

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

G. Thomas Cooper Jr., Circuit Judge

**RECEIVED**

MAY 04 2016

**SC Court of Appeals**

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Case No. 2013-CP-32-3371

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To Pradubscri . . . . . Appellant,

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The Lexington County Sheriff's Department . . . . Respondant.

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BRIEF OF APPELLANT

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To Pradubscri  
990 Wisacky Hwy  
Bishopville, S.C. 29010  
Pro se

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## STATEMENT OF ISSUE ON APPEAL

- (1) Did Circuit Court judge erred in granting Summary Judgment in violation of Rule 38 (a) S.C.R.C.P., Art. I § 14 of the South Carolina Constitution, and the 7th Amendment of the United State Constitution.

## STATEMENT OF THE CASE

On September 13, 2013 appellant brought this action alleging seven causes of action, Deprivation, Conversion, illegal seizure, Trespass, Continious Nuisances, negligence, and misfeasance. The appellant brought this action clearly seeking actual and Punitive on each claim. This action was heard June 16, 2015 and Judgment was entered July 7, 2015. Appellant filed a motion to alter or amend 59(e) on August 12, 2015 and Circuit Court Judgment denying the appellant motion was entered September 8, 2015.

## STATEMENT OF THE FACTS

This action was heard June 16, 2015 and Judgment was entered July 7, 2015. Appellant filed motion to alter or amend 59(e) August 12, 2015. And Circuit Court Judgment denying the appellant motion was entered September 8, 2015.

## ARGUMENT

Did Circuit Court erred in granting the respondent motion for summary judgment.

The appellant contends that the respondent was not entitled to summary judgment. Summary judgment is not appropriate in an action seeking to recover money see Rule 38 (c) which states, the right by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived. See Shaw v. Atlantic Coast Life Ins. Co. 470 S.E. 2d 382, See the appellant complaint, the appellant main purpose is for actual and punitive damages for each cause of action. Mortgage Recovery Fund - Riverbend Ltd. v. Heritage Clipper Riverbend Trust (S.C. App. 1997) 489 S.E. 2d.

655. Issues of facts in action for money damages only must be tried by jury unless jury trial is waived.

In the case at hand the appellant clearly stated the purpose of this suit. See T.P. 5 L. 1-9. The appellant further stated each cause of action for negligence, trespass, conversion, deprivation, continuing nuisance, misfeasance. See T.P. 9 L. 8-25, T.P. 10 L. 1-7. also, see Complaint. The appellant filed 59(e) motion to alter or amend August 13, 2015 and Circuit Court judgment denying the appellant motion was entered September 8, 2015. The appellant contends that the Circuit Court judge abuse his discretion when he order the return of the appellant seized money which created an issue of liability for actual and punitive damages but turn around and grant the respondent summary judgment. The appellant further contend that summary judgment is not appropriate when the respondent posed the negligence claim

but failed to argue against the other claims for trespass, conversion, deprivation, continuous nuisance, misfeasance. The appellant addressed these issues at the hearing and on his § 9(e) motion for the court to rule on each claim. Summary judgment cannot properly be granted by only finding no genuine issue of material fact exist as to one element of the appellant claim rather the court must determine that no genuine issue exist for each essential element of the appellant claims. The circuit court granting summary is in violation of Art. I § 14 of the South Carolina Constitution and the 7th amendment of the United States Constitution. Summary judgment is a drastic and should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Singleton v. Sherer (S.C. App. 2008), 659 S.E.2d. 196.

## CONCLUSION

For the foregoing reasons, appellant Jo Prachubski respectfully requests that this Court reverse the Circuit Court Summary Judgment and remand this case to the Lexington County Court of Common Pleas.

Respectfully submitted,

Jo Prachubski

Jo Prachubski

Appellant

Pro Se

This 28 day of April 2016.

April 28, 2016

Jenny A. Kitchings, Clerk

P.O. Box 11629

Columbia, S.C. 29211

**RECEIVED**

MAY 04 2016

**SC Court of Appeals**

Re: Jo Pradub Sri v. Lexington Co. Sheriff  
Appellate case no. 2015-002320

Dear clerk,

Please find enclosed the appellant initial brief along with the designation of matter to be included in the Record on Appeal. A copy was also served on the defendant. I appreciate your attention in this matter

Sincerely yours

*Jo Pradub Sri*

cc: Justin T. Baswell

