout employment with Charleston County. (See Charleston County's Personnel Policies for specific procedures.)

General comments from Supervisor: (If desired)

Employee Notice:

Review the entire appraisal to make sure that you understand its contents. If you have questions, it is your responsibility to have these clarified for you. Sign your name in the appropriate space. (Your signature does not indicate that you necessarily agree with the evaluation. Use the comment section to express yourself regarding the evaluation.)

Employee Comments: *Use of maintenance + assigned equipment: one incident documented, should not constitute a low 1.5 score - should be noted but should be higher. Professional Resp: I thought a letter of INST. was not disc. but I am getting a low score because of it. Resp. to calls: should be higher; I answer calls quickly, efficiently, and often alone - a double ding on letter of INST. being late. It hurts me in Resp. to calls score and prof. Resp. column.*

Your signature indicates that your evaluation has been completed and your supervisor has had an evaluation conference with you. An unsigned evaluation will be considered incomplete. No personnel actions (for example, longevity increases) will be processed if the evaluation form is incomplete. An employee who fails to sign his/her appraisal is subject to disciplinary action. (Refer to Charleston County's Personnel Policies and Procedures for details.)

Signatures:

Employee Signature *H. Long* Date 10-29-04

Rater Signature/Title *Quinn, Sgt* Date 10/13/04

Reviewer Signature *AS [Signature]* Date 10-01-04

*Department Head *[Signature]* Date 10-22-04

R342

EMPLOYEE PERFORMANCE APPRAISAL FORM

Section III: DEVELOPMENT PLAN

Name: HARRY A. LONG SSN [REDACTED] Dept: SHERIFF'S OFFICEFor Appraisal Period: October 1, 2004 through September 30, 2005

- A. Goals/Objectives (Each employee should have a job-related goal/objective which they expect to accomplish during the performance appraisal period. The supervisor and employee will work together in formulating the goal(s)/objective(s) for the appraisal period. The goal(s)/objective(s) listed below should be within the employee's ability to achieve during the upcoming performance appraisal period.)

Continue to develop my skills as an instructor for CDV and defensive tactics.

Continue my participation on the Crisis Negotiation Team.

- B. Personal/Professional Development Plan (This plan includes long-term career and personal development goals which the employee hopes to achieve. ~~This item is for information purposes regarding the employee's interest regarding job enlargement, promotional opportunities, and training needs.~~)

Attend advanced training classes to enhance my career with the Charleston County Sheriff's

Office.

H. Long
Employee Signature

10-12-04
Date

[Signature]
Rater

[Signature]
Reviewer

10/01/04
Date

R343

G. Sheriff's Department Answers to Interrogatories

12344

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA**

ROOSEVELT SIMMONS,

Plaintiff,

v.

**MASE and COMPANY, LLC, J. AL
CANNON, JR., SHERIFF OF
CHARLESTON COUNTY and
CHARLESTON COUNTY,**

Defendants.

CIVIL ACTION NO.: 2:11-cv-00709-RMG

**DEFENDANT CHARLESTON COUNTY'S
Sheriff Al Cannon ANSWERS TO
PLAINTIFF'S INTERROGATORIES**

TO: EDWARD BERTELE, ESQUIRE:

1. Specify the date when the Sheriff first received an execution on judgment in Case No. 2000-JG -10-1817 issued by the Magistrates Court against Roosevelt Simmons for nonpayment of a user fee of \$89.00 imposed against TMS 282-00-00-138.

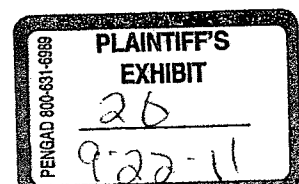
Answer: Defendant believes an execution of judgment a few days before February 26, 2009.

2. Identify all documents that were received by the Sheriff in connection with the execution on the judgment referenced in Interrogatory No.1 and attach a true copy of each.

Answer: Defendant believes it received the six judgments, the Selected Debts sheet, and the property description sheet, bates labeled 1-16.

3. Set forth in detail all actions taken by the Sheriff or his representative to levy upon property belonging to Roosevelt Simmons in connection with execution on the judgment referenced in Interrogatory No.1.

Answer: Several letters were sent to Plaintiff regarding the judgment and levy. Master Deputy Long talked with Plaintiff on the telephone regarding the judgment and levy. Master Deputy Long hand delivered the notice of the Sheriff's Sale of the property to Plaintiff. Defendant posted required notices. Defendant conducted a Sheriff's Sale of the property.



4. Identify all documents that evidence any of the actions in Answer No. 3 and attach a true copy of each.

Answer: Please see documents bates labeled 1-135.

5. Set forth in detail the date and substance of all communications between the Sheriff or his representative and Roosevelt Simmons concerning a levy upon Simmons property pursuant to an execution on the judgment identified in Interrogatory No. 1.

Answer: Master Deputy Long sent multiple letters to Plaintiff, spoke with him on the telephone on April 3, 2009, and spoke personally with Plaintiff on August 26, 2009, when he hand delivered the notice of the sale.

6. Identify all documents that evidence any of the communications in Answer No 5 and attach a true copy.

Answer: Please see documents bates labeled 31-35.

7. Set forth in detail all actions taken by the Sheriff or his representative to levy upon personal property owned by Roosevelt Simmons in connection with execution on the judgment identified in interrogatory No. 1.

Answer: Research on subject property. Notice of levy and Sheriff's Sale. Personal service of Notice of Sale. Sheriff's Sale.

8. Identify all documents that evidence any of the actions in Answer No. 7 and attach a true copy.

Answer: Please see documents bates labeled 1-135.

9. Identify all property levied upon by the Sheriff or his representative in connection with execution on the judgment identified in Interrogatory No. 1.

**Answer:
283-00-00498
0 Kitford Road
Lot C
Plat Book: DE-692
Deed Book: Z468-508**

10. If any levy (ies) identified in Answer No. 9 is evidenced by a document, attach a true copy of each.

Answer: Please see document bates labeled 50.

11. Set forth in detail the date and substance of all communications between the Sheriff or his representative and Roosevelt Simmons concerning the sale of his property pursuant to an execution on the judgment identified in Interrogatory No. 1.

Answer: Master Deputy Long personally delivered the notice of the Sheriff's Sale to Plaintiff and also mailed the notice to Plaintiff. Master Deputy Long informed Plaintiff that payment of one judgment could delay the Sheriff's sale, but Plaintiff responded that he didn't have any money.

12. Identify all documents that evidence any of the communications set forth in Answer No 11 and attach a true copy of each.

Answer: Please see documents bates labeled 31-35, 50, 98, and 123-127.

13. Set forth in detail the date and substance of all communications between the Sheriff or his representative and any other person or entity concerning the sale of TMS 283-00-00-498 in connection with the execution on the judgment identified in interrogatory No. 1.

Answer: Postings of notices in Post and Courier. Posting of notices at the Charleston County Courthouse, the James Island Magistrate Court, and the Charleston County Library at Dorchester and Pinehaven roads. Defendant conducted the Sheriff's Sale. Once property was sold, the paperwork was sent to the County Attorney and then to the Sheriff to sign. Once this was completed, paperwork was sent to Mase and Company, LLC.

14. Identify all documents that evidence any of the communications set forth in Answer No 13 and attach a true copy of each.

Answer: Please see documents bates labeled 17, 38-39, 49-50, 101-105, 120, 122-127, and 134-135.

15. Indicate the number of executions on judgments for the nonpayment of user fees processed by the Sheriff for each of the years from 2000 to the present.

Answer: Please see documents bates labeled 136-202.

16. Identify all documents that evidence any of the information in Answer No. 15 and attach a true copy of each.

Answer: Please see documents bates labeled 136-202.

17. Indicate the number of sales of real property resulting from executions on judgments for the nonpayment of user fees conducted by the Sheriff for each of the years from 2000 to the present.

Answer: During Master Deputy Long's 4 ½ years of employment, he recalls only 3 real properties and 1 personal property being sold for non-payment of user fees.

18. Identify all documents that evidence any of the information in Answer No 17 and attach a true copy of each.

Answer: Defendant is not in possession of documents responsive to this request.

19. Identify all real property sold by the Sheriff resulting from executions on judgments for the nonpayment of user fees for each of the years from 2000 to the present.

Answer: Master Deputy Long recalls the 3 pieces of real property sold as being in McClellanville, Johns Island, and Charleston on Line Street.

20. Identify by name and job title or description, all persons with whom the Sheriff consulted in the preparation of the Answers to these Interrogatories.

Answer: Master Deputy Harry Long.

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by

☐ depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

☐ handing counsel a copy thereof.

☐ by Fax transmittal.

This 10th day of August, 20 11
By [Signature]

August 10, 2011
Charleston, South Carolina

[Signature]

CHRISTOPHER T. DORSEL

Senn, McDonald & Leinbach, LLC

P.O. Box 12279

Charleston, SC 29422

(843) 556-4045

Attorney for Defendants Al Cannon,
Sheriff of Charleston County and
Charleston County

H. Sheriff's Department Policy and Procedure Manual

Section 3-08 and 5-04 (portions)

R349

3-08 DISCIPLINARY PROCEDURES	
☐ NEW	☒ REVISED ☐ REVIEWED
CALEA STANDARDS REF. NUMBERS: 26.1.4, 26.1.5, 26.1.6, 26.1.7, 26.1.8, 22.2.6.	
APPROVED:	
 Sheriff J. Al Cannon, Jr., Esq.	<u>10 Jan 2007</u> Date

I. Purpose

To establish guidelines for the administration of the agency's disciplinary process.

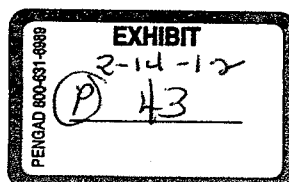
II. Policy

The maintenance of effective discipline is essential in order for the agency to effectively control its performance and satisfactorily achieve its objectives. Therefore, it is the policy of the Charleston County Sheriff's Office to hold individual employees accountable for their behavior in a manner that is fair, equitable, and timely in nature.

III. Procedure

A. Responsibility:

1. Complying with agency directives is the responsibility of all agency employees.
2. It is the supervisors duty to ensure that subordinate personnel conform to the agency's guidelines. This is best accomplished by supervisors setting a positive example for subordinates.
3. A supervisors responsibilities include:
 - a. rewarding positive behavior and exemplary conduct and performance;



- b. investigating allegations of employee misconduct when within the scope of their authority and responsibility;
- c. counseling employees to improve job performance or correct minor infractions and procedures;
- d. identifying training needs as a function of the disciplinary process;
- e. directly implementing punitive disciplinary actions, within the scope of their authority and responsibility; and
- f. implementing severe disciplinary action approved by the Chain of Command. (Ref: CALEA 26.1.5)

B. Disciplinary Action/Progressive Discipline:

- 1. It is not possible to list every specific act or omission, or combination of specific acts or omissions, which can result in disciplinary action. The agency's *Policy and Procedure Manual* serves as a guideline.
- 2. In order to assure compliance with all directives, this agency will follow the concept of progressive discipline when circumstances permit by administering gradually increasing disciplinary actions for each successive instance of employee misconduct. Progressive discipline means that employees will generally be given ample opportunity to correct deficiencies, depending on the severity of violation. The emphasis is on rehabilitation in the case of minor infractions. When an offense has been committed which requires more severe action the concept of progressive discipline is vacated.
- 3. Certain offenses are of such a serious nature that immediate termination upon first offense is appropriate. Additionally, the employee may be subject to termination for the accumulation of violations when the employee fails to participate in and/or respond to corrective action.

4. Although not all inclusive, the following should be taken into account when considering administration of discipline:
 - a. the seriousness of the incident;
 - b. the circumstances surrounding the incident;
 - c. the employee's past disciplinary record;
 - d. the employee's past work performance;
 - e. the impact of the incident on the agency and/or community; and
 - f. the prognosis for future similar disciplinary problems.
(Ref: CALEA 26.1.4, item c)

C. Training:

1. Remedial training may be used for specific performance and/or procedural deficiencies identified in personnel. The need for remedial training may be recognized by management during evaluation of job performance, as a result of a complaint, during an inspection, or failure to meet minimum standards in a training session evaluation.
2. Training used as part of the agency's disciplinary system will be documented and permanently maintained in the employee's personnel file.
3. Training may be used as part of the agency's disciplinary process by itself or along with other disciplinary procedures as determined by the supervisor and the Training Lieutenant.
(Ref: CALEA 26.1.4, item a)

D. Counseling:

1. Counseling assists employees with the process of problem solving. It may be corrective or preventive in nature. It may focus on the need for a person to change his present behavior or work methods. It may also focus on the need for a person to behave differently in preparation for responsibilities and challenges that lie ahead.

2. The immediate supervisor may counsel an employee when the employee has an existing problem or is experiencing difficulty understanding or adjusting to matters which are job related or effect job performance. The supervisor will identify the policy, procedure, or standards of conduct which the employee has violated or the duties which the employee has failed to discharge, and will suggest corrective action.
3. A supervisor may encourage that an employee use available professional counseling services when a personal problem is suspected of interfering with job performance.
4. Participation in a counseling program may be required as part of, or in lieu of, more serious disciplinary action should the Sheriff or respective department commander determine the employee would benefit from such counseling. Failure of the employee to participate in recommended counseling could result in disciplinary measures being taken.
(Ref: CALEA 22.2.6 item e)
5. Minor incidents noted by a supervisor may be handled verbally by that supervisor without documentation. All other counseling as a component of the agency's disciplinary process will be permanently documented in the employee's personnel file.
6. Counseling as a component of the agency's disciplinary process may be utilized by itself or along with other disciplinary procedures.
(Ref: CALEA 26.1.4, item b)

E. Written Reprimand:

1. A written reprimand is a formal reprimand to the employee from a supervisor describing the way in which the employee's conduct or performance has failed to meet prescribed standards.
2. The written reprimand should be used in cases where a past verbal warning has been ineffective or where an offense has been committed which requires more severe action than a verbal warning or counseling.

3. The written reprimand will identify the violations charged against the employee or the failures in work performance of the employee and will specify corrective action. It will warn the employee that repeated offenses will lead to sterner measures, including possible discharge. The written reprimand will be documented in the employee's personnel file. Written reprimands may be removed from the employee's personnel file after one year upon written application and approval of the Sheriff or his designee.

F. Suspension:

1. A suspension is a serious disciplinary action in which the employee must forfeit pay for misconduct considered to be serious or part of a continuing pattern of behavior involving repeated misconduct.
2. When necessary, supervisors may issue the following suspensions:
 - a. Sergeants: one to three days
 - b. Lieutenants: one to five days
 - c. Captains: one to 10 days
 - d. Majors: one to 20 days
 - e. Chief Deputies: one to 30 days.
 - f. Sheriff/Assistant Sheriff: one day through termination.
3. Any personnel placed on suspension must turn in agency identification, badge, weapon(s), keys, key cards, and vehicle.
4. Suspensions will be permanently documented in the employee's personnel file.
5. Employees under suspension have no authority to represent the Sheriff's Office. (Ref: CALEA 26.1.5)

G. Administrative Leave:

1. An employee may be reassigned to other duties or placed on administrative leave with pay for a prescribed period of time, which normally will not exceed thirty (30) calendar days. This allows for immediate response to a suspected but not fully substantiated offense and a period which an investigation can be thoroughly pursued.
2. Any personnel placed on administrative assignment will turn in agency identification, badge, weapon(s), keys, key cards, and vehicle at the discretion of the Sheriff or his designee.
3. All administrative leave will be permanently documented in the employee's personnel file.
4. Administrative leave is with pay unless directed by the Sheriff or his designee.

H. Disciplinary Probation:

In addition to the above actions, an employee may be placed on disciplinary probation for up to one year. The employee will be informed as to the corrective actions which are expected within this time period. Appropriate paperwork will be sent to the agency's Human Resources Office for implementation of probationary status and placement in the employee's personnel file. Any further infraction during this period may result in termination.

I. Termination:

1. Termination is the removal of an employee from duty, thereby ending his employment by the Charleston County Sheriff's Office. Pursuant to §23-13-10 of the South Carolina Code of Laws, 1976, as amended, and the *Charleston County Personnel Policies and Procedures*, the Sheriff and the Assistant Sheriff have the authority to terminate any sworn or civilian employee. The termination action will be documented in the employee's personnel file.

2. All employees may be subject to termination for any of the following general conditions:
 - a. consistent performance failure(s) or a single performance failure that results in serious consequences to the agency's public credibility or ability to function in an effective and efficient manner;
 - b. refusal to submit to an ordered alcohol or drug examination;
 - c. refusal to submit to a polygraph after being ordered to do so;
 - d. failure to cooperate in an administrative inquiry; and/or
 - e. lying, cheating, stealing, unethical conduct, etc., or subsequent arrest/conviction for a criminal act.
(Ref: CALEA 26.1.4, item c)

J. Termination Order:

1. Employees in new hire probation can be terminated at any time during the probationary period and are excluded from the provisions of this section.
2. If employee misconduct results in termination from the agency, the employee will receive a written notice which will contain the following information:
 - a. the reason for termination; and
 - b. the effective date of the termination.
(Ref: CALEA 26.1.7, items a & b)
3. All employees, including those terminated, will undergo an exit interview prior to ending employment with the Sheriff's Office. During the out processing and/or exit interview the employee will be provided a statement of the status of fringe and retirement benefits after termination (will be provided by the Human Resources Office). (Ref: CALEA 26.1.7, item c)

K. Supervisory Authority:

1. Final disciplinary authority and responsibility for agency employees rests with the Sheriff. All supervisors are held responsible for any discipline administered at any level below them within their span of authority.
2. If the misconduct is very minor, such as a minor infraction of procedures, or a case of poor judgment which has not significantly impeded effective agency operations, the supervisor is authorized to take immediate corrective action in the form of counseling which may be verbal or written.
3. A written reprimand may be given by any supervisor within his/her span of authority. If the span of authority is exercised outside the normal duty assignment, e.g., during a collateral duty assignment or a temporary assignment such as for an unusual occurrence, it will be the responsibility of that supervisor to inform the offending employee's normal duty assignment supervisor and ensure the reprimand is documented in the employee's personnel file.
4. Whenever improper conduct of an employee is observed by any supervisor, it will be the responsibility of that supervisor to take immediate corrective action and/or to inform the offending employee's supervisor for possible disciplinary action.
5. Any supervisor or command officer may relieve any employee from duty in the following circumstances:
 - a. employee conduct which is observed by or reported to the supervisor which is criminal, extremely serious in nature, and/or creates potential harm to the public, the employee, or the Sheriff's Office; or
 - b. the employee is unfit for duty due to physical or psychological reasons (e.g., intoxication (drugs or alcohol), use of deadly force, a motor vehicle accident or other physical injury, death in the family, other personal problems, etc.).

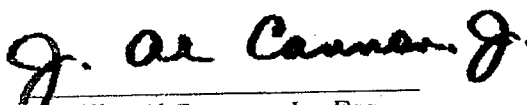
6. A supervisor taking such action must notify the appropriate department commander as soon as possible and articulate the reason for such action. The supervisor must also submit written documentation in statement form as to the incident and/or circumstances which led to the action. Such documentation will be forwarded to the appropriate department commander and the Office of Professional Standards by the end of the shift.
7. The supervisor will take possession of the employee's weapon(s), agency identification card, badge, keys, key cards, and vehicle. Unless otherwise notified by the Office of Professional Standards or department commander, such administrative leave will be with pay. (Ref: CALEA 26.1.5)

L. Maintenance of Disciplinary Records:

1. Reports and supporting documents which relate to a disciplinary action will be retained in the Office of Professional Standards. The record of disciplinary action will also be placed into the employee's personnel file.
(Ref: CALEA 26.1.8)

M. Appeal Procedures:

1. All adverse disciplinary action is an acceptable topic for grievance and may be appealed in accordance with agency grievance procedures. (Ref: CALEA 26.1.6)
2. Temporary and probationary employees may appeal disciplinary action under the provisions of this order.

5-04 CIVIL PROCESS	
☐ NEW	☒ REVISED ☐ REVIEWED
CALEA STANDARDS REF. NUMBERS: 74.1.1, 74.1.2, 74.2.1, 84.1.8	
APPROVED:  _____ Sheriff J. Al Cannon, Jr., Esq.	
_____ Date 08-02-07	

I. Purpose

To establish policy and procedure concerning the receipt, reporting, service, and processing of civil process.

II. Policy

The Charleston County Sheriff's Office is mandated by state law to assist the court with service of civil process, and to effect these duties in a diligent and timely manner as instructed by law.

III. Procedure

A. Records:

1. All civil process to be served by personnel of the Charleston County Sheriff's Office will be forwarded immediately to the Civil Process Unit of the Special Operations Department to be recorded.
2. The following information will be included in the civil process records when process is received:
 - a. date and time received;
 - b. type of process;
 - c. nature of document;

- g. the time of docketing in the county to which the execution is issued.
- 24. If the execution is against the property of the judgment debtor, the Sheriff must satisfy the judgment out of the personal property of such debtor. If sufficient personal property cannot be found, then any real property belonging to him/her can be used.
- 25. If the execution is against real or personal property of the judgment debtor that is in the hands of someone else, that property can be used.
- 26. If the execution is against the person of the judgment debtor, the Sheriff must arrest such debtor and commit him/her to jail until he/she will either pay the judgment or be discharged according to law.
- 27. If the execution is for the delivery of real or personal property of the judgment debtor into the possession of the plaintiff, the Sheriff must deliver the particularly described property to the party entitled thereto. If such a delivery cannot be made for any reason, then the Sheriff can resort to the same steps required of him if he had an execution against property.
- 28. It is absolutely essential that the name given for the judgment debtor on the execution delivered to the Sheriff's Office by the plaintiff or his/her attorney are the same name for the person from whom property is being taken. Notice particularly such words as Jr., Sr., individual, corporate, P.A., etc.
- 29. In order for the Sheriff to satisfy a judgment out of the real or personal property of the judgment debtor, he must bring such property into his possession or within his control. The method by which this is usually accomplished is through the making of a levy against the property to be sold.
- 30. The Sheriff should take actual custody of the personal property at the time of levy. Personal property must be taken into possession or be within the power of the Sheriff. Until the levy

is removed, the property levied upon is placed in possession of and under the control of the Sheriff, but they may be taken by a receiver appointed by a court who does so by court order. Bank accounts are not subject to levy by the Sheriff.

31. A lien is created against personal property when a levy is made against it.
32. In order to create a lien against real property, the Transcript of Judgment must be entered in the book of Abstract of Judgments with the Clerk of Court. The lien continues for a period of ten (10) years from the date of entry.
33. Execution against such real property is simply the means provided for enforcing the judgment. In the matter of personal property of the judgment debtor, however, neither the granting of a judgment to a judgment creditor nor the issuing of an execution writ by a judgment creditor has any lien effect. A levy must be made to create a lien against personal property, and property levied upon can only be bound thereby for a period of four (4) months from the date of such levy.
34. After a levy is made, the deputy sheriff making the levy must make a memorandum (a notice of levy and a notice of Sheriff's Sale) in writing of such levy. The memorandum should include the date of the levy and a specific description of the property upon which the levy was made. A copy of the memorandum should be given to the judgment debtor, and the original should be attached to the writ of execution. When a levy is made, a "prima facie" presumption of satisfaction of the judgment exists, and a second levy cannot be made until the sale of the property shows otherwise.
35. If no property can be found upon which to levy, the Sheriff may return the writ of execution to the plaintiff or his/her attorney unsatisfied ("nulla bona"). Before a truthful return of "nulla bona" (no goods) can be made by the Sheriff, Special Operations personnel will research all the records available to the agency so that the agency can certify that there is no property in the name of the defendant upon which levy may be

made. The records should be checked for personal and real property.

36. Before a levy is made on personal property, it must be determined if the property to be levied upon has adequate equity. The lien holder (if any) should be contacted regarding the outstanding balance owed on the property. If it is determined that the property does not have adequate equity, it should not be levied on unless the court orders otherwise. To determine equity, the lien amount, the cost of the sale, and other applicable Homestead Exemptions should be used in the computations.
37. Prior to personal property being levied on, the plaintiff is required to place a deposit with the Sheriff's Office for the amount to cover the expense of the levy. The deposit covers the towing, storage, and advertisement of the property. The plaintiff should also be advised that if the cost exceeds the deposit amount, he/she is responsible for the difference. Likewise, if the actual cost is less than the deposit, the difference will be refunded. The cost of the sale, any applicable Homestead Exemption, and any valid lien will dictate the minimum bid of the property.
38. The deposit required for real estate to be levied covers the advertising cost. Ordinarily, real estate will be levied on regardless of the equity situation as the Sheriff's Office is not required to research this information. All property may be sold subject to any and all mortgages, liens, and encumbrances, if any. The cost of the sale and any applicable Homestead Exemption should be used to compute the minimum bid.
39. The plaintiff, in all cases, should be advised that in the event the property (real or personal) does not sell, he/she is responsible for the cost, and, therefore, the deposit will not be refunded. However, any lawfully incurred expense will be attached to the judgment.
40. The seizure of non-titled assets, though not expressly forbidden, is highly discouraged. A court order directing the

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Sheriff's Office to seize specific non-titled assets should ordinarily be required. This can be accomplished by the plaintiff or their attorney in supplemental proceedings. The burden of proof of ownership and a lawful levy rests with the Sheriff's Office.

41. Sometimes, attorneys will request a "nulla bona" return without requiring the Sheriff to first try to satisfy the judgment by contacting the debtor. If such requests are honored, the return should be recorded "nulla bona by request of the plaintiff's attorney."
42. A judgment creditor is entitled to enforce his/her judgment by execution. A judgment creditor has the right to control and direct what proceedings should or should not be taken, therefore, his/her wishes and instructions, if lawful, should ordinarily be respected and obeyed when made known to the execution officer. However, the ultimate responsibility for the proper levy lies with the Sheriff.
43. When a number of executions against the same defendant are placed in the hands of the Sheriff, they should be satisfied in accordance with the order of their priority. If a writ of execution is to be enforced against real property, the priority of more than one writ is determined by the date the judgment was entered into the records of the court or the county where the property is located. If the writs are to be enforced against personal property, then priority is determined by the date of delivery to the Sheriff.
44. A deputy sheriff must stop proceedings if advised of bankruptcy. Bankruptcy must be verified.
45. Notice of appeal from adverse judgment may stay an execution.
46. If a business is funded through the U.S. Small Business Administration (SBA), there may be a prior lien through SBA.
47. Property may be subject to federal, state, or Uniform Commercial Code (UCC) liens.

48. By the beginning of each regular term of court from which the execution or judgment was issued, the Sheriff is required to make a return to the Clerk of Court of his actions which still have active energy. He must inform the Clerk of Court whether full, partial, or no satisfaction has been made. If he has fully executed the judgment, he must return the process to the clerk with the manner of its execution attached to it. If he has partially executed the judgment, or has not satisfied the judgment at all, he must state in writing under oath the reasons why he is unable to make the execution.
49. In any event, the Sheriff must return all process which has ceased to have active energy to the Clerk of Court or plaintiff, and such return should be made on the first day of the term of court after such cessation of energy. Failure to do so or the making of any false return may subject the Sheriff or other deputy sheriff to action, penalty, or other consequence provided by law for neglect of duty.
50. Custody orders to pick-up minor children must be registered with the Charleston County Clerk of Court prior to service. To determine if the order has been properly registered, the order should contain, at a minimum, the Clerk of Court stamp showing the date and time of registration, along with the Clerk of Court stamped signature (normally on the first page). Custody Orders should contain language in the body of the writ that specifically directs the Sheriff or any law enforcement officer to immediately take physical custody of the child and who the physical custody of the child is to be turned over to. If this is not in the body of the writ, a minor child may be placed in Emergency Protective Custody in accordance with the Sheriff's Office policy, if circumstances warrant. If there are any questions as to whether or not a custody order is enforceable, the deputy sheriff should contact the Civil Process Section for direction.

~~G. Seized Property Disposal:~~

1. When the Sheriff takes the lands, tenements, goods, and chattels of any person by virtue of a writ of execution and that person does not satisfy the debt, damages, and costs of the judgment creditor within five (5) days, the Sheriff may sell, by public auction, as much of the property as needed for the best price in order to satisfy the judgment. If the plaintiff bids, he may credit the amount bid to his execution and need not pay cash as long as all costs of the sale are paid. This is true only when the plaintiff is the first writ holder and his credit bid does not exceed the amount of his writ of execution.
2. An execution sale does not have to be approved by the court, but a sale may be set aside if there is a gross inadequacy in price bid which would shock the conscience or raise the presumption of fraud, unfairness, or mistake. If the property being sold is personal property, the sale can be conducted on any day of the week, Monday through Friday, after the sale has been advertised for fifteen (15) days (e.g., once a week for two weeks) before such sale. The sale of personal property may be at any convenient place in the county and should be designated in the advertisement.
3. If the property being sold is real estate, the sale can only be conducted on the first Monday of each month. If the first Monday is a legal holiday, the sale will be on the Tuesday after the holiday. The sale of real estate must be advertised for twenty-one (21) days (e.g., once a week for at least three weeks) prior to such sale. The place of sale of real property must be at the courthouse of the county.
4. The advertisement should specify the property to be sold, the time and place of sale, the owner of the property, the party at whose suit the sale is to be made, and the terms of the sale. The advertisement should be posted at three public places in the county, one of which will be at the courthouse door. Publication of the advertisement must be made in a newspaper before the day of sale, and the hours of sale will be between 11 a.m. and 5 p.m.
5. In all sales of real estate made by authority of a writ of execution, the bidding is not closed on the day of sale, but

remains open for thirty (30) days after the day of the sale. Within the thirty-day period, any person other than the highest bidder at the sale may enter a higher bid, called an upset bid. In all cases where subsequent upset bids are made, the five percent bid deposits of the lower bidders must be returned to them within two days with a notice that their bids have been raised. To comply with the terms of sale, the upset bidder must make a deposit of five percent of the bid to the Sheriff as a guarantee of his good faith.

6. At 11 a.m. on the thirtieth (30th) day after the sale, exclusive of the day of sale, the bidding is reopened by the deputy sheriff who conducted the original sale, and the bidding is allowed to continue until the sale is concluded in the usual custom of auction to the successful highest bidder complying with the terms of sale.
7. Upon the completion of a judicial sale, the deputy sheriff making the sale must execute a conveyance to the purchaser giving to him/her the rights and interests to the property sold. When making a conveyance of any real estate sold by writ of execution, the conveyance should contain the name of the person owning the property executed on, the name of the judgment creditor, the date of execution and the date of sale.
8. Neither the Sheriff nor any of his deputies are allowed, directly or indirectly, to participate in any way in the purchase of any property being sold at any sale being conducted by the Sheriff's Office.
9. When the Sheriff enforces the collection of a judgment by levy of execution, he is required to collect not only the face of the judgment and costs incurred, but also interest on the amount of the judgment. The interest rate may be subscribed on the face of the document and accrues from the date of the judgment until paid. In the absence of a written agreement between the parties fixing a different rate of interest, the statutory rate is prescribed by §34-31-20 of the Code of Laws of South Carolina, 1976, as amended.

I. Notice to produce, dated October 26, 2011 and County Response

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

ROOSEVELT SIMMONS)
Plaintiff)
)
Vs.)
MASE and COMPANY, LLC,)
J. AL CANNON, JR., SHERIFF OF)
CHARLESTON COUNTY)
and)
CHARLESTON COUNTY)
Defendants)

Civil Action No: 2:11-cv-00709-RMG

Notice of Document Production

Please take notice that pursuant to FRCP 34, defendants Sheriff of Charleston County and/or Charleston County shall produce the following whether in written, electronic or any other tangible form:

1. Charleston County Charter and all amendments;
2. Charleston County Sheriff's Department Employee or Personnel Manual applicable to the period 2005-2010 indicating the procedures for promotion and termination of employees;
3. all documents indicating training received by Master Deputy Long to conduct the levy, execution and sale of property to satisfy judgments received by Sheriff's Department;
4. all documents pertaining to the decisions by officials of Sheriff's Department denying Master Deputy Long promotion to sergeant, Charleston County Sheriff's Department;
5. all documents pertaining to decisions by officials of Sheriff's Department to retain Master Deputy Long as an employee of the Charleston County Sheriff's Department;
6. all documents indicating the procedures used by the Business License/User Fee department in the enforcement and collection of any tax, fee or other charge imposed by the county, for the period 2000 to present;

Respectfully.

Edward A. Bertele
1812 Pierce Street
Charleston, SC 29492
Attorney for plaintiff

October 26, 2011

R368

edward bertele

From: "Chris Dorsel" <chris@sennlegal.com>
To: "edward bertele" <ebertele@msn.com>; "Wendy Keefer" <wendykeefer@yahoo.com>
Sent: Friday, February 10, 2012 4:59 PM
Subject: RE: Simmons v Mase and Co.

Ed - in response to below. We have sent documents responsive to #2 in the Oct. 26 Notice to Produce. Below are response to the remaining document requests:

1. We are still working on the Charleston County Charter issue.
2. Documents sent.
3. We have one document responsive to this request that we will send to you.
4. No such documents exist.
5. No such documents exist.

We have been trying to locate the documents regarding the annual statements for the User Fee and Storm Water Fee, but I do not have those right now. I don't believe those documents will affect your ability to move forward with the Sheriff depositions next week.

Thanks,
 Chris

*Christopher T. Dorsel
 Senn Legal, LLC
 3 Wesley Drive
 Charleston, SC 29407
 (843)556-4045
 chris@sennlegal.com*

From: edward bertele [mailto:ebertele@msn.com]
Sent: Monday, January 23, 2012 12:59 PM
To: Chris Dorsel; Wendy Keefer
Subject: Simmons v Mase and Co.

Dear counsel: the holidays have come and gone and we are not any further along in discovery. Please be advised that I will now ask for strict adherence to a plan to complete discovery in the next 30 days. I note the following:

- 1) the county defendants have not yet scheduled depositions of the Sheriff's dept. officers that I noticed last October. Please advise of a schedule by Wednesday. As of now, my schedule is open for the depositions except for Feb 3.
- 2) the county defendants have not complied with prior document demands (copies attached) as follows:

- a) items No. 2 & 3 in the September 13, 2011 Notice to produce
- b) items No. 1-5 on the October 26, 2011 notice to produce

3. Mase and Company has not complied with Sept 13 Supplemental notice to Produce. copy attached.

4. Mase and Company has not scheduled the deposition of its principal, Charles Masencup noticed for last August .

I would appreciate your prompt attention to this request to comply. Judge Gergel may render a decision as to the pending motion to dismiss at any time and I will not allow much more time to pass before I will have to ask the court for relief. Cordially.

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8/1/2012

J. Deposition of Sgt. John Wilson

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1 IN THE UNITED STATES DISTRICT COURT
 2 DISTRICT OF SOUTH CAROLINA
 3 CHARLESTON DIVISION
 4 Civil Action No. 2:11-cv-00709-RMG
 5 ROOSEVELT SIMMONS,
 6 Plaintiff,
 7 vs.
 8 MASE AND COMPANY, LLC,
 9 J. AL CANNON, JR., SHERIFF OF
 10 CHARLESTON COUNTY, AND CHARLESTON
 11 COUNTY,
 12 Defendants.

**DEPOSITION OF
 SGT. JOHN WILSON**

13
 14
 15
 16 DATE: February 14, 2011
 17 TIME: 11:21 a.m. - 12:43 p.m.
 18 LOCATION: Senn, McDonald & Leinbach, LLC
 19 3 Wesley Drive
 20 Charleston, South Carolina
 21 REPORTED BY: Toby L. Davis
 22 *****
 23 LAW SERVICES OF S.C.
 24 Post Office Box 1498
 25 Goose Creek, SC 29445
 Tel.: (843) 607-3779
 LAW.Services.SC@gmail.com

Page 2

1 This transcript may not be reproduced,
 2 emailed to another party or transcribed in any form
 3 or by any means, electronic, mechanical,
 4 photocopying, recording or otherwise, without the
 5 prior written permission of the Court Reporter.
 6
 7 A-P-P-E-A-R-A-N-C-E-S
 8 For the Plaintiff:
 9 By: Edward A. Bertele, Esquire
 10 Attorney at Law
 11 1812 Pierce Street
 12 Charleston, SC 29492
 (843) 471-2082
 ebertele@msn.com
 13 For the Defendants:
 14 By: Christopher T. Dorsel, Esquire
 15 SENN, McDONALD & LEINBACH, LLC
 16 3 Wesley Drive
 Charleston, SC 29407
 (843) 556-4045
 17 Also Present: Roosevelt Simmons
 18
 19
 20
 21
 22
 23
 24
 25

LAW SERVICES OF S.C. (843) 607-3779

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1 It is stipulated by and between the
 2 parties that this deposition is taken pursuant to
 3 notice and that all questions as to notice are
 4 waived; that all objections, save as to the form of
 5 the question, are reserved until the time of trial;
 6 that this deposition is taken pursuant to the Federal
 7 Rules of Civil Procedure for the purposes allowed
 8 therein; and that the deponent was explained his
 9 right to read and sign the transcript of the
 10 deposition and waived that right.
 11 **BY MR. BERTELE:**
 12 Q Good morning, Sergeant.
 13 A **Good morning.**
 14 Q My name is Edward Bertele. I'm the
 15 attorney for Mr. Simmons in a case involving the
 16 County of Charleston, the Sheriff's Department and
 17 Deputy Harry Long.
 18 Before we begin, let me tell you that
 19 if you have any doubt about what I'm asking you,
 20 please tell me that you don't understand the
 21 question or you can't answer it the way I've asked
 22 it. And if, at any time today while we're in this
 23 deposition, if you think of something that you
 24 want to add or change about what you've told me
 25 earlier, please interrupt and stop and let me know

LAW SERVICES OF S.C. (843) 607-3779

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1 A **Everything I said before I affirm** Page 17
 2 to be true.
 3 Q Okay. Thank you very much.
 4 A **To the best of my knowledge.**
 5 Q We always have to go with the
 6 formalities.
 7 A **Uh-huh.**
 8 Q Okay. Do you know a Sergeant G.W.
 9 Karges? Do you recognize him as an employee of
 10 Charleston County?
 11 A **I know him, but he's no longer employed**
 12 **with Charleston County.**
 13 Q Okay. Did you know him while he was?
 14 A **I did.**
 15 Q Do you consider him to be a reliable
 16 person?
 17 A **I don't know him well enough to answer**
 18 **that.**
 19 Q How about Major Earnest Sweat, Junior?
 20 A **I know him, also.**
 21 Q Is he no longer with the Department?
 22 A **He's retired, but he is in the -- he**
 23 **works in Logistics now as a civilian.**
 24 Q He's employed as a civilian by the
 25 Department, or he's employed as an outside contractor

1 by the Department? Page 18
 2 A **A civilian.**
 3 Q Okay. Do you know him to be a reliable
 4 person?
 5 A **To my knowledge.**
 6 Q Do you know Lieutenant B.L. Hoskins?
 7 A **I do.**
 8 Q Do you know him to be a reliable person?
 9 A **I don't know him that well, but, to my**
 10 **knowledge, yes. He's no longer employed there.**
 11 Q Do you know Lieutenant T. Hughey?
 12 A **I do.**
 13 Q Do you consider him to be a -- I assume
 14 it's a man -- him, to be a reliable person?
 15 A **To my knowledge.**
 16 Q How about Captain Kaphart; do you know
 17 him?
 18 A **Her.**
 19 Q Her. What's her first name?
 20 A **Joyce.**
 21 Q Joyce. Thank you. Do you know her to be
 22 a reliable person?
 23 A **To my knowledge.**
 24 Q How about Major G. Van Horne; do you know
 25 him or her --

1 A **Him.** Page 19
 2 Q -- to be a reliable person?
 3 A **To my knowledge, I do.**
 4 Q Do you have any -- withdraw the question.
 5 In October 2004 -- withdrawn.
 6 You told me that in October of 2001,
 7 you were appointed to be a sergeant in charge of
 8 the Judgments section. And then -- correct?
 9 A **That's correct.**
 10 Q Okay. And then sometime in 2005, you
 11 were placed or transferred to the section in charge
 12 of the Judicial Center?
 13 A **That's correct.**
 14 Q Okay. Was it there that you came in
 15 contact with Deputy Long as an employee over whom you
 16 had supervisory control?
 17 A **I believe it was during that time.**
 18 Q Okay. It wasn't while you were in charge
 19 of Civil Judgments?
 20 A **No, Sir.**
 21 Q You're sure about that?
 22 A **I'm sure about that. Okay. I just want**
 23 **to understand the time frame.**
 24 Now Mr. Dorsel has provided me with
 25 some documents concerning Deputy Harry Long and an

1 Employee Performance Appraisal Rating Sheet Page 20
 2 which I believe you authored back in 2005.
 3 MR. BERTELE: Could we please mark this
 4 as Plaintiff's Exhibit 41? And then I'll show it to
 5 you and we can move ahead.
 6 (Employee Performance Appraisal Rating Sheet
 7 (5 pages), Plaintiff's Exhibit No. 41 is marked for
 8 identification.)
 9 BY MR. BERTELE:
 10 Q Okay. Sergeant, this is an exhibit that
 11 I'd like you to take a look at. And, first, if you'd
 12 refer to the -- I think it's the fourth or fifth page
 13 there of the Evaluation Form that has your signature.
 14 Is that your signature on it?
 15 A **It looks like it.**
 16 Q Okay. Do you remember preparing this
 17 Evaluation for Deputy Long?
 18 A **I'm sure I did, if I signed it.**
 19 Q Okay. And the following page is a
 20 Development Plan form.
 21 A **That's right.**
 22 Q You see that?
 23 A **I see it.**
 24 Q Okay. That's your signature on there, as
 25 well; correct?

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1 A Yes, Sir.

2 Q Okay. Now we've already had testimony

3 here today that these Employee Evaluation Forms were

4 normally prepared by a supervisor, based upon monthly

5 chronological reports that were prepared of the

6 particular employee being evaluated.

7 A That's correct.

8 Q Okay. Is that what was the basis of your

9 preparation of this Employee Evaluation of Deputy

10 Long?

11 A Yes.

12 Q Okay. So you had in front of you,

13 monthly reports of his performance for the period

14 covered by this evaluation?

15 A From October 1st, 2004 through September

16 30th, 2005; yes.

17 Q Okay. And those chronological reports

18 were made or written by you?

19 A Some of them. Some of them weren't. I

20 only -- I would have only prepared the ones that --

21 while he was under my supervision.

22 Q Okay. That --

23 A There was probably others that were

24 prepared before I was his supervisor.

25 Q Okay. That's kind of what I was getting

Page 22

1 at. Do you recall the point in time that you

2 came on board as his supervisor during this

3 evaluation --

4 A Not exactly.

5 Q During this evaluation period?

6 A No; I don't.

7 Q Okay. But it was sometime during the

8 evaluation period of October '04 to --

9 A Between those dates; yes, Sir.

10 Q Okay. Do you remember considering that

11 you hadn't been his supervisor long enough to really

12 evaluate him?

13 A No; I don't recall that.

14 Q Okay. In a case like this where your

15 tenure, where your responsibilities over him did not

16 include the full period of evaluation, was it ever

17 the case that the two supervisors would combine

18 together to prepare a joint report, or how did you

19 handle that?

20 A I did not. I based it entirely on the

21 prior chronological entries.

22 Q Okay. But I guess what I'm asking is,

23 was that the procedure, that it was the officer who

24 was in charge when the evaluation was being --

25 A I'm --

Page 23

1 Q Let me --

2 A I'm not --

3 Q Let me --

4 A I'm not -- okay.

5 Q Let me finish the question. Okay? I

6 know you want to answer. Was that the practice, that

7 it was the officer in charge at the time that the

8 evaluation that was being prepared that would do the

9 report, whether or not he was there for the whole

10 period of time?

11 A I believe the policy states that the

12 prior supervisor, if he was my employee for less than

13 -- and I'm not sure exactly -- six months, possibly?

14 Q Right.

15 A That I could -- with input from the prior

16 supervisor, you know, I -- I derived that input

17 through the chronological entries. I did not speak

18 to the supervisor face-to-face.

19 Q Okay. So you're not sure of what the

20 policy was. But in this case of this evaluation, you

21 relied upon the previous supervisor's chronological

22 reports in preparing your own evaluation?

23 A Correct.

24 Q Okay. Who was the previous supervisor;

25 do you remember?

Page 24

1 A I don't know, but looking at this

2 document, it looks like possibly Sergeant Dulin.

3 Q Okay. Could it have been Sergeant

4 Scarborough?

5 A I don't know.

6 Q Now there has been previous testimony

7 that when -- withdrawn.

8 There has been previous testimony that

9 after the annual employee evaluation is prepared,

10 that the monthly chronological reports on which

11 that evaluation is made are thrown away or

12 discarded. Is that your understanding?

13 A I don't know. I don't know what the

14 practice is. I attach copies of the chronologicals

15 that the evaluation is based on --

16 Q Right.

17 A And submit those along with the

18 evaluation. Now, what they do with those afterwards,

19 I have no idea.

20 Q Okay. So I guess I was asking a little

21 bit of a different question. Once the evaluation is

22 prepared by you and sent up to your supervisor

23 together with the monthly chronological reports,

24 that's the last you see of those chronological

25 reports; is that correct?

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1 Q Oh. Okay. I see. Now is the
2 rating system on this entire evaluation based on
3 anything -- any written criteria of job performance
4 for the various departments and sections in the
5 Sheriff's Department?

6 A Yes.

7 Q Okay. Which of these, or how many of
8 these sections are based upon specific criteria for
9 the Sheriff's Department?

10 A All of them.

11 Q Okay. So if I asked you to tell me where
12 was the criteria that Deputy Long got a 3.0 on the
13 Interpersonal Relationships, what would you point me
14 to?

15 A Well, it's divided into categories. W,
16 which it explains above here, is "works well with
17 others." C is ability to communicate. PR is public
18 relations, professional conduct. D is
19 disposition/outlook. So it's based on that.

20 Q Okay. But you gave him a 3.0 on his
21 ability to communicate. But that's something that
22 you thought was appropriate; right? There's no --
23 there's nothing in writing which says what a 3.0
24 equals; is there?

25 A No; not really.

1 Q Okay. And the same with public
2 relations/professional conduct; you gave him a 3.0 on
3 that. And there's nothing in writing that says --

4 A No.

5 Q -- how you get the 3.0; right?

6 A No.

7 Q And the same with disposition and
8 outlook. You gave him a 3.0 on that?

9 A Correct.

10 Q Okay. So isn't all of this form
11 subjective?

12 A I believe I said that earlier.

13 Q Okay. Now under professional
14 responsibilities for which Deputy Long received a 2.5
15 rating, you pointed out to me earlier that this
16 evaluation contains a reference to Deputy Long being
17 counseled by Sergeant Dulin for failure to comply
18 with a verbal order. You see that down there?

19 A Yes.

20 Q Okay. Did you know the circumstances of
21 that failure to comply?

22 A No; I don't.

23 Q Did you talk to Sergeant Dulin about the
24 incident?

25 A No; I didn't.

1 Q Did you do any investigation to
2 find out what was the nature of the disobedience or
3 insubordination, whatever it was?

4 A No. It was just based on the
5 chronological entry prepared by Sergeant Dulin for
6 that incident.

7 Q Okay. And did Sergeant Dulin recommend
8 any level of performance or evaluation for Deputy
9 Long, based upon this incident?

10 A No.

11 Q And so this was your subjective
12 interpretation of what that incident justified in
13 terms of Deputy Long's evaluation?

14 A Yes.

15 Q Were you aware of any prior incidents of
16 lack of compliance with orders or insubordination by
17 Deputy Long when you gave him this 2.5 rating for
18 professional responsibility, in October of '05?

19 A No.

20 Q Would that have entered into your
21 evaluation of his -- would that have entered into
22 your evaluation of him, as an employee of the
23 Sheriff's Department?

24 A Only if it occurred during that
25 performance appraisal period.

1 Q So you feel that what happened in
2 the past has no bearing upon your evaluation of him
3 as a then-current employee of the Department?

4 A We base it on that performance year.

5 Q Did you hear my question?

6 A I heard your question.

7 Q Okay.

8 A I thought I answered your question.

9 Q Okay. So if this incident were one of
10 many, you don't believe that it would have justified
11 a lower rating of professional responsibility?

12 A It's based on other factors in addition
13 to that one category. If it were just based on that,
14 I would have scored him lower. Professional
15 responsibility encompasses other aspects, also.

16 Q Well, that's not what I was asking,
17 Sergeant. I understand what you said. And correct
18 me if I'm wrong, but you said that the rating on
19 professional responsibility encompasses many
20 elements, not just his failure to comply with a
21 verbal order; right?

22 A Correct.

23 Q That's what you said. My question to you
24 was whether his failure to obey orders in the past
25 would have resulted -- if you knew about it, would

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1 A **No.**

2 Q And that would be true throughout this

3 form?

4 A **Yes.**

5 Q Let me ask a question about this civil

6 process warrants service. This category here, Civil

7 Process and Warrant, that applies to the service of a

8 Summons and Complaint?

9 A **Any type of civil process.**

10 Q Would it apply to executions on

11 judgments?

12 A **No.**

13 Q That's something else; correct?

14 A **That would be separate.**

15 Q Okay. So whatever is said here only

16 deals -- doesn't deal with judgments?

17 A **No.**

18 Q Okay. And warrants; we know what that

19 is. All right.

20 Does the Sheriff's Department have any

21 kind of informal mentoring system where superior

22 officers try to help junior employees along in

23 their careers? You know; something informal that

24 helps keep people on track?

25 A **Not that I'm aware.**

1 Q You've never heard of anything like

2 that going on in the Department?

3 A **Not particularly.**

4 Q Okay.

5 Did anybody speak to you about Deputy

6 Long at the time that you were preparing his

7 employee evaluation back in October of 2005?

8 MR. DORSEL: Object to the form.

9 A **I don't recall.**

10 THE DEPONENT: Sorry.

11 BY MR. BERTELE:

12 Q Okay. Counsel made an objection which, I

13 guess, is his way of saying he doesn't understand the

14 question, so. My question was, in connection with

15 your preparing an employee evaluation, did you talk

16 to any other employee of the Sheriff's Department or

17 did any other employee speak to you, concerning

18 Deputy Long's performance?

19 A **No.**

20 Q Not that you remember, or you know that

21 for a fact?

22 A **I don't normally speak with other people**

23 **about their -- unless there's a reason to, so.**

24 Q Okay. And --

25 A **So I guess my answer would be I don't**

1 **remember, but.**

2 Q Okay. Well, why is it that your

3 signature was dated after the date of the signature

4 of the people that reviewed your work? You didn't

5 sign it until after they did?

6 A **Correct.**

7 Q Why is that?

8 A **Because like I said before, it goes**

9 **through my chain of command and comes back to me**

10 **after it's approved, and I sign it.**

11 Q Okay. So do you remember what changes,

12 if any, were made to the evaluation that you

13 performed of --

14 A **I don't recall anything.**

15 Q Let me finish the question, please.

16 Okay? I understand you want to answer, but let me

17 finish the question.

18 Do you remember what, if any, changes

19 were made to the employee evaluation which you

20 made of Deputy Long back in October '05?

21 A **No.**

22 Q So you don't know whether this Employee

23 Evaluation Form is completely or partially your work

24 product; correct?

25 A **Don't recall.**

1 Q Well, you don't know whether you

2 wrote this all, or somebody told you to change it;

3 true?

4 A **True.**

5 Q Okay. Just give me a couple minutes,

6 Sergeant, just to review my notes, and I think we'll

7 be finished.

8 A **Okay.**

9 (At this point there is a break in the

10 deposition.)

11 BY MR. BERTELE:

12 Q Okay. Sergeant, perhaps you can help me

13 out with a name. Do you recall a Sergeant Nelson

14 Gerrenk [ph]?

15 A **Gerena.**

16 Q Okay. Could you spell it for me, please?

17 I can't make out the handwriting, that's why.

18 A **G-E-R-E-N-A.**

19 Q Is their first name Nelson?

20 A **Nelson.**

21 Q Okay. And you recognize him as a

22 sergeant in the Sheriff's Department back in '05?

23 A **Yes, Sir.**

24 Q And what relationship, if any, did he

25 have to the Judicial Center where you were stationed

02375

1 sometime in '05? Page 45
 2 A **He was a sergeant over General Sessions**
 3 **court. I was a sergeant over Family courts. And he**
 4 **was out with knee surgery during most of my tenure at**
 5 **that position, leaving me with both sides.**
 6 Q Okay. Well, at some point he was on
 7 duty, and then he went off with knee surgery; right?
 8 A **Correct.**
 9 Q Okay. Was he on duty when you were
 10 transferred over to the Judicial Center?
 11 A **When I began there; yes.**
 12 Q He was?
 13 A **Yes.**
 14 Q Okay. And then when he went off on -- I
 15 guess it was some kind of disability or medical
 16 leave?
 17 A **Yes.**
 18 Q And then you got both, Family court
 19 and --
 20 A **General Sessions.**
 21 Q General Sessions. Okay. Fine. Is
 22 Sergeant Gerena still with the Department?
 23 A **Yes.**
 24 Q And where does he serve right now; do you
 25 know?

1 A **Special Operations, Therapeutic** Page 46
 2 **Transport.**
 3 Q Okay. I don't remember if I asked you
 4 whether you have overseen Deputy Tice. I think --
 5 Deputy Muirhead; excuse me. I think you said you --
 6 A **No.**
 7 Q You didn't not?
 8 A **No.**
 9 Q You have never overseen him?
 10 A **No.**
 11 Q And how about Deputy Tice; have you
 12 overseen him?
 13 A **Yes.**
 14 Q In what capacity was that?
 15 A **Judgments.**
 16 Q Okay. So this is back in -- between '01
 17 and '05?
 18 A **Sometime during that --**
 19 Q When you were in charge of Judgments?
 20 A **Correct.**
 21 Q Okay. And so you would have been
 22 required to evaluate Deputy Tice's performance?
 23 A **Yes.**
 24 Q Okay.
 25 A **Possibly.**

1 Q He might have been in a different Page 47
 2 section?
 3 A **Well, it would depend on the dates. In**
 4 **other words, if he came in --**
 5 Q Okay.
 6 A **Say I supervised him for several months**
 7 **and then I left --**
 8 Q Right.
 9 A **-- to go to Warrants --**
 10 Q Got it. Okay.
 11 A **I may not have done his evaluation.**
 12 Q Okay. Understood. But other than while
 13 you served in the Judgments department, you never
 14 oversaw Deputy Tice?
 15 A **I don't think so.**
 16 Q Were you aware that Deputy Long was on
 17 probation for a portion of the time that you
 18 evaluated him in that evaluation, Exhibit No. 41?
 19 A **I don't recall whether I knew or not at**
 20 **the time.**
 21 Q And so you can't tell me whether that
 22 would have had any part of your evaluation of him on
 23 -- back in October of '05?
 24 A **Not if I don't recall; no.**
 25 Q Okay. Well, if you knew that he had been

1 on probation as a result of a disciplinary Page 48
 2 suspension during this period of time, would that
 3 have entered into your evaluation of him for the
 4 entire year?
 5 A **If it were during that evaluation period,**
 6 **then yes.**
 7 Q If the suspension occurred during the
 8 evaluation period?
 9 A **Yes.**
 10 Q Okay. Well, does that mean that you
 11 would have looked at his behavior a little more
 12 closely and considered any deviations from the norm a
 13 little more severely than you otherwise would have
 14 done without that suspension?
 15 A **Not necessarily.**
 16 Q Well, might it have been the result?
 17 A **Might.**
 18 Q Okay. Are you telling me, though, that
 19 if he had been on suspension before you came into
 20 that section, for a disciplinary violation, that that
 21 suspension would not have played any part in your
 22 evaluation of him for the entire year?
 23 A **During that time frame?**
 24 Q Yes, Sir.
 25 A **Then it probably would, in that case.**

R376

SIMMONS V MASE & COMPANY 2011CP10-1084

SUPPLEMENTAL APPENDIX TO PLAINTIFF'S OPPOSITION TO
COUNTY DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

EXHIBIT L. County Defendants Document Production

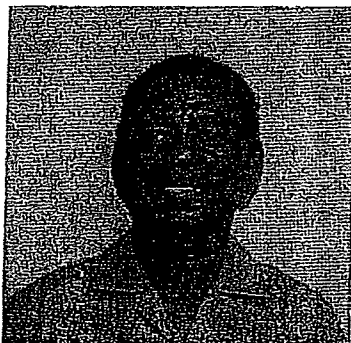
Bates No. 40, 64-65,203, 1291-1300 and Dep. Exhibit 21-1,2 &3

CCBLUE vs. Roosevelt L. Simmons et al.			
CASE NO. 00-16-10-1817, 02-16-10-21		CASE NO: 09-2772, 2773, 2774, 2775, 2776, 2777	
DATE	TIME	INT	
2-12-10		OG	MAILED DEF LTR TO Kitford Rd. addy.
3-12	150	HR	Conducted Research in this case for Personal & real prop.
			PID: 282-00-00-138, QR & QA, Homestead exemption applies to QR. pulled GIS, prop. record, Deed, Plat.
			We has 2 Vehicles 92 Ford - Too Old & 79 Toyota - Too Old.
			1955 - DeSoto 503, No Homestead, & TAG 190 RPR
4-1	1605	HR	Sent 2 nd Chance Letter
4-3	1410	HR	A Roosevelt Simmons called & stated that he is NOT going to pay, he said its his prop. He said county has not done anything for him. He made threats against me if I come out to post property. He stated he will not pay, I better bring the whole sheriff dept. and if he has to fight "so be it". He is going to be very difficult to collect judgments from. I tried to suggest a meeting w/ service so we can pay a smaller amount but he would not quite talking long enough for him to fully understand program.
5-11	1125	HR	Sent Lt. Letter
5-15	1430	HR	Notified Dispatch to put a "Flag" on his Address to warn Deputies of his Attitude AND Disposition About S/O, so they won't get hurt.
6-18	1140	HR	Sent Lt. Letter one more time
7-23	930	HR	Sent to Lt. to review to proceed.
7-23-09	10:55	HR	Reviewed file, suggested Delinquent Tax Sale Check on the (a) non-payment of Taxes to the Bus. Lic. office. If collection cannot be made



10 YEAR DRIVER RECORD

Same
guy
AS Judgment



Customer No: 25536715 Driver License No: [REDACTED]
Name: SIMMONS, ROOSEVELT L
Address: 3416 KITFORD RD
City: JOHNS ISLAND State: SC Zip: 294558943
County: CHARLESTON Sex: M Driver Training: N
DOB: 07/08/1940
Status - DL: NO SUSPENSION CDL: NO DISQUALIFICATION

License Information

Type	Class	Function	Issued	Expires	First Issued	Restrictions	Endorsements
Current							
DL	D	Renewal	07/02/2007	07/08/2012	07/09/1993	N	N
Prior							
DL	D	Renewal	10/21/2002	07/08/2007	07/09/1993	N	N
DL	D	Renewal	07/07/1997	07/08/2002	07/09/1993	N	N

Address Change -

Address: 3416 KITFORD RD
City: JOHNS ISLAND

State: SC

Zip: 294558943

Date Changed: 11/01/2002

Point Summary

Total Current Points: 0
Driver Credit: -0
Adjusted Current Points: 0

ACC: REPORTABLE

Accident: 08/08/2005

Accident Case Number: 5099644

Accident Jurisdiction: SC Acc Loc Ref: SCHDPT

Posted: 09/07/2005

FR-10 Audit Number: Q-052609

10 YEAR DRIVER RECORD

Customer No: 25536715

Driver License No: 3113178

Name: SIMMONS, ROOSEVELT L

VIOL: 441 - Speeding more than 10 mph but LT 25 mph

Ticket#: 48790DC

Violation: 09/04/2004 **Conviction:** 10/08/2004

Actual Speed: 59

Posted Speed: 45

ACD: S92 **Conviction Loc Ref:**

Recd: 10/27/2004

Post: 11/02/2004

Conviction State: SC

Conviction Reference:

Court Type: MAG

Violation Points: 4 **Current Points:** 0

VIOL: 475 - Careless or negligent driving

Ticket#: 43372BG

Violation: 08/06/1999 **Conviction:** 10/14/1999

Recd: 12/31/1999

Post: 12/31/1999

ACD: M81 **Conviction Loc Ref:** RL=04176 FR=02325

Conviction Reference:

Conviction State: SC

Court Type: MAG

End of Report

INCIDENT REPORT

SC0100000		DISPATCH NUMBER 09-014453B		ORIGINAL CASE NUMBER		PAGE 1 OF PAGES		NICC ENTRY		INO. ENT.																																																																						
EVENT	1. PHONE - THREATS			INCIDENT CODE	COMPLETED ☒ YES ☐ NO	FORCED ENTRY ☐ YES ☒ NO	PREMISE TYPE COURTHOUSE		TYPE VICTIM ☒ INDIVIDUAL ☐ BUSINESS ☐ FINANCIAL INST. ☐ GOVERNMENT ☐ RELIG. ORG. ☐ SOC. PUB. ☐ OTHER ☐ UNKNOWN ☐ POLICE OFF.																																																																							
	2. N/A				☐ YES ☐ NO	☐ YES ☐ NO																																																																										
	3. N/A				☐ YES ☐ NO	☐ YES ☐ NO																																																																										
	INCIDENT LOCATION: 100 BROAD ST CHARLESTON SC					ZIP CODE 29401	WEAPON TYPE N/A																																																																									
BEGINNING INCIDENT DATE 4-3-09		24 HR. CLOCK 1410	ENDING INCIDENT DATE 4-3-09	24 HR. CLOCK 1425	DISP. DATE 7-23-09	DISP. TIME 1145	TIME ARRIVED 1146	DEPART TIME 1200	TRACT # 001E																																																																							
COMPLAINANT	NAME: (LAST, FIRST, MIDDLE) SAME AS VICTIM				RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	DOB	ETH																																																																				
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.			DRIVERS LIC / ID & STATE		SOCIAL SECURITY #																																																																						
	ADDRESS #		STREET NAME		CITY	STATE	ZIP CODE	DAY PHONE		EVENING PHONE																																																																						
	OCCUPATION		EMPLOYER		ALIAS		NIC #																																																																									
VICTIM #1	NAME: (LAST, FIRST, MIDDLE) DEPUTY HARRY LONG				RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	DOB	ETH																																																																				
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.			DRIVERS LIC / ID & STATE		SOCIAL SECURITY #																																																																						
	ADDRESS #		STREET NAME		CITY	STATE	ZIP CODE	DAY PHONE		EVENING PHONE																																																																						
	OCCUPATION		EMPLOYER		ALIAS		NIC #																																																																									
SUBJ. I.D.	NAME: (LAST, FIRST, MIDDLE) SIMMONS ROOSEVELT				RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	DOB	ETH																																																																				
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.			DRIVERS LIC / ID & STATE		SOCIAL SECURITY #																																																																						
	ADDRESS #		STREET NAME		CITY	STATE	ZIP CODE	DAY PHONE		EVENING PHONE																																																																						
	OCCUPATION		EMPLOYER		ALIAS		NIC #																																																																									
ARREST	(A) CHARGE N/A				(C) CHARGE																																																																											
	(B) CHARGE				(D) CHARGE																																																																											
	ON 4-3-09, THIS VICTIM (LONG, H) WAS SPEAKING WITH THE SUSPECT IN REFERENCE TO HIS OUTSTANDING JUDGMENTS. THE SUSPECT GOT ANGRY AND STARTED YELLING AT THIS DEPUTY. HE STATED THAT HE WAS NOT GOING TO PAY ON THESE JUDGMENTS AND THE COUNTY HAS DONE NOTHING FOR HIM. HE ALSO STATED IF I COME TO LEVY ON HIS PROPERTY, " I BETTER BRING THE WHOLE SHERIFF'S OFFICE" BECAUSE HE IS " GOING DOWN WITH A FIGHT". I TOOK THIS AS A THREAT. I CALLED DISPATCH AND HAD THEM FLAG THE SUSPECTS ADDRESS BECAUSE I DID NOT WANT A DEPUTY TO GET HURT RESPONDING TO CALL OR CONDUCTING BUSINESS OUT THERE. DURING A CASE REVIEW LT. MCCRAY SUGGESTED THAT AN INCIDENT REPORT BE ON FILE FOR DOCUMENTATION. AT THIS TIME, NO FURTHER INCIDENTS HAVE OCCURRED.																																																																															
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td>TYPE (GROUP)</td> <td>N/A</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>TOTAL VALUE</td> <td>JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY</td> </tr> <tr> <td>STOLEN</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td rowspan="4">N/A</td> </tr> <tr> <td>DAMAGED</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>BURNED</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>RECOVERED</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>SEIZED</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY</td> </tr> </table>												TYPE (GROUP)	N/A									TOTAL VALUE	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY	STOLEN											N/A	DAMAGED											BURNED											RECOVERED											SEIZED										
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	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☒ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE NO CUSTODY																																																																															
	REPORTING OFFICER(S) 0755-0203				DATE		BADGE NUMBER		APPROVING OFFICER		DATE																																																																					
									FOLLOW-UP INVESTIGATION ☐ YES ☐ NO		OFFICER																																																																					

2381

3-08 DISCIPLINARY PROCEDURES	
☐ NEW	☒ REVISED ☐ REVIEWED
CALEA STANDARDS REF. NUMBERS: 26.1.4, 26.1.5, 26.1.6, 26.1.7, 26.1.8, 22.2.6.	
APPROVED:	
 Sheriff J. Al Cannon, Jr., Esq.	____2/21/2012____ Date

I. Purpose

To establish guidelines for the administration of the agency's disciplinary process.

II. Policy

The maintenance of effective discipline is essential in order for the agency to effectively ~~control~~ its performance and satisfactorily achieve its objectives. Therefore, it is the policy of the Charleston County Sheriff's Office to hold individual employees accountable for their behavior in a manner that is fair, equitable and timely in nature.

III. Procedure

A. Responsibility:

1. Complying with agency directives is the responsibility of all agency employees.
2. It is the supervisor's duty to ensure that subordinate personnel conform to the agency's guidelines. This is best accomplished by supervisors setting a positive example for subordinates.
3. Supervisor's responsibilities include:
 - a. Rewarding positive behavior and exemplary conduct and performance;

- b. Investigating allegations of employee misconduct when within the scope of their authority and responsibility;
- c. Counseling employees to improve job performance or correct minor infractions and procedures;
- d. Identifying training needs as a function of the disciplinary process;
- e. Directly implementing punitive disciplinary actions, within the scope of their authority and responsibility; and
- f. Implementing severe disciplinary action approved by the chain-of-command. (Ref:CALEA 26.1.5)

B. Disciplinary Action/Progressive Discipline:

- 1. Under South Carolina law, sworn personnel serve at the pleasure of the Sheriff, and all Charleston County Sheriff's Office employees are employed at will. Nothing in this policy is intended to limit the Sheriff's authority to fire or to alter the at will status of employment.
- 2. It is not possible to list every specific act or omission, or combination of specific acts or omissions, which can result in disciplinary action. The agency's *Policy and Procedure Manual* serves as a guideline.
- 3. Some conduct is simply unacceptable and may result in immediate discharge even on a first infraction. However, in order to assure compliance with all directives, this agency will endeavor to follow the concept of progressive discipline when circumstances permit by administering gradually increasing disciplinary actions for each successive instance of employee misconduct. Progressive discipline means that employees will generally be given ample opportunity to correct deficiencies, depending on the severity of the violation. The emphasis is on rehabilitation in the case of minor infractions. When an offense or pattern of offenses has been committed which requires more severe action the concept of progressive discipline is vacated. Whether and

when to vacate progressive discipline is within the sole discretion of the Sheriff or designee.

4. Certain offenses are of such a serious nature that immediate termination upon first offense is appropriate. Additionally, the employee may be subject to termination for the accumulation of violations when the employee fails to participate in and/or respond to corrective action.
5. Although not all inclusive, the following should be taken into account when considering administration of discipline. The weight given to any particular factor will be within the discretion of the Sheriff or designee:
 - a. The seriousness of the incident;
 - b. The circumstances surrounding the incident;
 - c. The employee's past disciplinary record;
 - d. The employee's past work performance;
 - e. The impact of the incident on the agency or the community; and
 - f. The prognosis for future similar disciplinary problems.
(Ref: CALEA 26.1.4, item c)

C. Training:

1. Remedial training may be used for specific performance or procedural deficiencies identified in personnel. The need for remedial training may be recognized by management during evaluation of job performance, as a result of a complaint, during an inspection, or failure to meet minimum standards in a training session evaluation.
2. Training used as part of the agency's disciplinary system will be documented and permanently maintained in the employee's personnel file.
3. Training may be used as part of the agency's disciplinary

process by itself or along with other disciplinary procedures as determined by the supervisor and the Training Lieutenant. (Ref: CALEA 26.1.4, item a)

D. Counseling:

1. Counseling assists employees with the process of problem solving. It may be corrective or preventive in nature. It may focus on the need for a person to change his present behavior or work methods. It may also focus on the need for a person to behave differently in preparation for responsibilities and challenges that lie ahead.
2. The immediate supervisor may counsel an employee when the employee has an existing problem or is experiencing difficulty understanding or adjusting to matters which are job related or effect job performance. The supervisor will identify the policy, procedure or standards of conduct which the employee has violated or the duties which the employee has failed to discharge and will suggest corrective action.
3. A supervisor may encourage that an employee use available professional counseling services when a personal problem is suspected of interfering with job performance.
4. Participation in a counseling program may be required as part of, or in lieu of, more serious disciplinary action should the supervisor determine that the employee would benefit from such counseling. Failure of the employee to participate in recommended counseling could result in disciplinary measures being taken. (Ref: CALEA 22.2.6 item e)
5. Minor incidents noted by a supervisor may be handled verbally by that supervisor without documentation. All other counseling as a component of the agency's disciplinary process will be permanently documented in the employee's personnel file.
6. Counseling as a component of the agency's disciplinary process may be utilized by itself or along with other disciplinary procedures. (Ref: CALEA 26.1.4, item b)

7. When approved by the Sheriff or designee, participation in a counseling or rehabilitation program may be made a condition of continued employment.

E. Written Reprimand:

1. A written reprimand is a formal reprimand to the employee from a supervisor describing the way in which the employee's conduct or performance has failed to meet prescribed standards.
2. The written reprimand should be used in cases where a past verbal warning has been ineffective or where an offense has been committed which requires more severe action than a verbal warning or counseling.
3. The written reprimand will identify the violations charged against the employee or the failures in work performance of the employee and will specify corrective action. It will warn the employee that repeated offenses will lead to sterner measures, including possible discharge. The written reprimand will be documented in the employee's personnel file. Written reprimands more than twelve months old normally will not be considered for the purposes of applying progressive discipline.

F. Suspension:

1. A suspension is a serious disciplinary action in which the employee must forfeit pay for misconduct considered to be serious or part of a continuing pattern of behavior involving repeated misconduct.
2. When necessary, supervisors may issue the following suspensions:
 - a. Sergeants: one to three days
 - b. Lieutenants: one to five days
 - c. Captains: one to ten days

- d. Majors: one to twenty days
 - e. Chief Deputies: one to thirty days.
 - f. Sheriff, Assistant Sheriff or designee : one day through termination.
- 3. Any personnel placed on suspension must turn in agency identification, badge, weapon(s), keys, key cards and vehicle.
 - 4. Suspensions will be permanently documented in the employee's personnel file.
 - 5. Employees under suspension have no authority to represent the Sheriff's Office and may not wear uniforms for any purpose including working an off-duty assignment.

(Ref: CALEA 26.1.5)

G. Administrative Leave:

- 1. An employee may be reassigned to other duties or placed on administrative leave with pay for a prescribed period of time, which normally will not exceed thirty calendar days. This allows for immediate response to a suspected but not fully substantiated offense and a period which an investigation can be thoroughly pursued.
- 2. Personnel placed on administrative assignment will turn in agency identification, badge, weapon(s), keys, key cards, and vehicle at the discretion of the Sheriff or designee.
- 3. All administrative leave will be permanently documented in the employee's personnel file.
- 4. Administrative leave is with pay unless directed by the Sheriff or designee.

H. Disciplinary Probation:

In addition to the above actions, an employee may be placed on disciplinary probation for up to one year. The employee will be

informed as to the corrective actions which are expected within this time period. Appropriate paperwork will be sent to the agency's Human Resources Office for implementation of probationary status and placement in the employee's personnel file. Any further infraction during this period may result in termination.

I. Termination:

1. Pursuant to § 23-13-10 of the South Carolina Code of Laws, 1976, as amended, and the *Charleston County Personnel Policies and Procedures*, the Sheriff, Assistant Sheriff or designee have the authority to terminate any sworn or civilian employee at any given time. All Charleston County Sheriff's Office employees are employed under the practice known as "at will", and can be terminated without notice or reason. The termination action will be documented in the employee's personnel file.
2. Obviously, it is not possible to list all of the acts or omissions which may result in termination from employment. However, some of the more obvious examples are listed below:
 - a. Consistent performance failures or a single performance failure that results in serious consequences to the agency's public credibility or ability to function in an effective and efficient manner;
 - b. Refusal to submit to an ordered alcohol or drug examination; tampering or attempting to tamper with the test results, testing positive, or otherwise violating the substance abuse policy;
 - c. Refusal to submit to a polygraph after being ordered to do so;
 - d. Failure to cooperate in an administrative inquiry; and/or
 - e. Lying, cheating, stealing, unethical conduct or subsequent arrest/conviction for a criminal act.

(Ref: CALEA 26.1.4, item c)

J. Termination Order:

1. Employees on new hire probation can be terminated at any time during the probationary period and are excluded from the provisions of this section.
2. If employee misconduct results in termination from the agency, the employee will receive a written notice which will contain the following information:
 - a. The reason for termination; and
 - b. The effective date of the termination.
(Ref: CALEA 26.1.7, items a & b)
3. All employees, including those terminated, will undergo an exit interview prior to ending employment with the Sheriff's Office. During the exit interview the employee will be provided a statement of fringe and retirement benefits. If the employee fails to attend the exit interview, the Human Resources Office will mail the appropriate documents to the employee's listed address. (Ref: CALEA 26.1.7, item c)

K. Supervisory Authority:

1. Final disciplinary authority and responsibility for agency employees rests with the Sheriff. All supervisors are held responsible for any discipline administered at any level below them within their span of authority.
2. If the misconduct is very minor, such as a minor infraction of procedures, or a case of poor judgment which has not significantly impeded effective agency operations, the supervisor is authorized to take immediate corrective action in the form of counseling which may be verbal or written.
3. A written reprimand may be given by any supervisor within their span of authority. If the span of authority is exercised outside the normal duty assignment, such as during a collateral duty assignment or a temporary assignment it will be the responsibility of that supervisor to inform the

offending employee's normal duty assignment supervisor and ensure the reprimand is documented in the employee's personnel file.

4. Whenever improper conduct of an employee is observed by any supervisor, it will be the responsibility of that supervisor to take immediate corrective action or to inform the offending employee's supervisor for possible disciplinary action.
5. Any supervisor may relieve any employee from duty in the following circumstances:
 - a. Employee conduct which is observed by or reported to the supervisor which is criminal, extremely serious in nature, and/or creates potential harm to the public, the employee or the Sheriff's Office; or
 - b. The employee is unfit for duty due to physical or psychological reasons, intoxication from drugs or alcohol, use of deadly force, a motor vehicle accident, other physical injury, death in the family, or other personal problems.
6. A supervisor taking such action must notify the chain-of-command as soon as possible and articulate the reason for such action. The supervisor must also submit written documentation in statement or other appropriate form as to the incident or circumstances which led to the action. Such documentation will be forwarded to the appropriate Chief Deputy and the Office of Professional Standards by the end of the shift.
7. The supervisor will take possession of the employee's weapon(s), agency identification card, badge, keys, key cards, and vehicle. Unless otherwise notified by the Office of Professional Standards or Chief Deputy, such administrative leave will be with pay. (Ref: CALEA 26.1.5)

L. Maintenance of Disciplinary Records:

1. Reports and supporting documents which relate to a disciplinary action will be retained in the Office of Professional Standards. The record of disciplinary action will also be placed into the employee's personnel file.

(Ref: CALEA 26.1.8)

M. Appeal Procedures:

1. All adverse disciplinary action, with the exception of verbal counseling is an acceptable topic for grievance and may be appealed in accordance with agency grievance procedures.

(Ref: CALEA 26.1.6)

2. Temporary and probationary employees may appeal disciplinary action under the provisions of this order.

U504
OPER: CPRSDP

CHARLESTON COUNTY TAX SYSTEM
MOTOR VEHICLE INQUIRY

03-12-2009
15:08:00

TX YR: 2008 ACCT: 00314400 PR YR:
OWNER 1: SIMMONS ROOSEVELT L
OWNER 2:
C/O:

RCPT: 2008 - 471783 ACTION: I RC: 02 A
STAT: CP
EXEM CD:

TAX ADDR 3416 KITFORD RD
C,S,Z: JOHNS ISLAND SC 29455

UNIT:
CORR:

CREATE DATE: 10-20-2008
BILL DATE: 10-20-2008
PAID DATE: 10-20-2008
N.B. DATE:
HWY LETTER:
SUSPEND:
RELEASE:

MAIL ADDR
C,S,Z:

UNIT:
CORR:

ORIGIN CODE: 2 YEAR: 1992 MAKE: FORD MODEL:
VIN: 1FTDF15Y6NNA81908 SCTC MODEL:
WEIGHT: BODY: VEHICLE TYPE: 1

FINAL NOTICE:
UPDATE DATE: 10-20-2008
UPDATE ID: AUTLML

TAG DATE: 10-2008 EXP DATE: 10 2009 TAG MONTHS: 12
TAG NUMBER: TAX DIST: 51

PREV RCPT:
NEXT RCPT:

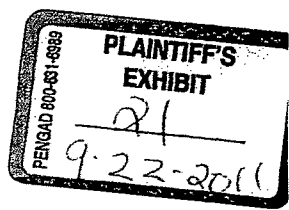
ORIG ASMT: 50 TX ASMT: 50 RENEWAL: .00 NET TX: 8.76
VALUE TYP: S TAX RELIEF: N INSURANCE REQ:

ACTION COMPLETE
PF2=CO INQ PF4=CREDIT

NEXT SCREEN:

21-1

R392



U504

OPER: CPRSDP

CHARLESTON COUNTY TAX SYSTEM
MOTOR VEHICLE INQUIRY

03-12-2009
15:07:20

TX YR: 2008 ACCT: 00196535 PR YR: RCPT: 2008 - 878394 ACTION: I RC:

OWNER 1: SIMMONS ROOSEVELT L

STAT: CP

OWNER 2:

EXEM CD:

C/O:

TAX ADDR 3416 KITFORD RD

UNIT:

CREATE DATE: 06-11-2008

C,S,Z: JOHNS ISLAN

SC 29455 8943 CORR:

BILL DATE: 06-27-2008

PAID DATE: 08-29-2008

MAIL ADDR

UNIT:

N.B. DATE:

C,S,Z:

CORR:

HWY LETTER:

SUSPEND:

ORIGIN CODE: 0 YEAR: 1955 MAKE: DESO MODEL: 503

RELEASE:

VIN: 50347812

SCTC MODEL:

FINAL NOTICE:

WEIGHT: 30 BODY: 4S VEHICLE TYPE: 1

UPDATE DATE: 06-11-2008

UPDATE ID: AUV007

TAG DATE: 08-2008 EXP DATE: 08 2009 TAG MONTHS: 12

TAG NUMBER: 190RPR TAX DIST: 51

PREV RCPT:

NEXT RCPT:

ORIG ASMT: 50 TX ASMT: 50 RENEWAL: .00 P NET TX: 8.76

VALUE TYP: S TAX RELIEF: N INSURANCE REQ: N

ACTION COMPLETE

PF2=CO INQ PF4=CREDIT

NEXT SCREEN:

21-2

2393

U504

OPER: CPRSDP

CHARLESTON COUNTY TAX SYSTEM
MOTOR VEHICLE INQUIRY

03-12-2009
15:07:43

TX YR: 2008 ACCT: 00252576 PR YR: RCPT: 2008 - 921834 ACTION: I RC:
OWNER 1: SIMMONS ROOSEVELT L STAT: CP
OWNER 2: EXEM CD:
C/O:

TAX ADDR 3416 KITFORD RD UNIT: CREATE DATE: 08-12-2008
C,S,Z: JOHNS ISLAN SC 29455 8943 CORR: BILL DATE: 08-29-2008
PAID DATE: 10-20-2008

MAIL ADDR UNIT: N.B. DATE:
C,S,Z: CORR: HWY LETTER:
SUSPEND:

ORIGIN CODE: 0 YEAR: 1979 MAKE: TOYT MODEL: LD5
VIN: TE51343365 SCTC MODEL: RELEASE:
WEIGHT: 22 BODY: 2S VEHICLE TYPE: 5 FINAL NOTICE:
UPDATE DATE: 08-12-2008
UPDATE ID: AUV007

TAG DATE: 10-2008 EXP DATE: 10 2009 TAG MONTHS: 12
TAG NUMBER: 897KAB TAX DIST: 51

PREV RCPT:
NEXT RCPT:
.00 P NET TX: 8.76

ORIG ASMT: 50 TX ASMT: 50 RENEWAL:
VALUE TYP: S TAX RELIEF: N INSURANCE REQ: N

ACTION COMPLETE

PF2=CO INQ PF4=CREDIT

NEXT SCREEN:

2394

21-3

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO. 2011CP10-1084

ROOSEVELT SIMMONS)
Plaintiff)
Vs.)
MASE and COMPANY, LLC,)
J. AL CANNON, JR.,)
CHARLESTON COUNTY)
SHERIFF'S DEPARTMENT,)
CHARLESTON COUNTY,)
CHARLESTON COUNTY)
REVENUE COLLECTIONS)
DEPARTMENT and)
HARRY LONG)
Defendants)

FILED
2012 AUG -2 AM 11:39
JULIE L. ARMSTRONG
CLERK OF COURT
BY _____

AFFIDAVIT OF
ROOSEVELT SIMMONS

Roosevelt Simmons being duly sworn according to law upon his oath deposes and says:

1. I am the plaintiff in this action and have personal knowledge of the facts herein.
2. I filed this suit because of the unfair and illegal practices by the county in trying to collect user fees from me and other property owners like me that can hardly afford to pay their taxes. I should not be required to pay the user fee because I do not benefit from the services that the county is providing. I never received notice of the suits brought by the Business License/User fee Department and never went to Magistrate's Court to challenge them. I believed that the user fees had been waived by the county after I complained and no one ever told me otherwise. The Sheriff's Department sold real property I owned that wasn't even subject to the user fee for practically nothing instead of personal property I owned. And the Business License/User fee Department obtained judgments against me for user fees on real estate that I don't even own.

3. I have lived on Johns Island for many years. My house is located on the parcel identified as TMS 282-00-00-138 (TMS 138). I don't receive any county services for trash removal, sewer or water. Trash removal companies don't come back to my house because it is too far off Kitford Road. I don't have any trash pickup or take any solid waste to the landfill.

4. Each year I received a tax bill from the county which included a user fee, I went to the County Auditor and spoke to Ms. Peggy Ellington, one of the employees. To object to the user fees being part of my taxes. She gave me a form which I signed and she initialed it indicating the user fee was being removed. I also spoke to the Auditor, Ms. Peggy Moseley about my problem with the user fee. Neither Ms. Ellington nor Ms. Moseley ever told me that I had to pay the user fee or else I could lose my property. Each year, the county removed the user fees from my tax bill. I then paid the taxes in full for TMS 138 for each and every year. I never received a separate user fee bill. As a result, I thought that the county had no claim for user fees.

5. I did not receive any written notice of a complaint filed against me by the Business License/User Fee Department in 2000 for nonpayment of the user fees in the amount of \$89.00. I have had problems with not receiving mail for many years. Since I never received notice of the complaint in 2000, I never went to the Magistrate's Court to object to the user fee. I also did not receive written notice that a judgment had been entered against me on that complaint.

6. I deny speaking to Deputy Long in April 2009 as he claims in his deposition. I never spoke to or heard from Deputy Long before he arrived at my house in August 2009. I never received any letters which he claims to have sent before then about the 2000 judgment. I never spoke to him on the telephone or made any threats against him or the Department.

7. I own several motor vehicles including a Ford truck, a Toyota sedan and a "classic" 1955 Desoto sedan which I maintained in very good condition. These vehicles are all owned free and clear and are registered to me. I also own a boat and trailer, a Kubota tractor and attachments for which I had paid over \$8000. and an Allis Chalmers tractor for which I had paid \$9000. and a backhoe 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 my house in August 2009 but he didn't seem to have any interest in them. When he told me at my house that I had to pay the judgment, I told him the user fee had been removed. Because the user fee had been removed by the Auditor's Office from my tax bill earlier, I did not believe that any sale of my property would occur. When Deputy Long gave me a notice of sale for TMS 282-00-00-498, another parcel I own, I did not understand why the County would try sell property on which the taxes were paid that was not subject to the user fee. If I had understood, I would have placed the taxes and user fee into an escrow account until the dispute could be resolved.

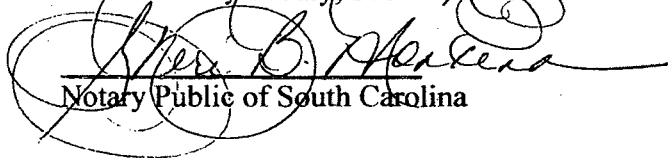
8. As I found out later, Deputy Long sold TMS 498 for \$600. I had TMS 498 appraised in 2006 because of a dispute involving Berkeley Electric and the fair market was then \$70,000. Deputy Long did not perform his duty to obtain the best price possible and the sale price is grossly inadequate.

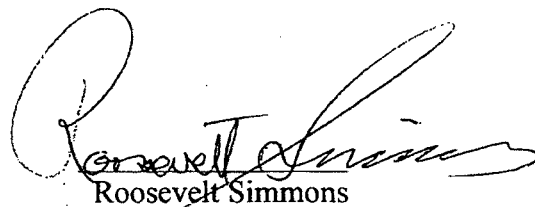
9. I also found out later that other judgments had been entered against me without my knowledge for user fees that I thought had been waived on TMS 138. I had no notice that these had been filed or judgments entered and there has not been any attempt to execute on any other property since the sale of TMS 498 in 2010. I ask the court to vacate these judgments as well.

10. In prior years, I also paid the taxes on property known as TMS 312-00-00-024 located on River Road, Johns Island which was held in the name of "the estate of Sam Balaam" who was married to my grandmother Hester Singleton Balaam. Because the taxes were not being paid regularly by family members and I had to pay them to avoid a tax sale, I had the Tax Assessor send the bill to me even though I was not the legal owner. I did this in order to protect my family heirs' interest in this property. Because the tax bill contained a user fee, I asked the Auditor to remove in as I had done for TMS 138 because the county was not providing any services. In 2004, other persons claiming to be heirs of Sam Balaam (whom they identified as Sam Bailum) filed suit against me and my family to quiet title in TMS 024 and several other parcels of heirs' property. A judgment was entered in 2006 allowing me the right to purchase it but the Special Referee later refused to issue a deed and title to TMS 024 was divided between Franklin Smith and LMC, LLC. As a result I never acquired title to TMS 024 and any judgments which involve user fees due to TMS 024 should be vacated since it would be unfair for me to have to pay a user fee judgment on property when I was never the owner.

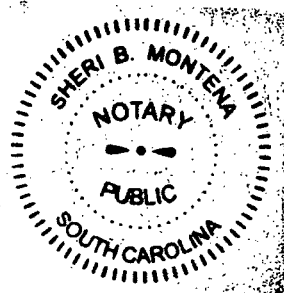
Sworn and subscribed before me

This 7th day of ~~July, 2009~~ August, 2012


Notary Public of South Carolina


Roosevelt Simmons

SEP-003113.178



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ROOSEVELT SIMMONS,

Plaintiff,

v.

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

Defendants,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-1084

**SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF DEFENDANTS J. AL
CANNON, JR., CHARLESTON COUNTY
SHERIFF'S OFFICE, CHARLESTON
COUNTY, CHARLESTON COUNTY
REVENUE COLLECTIONS
DEPARTMENT, and HARRY LONG'S
MOTION FOR SUMMARY JUDGMENT
(FILED UNDER SEAL)**

Defendants, J. AL CANNON, JR., CHARLESTON COUNTY SHERIFF'S OFFICE,
CHARLESTON COUNTY, CHARLESTON COUNTY REVENUE COLLECTIONS
DEPARTMENT, and HARRY LONG ("Defendants") file this Supplemental Memorandum in
Support of their Motion for Summary Judgment.

ARGUMENT

- I. **The Circuit Court does not have jurisdiction to overturn judgments against Plaintiff from the Charleston County Magistrates Court because Plaintiff has never filed any post-trial motions nor has he filed an appeal of the Magistrates Court judgments against him.**

Plaintiff cannot collaterally attack Magistrates Court judgments in Circuit Court because Plaintiff failed to file any post-trial motions or appeals after notice of the judgments. Plaintiff is asking the Circuit Court to overturn multiple judgments from the Charleston County Magistrates Court. Plaintiff seeks to do this not through an appeal of the Magistrates Court judgments, but rather through a collateral lawsuit filed more than ten years after some of the judgments were rendered.

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R400

This is improper under South Carolina statute, court rules and case law.

South Carolina Code Ann. § 22-3-1000 provides the time for post-trial motions and appeals from civil and criminal judgments in Magistrates Courts.

No motion for a new trial may be heard unless made within five days from the rendering of the judgment. The right of appeal from the judgment exists for thirty days after the rendering of the judgment.

The South Carolina Magistrates Court Rules conform to the statute. Magistrates Court Rule 19 states that:

The motion for a new trial shall be made in writing and filed with the court no later than five (5) days after notice of the judgment. The court shall notify all opposing parties that the motion has been filed and shall provide those parties a copy of the motion in a manner provided for in Rule 8.

Rule 19(b), SCRMC. Rule 18 of the SCRMC governs appeals from Magistrates Courts:

All appeals of judgments rendered by the magistrates court shall be to the circuit court of the county where the judgment was rendered. Within thirty (30) days after delivery of written notice of judgment to the parties or their attorneys, a party wishing to appeal shall serve on the respondent and file a notice of appeal containing a statement of the grounds for appeal with the magistrate rendering the judgment and with the Circuit Court of the County where the judgment was rendered.

Rule 18(a), SCRMC.

In Town of Hilton Head Island v. Godwin, 370 S.C. 221, 634 S.E.2d 59 (Ct.App.2006), the South Carolina Court of Appeals addressed the necessity to file timely post-trial motions once notice of a judgment is received. In this case, Godwin was issued a ticket for criminal domestic violence ("CDV") in July 1995. Id. at 222. Godwin failed to appear for a trial on the CDV charges that was set for August 8, 1995, and in his absence, he was convicted and the court ordered him to pay a fine of \$304. Id. On September 29, 1995, Godwin was arrested for three outstanding warrants, one being

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R401

the CDV charge. Id. Either Godwin or someone on his behalf paid the \$304 fine on September 29, 1995, in order to have Godwin released from jail. Id.

Approximately eight years later, on August 11, 2003, Godwin applied for a gun permit; however, he was denied the permit due to the CDV conviction. Id. at 223. Instead of filing any motions with the Municipal Court or an appeal with the Circuit Court, Godwin waited seven months to send a letter to the Municipal Court, which was "treated as a motion to set aside the conviction and/or a motion for a new trial." Id. The municipal court denied the motion and Godwin appealed to the Circuit Court. Id. Godwin argued to the Circuit Court that due to clerical errors or mistakes made by the Municipal Court, he did not receive notice until August 11, 2003. The Circuit Court ordered a new trial. Id.

The Court of Appeals vacated the Circuit Court judgment and held that the Circuit Court lacked jurisdiction to hear Godwin's motion. Id. at 224. The basis for this holding was that Godwin did not file a timely post-trial motion or appeal once he received notice of the conviction. Id. The Court held that "[a] party who fails to timely appeal or take any other timely action necessary to correct an error is procedurally barred from contesting the validity of the conviction." Id. Importantly, the court held that while there was evidence to support the fact that Godwin had received notice of the conviction in 1995 when he paid the \$304 fine, there was certainty that he had notice of the conviction on August 11, 2003. Id. at 225. Because Godwin waited 7 months to take any action on the conviction, the Circuit Court was without jurisdiction to overturn Godwin's conviction. Id.

In Godwin, the Court of Appeals relied on Brewer v. South Carolina Highway Department, 261 S.C.52, 198 S.E.2d 256 (1973). In that case, Brewer filed a motion to enjoin the South Carolina

Highway Department ("SCHD") from suspending his driver's license and reinstating his driving privileges. Id. at 55. The underlying facts of the case are that Brewer was arrested for driving under the influence, and neither he nor his attorney received notice of the trial set before a magistrate judge on September 25, 1972. Id. at 54-55. Brewer was convicted in his absence and did not receive notice of the conviction until October 18, 1972. Id. Brewer's attorney filed a motion for a new trial the following day, October 19, 1972. Id.

The SCHD took the position that the motion was not timely as it was not filed within five days of the conviction. Id. at 55. However, the Court held that Brewer timely filed his motion as he filed it one day after he had notice of the conviction. Id. at 55-56. The Court also held that the "time to appeal from a judgment in a magistrate's court or move for a new trial therein does not begin until he has notice of the judgment against him." Id. at 56. The Brewer Court cited the case of O'Rourke v. Atlantic Paint Co. 74 S.E. 930, 932 (1912), which held that "the only remedy of a party against whom a judgment is rendered is either to appeal, or make a motion for a new trial, and appeal in case such motion is refused."

In our current case, Plaintiff has never filed any motions or appeals of the Magistrates Court judgments once he had notice of the same. Therefore, he is procedurally barred from challenging those judgments. Plaintiff is challenging Magistrates Court judgments from the years 2000-2009. He claims that the Magistrates Court lacked jurisdiction to hear cases involving non-payment of user fees and therefore, the Magistrates Court judgments are without affect. As the Supreme Court held in O'Rourke, Plaintiff's proper remedy for challenging a judgement in Magistrate Court is to make a motion for a new trial or to appeal. Id. If a party does not make a timely motion or appeal, once he has received notice of the Magistrate Court judgment, he is procedurally barred from challenging that judgment. Town of Hilton Head Island, 370 S.C. at 224; Brewer, 261 S.C.56.

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2403

Plaintiff has neither timely appealed nor filed a motion for a new trial regarding any of the judgments he is now challenging. Plaintiff claims that he was never served with any of the Magistrates Court lawsuits nor any of the judgments against him. While Defendants strongly dispute this allegation, for purposes of this summary judgment motion and taking facts in a light most favorable to the non-moving party, Plaintiff was certainly on notice of these judgments when he filed the current lawsuit contesting the judgments. This lawsuit was originally filed on February 11, 2011. When Plaintiff became aware of these judgments, he should have filed a motion for a new trial or an appeal of the judgments as required by South Carolina statute and the South Carolina Magistrates Court rules. Instead, he filed a civil lawsuit against defendants seeking monetary damages and declaratory relief among other elements of relief. Because Plaintiff did not timely file a motion for a new trial nor an appeal of the judgments, this court in our current lawsuit is without jurisdiction to overturn those judgments. Town of Hilton Head Island, 370 S.C. at 225.

II. Because Plaintiff did not appeal the prior orders and judgments of the Magistrates Court, those orders have become the law of the case.

An unappealed order of a court becomes the law of the case. See Judy v. Martin, 381 S.C. 455, 674 S.E.2d 151 (2009). In Judy, Martin filed a suit against Judy in 2000 seeking \$2500 in damages and Judy counter-claimed for \$6500 (which exceeded the jurisdictional limit of \$5000 at that time). Id. at 456-457. The trial was set for September 28, 2000, but Judy claimed that the magistrate told him that the Magistrates Court did not have jurisdiction over his counter-claim and that the case would be transferred to Circuit Court. Id. at 457. Based on this representation, Judy did not appear at trial and a judgment was issued against him for \$2,555. Id. Judy appealed the Magistrates Court's judgment to the Circuit Court and the Circuit Court affirmed the judgment. Judy "did not seek reconsideration from the circuit court or file an appeal." Id.

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In 2004, Martin sought to levy on property owned by Judy in order to satisfy the judgment. Id. Judy filed a declaratory judgment action with the Master in Equity asking the master to hold that the Magistrates Court lacked subject matter jurisdiction in the 2000 case. Id. The master ruled that Judy was not entitled to relief because he failed to remove the case to the circuit court, failed to ask the circuit court to reconsider their decision, failed to appeal the circuit court ruling, and “abandoned his defense of lack of subject matter jurisdiction until nearly four years later.” Id.

The South Carolina Supreme Court held that Judy could not seek relief from “a prior unappealed order.” Id. at 458. Because Judy had not appealed the prior order, the order became the law of the case. Id. See also Bakala v. Bakala, 352 S.C. 612, 576 S.E.2d 156 (2003) (holding that unappealed order became law of case and another family court judge could not overrule the prior unappealed order).

In our current case, suit was filed in the Charleston County Magistrates Court against Plaintiff for unpaid user fees. Orders were issued by the Magistrates Court awarding judgment against Plaintiff and a Transcript of Judgment was filed with the court. Plaintiff failed to timely appeal the issue of subject matter jurisdiction and therefore, it has become the law of the case. See Judy supra. Plaintiff now has filed this lawsuit seeking, among other things, a declaratory judgment that the Magistrates Court lacked jurisdiction over non-payment of user fees. However, relying on the Supreme Court’s decision in Judy, this court may not entertain a declaratory judgment action seeking to overturn an unappealed order. Id. Therefore, Plaintiff’s First, Second, Third, and Fourth causes of action should be dismissed.

III. Plaintiff cannot prove facts necessary to succeed on a claim for negligent retention against the Charleston County Sheriff’s Office.

Plaintiff cannot succeed on a negligent retention theory because he cannot prove a sufficient

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nexus between any of Deputy Long's prior disciplinary issues and the harm he claims in this case. See Doe v. ATC, Inc., 367 S.C. 199, 624 S.E.2d 447 (Ct.App.2005). Plaintiff makes only one reference to this allegation in his Second Amended Complaint at paragraph 35: "Defendant Sheriff's Department was negligent in retaining defendant Long as an employee prior to the time he undertook work on the Simmons judgment." Importantly, Plaintiff makes no allegations regarding negligent hiring.

Negligent retention claims involve two elements: "knowledge of the employer and foreseeability of harm to third parties." Id. at 206; citing Di Cosala v. Kay, 91 N.J. 159, 450 A.2d 508, 516 (1982). The ATC court explained that

These elements, from a factual perspective, are not necessarily mutually exclusive, as a fact bearing on one element may also impact resolution of the other element. From a practical standpoint, these elements are analyzed in terms of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused.

Id. at 206.

Plaintiff cannot prove facts necessary to prove that the Sheriff's Office was negligent in retaining Deputy Long. Plaintiff bases his allegations of negligent retention on several unrelated disciplinary infractions Deputy Long received several years before he began working in the judgment division of the Sheriff's Office. Below are the infractions and the dates of the infractions:

- 1998 - failed to transport prisoner
- 1999 - left post to let his dog out
- 1999 - motor vehicle accident
- 2002 - unauthorized attendance in connection with a search warrant and failure to document crime victim interview
- 2003 - Warrantless search, yelling at supervisor, failure to respond to a call
- 2004 - Gave bad advice concerning search warrant vs. search by consent

Plaintiff must prove a "nexus or similarity between the prior acts and the ultimate harm

caused.” Id. The ultimate harm Plaintiff alleges is that “Defendant Long exhibited hostility toward Simmons and with malice and intent to injure Simmons, caused a levy to be placed against real property owned by Simmons which resulted in a sale and loss of Simmons interest in the property.” Second Amended Complaint, ¶ 36. None of the prior disciplinary infractions have a nexus or similarity to the alleged ultimate harm to Plaintiff.

Further, Plaintiff cannot prove that the Sheriff’s Office had knowledge sufficient to be held liable for negligent retention. Deputy Long began working in the Judgment Division in 2007. For the two years prior, there is no evidence of disciplinary infractions. During his employment with the Judgment Division, Deputy Long received no disciplinary infractions and his evaluations show that he was exceeding expectations in his job duties. See Exhibit A.

In Kase v. Ebert, 392 S.C. 57, 707 S.E.2d 456 (SC.App.2011), summary judgment was granted in favor of the employer on Kase’s claims of negligent hiring and negligent retention. The Court of Appeals affirmed the trial courts grant of summary judgment despite multiple instances of disciplinary infractions against the employee. In Kase, a truck driver, Ebert, (“Employee”) who was employed by DMX Transportation, Inc. (“Employer”) got into a physical altercation with a motorist after an automobile accident. Id. at 60. Kase filed a civil lawsuit against the Employee and the Employer alleging, among other things, negligent hiring and negligent retention. The evidence showed that the Employee had been convicted of assault prior to being hiring. Additionally, the record showed the following disciplinary infractions against Employee:

Ebert’s employment at DMX continued despite numerous professional and personal difficulties, including (1) suspension of his commercial driver’s license because of too many serious traffic violations within a short time, (2) a written reprimand from DMX concerning numerous accidents and complaints from customers and supervisors about his performance, (3) a second reprimand from DMX admonishing Ebert for hostile disrespect of his supervisors, (4) marital difficulties that were further compounded by DMX’s

withholding of his wages to pay child support, (5) a recent citation in Wisconsin for speeding and inattentive driving, and (6) a bizarre written complaint that he wrote against the officer who ticketed him in Wisconsin.

Id. at 60. Employee pled guilty to assaulting Kase after the accident, but even with that guilty plea, Employee was not fired. Id.

The Court of Appeals affirmed the trial court's grant of summary judgment finding that Kase had not proven the facts necessary to prove a claim of negligent retention. The Court of Appeals held that even though the prior assault conviction was essentially identical to the assault after the subject accident, there was no reason for Employer to foresee the type of harm caused here. Id. at 62. Importantly, neither the trial court nor the Court of Appeals placed any weight on the long list of disciplinary infractions Employee had.

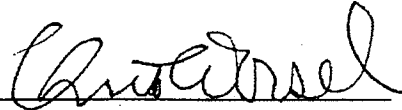
In our current case, Plaintiff cannot point to any prior conduct with a sufficient nexus to the alleged harm he received. Plaintiff claims that Deputy Long acted with ill will and as support for this, he has cited Long's prior disciplinary infractions. However, none of these disciplinary infractions lead to a question of fact concerning whether the Sheriff's Office should have foreseen the alleged wrongful actions of Long. Id. In Kase, the ultimate harm was an assault on a third party. The Employee had a documented record of complaints from customers, hostility toward superiors, and even had a conviction for assault, which was the ultimate harm caused. Even with all of this, the Court of Appeals affirmed the trial court's decision that there was no factual issue concerning negligent hiring or negligent retention. Id.

Based on the decisions in ATC and Kase, Defendants assert that Plaintiff cannot state a factual issue concerning negligent retention, and therefore, summary judgment should be granted in favor of the Charleston County Sheriff's Office on this issue.

CONCLUSION

For all the reasons stated herein along with all the reasons set forth in Defendants' Memorandum in Support of Summary Judgment, Defendants respectfully request that this Honorable Court grant their Motion for Summary Judgment and dismiss Plaintiff's complaint with prejudice.

RESPECTFULLY,



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